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The Search for a Solution to the U.S.-Caribbean Copyright Enforcement Controversy

Valerie L. Hummel*

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The Search for a Solution to the U.S.-Caribbean Copyright Enforcement Controversy

Valerie L. Hummel

Abstract

Caribbean countries sees little advantage in enforcing copyright laws. This article searches for a solution to this copyright enforcement controversy. Part I of this Note provides background information on copyright law and examines the legal, political, and socioeconomic conditions existing in both the United States and in the Caribbean countries. It also discusses the effect of these conditions on substantive copyright laws and on the particular copyright interests and objectives of both parties. Part II reviews different approaches to international copyright protection. Part III discusses the advantages and disadvantages of each approach and concludes that, for resolution, the controversy requires a new approach, tailored to the needs of both the United States and the Caribbean. This Note concludes that a regional trade-based agreement between the U.S. and the Caribbean countries would protect U.S. intellectual property in the region, while accommodating the unique circumstances and interests of the Caribbean countries.

THE SEARCH FOR A SOLUTION TO THE U.S.-CARIBBEAN COPYRIGHT ENFORCEMENT CONTROVERSY

INTRODUCTION

Considered a major commercial asset in troubled economic times, intellectual property currently plays a prominent role in the domestic and international economic agenda of the United States.¹ As one of the world's largest producers of intellectual property, the United States has a substantial interest in the enactment and enforcement of international copyright laws.² In particular, the protection of intellectual property has become a priority concern for the United States in relation to Caribbean countries, where the lack of laws protecting copyrights results in a loss of millions of dollars each year for U.S. industries.³

As consumers of intellectual property, Caribbean countries see little advantage in enforcing copyright laws. Together with other developing countries,⁴ Caribbean countries con-

1. EARL W. KINTNER & JACK LAHR, *AN INTELLECTUAL PROPERTY LAW PRIMER* 1 (2d ed. 1982) (describing intellectual property as the "products of people's minds—ideas—that are translated into writings, communications, documents and tangible things"); see JESSE DUKEMINIER & JAMES E. KRIER, *PROPERTY* 63 (2d ed. 1988). "Intellectual property" refers to "productive incentives and property rights in *ideas*." *Id.* It includes the law of patent, trademark, and copyright which grants a limited monopoly right in ideas. *Id.*

2. Richard A. Morford, *Intellectual Property Protection: A United States Priority*, 19 GA. J. INT'L & COMP. L. 336, 336 (1989) (observing that "[t]he United States is the largest producer of copyrighted works and the heaviest investor in basic research and development in the world").

3. Shelley Emling, *Motion Picture Exporters Seek Laws Against Cable Theft in Caribbean*, J. COM., Aug. 20, 1991, at 5A. In its complaint to the U.S. International Trade Commission, the Motion Picture Export Association of America [hereinafter MPEAA] stated that the disregard of U.S. copyrights in eight Caribbean countries alone costs member companies an estimated US\$8,000,000 each year. *Id.* Particularly disturbing to U.S. industry is the fact that these same countries receive economic benefits from the United States, such as duty-free access to the U.S. market through the Caribbean Basin Initiative. *Id.*; see Caribbean Basin Economic Recovery Act (Caribbean Basin Initiative), Pub. L. No. 98-67, 97 Stat. 369, 384-87 (1983) (codified as amended at 19 U.S.C. §§ 2701-2706 (1988)).

4. INTERNATIONAL MONETARY FUND, *WORLD ECONOMIC OUTLOOK: A SURVEY BY THE STAFF OF THE IMF* 103 (1988). The International Monetary Fund's [hereinafter IMF] list of "industrial countries" (or developed countries) include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, the United Kingdom, and the United States. *Id.* The countries categorized

sider ready access to intellectual property a crucial means of furthering economic development.⁵ Consequently, the Caribbean attitude toward copyright laws is ambivalent at best.⁶ On the other end of the spectrum, the United States believes that Caribbean countries not only fail to provide adequate protection for foreign copyrights under their substantive laws, but do not enforce the legal standards that do exist. In an era when the United States suffers from a recession that is partially attributable to trade balance deficits, the search for a solution remedying the international copyright situation has reached the status of a fundamental trade issue.⁷

Developing countries' need for access to copyrighted works is difficult to harmonize with the demands of producer countries.⁸ The success of a solution to the international copyright dilemma depends upon mutual gain.⁹ This Note argues that a regional trade-based agreement between the United States and the Caribbean Basin countries¹⁰ would provide mutual gain, and thus most effectively ensure enforcement of copyright laws. Part I of this Note provides background information on copyright law and examines the legal, political, and

as "developing countries" for IMF purposes include any IMF members not listed above, "together with certain essentially autonomous dependent territories for which adequate statistics are available." *Id.*

5. See UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, *THE ABC OF COPYRIGHT* (1981) [hereinafter UNESCO, *COPYRIGHT*] (observing importance of education in curing Caribbean underdevelopment).

6. Gary M. Hoffman & George T. Marcou, *Who's Stealing America's Ideas?* WASH. POST, Nov. 5, 1989, at C3. Governments of underdeveloped countries believe that their economies and cultures will remain second-class and dependent on developed countries if protection of intellectual property is pursued. *Id.*

7. Marshall A. Leaffer, *Protecting United States Intellectual Property Abroad: Toward a New Multilateralism*, 76 IOWA L. REV. 273, 275 (1991).

8. See *infra* notes 37-110 (discussing in detail sources of divergence between U.S. and Caribbean perspectives on international copyright issues).

9. See Leaffer, *supra* note 7, at 278 (observing that, as to developing nations and the United States, "[a] durable agreement must be based on mutual gain and cannot be imposed by the information-producing countries on the developing world").

10. Caribbean Basin Initiative, 9 U.S.C. §§ 2701-2706 (1988). Under 19 U.S.C. § 2702(b) (1983), the President may consider for designation as "beneficiary countries" the following "Caribbean Basin" countries: Anguilla, Antigua and Barbuda, the Bahamas, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the Cayman Islands, Montserrat, Netherlands Antilles, Saint Christopher - Nevis, Turks and Caicos Islands, and the British Virgin Islands. *Id.*

socioeconomic conditions existing in both the United States and in the Caribbean countries. It also discusses the effect of these conditions on substantive copyright laws and on the particular copyright interests and objectives of both parties. Part II reviews different approaches to international copyright protection. Part III discusses the advantages and disadvantages of each approach and concludes that, for resolution, the controversy requires a new approach, tailored to the needs of both the United States and the Caribbean. It proposes a regional trade-based agreement between the United States and the Caribbean as an innovative and workable solution to the United States-Caribbean copyright problem. This Note concludes that a regional trade-based agreement between the U.S. and the Caribbean countries would protect U.S. intellectual property in the region, while accommodating the unique circumstances and interests of the Caribbean countries. Because a regional trade-based agreement provides for mutual gain, it offers the best opportunity for success.

I. COPYRIGHT LAW IN THE UNITED STATES AND THE CARIBBEAN

The United States and the Caribbean have different definitions of copyright law and different conceptions of its adequate enforcement. The disparity arises from the contrasting legal, political, and socioeconomic conditions existing within the countries. These differences lead to diverging interests and objectives in the area of international copyright law.

A. *Copyright Law and Perspective in the United States*

The United States is one of the world's largest producers of copyrighted works.¹¹ To preserve the income generated by U.S. copyrighted works outside the United States, the U.S. government has actively encouraged improved intellectual property protection on an international scale.¹² Within U.S. borders, the United States safeguards its intellectual property through a long-standing tradition of copyright protection

11. Morford, *supra* note 2, at 336-38 (observing importance of U.S. copyright production and heavy volume of U.S. investment in research and development).

12. *Id.* at 337.

originating in the U.S. Constitution.¹³

1. U.S. Copyright Laws

Intellectual property law¹⁴ grants rights to creators of intangible property¹⁵ through copyrights, trademarks,¹⁶ and patents.¹⁷ U.S. copyright law protects certain forms of intellectual property.¹⁸ Essentially, a copyright is a set of exclusive rights given to the copyright owner, for literary, musical, choreo-

13. U.S. CONST. art. I, § 8, cl. 8; *see infra* notes 25-29 and accompanying text (discussing constitutional origins of U.S. copyright protection).

14. *See generally* KINTNER & LAHR, *supra* note 1 (providing overview of intellectual property law).

15. *Id.* at 1 (describing intangible property and intellectual property as "products of people's minds" that are translated into tangible objects such as writings and documents); *see* BLACK'S LAW DICTIONARY 808 (6th ed. 1990) (defining intangible asset as "[p]roperty that is a 'right' such as a patent, copyright, trademark . . . or one which is lacking physical existence").

16. MICHAEL EPSTEIN, MODERN INTELLECTUAL PROPERTY 289 (2d ed. 1989 & Supp. 1991) (stating that "[a] trademark is any word, name, symbol, device or any combination thereof used by a manufacturer or retailer of a product, in connection with that product, to help consumers identify that product as different from the products of competitors"); *see* Leaffer, *supra* note 7, at 279 n.30 (stating that "[t]rademark law protects words, names, symbols, and devices that distinguish goods and services from similar goods and services"). Trademark infringement occurs when a third party uses a mark on similar goods or services, causing confusion in the consumer as to the origin of such goods or services. *Id.* In the United States, trademark rights are obtained once the mark is utilized. *Id.* In many other countries, trademark rights are acquired by registering the mark. *Id.*

17. *See* EPSTEIN, *supra* note 16, at 199 (stating that "United States patent laws provide a federal statutory basis for protecting certain types of inventions"); *see also* Leaffer, *supra* note 7, at 279 n.31. Patent law grants property rights to useful, novel and nonobvious products and processes. *Id.* It prevents third parties from using, making or selling the patented invention for a period of seventeen years. *Id.* To be patented, an invention must be new, original, and an improvement over prior inventions such that a person of ordinary skill in the area would not consider the invention obvious. *Id.* A patent is much more difficult to obtain than a copyright or a trademark. *Id.*

18. Copyright Revision Act of 1976, 17 U.S.C. § 102(a) (1976). Copyright protection is available for "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." *Id.* To qualify for copyrightability, a work must have originality, fixation, and the ideas contained therein must be separate from their expression. *See generally* HARRY G. HENN, COPYRIGHT PRIMER (2d ed. 1979) (providing comprehensive guide on copyright law); MELVILLE B. NIMMER, NIMMER ON COPYRIGHT: A TREATISE ON THE LAW OF LITERARY MUSICAL AND ARTISTIC PROPERTY, AND THE PROTECTION OF IDEAS (14th ed. 1976); WILLIAM S. STRONG, THE COPYRIGHT BOOK: A PRACTICAL GUIDE (1981) (providing concise overview of copyright law).

graphic, dramatic, architectural, and artistic works.¹⁹ The rights provided to the owner under copyright law pertain to the reproduction, adaptation, public distribution, and public display or performance of the work in question.²⁰

The substance and information contained within a copyrighted work is incorporeal.²¹ That is, the author's intangible intellectual creation may be contained in a variety of tangible objects such as books, computer disks, music cassettes, or videotapes. The intangible nature of intellectual property presents unique protection problems that are not as pronounced in other forms of property, such as land and personal property.²² These protection problems arise because once a work is created and published, it is difficult to prevent others from using and copying it.²³ Therefore, without intellectual property laws granting protection for the creation of such works, creators will not invest in the production of new works because third parties will be able to appropriate those works without compensating the creators.²⁴

As reflected in the U.S. Constitution, the ultimate purpose of copyright law is to benefit the public by giving creators certain rights.²⁵ Copyrights give authors an incentive to create,

19. 17 U.S.C. § 102(a) provides that copyright protection subsists in the following subject matters of copyright: literary works, musical works, dramatic works, pantomimes and choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, and sound recordings. *Id.*

20. *See* 17 U.S.C. §§ 107-112, 117 (1976) (stating statutory limitations on the copyright owner's exclusive rights). In addition, there are three further limitations. ALAN LATMAN ET AL., *COPYRIGHT FOR THE NINETIES* 30 (3d ed. 1989) [hereinafter LATMAN]. First, because copyright law protects only against the copying of a copyrighted work, a copyright does not prohibit another author from independently producing the same or a similar work. *Id.* Second, anyone is allowed to copy the ideas from a copyrighted work because copyright only protects the unique expression of ideas. *Id.* Third, a copyright does not extend to systems explained in a work, nor to the facts therein contained. *Id.*

21. LATMAN, *supra* note 20, at 13. One must distinguish between the intellectual property (the copyrighted work) and the material object or copy in which the information is embodied. *Id.* Possession of a copy of a copyrighted work is not possession of a copyright in the intellectual property. *Id.* The pertinent terms are defined in the Copyright Act of 1976. 17 U.S.C. § 101 (1976).

22. Leaffer, *supra* note 7, at 279.

23. *Id.*

24. *See infra* notes 27-32 and accompanying text (describing concept of "incentive dissemination" which balances protection given to authors (incentive) with public's need for information (dissemination)).

25. U.S. CONST. art. I, § 8, cl. 8. This article grants to Congress the power to

thus fostering the growth of learning and culture.²⁶ This idea is called the "incentive dissemination policy" and it underlies much of copyright law.²⁷ Without such copyright protection and laws, inventors and artists have little incentive to invent or to create new works, as they have no guarantee that they will reap the fruit of their labor.²⁸ If copyright laws, or their enforcement, prove inadequate, authors cannot compete on the market with third-party users who reap the benefits of the stolen product without investing any of the costs in the form of time, research, money, or creativity to produce the work.²⁹

At the international level, the injuries to the owner multiply when the work is pirated, that is, exported and sold with little if any compensation returning to the owner.³⁰ A high technology computer program,³¹ for example, may be expensive to produce, but can be copied for a minimal cost. A sophisticated computer program priced in the United States at US\$500 may sell for less than US\$10 in some developing

enact laws "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." *Id.*

26. *Id.*

27. *Whelan Assocs. v. Jaslow Lab.*, 797 F.2d 1222, 1234 (3d Cir. 1986) (observing that "[w]e must remember that the purpose of the copyright law is to create the most efficient and productive balance between protection (incentive) and dissemination of information, to promote learning, culture, and development"); see LATMAN, *supra* note 20, at 14 (stating that "[a]lthough the primary purpose of copyright law is to foster the creation and dissemination of intellectual works for the public welfare, it also has an important secondary purpose: to give authors the reward due them for their contribution to society"). *Id.* at 14-15.

28. *Whelan*, 797 F.2d at 1238 (stating that "[i]n balancing protection and dissemination . . . the copyright law has always recognized and tried to accommodate the fact that all intellectual pioneers build on the work of their predecessors"); see J. Davidson Frame, *National Commitment to Intellectual Property Protection: An Empirical Investigation*, 2 J. L. & TECH. 209, 210 (1987).

29. LATMAN, *supra* note 20, at 14; Mark L. Damschroder, *Intellectual Property Rights and the GATT: United States Goals in the Uruguay Round*, 21 VAND. J. TRANSNAT'L L. 367, 370.

30. *Shipman v. RKO*, 100 F.2d 533, 538 (2d Cir. 1938) (stating that piracy is inferred when similarities between the work of the plaintiff and the work of the defendant are apparent). When the defendant has had access to the plaintiff's work, the weight given to the similarities is increased. *Id.*; see BLACK'S LAW DICTIONARY, *supra* note 15, at 1148 (defining "piracy" as "illegal reprinting or reproduction of copyrighted matter . . . or unlawful plagiarism of it").

31. 17 U.S.C. §§ 101, 102(a) (1976). A computer program is categorized as a "literary work" protected under copyright law. *Id.*

countries.³²

Because many developing countries are signatories to international copyright conventions providing substantive international copyright law,³³ U.S. copyright owners face the difficulty of insufficient copyright law enforcement,³⁴ rather than the non-existence of copyright laws.³⁵ By refusing to enforce the rights granted by its copyright laws, a country in effect does not grant any rights at all.³⁶

2. The Copyright Law Perspective of the United States

The United States, as a developed country³⁷ ranking among the largest producers of new and valuable information, considers assets in the form of intellectual property a bright spot in an otherwise bleak economic environment.³⁸ The sale and licensing of copyrighted material to other countries generates substantial income for the United States.³⁹ To preserve the resulting inflow of funds and economic benefit, the U.S. government has long been active in vigorously encouraging improved international intellectual property protection.⁴⁰ Increasingly dependent upon the sale of information, the United States deems the international protection of intellectual property a vital trade issue involving its competitive advantage in

32. Leaffer, *supra* note 7, at 280.

33. See *infra* text accompanying notes 111-33 (discussing international copyright conventions and the signatories thereto).

34. Eileen Hill, *The Administration is Working to Improve Worldwide Protection of One of Our Most Valuable Assets: Intellectual Property*, Bus. AM., July 21, 1986, at 9 (observing that "[e]ven if adequate laws and penalties are in place, their enforcement most often is ineffective").

35. See Morford, *supra* note 2, at 340 (observing that "[a] copyright has little value if the owner has no way of enforcing its rights"); Leaffer, *supra* note 7, at 287 (noting that "it is inadequate enforcement rather than a lack of substantive protection" which presents dilemma for owners of copyright).

36. See Morford, *supra* note 2, at 340 (observing that "the best law in the world will have little effect on . . . pirates, if they know that the police never raid, the courts never issue injunctions, or that the penalties are easily absorbed as a cost of doing business").

37. See *supra* note 4 (listing those countries considered "developed").

38. See *supra* note 1 and accompanying text (maintaining that intellectual property plays prominent role in U.S. economic agenda because of its status as major economic asset).

39. See *infra* notes 101-06 and accompanying text (observing that intellectual property law benefits accrue mostly to the United States).

40. See Morford, *supra* note 2, at 337.

the world market.⁴¹

The United States argues that inadequate protection of copyrights has definable detrimental economic effects.⁴² At a time when it can hardly be afforded, the problem has resulted in the large-scale loss of jobs in the United States.⁴³ Furthermore, the production of intellectual products has become extremely costly, requiring research, development, and large-scale production expenses.⁴⁴ Increasingly, the United States needs an expansive international market to recover its investment costs.⁴⁵ Unrecoverable costs, resulting from inadequate copyright laws and enforcement, discourage production of copyrightable material due to a loss of incentives and unavailability of funds.⁴⁶

The United States stresses that inadequate copyright protection causes other identifiable "trade distortions."⁴⁷ For example, pirated products imported into the United States displace sales of legitimate items on the domestic market.⁴⁸ In addition, if products are pirated in non-U.S. markets, they decrease United States exports to those markets.⁴⁹ Furthermore, pirated parts exported from those non-U.S. markets to third

41. Leaffer, *supra* note 7, at 275. Reflecting this view, former U.S. Trade Representative [hereinafter USTR] Carla Hills has stated that any trade agreement signed with Central America must contain "guarantees that investors' and traders' intellectual property will be protected." See Emling, *supra* note 3, at A5.

42. INT'L TRADE COM., *FOREIGN PROTECTION OF INTELLECTUAL PROPERTY AND ITS EFFECT ON U.S. INDUSTRY AND TRADE* (1988). The U.S. International Trade Commission [hereinafter ITC] estimates that the failure of international copyright laws results in a loss of \$US24,000,000,000 for U.S. businesses. *Id.*; see "U.S. Firms Lose Billions Annually to Foreign Piracy, ITC Intellectual Property Study Finds," 5 Int'l Trade Rep. (BNA) 290 (Mar. 2, 1988) (claiming losses are \$US43,000,000,000 to \$US60,000,000,000 per year due to non-U.S. piracy of intellectual property). *Id.*

43. Calvin Sims, *Wounded by Patent Piracy . . . Vexed by Tape Technology; U.S. Laws Offer Less Protection Than Those of Major Trading Partners*, N.Y. TIMES, May 13, 1987, at D1 (reporting that 130,000 jobs are lost each year due to non-U.S. piracy). One ITC report has estimated that 131,000 jobs in five industry sectors were lost in 1982 due to foreign counterfeiting. United States Int'l Trade Comm. Pub. No. 1479, XVII "Effects of Foreign Product Counterfeiting on U.S. Industry," 4-13 (Jan. 1984).

44. Leaffer, *supra* note 7, at 275.

45. *Id.*

46. See *supra* notes 21-24 and accompanying text (explaining scenario unique to copyright holders whose work is intangible, easily copied, and requires protection as part of incentive to produce).

47. Emery Simon, *U.S. Trade Policy and Intellectual Property Rights*, 50 ALB. L. REV. 501, 501 (1986).

48. *Id.*; see *supra* note 30 and accompanying text (defining "piracy").

49. Simon, *supra* note 47, at 501.

countries again displace United States exports.⁵⁰ In contrast with the view of Caribbean countries, the United States argues that lack of enforcement is equivalent to a trade barrier because inadequate enforcement deters international trade.⁵¹

The United States therefore finds itself in very different circumstances than do the countries of the Caribbean.⁵² These contrasting circumstances have led to differing interests and objectives in the search for a workable solution to the problem.⁵³ The United States' strict adherence to strong substantive copyright laws reflects its legal tradition of protecting copyrightable material.⁵⁴ Furthermore, the economic-based need for copyright compensation from non-U.S. countries spurs the United States to push relentlessly for an overhaul of the international protection of copyrights.⁵⁵ The United States perceives the international copyright protection problem as a major trade issue.⁵⁶ Recent approaches to solve the problem have been trade-based, with the United States holding trade pacts hostage to its demands for better copyright protection.⁵⁷

B. *The Copyright Law and Perspective of Caribbean Countries*

The countries of the Caribbean⁵⁸ face monumental eco-

50. *Id.*

51. *Id.* at 501-02; *see infra* notes 108-10 and accompanying text (providing Caribbean opinion that intellectual property protection is what qualifies as international trade barrier).

52. William Alonzo Stanback, *International Intellectual Property Protection: An Integrated Solution to the Inadequate Protection Problem*, 29 VA. J. INT'L L. 517, 525-41 (1989) (discussing differing U.S. and Caribbean positions on copyright law and enforcement).

53. *Id.*

54. *See supra* notes 14-36 and accompanying text (providing an overview of copyright law with focus on U.S. law).

55. Emling, *supra* note 3, at 5A (quoting former USTR Director of Caribbean Basin Affairs John Melle as stating that "[i]ncreasingly the U.S. can[not] tolerate the lack of protection around the world").

56. Leaffer, *supra* note 7, at 277.

57. Mary Foley, *U.S. and Poland Co-Star in Copyright Dispute*, J. COM., Sept. 24, 1991, at 6 (discussing U.S. approach to copyright disagreements); *see infra* text accompanying notes 134-40 (discussing recent attempts by the United States to condition the progress of trade agreement negotiations upon better protection of intellectual property).

58. *See supra* note 10 (listing countries classified as "Caribbean Basin" countries by Caribbean Basin Initiative); *see* Treaty Establishing the Caribbean Community, 946 U.N.T.S. 17 (July 4, 1973) [hereinafter CARICOM] (listing Anguilla, Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat,

conomic, political, and cultural development problems similar to those faced by other developing countries.⁵⁹ Improvement of the current substandard living conditions greatly depends on the progress of education, science, and culture.⁶⁰ Access to the intellectual property of developed countries is vital to the creation and maintenance of an effective system of education.⁶¹ Education, in turn, is essential for the training of qualified workers, technicians, engineers, and professionals crucial to the countries' advancement.⁶² In an attempt to improve their situation, Caribbean countries have reached a regional agreement, the Treaty Establishing the Caribbean Community ("CARICOM"), which has social, cultural, and technological development as its goal.⁶³

1. Caribbean Copyright Laws

The ideas and concepts underlying Caribbean copyright legislation are similar to those found in U.S. law, and have resulted in laws comparable to U.S. copyright laws.⁶⁴ Haiti's copyright statute, for example, covers "literary and artistic works" which includes books, leaflets, writings, dramatic works, musical compositions and paintings.⁶⁵ The authors of

St. Kitts-Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago as signatories to CARICOM).

59. See CARICOM, *supra* note 58, art. 3, 946 U.N.T.S. at 19. Article 3 of CARICOM classifies Barbados, Guyana, Jamaica, and Trinidad and Tobago as the more developed Caribbean countries; less developed countries are Antigua, Belize, Dominica, Grenada, Montserrat, St. Kitts-Nevis, Anguilla, St. Lucia, and St. Vincent. *Id.*

60. See UNESCO, COPYRIGHT, *supra* note 5, at 67 (observing the importance of education in curing Caribbean subdevelopment).

61. *Id.*

62. See MARK M. BOGUSLAVSKY, COPYRIGHT IN INTERNATIONAL RELATIONS 38 (1979); see also UNESCO, COPYRIGHT, *supra* note 5, at 68; JORGE HEINE & LESLIE F. MANIGAT, THE CARIBBEAN AND WORLD POLITICS 29 (1988) (noting Caribbean's economic dependence on non-Caribbean technology).

63. CARICOM, *supra* note 58, pmb., 946 U.N.T.S. at 18.

64. See generally UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, COPYRIGHT LAWS AND TREATIES OF THE WORLD (1971) [hereinafter UNESCO, LAWS AND TREATIES] (compiling copyright laws and treaties of numerous nations).

65. See *id.*, "Haiti," at 1 (outlining Haiti's statutes covering intellectual property law in general and addressing protection and enforcement of copyrightable material); Law on Literary and Artistic Property, 1885, art. 1 (Haiti). Other protected works are engravings, lithographs, geographical maps, plans, scientific sketches, and any literary, scientific or artistic work capable of publication by any method of printing or reproduction. *Id.*

these works are granted property rights in their works and the privilege of instituting proceedings against infringers.⁶⁶ Haiti's Penal Code makes the violation of the copyright laws a criminal infringement and outlines the fines payable in the event of infringement.⁶⁷

Nicaragua's copyright laws are found primarily in Articles 724-867 of the Nicaraguan Civil Code.⁶⁸ The Nicaraguan Civil Code divides the subject matter of copyright protection into separate articles relating to dramatic works and general artistic works.⁶⁹ The rules relating to infringement are found in the Civil Code as well.⁷⁰ Infringement is deemed to have occurred when someone uses an original work without the consent of the legitimate owner.⁷¹ The penalties for copyright infringement include forfeiture of all remaining copies of the work and payment of compensation to the lawful owner of the work for the value of the infringing copies.⁷² In addition, the Civil Code provides that copyright infringers are also punishable under the Penal Code for the commission of a fraudulent act.⁷³

The Dominican Republic protects scientific, artistic, and

66. See UNESCO, LAWS AND TREATIES, "Haiti," *supra* note 64, at 1 (outlining Haiti's 1885 statute covering copyrightable materials); Law on Literary and Artistic Property, 1885, art. 2 (Haiti). The author is required to deposit five copies of the work with the Secretariat of State for Home Affairs. *Id.*

67. See UNESCO, LAWS AND TREATIES, "Haiti," *supra* note 64, at 2 (covering relevant Haitian criminal law provisions applying to copyright infringement); Penal Code of 1835, arts. 347-51 (Haiti). Proceeds from confiscated infringing materials are handed over to the copyright owner to compensate him for his suffering. *Id.*

68. See UNESCO, LAWS AND TREATIES, "Nicaragua," *supra* note 64, at 1 (outlining statutory provisions relating to intellectual property and copyright law in Nicaragua); Civil Code, 1904, arts. 724-867 (Nicar.).

69. See UNESCO, LAWS AND TREATIES, "Nicaragua," *supra* note 64, at 3-5; Civil Code, 1904, arts. 765-88, 789-98 (Nicar.). The author of a dramatic work enjoys his rights during his lifetime. *Id.* Upon the author's death, the rights pass to the author's heirs for a period of 30 years. *Id.* The same rule applies to artistic works in general, except that no time period is specified for duration of the heirs' rights. *Id.*

70. *Id.*

71. See UNESCO, LAWS AND TREATIES, "Nicaragua," *supra* note 64, at 5; Civil Code, 1904, art. 799 (Nicar.). Examples of use of a work without the consent of the legitimate owner include publishing original works, speeches, lessons and articles, publishing translations, performing dramatic or musical works, omitting the name of the author, and reproducing an architectural work. *Id.*

72. See UNESCO, LAWS AND TREATIES, "Nicaragua," *supra* note 64, at 6; Civil Code, 1904, art. 806 (Nicar.); see also arts. 806-30 (covering penalties for infringement). *Id.*

73. See UNESCO, LAWS AND TREATIES, "Nicaragua," *supra* note 64, at 7; Civil Code, 1904, art. 830 (Nicar.).

literary productions of any kind.⁷⁴ A copyright belongs to the author during the author's lifetime, and to the author's heirs for thirty years after the author's death.⁷⁵ Any person who illegally exercises any of the rights reserved to the author by the Dominican copyright laws is guilty of a misdemeanor, entitling the author to bring suit for damages or for an injunction.⁷⁶ In order to benefit from the protection of the Dominican copyright laws, however, the author is required to register the copyright with the Copyright Registry of the Dominican Republic.⁷⁷

2. Copyright Law Perspective of Caribbean Countries

Caribbean countries have an unenthusiastic attitude toward their own laws as well as toward international copyright laws.⁷⁸ Their attitude is due in part to their perception that copyright law limits free access to intellectual property, thus hindering economic development.⁷⁹

Despite their ambivalence regarding copyright law, a significant number of Caribbean countries are signatories to international copyright conventions.⁸⁰ As a consequence of their ratification of such conventions, these countries are bound, as a matter of international law, to adhere to the international copyright laws and standards embraced in such treaties.⁸¹

74. See UNESCO, LAWS AND TREATIES, "Dominican Republic," *supra* note 64, at 1; Copyright Statute, 1947, art. 3, (Dom. Rep.). Article 3 includes a list of works protected by the Copyright Statute, such as theatrical works, cinematographic works and radio plays. *Id.*

75. See *id.* art. 30, at 6.

76. See *id.* art. 9, at 2. Where the work is capable of misleading the public as to its identity, the author is entitled to bring an action. *Id.* art. 10, at 2.

77. See *id.* art. 11, at 2.

78. Hill, *supra* note 34, at 9 (observing the inadequacy of copyright law enforcement).

79. The United Nations Conference on Trade and Development [hereinafter UNCTAD] reflects in its position papers the concerns of developing countries in obtaining access to the works of developed countries. See generally John P. Spitals, *The UNCTAD Report on the Role of Trademarks in Developing Countries: An Analysis*, 2 N.Y.L. SCH. J. INT'L & COMP. L. 369 (1981); see also Carlos A. Primo Braga, *The Economics of Intellectual Property Rights and the GATT: A View from the South*, 22 VAND. J. TRANSNAT'L L. 243 (1989) [hereinafter Primo Braga].

80. See *infra* text accompanying notes 111-33, discussing international copyright conventions.

81. Vienna Convention on the Law of Treaties, adopted May 22, 1969; opened for signature May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention]. Article 26 of the Vienna Convention concerns a paramount principle of international law, *pacta sunt servanda*, which holds that "every treaty in force is binding upon the

Therefore, the inadequate protection of intellectual property in the Caribbean is more closely attributable to nonexistent or ineffectual enforcement of the law than to a total lack of substantive copyright laws.⁸²

A major enforcement effort would be necessary to adequately protect foreign copyrighted material in the Caribbean.⁸³ Achieving sufficient enforcement of copyright laws demands complex and very costly administrative and judicial systems.⁸⁴ The infrastructure required to support such systems is severely lacking in Caribbean Basin countries.⁸⁵ Basic services, as well as skilled workers, technicians, and administrative personnel, are either scarce or completely lacking.⁸⁶ Further infrastructure problems include substandard communications facilities, airports, roads, and other means of transportation.⁸⁷ The problem is compounded by the notoriously slow bureaucracies of many Caribbean countries.⁸⁸

The public, of course, would bear the cost of developing

parties to it and must be performed by them in good faith." *Id.* art. 26, 1155 U.N.T.S. at 339.

82. UNESCO, COPYRIGHT, *supra* note 5, at 68. The enactment of copyright laws does not lead directly to protection of copyrighted material. *Id.* In addition to implementation of the laws, public education is also necessary to explain rights and liabilities to those affected by such laws. *Id.*

83. Hoffman & Marcou, *supra* note 6. Traditional civil suits are largely ineffective as a means of enforcing intellectual property rights. *Id.* Government computer networks are greatly decentralized and virtually impossible to monitor. *Id.* Many holders of intellectual property rights have no way of knowing when their rights are infringed. *Id.*

84. *Id.*

85. *Id.*

86. See Mark B. Baker & Jaime E. Toro-Monserrate, *CBI v. Caricom: The Interplay Between Two International Law Instruments*, 11 N.C. J. INT'L L. & COM. REG. 1, 5 (1986) (arguing in addition that there are major disparities in level of infrastructure needs among Caribbean nations).

87. *Id.*; see Anilisa G. Lungert, *The Caribbean Basin Initiative and the I.R.C. Section 936 Investment Program: A United States Answer to the Troubled Caribbean Region*, 9 U. PA. J. INT'L BUS. L. 741, 764 (1987) (noting that Caribbean infrastructure problem has turned into vicious cycle: lack of infrastructure discourages foreign investment, and resulting lack of investment prevents development of infrastructure). Many of the poorer nations lack the infrastructure needed for even small scale industry. *Id.* at 765. Dominica, one of the smaller Caribbean islands, has an airport which cannot handle jet aircraft, and its technological capacities are not sufficiently advanced to harness water for industrial use. *Id.* In most, if not all, Caribbean nations, frequent electricity shutdowns and water shortages are common. *Id.*

88. Thomas L. Raleigh III, *The U.S. Caribbean Basin Initiative*, 3 INT'L BUS. LAW. 136, 137 (1987).

the judicial and administrative infrastructures necessary for copyright law enforcement.⁸⁹ Developing countries in general are reluctant to allocate scant government capital to the enforcement of intellectual property laws.⁹⁰ In the Caribbean, a severe shortage of foreign currency, coupled with the belief that available resources are better spent elsewhere, renders the enforcement of foreign copyright laws a secondary concern.⁹¹ Many view piracy as having the benefit of producing desperately needed intellectual property at little cost to the public and with less sacrifice of the funds demanded for the development of infrastructure.⁹²

The inability or mere unwillingness of government and judicial officials to enforce copyright laws may also stem from political instability and widespread corruption.⁹³ Enforcement efforts are thwarted when enforcement officers can be bribed to allow incidents of infringement to escape the sanctions provided for by the law.⁹⁴ The natives of Saint Vincent and the Grenadines, for example, have grown cynical and alienate themselves from their own political process.⁹⁵ Vincentians perceive political elections simply as a change from a few individuals to a few individuals within the same corrupt system.⁹⁶

89. See Stanback, *supra* note 52, at 536 (“[B]ecause most developed countries already have extensive systems of enforcement, the cost of implementing a new international regime would be minimal However, the cost . . . will likely be much higher for developing countries.”).

90. See Leaffer, *supra* note 7, at 282.

91. Hill, *supra* note 34, at 9 (observing that at root of enforcement problem is “the belief in many developing . . . countries that economic development will be hindered . . . if counterfeiting is curbed”).

92. *Id.* (noting that “the theft of foreign intellectual property is at the root of national industrial policies designed to provide a ‘shortcut’ to modernization”).

93. See generally ANDRES SERBIN, *CARIBBEAN GEOPOLITICS: TOWARD SECURITY THROUGH PEACE?* (1990) (providing overall review of principal political and socioeconomic features of Caribbean); see also THOMAS D. ANDERSON, *GEOPOLITICS OF THE CARIBBEAN: MINISTATES IN A WIDER WORLD* (1984) (studying geopolitics of Caribbean, detailing natural and economic background of problems of Caribbean Basin); Paul Verna, *RIAA: Paraguay, El Salvador Menace Copyright Owners*, *BILLBOARD*, May 9, 1992, at 8. In Paraguay, for example, there are fairly adequate laws protecting intellectual property, but because of the complete indifference of government officials, pirates operate openly. *Id.*

94. Verna, *supra* note 93 (observing that copyright pirates are allowed to operate openly).

95. CATHY SUNSHINE, *THE CARIBBEAN: SURVIVAL, STRUGGLE AND SOVEREIGNTY* 138 (1985) (discussing Caribbean economic and political situation).

96. *Id.*

In addition, Caribbean countries simply have no tradition of protecting intellectual property.⁹⁷ The lack of tradition contrasts with the United States, where copyright law is so ingrained in U.S. jurisprudence as to be included in the Constitution.⁹⁸ Unlike the United States, Caribbean countries have few authors, inventors, or companies that would lobby for, or benefit from, sound intellectual property laws.⁹⁹ Therefore, U.S. outrage as to "mere" copyright violations are sometimes met if not with bafflement, then at least without complete understanding.¹⁰⁰

C. Sources of Caribbean Divergence with the United States

A conflict in interests and goals has arisen between the United States and the Caribbean countries. The United States increasingly relies on the sale and licensing of creative works as a valuable asset in its trade with other countries. As a result, the United States has become greatly concerned with protecting intellectual property on an international scale.¹⁰¹ The U.S. view of ideal copyright protection, however, collides with the interests of the Caribbean countries.

Vigorous urging and encouragement by the United States for improvement of copyright law enforcement, ostensibly for the benefit of both sides, has a self-interested flavor to it.¹⁰² Stronger intellectual property rights protection would probably not aid the deficient economies in the Caribbean, and instead, would mostly benefit multinational corporations likely to be based in the United States.¹⁰³ The benefits run to the

97. See generally UNESCO, LAWS AND TREATIES, *supra* note 64 (outlining statutory, as opposed to constitutional, basis for copyright law in Caribbean countries).

98. U.S. CONST. art. I, § 8, cl. 8; see *supra* note 25 and accompanying text (discussing constitutional basis for U.S. copyright laws).

99. Leaffer, *supra* note 7, at 282.

100. See Primo Braga, *supra* note 79, at 253 (observing that "any attempt to present a country's intellectual property system as a model of 'enlightened' virtues is bound to face a great deal [of] skepticism in the Third World").

101. Leaffer, *supra* note 7, at 287.

102. *Id.* at 283 (stating that perception of U.S. motives as self-interested is true "especially when developing countries have to pay the bill for protecting the rights of foreigners and the expense of the indigenous population").

103. Primo Braga, *supra* note 79, at 252. An improvement of intellectual property protection to favor foreign parties would be highly controversial in developing countries. *Id.* In his study of the costs and benefits of strong intellectual property protection in the developing countries, Mr. Primo Braga concludes that "[t]he impact

United States rather than to the Caribbean due to the simple reality that Caribbean countries typically do not have a myriad of intellectual property creators and owners who would stand to benefit from the international protection of copyright laws.¹⁰⁴

If international copyright laws were enforced in the Caribbean, any benefits to Caribbean countries resulting from exporting their intellectual property would be greatly outweighed by the cost of importing and paying licensing fees for foreign technology.¹⁰⁵ Due to the high price of royalties paid to their authors, developed countries receive billions of dollars in foreign exchange from information-poor developing countries for the sale of intellectual property.¹⁰⁶ Furthermore, some developing countries believe that the developed world seeks not only to make money, but also to control the developing world's access to technology, thus ultimately managing their progress.¹⁰⁷

Caribbean countries disagree with the United States as to the nature and cause of the international copyright problem. There is opposition to the U.S. view that the problem qualifies as a trade issue with definite economic effects.¹⁰⁸ Developing

of any individual intellectual property reform in the Third World would be marginal at best." *Id.* at 257.

104. Stanback, *supra* note 52, at 535 (observing that "[b]ecause these countries have less intellectual property and technology to export, most of the benefits from proposed protection will bypass them").

105. Stanback, *supra* note 52, at 535.

106. Leaffer, *supra* note 7, at 281. A country's economy is affected by the number of copyright holders who receive royalties from foreigners who pay to use the information protected by international copyright laws. *Id.* Countries with many creators who sell and license their intellectual property abroad have a substantial capital income flowing from foreign licensing payments. Developing countries, with a substantially lower number of nationals who sell and license their copyrighted materials abroad, end up with a net outflow of scarce capital to developed nations when they comply with international copyright laws. Stanback, *supra* note 52, at 534 n.84.

107. Stanback, *supra* note 52, at 533; see *Other Nations Said Set to Attack U.S. Over Trade Sanctions at GATT Meeting*, 6 Int'l Trade Rep. (BNA) 171 (Feb. 8, 1989) (stating that "two days of talks on the intellectual property issue ended Feb. 7 in yet another stalemate Developing countries are afraid that Western countries led by the European Community and the United States, are seeking to impose their own rules in the area, effectively blocking Third World development in such fields as patents and copyrights").

108. See Stanback, *supra* note 52, at 525; see *supra* text accompanying notes 37-57 (discussing United States position on the problem of international copyright law).

countries generally deny that the international copyright situation qualifies as a trade problem, and if it does, they argue that intellectual property protection actually creates a barrier to international trade.¹⁰⁹ In seeking a workable solution to the international copyright problem, Caribbean countries therefore approach the problem from a very different perspective than does the United States.¹¹⁰

II. APPROACHES TO INTERNATIONAL COPYRIGHT PROTECTION

Copyright owners have looked to various international law approaches to protect their creations. Such approaches include multilateral copyright conventions, bilateral agreements, and multinational trade-based agreements. Each approach has marked advantages and disadvantages, with differing levels of effectiveness.

A. Multilateral Copyright Treaties

1. The Berne Convention

The first multilateral treaty concerning international copyright law was signed in 1886 in Berne, Switzerland.¹¹¹ The resulting Berne Convention for the Protection of Literary and Artistic Works¹¹² (the "Berne Convention") is administered by the World Intellectual Property Organization (the "WIPO"), a specialized agency of the United Nations.¹¹³ To date, the Berne Convention has eighty-four signatories, including Caribbean nations.¹¹⁴ The United States was the last major West-

109. Bryan T. Johnson, *A U.S. Strategy for GATT*, 804 HERITAGE FOUNDATION REP. 84 (1991).

110. Stanback, *supra* note 52, at 525 (discussing differing perspectives of United States and Caribbean).

111. See generally MARSHALL A. LEAFFER, *INTERNATIONAL TREATIES ON INTELLECTUAL PROPERTY* (1990) [hereinafter LEAFFER, *TREATIES*] (containing text of major treaties on intellectual property, with commentary); see also Damschroder, *supra* note 29, at 378.

112. June 26, 1948, 331 U.N.T.S. 217, Paris revision, July 24, 1971 [hereinafter Berne Convention].

113. See generally DOUGLAS WILLIAMS, *THE SPECIALIZED AGENCIES AND THE UNITED NATIONS: THE SYSTEM IN CRISIS* (1990). The WIPO seeks to promote the protection of international intellectual property rights. Leaffer, *supra* note 7, at 292-93; see also UNESCO, *COPYRIGHT*, *supra* note 5, at 65 (providing overview of Berne Convention provisions).

114. BOGUSLAVSKY, *supra* note 62, at 55-64. The original document was signed

ern country to ratify the Berne Convention, effective on March 1, 1989.¹¹⁵

The objective of the Berne Convention, as set out in its preamble, is to bring the nations of the world together in a venture to protect, in as an effective and uniform a manner as possible, the rights of authors in their literary and artistic works.¹¹⁶ Its fundamental principle is protection based upon national treatment, which ensures that foreign works enjoy, in each member country, the same advantages accorded to the works of that member country's nationals.¹¹⁷ In addition, copyright protection extends to authors of non-member as well as member countries, on the condition that the work is published for the first time in a member country.¹¹⁸

The Berne Convention also addresses standards to be observed for the protection of international copyrights.¹¹⁹ The Berne Convention contains specific provisions detailing the minimum levels of protection that all member countries must provide.¹²⁰ Furthermore, the Berne Convention states that it is not necessary for member countries to abide by specific for-

by Britain, Belgium, Haiti, Germany, Spain, Italy, Liberia, Tunisia, France, and Switzerland. *Id.* at 55. Since 1886, the Berne Convention has been revised in 1908, 1928, 1948, 1967, and 1971. See generally Eric A. Savage, *Abandon Restrictions All Ye Who Enter Here!: The New United States Copyright Law and the Berne Convention*, 9 N.Y.U. J. INT'L L. & POL. 457 (1977).

115. Cary H. Sherman & David E. Korn, Overview of Major Principles in International Intellectual Property Law, 20 (1991) (unpublished article available from Arnold & Porter, Washington, D.C.); see Damschroder, *supra* note 29, at 379. U.S. ratification occurred very late, despite efforts of legislators to bring U.S. laws into line with the Berne Convention so that ratification by the United States would be permitted. *Id.* This situation occurred because domestic lobbyists long succeeded in preserving the formalities contained in U.S. copyright law, which precluded U.S. participation. *Id.*

116. Berne Convention, *supra* note 112, pmbl., 331 U.N.T.S. at 219.

117. *Id.* art. 4(1), 331 U.N.T.S. at 223; see Marian N. Leich, *Contemporary Practice of the United States Relating to International Law*, 83 AM. J. INT'L L. 63, 64-65 (1989); Damschroder, *supra* note 29, at 379 (discussing national treatment).

118. Berne Convention, *supra* note 112, art. 5, 331 U.N.T.S. at 225.

119. Leich, *supra* note 117, at 65; see BOGUSLAVSKY, *supra* note 62, at 26 (discussing national treatment and minimum protection clauses).

120. Berne Convention, *supra* note 112, 331 U.N.T.S. 217; see UNESCO, COPYRIGHT, *supra* note 5, at 66. The Berne Convention provides minimum conditions of protection for rights of reproduction, translation, public performance, recitation, broadcasting, cinematography, adaptation, and recording of musical works. Berne Convention, *supra* note 112, 331 U.N.T.S. 217. The author has a moral right to object to the mutilation, distortion, or other alterations to his work that would be detrimental to his reputation. *Id.*

malities, such as registration required by a particular member country of its own citizens, in order to qualify for copyright protection.¹²¹

2. The Universal Copyright Convention

The Universal Copyright Convention¹²² (the "UCC") is a multilateral treaty that was ratified, not as a replacement for previously existing treaties, but to establish a basis for copyright protection among countries of widely differing cultural traditions and conflicting interests.¹²³ The United States is a signatory to the UCC.¹²⁴ The member Caribbean countries include the Bahamas, Barbados, Belize, Cuba, the Dominican Republic, and Haiti.¹²⁵

Adopted in 1952, the UCC, like the Berne Convention, embraces national treatment as its essential feature.¹²⁶ Works created by a national of a UCC nation or works published in a UCC nation are eligible for national treatment.¹²⁷ Each mem-

121. See UNESCO, COPYRIGHT, *supra* note 5, at 66 (discussing Berne Convention formalities required for copyright protection). In the United States, for example, a person wishing to sue on copyright infringement must first register with the U.S. Copyright Office. See 17 U.S.C. § 411(a). Registration, however, is not required in many other countries for commencement of a suit. UNESCO, COPYRIGHT, *supra* note 5, at 66.

122. Universal Copyright Convention, Sept. 6, 1952, 6 U.S.T. 2731, 216 U.N.T.S. 132, Paris revision, July 24, 1971, 25 U.S.T. 1341, 943 U.N.T.S. 178 [hereinafter UCC]; see LEAFFER, TREATIES, *supra* note 111 (discussing major intellectual property treaties).

123. UCC, *supra* note 122, pmb., 25 U.S.T. at 1341, 943 U.N.T.S. at 194; UNESCO, COPYRIGHT, *supra* note 5, at 64. The UCC is administered by UNESCO, a U.N. organization of which the United States is no longer a member. Leaffer, *supra* note 7, at 293 n.95.

124. Leaffer, *supra* note 7, at 293 n.95 (describing reason for U.S. adherence to UCC).

125. *International Copyright Relations of the United States*, TREATIES IN FORCE: A LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES IN FORCE, Jan. 1, 1992, at 409-22.

126. UCC, *supra* note 122, art. II, 25 U.S.T. at 1343, 943 U.N.T.S. at 195; see LATMAN, *supra* note 20, at 792 (citing article II of the UCC); see *supra* notes 111-21 and accompanying text (discussing Berne Convention and principle of national treatment); see also Hans P. Kunz-Hallstein, *The United States Proposal for a GATT Agreement on Intellectual Property and the Paris Convention for the Protection of Industrial Property*, 22 VAND. J. TRANSNAT'L L. 265, 274 (1989) (observing that "[t]he principle of national treatment is . . . a cornerstone of the present intellectual property treaties").

127. UCC, *supra* note 122, art. II, 25 U.S.T. at 1343, 943 U.N.T.S. at 195; LATMAN, *supra* note 20, at 793 (stating that "[t]he UCC allows member countries to impose compliance with formalities, but somewhat simplifies their array. Under UCC

ber nation must therefore give the same treatment to the nationals of other member nations as it gives to its own nationals.¹²⁸

Many consider the UCC to have lower standards than the Berne Convention, thus providing for a lesser level of protection for member copyright owners.¹²⁹ In contrast to the Berne Convention, the UCC does not endeavor to set out specific minimum standards of copyright protection, beyond the general requirement that member states provide "adequate and effective" protection for copyright owners.¹³⁰

The UCC may provide for lower protection standards because it was intended, from its inception, to provide a system acceptable to developing countries and to those not yet a part of the international copyright system, such as the United States.¹³¹ Another explanation for the lower UCC copyright protection standards resulted from the UCC's Paris revision of 1971, through which developing nations received more latitude as to protection and enforcement of foreign copyrights.¹³² To qualify as providing "adequate" protection, however, member nations are obligated to grant certain basic

art. III, all of a member country's conditions on the initial existence of copyright shall be deemed satisfied if the foreign work was first and continuously published with an accompanying notice"). Notice entails including the copyright symbol accompanied by the name of the copyright owner and the year of first publication, placed in such a manner and location as to give reasonable notice of the claim of copyright. UCC, *supra* note 122, art. III, ¶ 1, 25 U.S.T. at 1345, 943 U.N.T.S. at 195.

128. LATMAN, *supra* note 20, at 792 (describing concept of national treatment).

129. See UNESCO, COPYRIGHT, *supra* note 5, at 64; BOGUSLAVSKY, *supra* note 62, at 26; see also Damschroder, *supra* note 29, at 381-82 (stating that "[e]ven within the UCC itself the supremacy of the Berne Convention was never in doubt"). Under Berne Convention provisions, member nations are prohibited from denouncing the Berne Convention in favor of the UCC. *Id.* at 382. Where a dispute arises between nationals of Berne Convention members, the Berne Convention is applied. *Id.*; see Leich, *supra* note 117, at 65; Leaffer, *supra* note 7, at 276.

130. UCC, *supra* note 122, art. I, 25 U.S.T. at 1341, 943 U.N.T.S. at 195. Article I of the UCC states that "[e]ach Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors." *Id.* at 197. After the 1971 Paris revision, the rights became somewhat more explicit, as seen in article IV, which includes the exclusive rights of reproduction, public performance and broadcasting. *Id.* art. IV; see Damschroder, *supra* note 29, at 382 (discussing adequate protection of authors and copyright holders); see also UNESCO, COPYRIGHT, *supra* note 5, at 65. The only truly detailed UCC provision relating to minimum standards of protection relates to the right of translation because of its importance to the world community. *Id.*

131. UNESCO, COPYRIGHT, *supra* note 5, at 64.

132. *Id.* at 70 (discussing 1971 Paris revisions to UCC and Berne Convention,

rights, such as the reproduction right.¹³³

B. *Bilateral Trade-Based Copyright Approaches*

U.S. business stands at the forefront of the movement in favor of the bilateral trade-based approach to the dilemma of international copyright protection.¹³⁴ The bilateral approach requires agreement on copyright matters between two particular nations, through direct negotiations.¹³⁵ Economic sanctions provide the "teeth" of the agreements, and are applied by the United States toward noncomplying nations.¹³⁶ The United States has domestically confirmed the legality of imposing unilateral trade sanctions through the Omnibus Trade and Competitiveness Act of 1988 (the "OTCA").¹³⁷ The OTCA proclaims the protection of intellectual property rights a priority of U.S. trade policy.¹³⁸ The OTCA authorizes the government to use economic sanctions¹³⁹ as leverage against countries it believes do not afford adequate protection to its copyrights.¹⁴⁰

together with analysis of measurement and degree of copyright protection afforded by revisions).

133. *Id.* at 65 (stating that "[t]he rights were made more explicit in 1971 in Article IV [] to include the exclusive rights of reproduction"); see Copyright Act of 1976, 17 U.S.C. § 106 (1976) (granting owner of copyright right to reproduce copyrighted work in copies or phonorecords); see also BOGUSLAVSKY, *supra* note 62, at 26 (observing that UCC provides low minimum standards of protection).

134. See Emling, *supra* note 3. The MPEAA, for example, has asked that the bilateral trade-based approach be used to limit or deny Caribbean Basin Initiative benefits to Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, and Panama. *Id.*; see Max Baucus, *A New Trade Strategy: The Case For Bilateral Agreements*, 22 CORNELL INT'L L. J. 1 (1989) (discussing bilateral agreements).

135. See Leaffer, *supra* note 7, at 295 (describing the bilateral approach to copyright protection, and stating that "[b]ilateral trade agreements have long been a mainstay of U.S. policy. Over the years, the United States has entered into a series of bilateral agreements on patent and copyright law").

136. See Leaffer, *supra* note 7, at 295-97 (discussing bilateral trade-based approach).

137. 96 Pub. L. No. 100-418, §§ 1301-1480, 102 Stat. 1107, 1164-84, 1211-16 (codified at 19 U.S.C. §§ 1337, 2242, 2411-2420 (1988)).

138. *Id.*

139. 19 U.S.C. § 2411(c) (1988). Economic sanctions include tariff increases or the removal of tariff preferences. *Id.*

140. See Leaffer, *supra* note 7 at 295-96. The increased function of the USTR as to negotiating intellectual property protection includes the USTR's responsibility annually to assess the adequacy of such protection granted by those countries in bilateral trade agreements with the United States. *Id.*; see 19 U.S.C. §§ 2241(a)(1)(A)(i).

Caribbean countries experienced the United States' bilateral trade-based approach first through the Caribbean Basin Initiative (the "Initiative").¹⁴¹ The Initiative, signed into law in 1983 and extended indefinitely in 1990,¹⁴² involved a series of agreements between the United States and individual countries of the region that met specific economic, ideological, and political criteria.¹⁴³ The United States designed the Initiative to allow these "qualified" Caribbean nations to trade on more favorable terms with the United States through the use of benefits in the form of economic aid, trade, and private investment.¹⁴⁴ Only those countries designated as "beneficiary countries" by the U.S. President may reap the benefits from the Initiative.¹⁴⁵

The Initiative seeks, *inter alia*, to ensure the protection of intellectual property rights of U.S. citizens *vis-à-vis* Caribbean nations through two main provisions. First, the U.S. President

2241(b), 2414(a)(1) (1988). The USTR is also required to identify and designate as priority countries "those foreign countries that: (A) deny adequate and effective protection of intellectual property rights, or (B) deny fair and equitable market access to United States persons that rely upon intellectual property protection." *Id.* § 2242(a)(1), § 2242(a)(2) (1988). Once such "priority countries" are identified, sanctions may be imposed if progress cannot be made otherwise. *Id.* § 2411 (1988).

141. 19 U.S.C. §§ 2701-2706 (1988); *see generally* Francis W. Foote, *The Caribbean Basin Initiative: Development, Implementation and Application of the Rules of Origin and Related Aspects of Duty-Free Treatment*, 19 *GEO. WASH. J. INT'L L. & ECON.* 245 (1985) (providing detailed analysis of Caribbean Basin Initiative provisions and development); *see also* ANDERSON, *supra* note 93, at 148 (discussing Caribbean Basin Initiative); Remarks Announcing the Enterprise for the Americas Initiative, 26 *WEEKLY COMP. PRES. DOC.* 1009, 1011 (June 27, 1990) [hereinafter EAI] (outlining President Bush's plan designed to improve economic situation of Caribbean and Latin American countries through expanded trade with United States).

142. Statement of former USTR Carla Hills at Hearing of the Trade Subcommittee of the House Ways and Means Committee, Federal News Service (July 25, 1991) [hereinafter Hills], *available in* LEXIS, Nexis Library, CURRNT File.

143. 19 U.S.C. § 2702(b) (1988). The countries eligible for consideration under the Caribbean Basin Initiative are Anguilla, Antigua and Barbuda, the Bahamas, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the Cayman Islands, Montserrat, Netherlands Antilles, Saint Christopher-Nevis, Turks and Caicos Islands, and the British Virgin Islands. *Id.*

144. *Id.* §§ 2701-2706 (1988); *see* Lungert, *supra* note 87, at 741.

145. 19 U.S.C. §§ 2702(b) (1988). The Caribbean Basin Initiative defines a "beneficiary country" as any country listed in subsection (b) that has been designated a beneficiary country in a presidential proclamation. 19 U.S.C. § 2702(a)(1)(A) (1988); *see* Foote, *supra* note 141, at 267 (discussing concept of "beneficiary country").

may not designate a country as a "beneficiary country" if such country violates U.S. copyrights.¹⁴⁶ Second, in determining whether a Caribbean country should be chosen as a beneficiary country, the U.S. President must consider the extent to which that country provides "adequate and effective" protection under its laws as to copyrights.¹⁴⁷ U.S. copyright laws provide the standards from which the U.S. President determines whether the protection afforded under domestic Caribbean copyright laws are "adequate and effective."¹⁴⁸

C. Multilateral Trade-Based Agreements

By the early 1980s, confronted with increasing copyright infringement and ineffective solutions to that infringement, the United States began to look for a multilateral trade-based resolution to the copyright piracy problem. The United States and other developed countries categorize the lack of international copyright protection as a trade issue with defined economic effects.¹⁴⁹ Within this context, the United States considered the General Agreement on Tariffs and Trade ("GATT")¹⁵⁰ the in-

146. Section 2702(b) states in relevant part that "the President shall not designate any country a beneficiary country . . . if such country . . . has seized ownership or control of property owned by a United States citizen . . . [or] has taken steps to repudiate or nullify . . . any patent, trademark, or other intellectual property of a United States citizen." 19 U.S.C. § 2702(b)(2)(A), (B)(ii) (1988). The President may waive any of the criteria in section (b) only upon special circumstances. 19 U.S.C. § 2702(b)(2)(C) (1988). Requests for waivers are uncommon. *Id.*; see Hills, *supra* note 142; see also Foote, *supra* note 141, at 268-70 (discussing "beneficiary countries").

147. Section 2702(c) reads, in pertinent part, that "[i]n determining whether to designate any country a beneficiary country . . . the President shall take into account . . . the extent to which the country provides under its law adequate and effective means for foreign nationals to secure, exercise and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights." 19 U.S.C. § 2702(c)(9) (1988). Ten other factors are also taken into consideration. *Id.* § 2702(c)(1)-(11) (1988).

148. See Leaffer, *supra* note 7, at 304 ("The standards proposed by the United States are unsurprisingly much like the U.S. law of trademark, patent, and copyright."); see *supra* notes 14-36 and accompanying text (outlining U.S. copyright law).

149. Peter Gakunu, *Intellectual Property: Perspective of the Developing World*, 19 GA. J. INT'L & COMP. L. 358, 359 (1989) (observing that in contrast to U.S. view, developing countries strongly believe that intellectual property negotiations are beyond scope of trade agreements). There is great disagreement as to whether the problems arising from international copyright law qualify as a trade issue. *Id.*; see *supra* notes 108-10 and accompanying text (discussing respective U.S. and Caribbean view on issue).

150. Opened for signature Oct. 30, 1947, 61 Stat. (pts. 5 & 6) A3, 55 U.N.T.S. 187 (1947) [hereinafter GATT].

ternational institution most adept to render the needed relief. Today, developed nations prefer the GATT option to protect international intellectual property rights.¹⁵¹

GATT arose from the realization that one of the principal causes of the Great Depression was shrinking world trade resulting from protectionism.¹⁵² To avoid a repetition of the Great Depression, the Western democracies committed themselves to trade liberalization after World War II.¹⁵³ In 1947, twenty-four countries signed GATT, which liberalized some trade immediately and established mechanisms for future trade barrier removal.¹⁵⁴ Today, 105 countries are members of GATT.¹⁵⁵

GATT strives to provide certainty and predictability in the world market trade conditions.¹⁵⁶ The foremost principle embodied in GATT is the concept of "Most Favored Nation" status.¹⁵⁷ The term is deceptive, because it implies that some na-

151. Stanback, *supra* note 52, at 523 (discussing developed nations' preference of GATT option); see ROBERT P. BENKO, PROTECTING INTELLECTUAL PROPERTY RIGHTS: ISSUES AND CONTROVERSIES 27 (1987) ("There is a movement in the United States to make the GATT the focal point for enforcement powers and means of settling disputes."). Developing nations believe WIPO, not GATT, is the adequate forum for discussing international copyrights. See *infra* text accompanying notes 220-26 (discussing in further detail divergent views of developing nations vis-à-vis U.S. view in relation to GATT and WIPO roles).

152. Johnson, *supra* note 109, at 85. Protectionism results from interference with international free trade designed to protect domestic industry. *Id.* Protectionism, or "safeguards," can take the form of quotas, tariffs, and voluntary restraint agreements. See generally ALAN C. SWAN & JOHN F. MURPHY, CASES AND MATERIALS ON THE REGULATION OF INTERNATIONAL BUSINESS AND ECONOMIC RELATIONS (1991) 349-514 (discussing safeguards and unfair practices).

153. See GATT, *supra* note 150, pmbl., 61 Stat. pt. (5) at A11, 55 U.N.T.S. at 196. GATT is "directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce." *Id.*

154. *Id.* at A3 n.1, 55 U.N.T.S. at 194.

155. See SWAN & MURPHY *supra* note 152, at 219 (observing that in addition to 105 GATT members, "more than twenty other nations apply the General Agreement on Tariffs and Trade to their trade relations of [sic] a *de facto* basis").

156. Leaffer, *supra* note 7, at 298. GATT is the only multilateral instrument that lays down agreed upon rules for the conduct of international trade. *Id.* Also, it is a medium for negotiations. *Id.*

157. Johnson, *supra* note 109, at 85-86. Article I of GATT makes the commitment to the principle of the Most Favored Nation [hereinafter MFN], whereby contracting parties must give unqualified MFN treatment to the products of other countries. GATT, *supra* note 150, art. I, 61 Stat. pt. (5) at A12, 55 U.N.T.S. at 196. Any privilege given by one country to a product imported from another country must be immediately granted to like products of any contracting party. *Id.*; see generally KEN-

tions receive special privileges over others.¹⁵⁸ Quite the contrary, "Most Favored Nation" status provides that every contracting party receives the same trade treatment as that given to the Most Favored Nation.¹⁵⁹ Each member nation agrees to give equal access to its markets, without discrimination, to all its trading partners.¹⁶⁰ If barriers are lowered for one country, those barriers are automatically reduced for all parties.¹⁶¹

The most recent round of GATT negotiations, the Uruguay Round,¹⁶² includes intellectual property for the first time.¹⁶³ Previously, GATT considered intellectual property only tangentially.¹⁶⁴ Because the United States believes that

NETH R. SIMMONDS & BRIAN H. W. HILL, *LAW AND PRACTICE UNDER THE GATT* (1988) (providing overview of GATT provisions and application of provisions to practice); Leaffer, *supra* note 7, at 299. Other basic principles upon which GATT is based are the following: (1) the national treatment principle, whereby contracting parties may not inflict more onerous taxes or regulations on imported products than on like domestic products; (2) the tariff concession principle, by which contracting parties must maintain customs duties on imported products at levels not more than those specified in the latest applicable schedules that the party has filed; (3) the principle against nontariff barriers, whereby contracting parties cannot use quantitative and other nontariff barriers to restrain trade; and (4) the fair trade principle, by which contracting parties cannot promote exports through subsidies or dumping and may defend its domestic industry from unfair practices only through reasonable and proportionate tariff measures. Leaffer, *supra* note 7, at 299.

158. Johnson, *supra* note 109, at 87.

159. *Id.*

160. *Id.*

161. *Id.*; see C. Michael Aho, *More Bilateral Trade Agreements Would be a Blunder: What the New President Should Do*, 22 *CORNELL INT'L L.J.* 27 (1989). Article I of GATT states in relevant part that "any advantage, favour, privilege, or immunity granted by any Contracting Party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties." GATT, *supra* note 150, art. I, 61 Stat. pt. (5) at A12, 55 U.N.T.S. at 196.

162. Johnson, *supra* note 109, at 86. The Uruguay Round is the latest round of GATT negotiations. *Id.* Since 1947 there have been seven completed rounds of GATT negotiations: the Geneva Round of 1947, the Annecy, France Round of 1949, the Torquay, France Round of 1951, the Geneva Round of 1956, the Dillon Round of 1960-1962, the Kennedy Round of 1963-1967 and the Tokyo Round of 1973-1979. *Id.* The Uruguay Round, launched in 1986, has two very broad goals. *Id.* The first is to prevent increased protectionist pressures from adversely affecting the multilateral trading system. *Id.* The second is to extend GATT to disputed areas that have not been included in previous GATT rounds. *Id.*

163. Anthony McDermott, *Ambitious GATT Round*, *FIN. TIMES*, Oct. 14, 1991, at 26 (discussing goals for latest GATT Round).

164. GATT, *supra* note 150, art. IX, 61 Stat. pt. (5) at A29, 55 U.N.T.S. at 220. Article IX established that marks of origin should not be used to hinder world trade.

other approaches to the international copyright problem do not sufficiently respond to its interests, the United States was the foremost advocate of extending GATT's global trade laws to include the protection of copyrights.¹⁶⁵ Developing countries, however, have opposed such an extension strongly, arguing that GATT is an improper forum to address the problem.¹⁶⁶

The current GATT proposal is called Trade Related Aspects of Intellectual Property ("TRIPS").¹⁶⁷ TRIPS would integrate minimum world standards for the protection of intellectual property into GATT.¹⁶⁸ In addition, TRIPS attempts to clarify existing GATT rules bearing upon intellectual property protection and to elaborate new rules as appropriate in reach-

Id. Article XX(d) placed copyrights, trademarks and patents among the exceptions to GATT liberalization. *Id.* art. XX(d), 61 Stat. pt. (5) at A61, 55 U.N.T.S. at 262; see SIMMONDS & HILL, *supra* note 157, at 19-20, 53 (discussing intellectual property provisions in recent GATT negotiations).

165. Kunz-Hallstein, *supra* note 126, at 267; see Keith M. Rockwell, *U.S. Strategy Shift Pays Dividends in GATT Talks*, J. COM., August 2, 1991 at 1A; Damschroder, *supra* note 29, at 385 (observing that "it is the prospect of effective enforcement that has drawn the public and private sectors in the United States to the GATT"); Harvey J. Winter, *The Role of the United States Government in Improving International Intellectual Property Protection*, J. L. & TECH. 325, 326; see generally *U.S. Proposal for Negotiations on Trade-Related Aspects of Intellectual Property Rights*, 34 Pat. Trademark & Copyright J. (BNA) 667 (1987).

166. See *supra* notes 108-10 and accompanying text and *infra* notes 220-26 and accompanying text (discussing divergent U.S. and Caribbean views on whether GATT is proper forum to address international copyright issues).

167. A. Jane Bradley, *Intellectual Property Rights, Investment, and Trade in Services in the Uruguay Round: Laying the Foundations*, 23 STAN. J. INT'L L. 57, 59 (1987). "Trade Related Aspects of Intellectual Property" [hereinafter TRIPS] is being negotiated for inclusion in the Uruguay Round of GATT. *Id.* If adopted, TRIPS would include minimum world standards for the protection of intellectual property as a part of GATT. *Id.*

168. Leaffer, *supra* note 7, at 277; see Bradley, *supra* note 167, at 59. The Punta del Este Ministerial Declaration outlines as follows the Uruguay Round objectives in relation to intellectual property:

In order to reduce the distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines. Negotiations shall aim to develop a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods, taking into account work already undertaken in GATT.

Id. at 58-59.

ing adequate and effective intellectual property rights protection and enforcement.¹⁶⁹

U.S. objectives¹⁷⁰ for the Uruguay Round include member nation recognition of the need for intellectual property protection and the promulgation of standards for the effective enforcement of rights established in substantive copyright laws.¹⁷¹ The enforcement aspect of the proposal includes enhanced implementation of border ordinances devised to catch infringing goods before they reach the country's markets, as well as increased international surveillance and notification.¹⁷² The United States has succeeded in getting intellectual property rights on the Uruguay Round bargaining table, but much work remains to be done.

III. A REGIONAL TRADE-BASED APPROACH PROVIDES THE BEST APPROACH TO INTERNATIONAL COPYRIGHT PROTECTION

In the search for an integrated solution to the U.S.-Caribbean controversy on the enforcement of international copyright laws, the insertion of a TRIPS-like provision into a regional trade-based approach offers a mutually beneficial workable answer. Such an approach would lead to an effective resolution because it more fully addresses the needs of both positions and provides both sides with benefits.

A. Current Approaches Fail to Provide an Adequate Solution

Copyright owners have looked to various differing international law approaches such as multilateral copyright conventions and bilateral treaties and multinational agreements to protect their creations.¹⁷³ Although each approach has marked advantages and disadvantages, the disadvantages tend

169. Jan Jancin, Jr., *Uruguay Round: Implications of the TRIPS Negotiations*, 29 INT'L ASPECTS OF INTELLECTUAL PROP. (N.Y. State Bar Assn, New York, N.Y.), Feb. 22, 1991, at 30.

170. See U.S. Framework Proposal to GATT Concerning Intellectual Property Rights, 4 Int'l Trade Rep. (BNA) 1372 (Nov. 4, 1987) (discussing U.S. proposal concerning GATT's coverage of intellectual property).

171. *Id.* For a discussion of the proposals of the European Community and Japan, see Damschroder, *supra* note 29, at 397.

172. Damschroder, *supra* note 29, at 394.

173. See *supra* notes 111-72 and accompanying text (discussing various international approaches to copyright protection).

to outweigh the advantages. The traditional methods have proven ineffective due to their failure to accommodate the differing objectives and interests of both the Caribbean countries and the United States.¹⁷⁴

1. Effectiveness of Multilateral Copyright Treaties

Multinational copyright treaties, such as the Berne Convention and the UCC, undoubtedly accomplish very useful functions in the area of international intellectual property protection.¹⁷⁵ The conventions provide a concrete body of international copyright laws. In addition, the standards embraced by such copyright laws, with which the signatories are expected to comply, are standards approved by the international community.¹⁷⁶ Furthermore, nations generally comply with international copyright treaties because, as a matter of international law, the treaties legally bind all of the nations that have ratified them.¹⁷⁷

Despite these advantages, serious obstacles face those relying on multilateral copyright conventions as the means to protect their property. The main hindrance stems from the treaties' lack of enforcement power as to laws outlined by the multilateral copyright conventions.¹⁷⁸ The United States argues that, due to the lack of enforcement mechanisms, a nation can violate its obligations conspicuously under such a multilateral treaty, without fear of legal sanctions.¹⁷⁹ In addition to this problem, the conventions include no dispute settlement provisions.¹⁸⁰ If a conflict arises under the treaties administered by the WIPO, the claimant has no recourse but to take

174. See *supra* notes 111-72 and accompanying text (discussing traditional international methods used to protect copyrighted materials).

175. See *supra* notes 111-33 and accompanying text (describing Berne Convention and UCC).

176. See *supra* notes 154-55 and accompanying text (discussing GATT standards and approval of such standards, as evidenced by great number of signatories).

177. Vienna Convention, *supra* note 81, arts. 26-27, 1155 U.N.T.S. at 339. Despite the binding nature of international treaties, some commentators argue that international conventions merely influence the content of intellectual property laws and that such laws are substantively decided by the laws of each nation. Sherman & Korn, *supra* note 115 at 6.

178. Leaffer, *supra* note 7, at 275-76.

179. *Id.* at 300.

180. *Id.* at 301.

the dispute before the International Court of Justice.¹⁸¹ The WIPO sympathizes with the developing world's reluctance regarding intellectual property protection.¹⁸² Therefore, modification of the lack of enforcement mechanisms and inadequate dispute resolution found in multilateral copyright treaties is unlikely. The consensus is that multilateral copyright conventions have not proven effective against methodical, large-scale copyright infringement in developing countries.¹⁸³

2. Effectiveness of Bilateral Trade-Based Copyright Approaches

In the search for a resolution to the problem of international copyright protection, bilateral trade-based agreements have several marked advantages. Because only two parties are involved, negotiations are expeditious and results occur in a relatively short amount of time.¹⁸⁴ Bilateral negotiations also allow the parties to address issues specific to them, resulting in an agreement which actually responds to the divergent interests and objectives of both sides.¹⁸⁵ The typical deadlock often reached in multilateral forums, and usually concerning issues irrelevant to the parties concerned, can thus be avoided.¹⁸⁶ In addition, from a U.S. point of view, bilateral trade-based agreements prove effective in that the United States can place direct pressure on noncompliant countries to remedy their copyright laws, thus ensuring their enforce-

181. Statute of the International Court of Justice, June 26, 1945, art. 1, 1 U.N.T.S. xvii, 59 Stat. 1055 [hereinafter ICJ Statute]. Article 1 of the ICJ Statute states that the International Court of Justice is established by the United Nations as the principal judicial organ of the United Nations. *Id.* Article 35 states that the International Court of Justice is open to all states parties to the present ICJ Statute. *Id.* art. 35. The International Court of Justice has jurisdiction to issue advisory opinions on any legal question at the request of any party authorized by the General Assembly. *Id.* art. 65.

182. WILLIAMS, *supra* note 113, at 78. The developing countries constitute the majority in many of the specialized agencies, outweighing the views of and the votes of developed countries. *Id.*

183. Leaffer, *supra* note 7, at 276.

184. Baucus, *supra* note 134, at 7-8. For example, the bilateral free-trade negotiations recently concluded with Canada took sixteen months as opposed to the last GATT round which took six years. *Id.*; *see supra* notes 134-48 and accompanying text (discussing bilateral trade-based copyright treaties).

185. *Id.* (noting that bilateral forum allows parties to discuss broader, as well as more detailed issues likely to be beyond scope of multilateral treaties such as GATT).

186. *Id.*

ment.¹⁸⁷

The latter advantage, the ability to coerce a noncomplying country to conform, may also be a disadvantage. A U.S. attempt to force a Caribbean country to comply with international law may backfire and lead to resentment; it may also seem like colonialism.¹⁸⁸ From the standpoint of Caribbean countries, the approach of the Caribbean Basin Initiative contains several grounds for resentment.¹⁸⁹ First, the Initiative was motivated primarily by political and social unrest resulting from economic hardship in Central America.¹⁹⁰ Caribbean countries therefore believed that economic benefits were granted merely to develop friendly governments in a region strategically vital to the international political agenda of the United States.¹⁹¹ Second, disaffection grew from U.S. demands that the country in question strive for economic development in accordance with U.S.-designated methods.¹⁹² Third, the country had to agree with U.S. policy in the region as a prerequisite to receiving benefits.¹⁹³ Fourth, the Initiative inevitably creates fragmentation of the Caribbean countries by positioning them in competition with each other for beneficiary country status, and further resentment toward the United

187. See *supra* notes 134-40 and accompanying text (discussing advantages of bilateral agreements from U.S. standpoint).

188. See Primo Braga, *supra* note 79, at 264 (“[U]nilateral actions designed to force [lesser developed countries] to reform their intellectual property systems may easily backfire . . .”).

189. See Raleigh, *supra* note 88, at 136 (noting that U.S. considered the development of friendly governments in Caribbean necessary to avoid adverse effects on U.S. interests).

190. *Id.* (stating that “[e]conomic crises caused by the high price of imported oil and declining prices for major export products . . . threatened the social stability of countries in the Caribbean Region and, therefore, began to have direct adverse consequences to the US in the form of massive illegal immigration and perceived Communist infiltration”).

191. *Id.*

192. See Abraham F. Lowenthal, *Misplaced Emphasis*, 47 *FOR. POL.* 114, 115 (1982) (observing that “the [Initiative] reflects the administration’s interest in military security, political loyalty, and advantages for U.S. firms, rather than U.S. concern for the region’s long-term development. Because most Caribbean countries are dependent on the United States, they will speak the language [it] wants to hear”).

193. See Baker & Toro-Monserrate, *supra* note 86, at 12 (stating that “one of the dangers inherent in the policy is illustrated by the invasion of Grenada, over which [Caribbean] nations were divided in their support of U.S. action. Shortly after the invasion, the U.S. punished Trinidad and Tobago, the most outspoken critic of the action, by cancelling several trade agreements”).

States is created by the "carrot and stick" use of trade benefit promises in return for copyright protection.¹⁹⁴

In addition, the United States has much greater bargaining power when negotiating a bilateral agreement with only one Caribbean nation at a time.¹⁹⁵ Hence, it is likely that the resulting agreement will be biased in favor of the United States and will impose U.S. standards.¹⁹⁶ Bilateral agreements tend to fragment the international trading system, forcing countries to compete against each other for agreements with the United States.¹⁹⁷ The overall result is resentment and distrust among the Caribbean nations and against the United States. Because of the difficulty of securing worldwide copyright protection through bilateral approaches, they have been overshadowed by multilateral and regional conventions.¹⁹⁸

3. Effectiveness of Multilateral Trade-Based Approach

Advocates of GATT as the solution to the international copyright problem often mention GATT's dispute settlement mechanism as a principal benefit that other approaches lack.¹⁹⁹ Once a disagreement arises over any trade issues covered by

194. See Leaffer, *supra* note 7, at 295 (stating that "former noncomplying countries receive the right to export to the United States as a most favored nation in exchange for providing proper intellectual property protection").

195. See *supra* notes 134-40 and accompanying text (observing that United States unilaterally decides whether a country will receive U.S. beneficial treatment in relation to trade, and noting U.S. ability to impose trade sanctions if displeased with Caribbean intellectual property law enforcement).

196. See *supra* notes 141-48 and accompanying text (discussing procedure for ratification of U.S.-Caribbean bilateral trade-based treaties and showing U.S. control over crucial aspects of procedure).

197. See generally Aho, *supra* note 161, at 25 (discussing effect of bilateral treaties).

198. UNESCO, COPYRIGHT, *supra* note 5, at 63.

199. See Leaffer, *supra* note 7, at 300; Morford, *supra* note 2, at 339 ("[C]urrent international intellectual property agreements do not include dispute settlement provisions other than a provision to take disputes . . . to the International Court of Justice. The GATT offers . . . effective dispute settlement mechanisms to intellectual property issues.").

Dispute settlement provisions are found in Articles XXII and XXIII of GATT. GATT, *supra* note 150, arts. XXII-XXIII, 61 Stat. pt. (5) at A64-65, 55 U.N.T.S. at 266-68. Article XXII provides that any contracting party will consult with any other contracting party with respect to any matter affecting the operation of the GATT. *Id.* Article XXIII provides that GATT contracting parties may suspend the obligation toward the contracting party that has caused impairment or nullification. *Id.*

GATT, the aggrieved party files a complaint.²⁰⁰ A third-party panel of experts investigates the claim, and reaches a conclusion as to the dispute.²⁰¹ The panel reports its conclusions and recommendations to all contracting parties.²⁰² The contracting parties decide on the matter, and often follow the panel recommendations.²⁰³ GATT also provides a forum for negotiations.

The GATT option thereby offers legally binding obligations as opposed to suggestive norms.²⁰⁴ Under GATT, unlike the Berne Convention and the UCC,²⁰⁵ a signatory country cannot disregard its obligations openly without the worry of sanctions imposed by the treaty mechanism.²⁰⁶ The state of an offended copyright owner can threaten the noncomplying state with the imposition of the GATT dispute settlement provisions which, if ignored, can lead to trade sanctions.²⁰⁷ Proponents of the GATT solution identify among its advantages the legitimacy and comprehensiveness that is granted to international copyright law through GATT.²⁰⁸ GATT's legitimacy as a source of international law is enhanced by its vast number of signatories.²⁰⁹ Its large membership implies the consensus of many nations as to its provisions.²¹⁰ Also, GATT is the only multinational organization that outlines agreed upon provisions for the conduct of international trade, and that has a sub-

200. GATT, *supra* note 150, arts. XXII-XXIII, 61 Stat. pt. (5) at A64-65, 55 U.N.T.S. at 266-68 (discussing GATT dispute settlement provisions).

201. *See* Leaffer, *supra* note 7, at 301. The members of the third party panel act not as representatives of their respective governments, but in their individual capacities. *Id.*

202. *Id.*

203. *Id.*; *see* Damschroder, *supra* note 29, at 384 (discussing GATT's dispute settlement procedure).

204. Stanback, *supra* note 52, at 531 n.66.

205. *See supra* notes 111-33 and accompanying text (discussing Berne Convention and UCC).

206. Leaffer, *supra* note 7, at 301 (observing that a country cannot disregard its obligations without consequences).

207. *See* Stanback, *supra* note 52, at 549 (regarding use of dispute mechanism as leverage).

208. *See* Leaffer, *supra* note 7, at 298 (stating that GATT is most important international agreement regulating trade among nations).

209. *Id.* (noting that GATT's membership represents more than four-fifths of world trade).

210. *Id.*

stantial record in promoting the goals of free trade.²¹¹

There are, however, disadvantages to the GATT option that ultimately outweigh its benefits. The Uruguay Round of GATT itself, let alone the proposed TRIPS provision within it, has suffered a grave series of stalemates.²¹² In its sixth year of negotiations, the Uruguay Round has been a journey of starts, stops, deadlocks, and inactivity leading to fatigue, boredom, and frustration.²¹³ The deadlocks relate principally to agricultural issues, with much of the blame placed on the uncompromising positions of the European Community and the United States.²¹⁴ In addition, the United States itself faces recession-based pressures raising national and protectionist issues above the global concerns of the Uruguay Round.²¹⁵

The Uruguay Round negotiators have divided their attention among numerous and extremely complicated issues.²¹⁶ Intellectual property has been overshadowed by complex matters such as liberalization of agricultural policies and trade in services.²¹⁷ Some commentators criticize GATT as too fragile a forum for such ambitious negotiations.²¹⁸ However, for a more effective GATT, states would have to cede some sovereign rights to GATT,²¹⁹ an extremely unlikely event.

211. *Id.*; see *supra* note 156 and accompanying text (observing that objective of GATT is to provide certainty and predictability in world market and trade conditions).

212. McDermott, *supra* note 163, at 26.

213. *Id.*

214. *Id.*; see SWAN & MURPHY, *supra* note 152, at 320. They note the following: [T]he United States and the [European Community] . . . appear at this late date in the negotiations to be at an impasse on the rate of subsidy reduction . . . [T]he United States initially proposed a definite deadline for the elimination of all domestic agricultural subsidies by the industrialized countries Hence the present impasse; how [much] reduction and how fast.

Id.

215. See SWAN & MURPHY, *supra* note 152, at 320.

216. Leaffer, *supra* note 7, at 299 n.131.

217. *Id.*

218. McDermott, *supra* note 163, at 26. GATT is a small organization with a full staff of four hundred people but it does not have the authority or the standing of a U.N. organization. *Id.* As a result, the future of GATT itself has been under scrutiny. *Id.* Even if the Uruguay Round is successful, the multilateral trading system will have to be enforced institutionally. *Id.*

219. Leaffer, *supra* note 7, at 302. Any agreement in GATT would likely force most signatories to change their national laws. *Id.* For example, some proposals would require patents to be granted on a "first-to-file" basis, rather than the "first-to-invent" criteria used by the United States. Sherman & Korn, *supra* note 115, at 25.

The strongly held view of developing countries that intellectual property negotiations and global criteria are beyond the scope of GATT presents a significant handicap for GATT's effectiveness.²²⁰ These countries did not want to negotiate over TRIPS at the Uruguay Round because they do not consider intellectual property a trade-related issue.²²¹ Developing countries agree that the WIPO, not GATT, is the correct forum for international copyright negotiations.²²² Developing countries consider GATT's duplication of initiatives already covered by the WIPO-administered international copyright treaties²²³ to be inappropriate.²²⁴ These countries consider it improper that GATT requires developing countries to adopt new rules inconsistent with their national development interests.²²⁵ In light of the developing countries' formidable reluctance to include intellectual property in GATT, the challenge of legitimizing inclusion of copyright issues into GATT is likely to continue to plague the United States throughout the Uruguay Round and future rounds of GATT, if the United States continues to depend on GATT to provide the solution to international copyright protection.²²⁶

A further important flaw in the GATT solution relates to the widely differing interests and objectives of the United States in relation to Caribbean countries.²²⁷ These contrasts lead to a discrepancy as to what the TRIPS standards for inter-

220. Gakunu, *supra* note 149, at 359.

221. See *supra* notes 108-10 and accompanying text (describing Caribbean perspective as to international copyright law).

222. See Damschroder, *supra* note 29, at 384; *EC and Japan Present Intellectual Property Proposals for Uruguay Round Negotiations*, 4 Int'l Trade Rep. (BNA) 1499, 1499 (Dec. 2, 1987) ("Third World countries have argued that the WIPO . . . should be the forum for such discussions, and that GATT should concentrate on trade in goods and services."); Gakunu, *supra* note 149, at 359; Stanback, *supra* note 52, at 524, 532-33.

223. See *supra* notes 111-33 and accompanying text (describing international copyright treaties administered by WIPO).

224. See *supra* notes 108-10 and accompanying text (discussing perspective of Caribbean countries in relation to international copyright laws and treaties).

225. Gakunu, *supra* note 149, at 359.

226. Damschroder, *supra* note 29, at 393 n.160 (observing that even domestically there exists controversy as to the appropriateness of using GATT to solve international intellectual property problems).

227. See Baucus, *supra* note 134, at 6; see also Gakunu, *supra* note 149, at 364 (discussing U.S.-Caribbean differing interests).

national copyright protection should be.²²⁸ It has been repeatedly advanced that the goal of the United States is to mold international intellectual property law to conform to U.S. laws and standards despite the differing circumstances in individual countries.²²⁹ The United States unrealistically and rigidly denies differential treatment for certain developing countries.²³⁰ As a consequence, a TRIPS provision will inevitably lead to enduring conflicts of opinion as to what constitutes "adequate" copyright protection. It is noteworthy, however, that the United States no longer has the unquestioned economic dominance needed to dictate that the rest of the world play according to its rules.²³¹

Even if none of the above-described hardships existed, GATT needs substantial reform.²³² The much-hailed dispute settlement mechanism is admittedly ineffective and inefficient, with GATT cases claiming notoriety for endless hearings and severe politicalization by member nations.²³³ Furthermore, the people responsible for the GATT dispute mechanism simply lack the expertise in international intellectual property necessary to make informed decisions.²³⁴

GATT's large membership, the same feature that affords GATT its comprehensiveness and legitimacy, has also caused progress within the institution to slow to a crawl.²³⁵ The Uru-

228. See Gakunu, *supra* note 149, at 364 ("It is . . . not in the interest of developing countries to fashion their intellectual property laws on the basis of criteria . . . derived from the conditions and interests of the technologically advanced countries."); Leaffer, *supra* note 7, at 304-05 ("The standards proposed by the United States are unsurprisingly much like the U.S. law of trademark, patent, and copyright."); Stanback, *supra* note 52, at 530-31 ("Not surprisingly, the norms proposed [by the U.S.] resemble present U.S. law.").

229. Primo Braga, *supra* note 79, at 252 (noting "the widespread perception that the United States is trying to translate its domestic provisions into international standards").

230. Leaffer, *supra* note 7, at 306.

231. Baucus, *supra* note 134, at 7.

232. See Damschroder, *supra* note 29, at 390 ("Both developed and developing nations are now looking to a major revision of the GATT as the only solution to the deterioration of international trade.").

233. Leaffer, *supra* note 7, at 301; see Johnson, *supra* note 109, at 92.

234. Stanback, *supra* note 52, at 550 (concluding that "GATT does not appear to be the most appropriate forum in light of the unique characteristics of intellectual property").

235. See *supra* notes 154-55 and accompanying text (discussing effect of GATT's large membership).

guay Round has stalled repeatedly on issues completely irrelevant to the international copyright problem between the United States and the Caribbean countries.²³⁶ Furthermore, because any intellectual property provisions will have to satisfy the majority of member nations,²³⁷ an effective agreement on any issue or dispute will evolve over a long period of time, if it develops at all.²³⁸ This situation is inadequate for those, such as U.S. industry, requiring immediate results. In light of the considerable hardships connected with a GATT solution to the international copyright dilemma, it is evident that the disadvantages outweigh the advantages.

B. The Regional Trade-Based Approach Provides the Best Solution

In the search for an integrated solution to the U.S.-Caribbean controversy on the enforcement of international copyright laws, the insertion of a TRIPS-like provision into a regional trade-based approach offers a workable answer. Countries in a particular region often have comparable needs and may therefore benefit from establishing a regional agreement on copyrights.²³⁹ Also, a regional approach would lead to an effective resolution because it more fully addresses the needs of both the Caribbean and U.S. positions and provides for mutual gain.

A regional-trade based agreement, including a TRIPS-like provision, could be accomplished through the use of the Caribbean Community ("CARICOM")²⁴⁰ and former President

236. See *supra* notes 216-19 and accompanying text (observing that Uruguay Round talks on intellectual property have been overshadowed by complex matters such as liberalization of agricultural policies and trade in services).

237. Damschroder, *supra* note 29, at 372.

238. Leaffer, *supra* note 7, at 307; see McDermott, *supra* note 163, at 26.

239. See *supra* notes 78-100 and accompanying text (discussing Caribbean perspective regarding international copyright laws and treaties).

240. See CARICOM, *supra* note 58, 946 U.N.T.S. 17. (discussing membership and genesis of CARICOM). CARICOM replaced the failed Caribbean Free Trade Association, Dec. 15, 1965, 772 U.N.T.S. 2 [hereinafter CARIFTA] agreement which was formed by four Caribbean nations in 1968. See C. Ray Miskelley, *Grand Anse Declaration: Can the Caribbean Community Realistically Integrate Intraregional Trade and Production Within the Confines of the CARICOM Treaty by 1993?*, 20 GA. J. INT'L & COMP. L. 185 (1990). CARIFTA failed due to the objections to the disparity of the relative benefits created by the operation of the agreement between the lesser developed countries and the more developed countries within it. *Id.* at 190; see Baker & Toro-Monserrate, *supra* note 86 (providing discussion of relationship between Caribbean Basin Initiative and CARICOM).

George Bush's Enterprise for the Americas Initiative ("EAI").²⁴¹ The United States signed a framework EAI agreement with CARICOM in July of 1991, which included, among other goals, a statement of agreed-upon principles regarding the benefits of open trade and investment and the need for adequate intellectual property rights.²⁴² The agreement established a U.S.-CARICOM Trade and Investment Council, thereby providing a framework for a concrete process of consultation and negotiations in signing future treaties.²⁴³ Unlike the Caribbean Basin Initiative, the EAI is a "two-way street" designed to benefit both sides in reaching a final agreement.²⁴⁴

A TRIPS-like provision complements CARICOM. CARICOM has among its objectives the advancement of social, cultural, and technological development.²⁴⁵ The infrastructure necessary to reach a U.S.-CARICOM agreement, including the TRIPS-like provision, is already present within CARICOM. The internal structure of the CARICOM treaty is composed of two elements, the Caribbean Community and the Common Market. The Caribbean Community particulars are articulated in the body of the CARICOM treaty, while the Common Market provisions are contained in the annex to the CARICOM treaty.²⁴⁶ The Caribbean Community branch of CARICOM has "full juridical personality" and "may enter into agreements with Member States, non-Member States and international or-

241. EAI, *supra* note 141, at 1011; see Carrie B. Clark, *The Enterprise for the Americas Initiative: Supporting a "Silent Revolution" in Latin America*, BUS. AM., Sept. 23, 1991, at 6. The Bush Administration launched the Enterprise for the Americas Initiative on June 27, 1990. *Id.* The EAI's goal is to strengthen Caribbean and Latin American economies by means of greater trade, investment and reduction of official debt owed to the United States. *Id.* The long-term goal is an eventual hemispheric free trade area. *Id.*

242. Clark, *supra* note 241, at 6.

243. *Caricom-US Agreement Paves Way for "Dynamic" and "Growth-Inducing" Ties*, LATIN AM. NEWSL., Aug. 29, 1991, at 1.

244. *Id.*

245. CARICOM, *supra* note 58, art. 4, 946 U.N.T.S. at 19. CARICOM also designates as its goals the economic integration of the Caribbean Basin and the coordination and regulation of trade among member states. *Id.*; see Miskelley, *supra* note 240, at 190. CARICOM's goals address the long standing problems of the region arising from the existence of many small countries, many of which have only recently achieved economic independence. Baker & Toro-Monserrate, *supra* note 86, at 2.

246. See Miskelley, *supra* note 240, at 191; Baker & Toro-Monserrate, *supra* note 86, at 3.

ganisations"²⁴⁷ through the Heads of Government Conference.²⁴⁸ CARICOM therefore provides a viable forum and infrastructure through which Caribbean nations can negotiate collectively with the United States as to international intellectual property.

The advantages of using CARICOM and the EAI as a framework for reaching a regional trade-based agreement containing a TRIPS-like provision are manifold. The traditional approaches previously mentioned have proven deficient as they do not sufficiently promote mutual gain.²⁴⁹ Resulting agreements tend to be unduly biased in favor of one party or the other.²⁵⁰ The multilateral copyright conventions, for example, tend to favor the developing nations, thus the United States finds them inefficient.²⁵¹ On the other hand, bilateral treaties reached with the United States through the Caribbean Basin Initiative favor the United States, causing resentment and noncompliance in Caribbean countries.²⁵² Through a regional trade-based agreement, the Caribbean nations, as a group, would hold more bargaining power with the United States, resulting in an agreement which would more equitably represent the interests of both sides.

A regional copyright treaty would provide Caribbean nations and the United States with a degree of specificity in their agreement not possible with large multilateral institutions and treaties such as GATT. The unique circumstances and interests particular to Caribbean nations, such as their desperate need for intellectual property for development purposes, cou-

247. CARICOM, *supra* note 58, art. 20, 946 U.N.T.S. at 25.

248. Baker & Toro-Monserrate, *supra* note 86, at 3 n.9. Article 8 of the CARICOM treaty states that the Heads of Government Conference shall be the final authority for the conclusion of treaties on behalf of the CARICOM Caribbean Community. CARICOM, *supra* note 58, 946 U.N.T.S. at 21; see Miskelley, *supra* note 240, at 191 (stating that "the Heads of Government Conference possesses the authority to enter into agreements with states and international organizations").

249. See *supra* notes 111-72 and accompanying text (outlining traditional methods used to protect intellectual property on an international scale).

250. See *supra* notes 174-238 and accompanying text (discussing advantages and disadvantages of traditional methods of protecting intellectual property on an international scale).

251. See *supra* notes 111-33 and accompanying text (providing discussion of international copyright conventions).

252. See *supra* notes 134-48 and accompanying text (discussing bilateral treaties and Caribbean Basin Initiative).

pled with their limited ability to pay for it, would be more adequately addressed in a smaller forum comprised mostly of other nations with similar problems. Likewise, the United States' need to ensure compensation for the intellectual property of its copyright owners would also receive its deserved attention.²⁵³

A regional agreement would be genuinely flexible, allowing discussion of specific issues beyond the scope of large multilateral treaties. For example, the Caribbean nations could negotiate with the United States regarding their desire for the application of a more realistic and lower standard of international copyright laws. A TRIPS-like provision, accounting for both viewpoints on what constitutes "adequate" protection of international copyright laws, could thus be specifically molded. Furthermore, because fewer parties would be involved, negotiations and procedures within the treaty framework would be more expeditious, thus meeting the pressing needs of both sides within an acceptable time-frame.²⁵⁴ This situation could be achieved without one of the major drawbacks of the bilateral treaty approach to international copyrights, namely, the fragmentation of the international trading structure into a series of individual countries that must compete with each other to reach a beneficial agreement with the United States.²⁵⁵

A regional trade-based approach to the international copyright dilemma would also address the principal complaint of the United States concerning inadequate enforcement of those copyright laws presently in existence. Any treaty signed between the United States and the Caribbean countries, including any TRIPS-like provisions contained therein, would legally bind all parties as a matter of international law, as do all

253. See *supra* notes 175-83 and accompanying text (discussing effectiveness of multilateral treaties). Large multilateral institutions and treaties cannot achieve sufficient specificity to cover the particular interests of a country or region because their vast membership includes countries of such contrasting economic, political, and socioeconomic situations. Resulting agreements must therefore patch over their differences and as a result are more general in nature.

254. See Baucus, *supra* note 134, at 7-8 (observing that "the old rule of thumb that 'the fewer parties at the table the faster the negotiations' is particularly applicable in international trade negotiations").

255. See *supra* text and accompanying notes 184-98 (discussing effectiveness of bilateral treaties).

international treaties.²⁵⁶ Enforcement could be effected by the inclusion of a dispute settlement mechanism similar to the one contained in GATT.²⁵⁷ This mechanism would avoid the problems of multilateral copyright conventions, by preventing noncompliant countries from violating their obligations without the fear of sanctions within the treaty framework. The United States could use the dispute settlement mechanism as leverage in negotiations with an offending country, and if unsuccessful, could initiate the dispute settlement procedure. Unlike the process provided for in the Caribbean Basin Initiative, however, the United States could not impose economic sanctions unilaterally on a Caribbean nation outside the treaty provisions.²⁵⁸

CONCLUSION

In the search for an integrated solution to the U.S.-Caribbean controversy for the enforcement of international copyright law, an adequate solution must be based upon mutual gain. A successful solution must take into account the interests and objectives of both parties, arising from the domestic legal, political and socioeconomic situations found within the countries concerned. The implementation of a TRIPS-like provision into a regional trade-based approach offers the most adequate answer to the international copyright dilemma.

*Valerie L. Hummel**

256. Vienna Convention, *supra* note 81, art. 26, 1155 U.N.T.S. at 339.

257. *See supra* notes 199-208 and accompanying text (discussing GATT's dispute settlement mechanism).

258. *See supra* notes 141-48 and accompanying text (discussing the Caribbean Basin Initiative).

* J.D. Candidate, 1993, Fordham University.