



February 11th, 2008

By email: FR0606@ustr.eop.gov
Ms. Jennifer Choe Groves
Director for Intellectual Property and Innovation
Chair, Special 301 Committee
Office of the U.S. Trade Representative (USTR)
600 17th Street, N.W.
Washington, D.C. 20508

Re: The Bahamas and Special 301,
73 Fed. Reg. 2958 (January 16, 2008)

Dear Ms. Groves:

This submission responds to the request for comments in the annual Special 301 by which USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection.

The Television Association of Programmers (TAP) Latin America hereby provides an update regarding the disturbing pay television compulsory licensing situation in the Bahamas. While we do not request placement on any Special 301 list at this time, we do request that bilateral government attention and engagement be directed to addressing this untenable situation.

ABOUT TAP

The Television Association of Programmers (TAP) Latin America is an industry trade group representing more than 30 pay television channels in Latin America. TAP's member networks are: Animal Planet, AXN, A&E, Boomerang, Canal Fox, Cartoon Network, Casa Club TV, Cinemax, CNN en Español, CNN International, Discovery Channel, Discovery Kids, Discovery Home & Health, Discovery Travel & Living, Discovery Civilization, Discovery Science, Discovery Turbo, ESPN International, ESPN Dos, ESPN+, ESPN2, E! Entertainment, Speed, Fashion TV, FX, Fox Sports, HTV, HBO, HBO Plus, HBO Family, History Channel Latin America, I-Sat, Infinito, Max Prime, MGM Channel, MTV, MuchMusic, Mundo, National Geographic, Nickelodeon, People + Arts, Retro, Space, Sony, TCM, TNT, VH1, Universal Channel and Warner Channel.

DISCUSSION

On January 5, 2000, the Government of The Bahamas implemented its 1998 Copyright Act through publication of regulations that authorized a new compulsory license for retransmission of television programming by licensed cable operators. This compulsory license expanded the scope beyond the internationally accepted limits of such a license (e.g., authorizing retransmission of free, over-the-air broadcast networks by cable operators) to the unprecedented step of permitting retransmission of any copyrighted work transmitted over its territory, including the encrypted signals of U.S. basic cable and pay TV services. In 2000, the U.S. and the Bahamas entered into

bilateral negotiations to specifically address this issue, and as a result the Bahamian government pledged to amend its 1998 Copyright Act to limit the compulsory license to only free over-the-air broadcasts.

Four years passed without any legislative action, until copyright law amendments were passed by the Bahamian government in June 2004. These 2004 amendments did remove the objectionable compulsory license from the law. Proper implementation of these amendments would limit the scope of the compulsory license to the unaltered retransmission of free, over-the-air broadcast signs and would not permit retransmission of encrypted signals or extend to retransmission over the Internet.

Nevertheless, contrary to its 2004 commitment, the Bahamian government has not properly implemented this compulsory license. Instead, in 2007, the Bahamian government decided to implement their compulsory license, permitting the retransmission of encrypted satellite signal carrying U.S. domestic pay television signals. This was based on the Bahamian government's argument that its state-owned cable company, Cable Bahamas, did not have enough access to English language programming. To the contrary, there is sufficient English language programming legally available in this market. The Bahamas compulsory license is the only one in the world that allows for the retransmission of pay television signals without authorization. Its immediate impact is that local Bahamian cable operators are no longer purchasing programming from legitimate rights holders, (i.e. TAP member networks) since they can downlink, unencrypt, and retransmit signals without authorization, using the compulsory license as legal protection. This compulsory license represents an extremely dangerous precedent and threatens to erode the foundation of intellectual property protection for the U.S. pay television programming industry. In fact, other English-speaking countries in the Caribbean region are currently drafting, or already have, similar legislation in place.

TAP strongly believe the Bahamas merits immediate bilateral engagement for its actions to promote the theft of U.S. films and pay television programming, in contravention to existing bilateral commitments as well as international copyright obligations.

Sincerely,

A handwritten signature in black ink that reads "Sean Spencer". The signature is fluid and cursive, with the first name "Sean" and last name "Spencer" clearly distinguishable.

Sean Spencer
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