

The Growing Importance of International Protection of Intellectual Property

The matter of intellectual property is within the purview of the International Law and Practice Section's International Patent, Copyright and Trademark Committee, chaired by Lou Schapiro. It is telling that the committee has proposed a resolution supporting the inclusion of intellectual property rights in the General Agreement on Tariffs and Trade (GATT)¹ negotiations. This action reflects the growing recognition of the increasing proportion of international trade involving intellectual property. It also attests to the equally growing concern over inadequate international protection of this key trade component. Indeed, government ministers meeting for the next GATT round recently issued a declaration recognizing international protection of intellectual property as a trade issue to be negotiated as a GATT agenda item.²

I. Intellectual Property as an International Trade Issue

Let us look briefly at the scope of intellectual property protection as a trade issue:

To start closest to home, billions of dollars worth of computer software has been illegally pirated and distributed, threatening the required heavy investment and resulting innovation.

The pharmaceutical industry, which also must carry high front-end R&D expenses, finds a number of countries with such inadequate proprietary

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1. General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187, as modified.

2. Ministerial Declaration on the Uruguay Round of Multilateral Trade Negotiations, Sept. 1986, at 7-8.

drug protection that local companies simply misappropriate information given to governments for approval and market quickly produced imitations even before the inventing firm has gotten a government green light for its original formula.

In a number of countries, trademark laws are not adequately enforced. This permits the fraudulent marketing of substandard and, therefore, dangerous counterfeit items such as automobile replacement parts and agricultural chemicals.

Finally, you can imagine the chilling effect on publishers, producers, composers, and authors who see their records, tapes, movies, books, and magazines brazenly pirated in countries that have no effective copyright enforcement. Retailers, too, lose valuable business to the pirates.

The products and services that should be protected by intellectual property law account for a significant portion of trade, and inadequate protection today plays a major distorting role in world trade. This is all the more troublesome at a time when trade imbalances are already threatening existing open marketplaces. Let us therefore turn from the anecdotal to the quantitative.

Government and industry estimates evaluate yearly losses from counterfeiters at about six to eight billion dollars,³ or an amount equivalent to five percent of the U.S. merchandise trade deficit of \$175 billion.⁴ Individual industry estimates include \$200 million lost annually by the agricultural chemical industry due to inadequate patent protection,⁵ and one billion dollars a year lost in computer software revenues.

A study demonstrated that, already in 1977, those American industries that marketed products dependent just on copyright protection contributed \$55 billion, or 2.8 percent to the nation's GNP.⁶ It was recently estimated that \$1.3 billion, over two percent of that production, is said to have been lost by these so-called "copyright industries" due to inadequate protection in just ten countries.⁷

3. Address by Edmund T. Pratt, Jr., Chairman and Chief Executive Officer of Pfizer, Inc., "The Role of Intellectual Property Rights in International Business, Trade and Investment," American Bar Association Meeting (Aug. 11, 1986) [hereinafter Pratt].

4. *Testimony on Unfair Trade Practices and U.S. Trade Policy Before the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce, 99th Cong., 2d Sess. (Sept. 26, 1986)* (statement of Ambassador Clayton Yeutter, U.S. Trade Representative).

5. Pratt, *supra* note 3.

6. UNITED STATES COPYRIGHT OFFICE, REPORT TO THE SUBCOMMITTEE ON PATENTS, COPYRIGHTS, AND TRADEMARKS, COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE, ON THE SIZE OF THE COPYRIGHT INDUSTRIES IN THE UNITED STATES ii (1984).

7. Pratt, *supra* note 3.

II. Intellectual Property: A Basic Business Asset

Intellectual property is a basic business asset. Its protection can be considered under the three principal forms of protection: patents, copyright, and trademark.⁸

Patents are a powerful incentive to investment in innovation because they create a foundation for profitable business. Just how essential an asset patents may be was shown in the recent dramatic conclusion to the decade-long dispute between Polaroid, the originator of the "instant camera," and Kodak, which announced a competitive product. Earlier this year, a U.S. Court of Appeals decision affirmed that seven Polaroid patents were valid and that Kodak had infringed them.⁹ The court's judgment, including past damages, possibly to be trebled, and a permanent injunction, has now led to the closure of a main product line of a major corporation. Multimillion dollar awards are not uncommon in other patent infringement suits.¹⁰

Copyright provides similarly powerful remedies against those who choose to shortcut independent creation. In 1983 Apple Computer obtained a preliminary injunction against Franklin Computer that effectively prevented Franklin from marketing personal computers because they contained infringing copies of Apple's copyrighted operating system program.¹¹ Franklin's then-thriving personal computer business is just now, after three years, beginning to recover.

A third category of intellectual property is trademark. A trademark prohibits product imitators from using the identification of the product originator. The business importance of the Coca-Cola trademark on its beverage worldwide is one clear example of the value of such protection. You also may know that marketing specialists like to ask individuals to describe what they would expect to find inside a box marked solely with a well-known trademark such as IBM or GM. They get some remarkably detailed comments, demonstrating that valuable business reputations and goodwill really do ride on adequate trademark protection.

8. Trade secrets are, of course, also an important component of intellectual property but are not included here because, unlike copyrights, trademarks, and patents, trade secrets are generally not defined by U.S. federal statutes. Trade secrets are protected under widely divergent rationales arising from the principles of contract law, unfair competition, and torts, as interpreted by the courts of fifty states and the District of Columbia.

9. *Polaroid Corp. v. Eastman Kodak Co.*, 789 F.2d 1556 (Fed. Cir.), *cert. denied*, 107 S. Ct. 178 (1986).

10. *See, e.g., Shiley, Inc. v. Bentley Laboratories, Inc.*, 794 F.2d 1561 (Fed. Cir. 1986) (\$44 million); *Smith Int'l, Inc. v. Hughes Tool Co.*, 229 U.S.P.Q. (BNA) 81 (C.D. Cal. 1986) (\$205 million); *Pfizer, Inc. v. International Rectifier Corp.*, 218 U.S.P.Q. (BNA) 586 (C.D. Cal. 1983) (\$55.8 million).

11. *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240 (3d Cir. 1983), *cert. dismissed*, 464 U.S. 1033 (1984).

III. Current International Problems in Protecting Intellectual Property

That intellectual property has become a trade problem is not surprising, because the source of the problem is the same as that of other trade issues. That is, nations often put domestic priorities first and only later understand that national actions favoring them can seriously erode their own international trade interests.

Nations often exploit their resources in ways that they believe benefit them, without too much attention to external effects; OPEC, for example, which set out to peg its oil prices for the exclusive benefit of its members.

In the intellectual property arena many countries may fail to provide minimum protection or they may restrict rights obtainable under their domestic patent, copyright, and trademark laws to protect their own interests. Argentina does not grant patents for pharmaceutical products¹² because its indigenous industry depends upon copies of foreign drugs. Brazil's patent law fails to protect food, drugs, and metal alloys¹³ for the same reason. Brazil also still limits the use of foreign intellectual property rights in industries such as computers in order to protect its own national computer industry.

A number of other countries afford substandard or no copyright or trademark protection. Pirates and counterfeiters thereby find a haven to make and distribute worldwide unauthorized copies of legitimate goods. I am not only talking about audio and videotapes, but also about agricultural chemicals that destroy crops, automobile replacement parts that fail, contraceptives that do not prevent conception, watches that do not tick, jeans that rip, and T-shirts that lose their distinctive emblems during the first washing. Such defects hurt the reputation of the company whose name appears fraudulently on the product, and the costs of that fraud also fall upon businesses and consumers worldwide.

Because international trade itself involves multilateral relationships, protection of intellectual property must closely follow that network. For example, a U.S. company's market is affected by intellectual property rights in every country upon which it depends for either supplies or sales. So a U.S. recording company depends upon its U.S. copyrights and trademarks both to prevent infringement domestically and to bar entry of infringing imports. Overseas, that same U.S. company must seek protection against infringers who may market in that country and who may also export their infringing manufacture from that country.

12. ANNUAL REPORT ON NATIONAL TRADE ESTIMATES 9 (1985) (U.S. Trade Representative's report to Senate Finance Comm. and House Ways and Means Comm. on National Trade Estimates for year ending Oct. 31, 1985).

13. *Id.* at 27.

Indeed, a U.S. company may find itself dependent upon many national laws and even engaged in overseas customs enforcement activities between foreign countries. An interesting, timely case in that regard concerns the U.S. Semiconductor Industry Association's successful efforts to have the U.S. Trade Representative intervene with Japan to prevent Japanese companies from selling chips in third countries at unreasonably low prices.¹⁴

Just as the problems are complex, the current vehicles for treating them are inadequate. The concept of nondiscriminatory "national treatment," while generally a valuable concept, today may mean no protection at all in a number of countries. For the only "protection" that foreigners may receive in many countries is whatever minimal protection each country provides to its own nationals, and that is sometimes close to no protection at all.

Protection through current international treaties also lacks vigor. The Berne Convention¹⁵ does provide for minimum levels of copyright protection, but the U.S. does not as yet adhere to that treaty. The Universal Copyright Convention,¹⁶ to which the U.S. does adhere, is administered by UNESCO—from which the U.S. has withdrawn. Neither of these treaties provides meaningful dispute resolution procedures.

The World Intellectual Property Organization (WIPO) administers major patent¹⁷ and trademark, as well as copyright treaties. Although all the treaties on all three forms of protection prescribe how rights are obtained, the patent and trademark treaties do not set meaningful minimum standards for defining the acquisition and enforcement of intellectual property rights.

U.S. companies can seek some help in a variety of U.S. import-control remedies. However, reliance on them is time-consuming and costly, the classic "pound of cure" instead of the required "ounce of prevention." And, while bilateral treaties can address some intellectual property prob-

14. See Sanger, *Japan Yields to U.S. on Chips*, N.Y. Times, Nov. 21, 1986, at D5, col. 1; *SIA Criticizes Japanese for Pricing Chips Unfairly*, InfoWorld, Nov. 10, 1986, at 39.

15. Berne Convention for the Protection of Literary and Artistic Works of Sept. 9, 1886, completed at Paris, on May 4, 1896, revised at Berlin on November 13, 1908, completed at Berne on March 20, 1914, and revised at Rome on June 2, 1928, at Brussels on June 26, 1948, at Stockholm on July 14, 1967, and at Paris on July 24, 1971, effective July 10, 1974, reprinted in 7 COPYRIGHT 135 (1971).

16. Universal Copyright Convention, ratified Sept. 6, 1952, 6 U.S.T. 2731, T.I.A.S. No. 3324, 216 U.N.T.S. 132, revised July 24, 1971, 25 U.S.T. 1341, T.I.A.S. No. 7868.

17. The major international patent treaty is the Paris Convention for the Protection of Industrial Property of Mar. 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, signed at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, 53 Stat. 1748, T.S. No. 941.

lems between some countries, this process could occupy the entire manpower of the U.S. Trade Representative and perhaps even that of the State Department for years.

So the multilateral approach through GATT does offer a bright hope in this otherwise gloomy picture. And there is one other bright spot to report to you, one that may be the most promising in the long term, since it involves the enlightened self-interest of the lagging countries today. Some countries are realizing that their own domestic investment in good growth industries is jeopardized by a lack of protection for intellectual property. This may be an even more important long-term consideration for these countries than is attracting foreign capital through such reform. For, in most developing countries, local capital continues to be the main source of new investment.

For example, a number of nations are encouraging growth in local publishing and software firms. Unless intellectual property protection exists to safeguard investment in those industries, they will not grow. That is why countries with young domestic computer software industries, such as the People's Republic of China, Hungary, India, and Finland, are strengthening legal protection of computer software.

And even in some nations where piracy has been an international problem, recognition of the growing costs and decreasing benefits of inadequate protection of intellectual property is evident. Included here are Indonesia, Malaysia, Korea, Taiwan, Hong Kong, and Singapore; in each case there is active consideration of improved protection, either through stronger laws or better enforcement of existing laws or both.

IV. The United States as Model?

After many years as a lagging country, the United States is putting its own house in order so that it may soon be a model for others seeking to protect intellectual property at home and abroad. Indeed, at first, the U.S. considered itself an importer of intellectual property, and protection for imported works was minimal if it existed at all. Today, the executive,¹⁸ legislative,¹⁹ and judicial branches are among the leaders in exploring the

18. *See, e.g.*, TASK FORCE ON INTELLECTUAL PROPERTY TO THE PRESIDENT'S ADVISORY COMMITTEE FOR TRADE NEGOTIATIONS, SUMMARY OF THE PHASE II RECOMMENDATIONS (1986); TASK FORCE ON INTELLECTUAL PROPERTY TO THE PRESIDENT'S ADVISORY COMMITTEE FOR TRADE NEGOTIATIONS, SUMMARY OF THE PHASE I RECOMMENDATIONS (1985).

19. *See, e.g.*, OFFICE OF TECHNOLOGY ASSESSMENT, U.S. CONGRESS, INTELLECTUAL PROPERTY RIGHTS IN AN AGE OF ELECTRONICS AND INFORMATION OTA-CIT-302 (1986). This study by the U.S. Congress Office of Technology Assessment involved many eminent experts who gave extensive testimony. However, this staff report is somewhat flawed. The summaries of controversial technical issues (e.g., what a computer program is) and legal issues (e.g., the scope of copyright protection) are inconsistent with the experts' conclusions.

adaptation of traditional intellectual property protection to encourage innovation in new technologies.

Legislation is being pressed with a trade-based approach, including a key step to have GATT bring intellectual property under its aegis.²⁰ The U.S. Congress is considering the elimination of certain formalities and other technical legal impediments to U.S. adherence to the Berne Convention.²¹ Thus, more than one hundred years after Berne was established, the 100th Congress may move to permit the United States to adhere.²² Congress has also affirmed protection for semiconductor mask works, a new technology that some countries consider to be protected under existing copyright law.²³ Congress specifically afforded such protection in the Semiconductor Chip Protection Act of 1984.²⁴ The U.S. courts have also made considerable progress recently in copyright, trademark, and patent protection, resolving problems presented by new technologies.

Over the past decade, both the Congress and the courts have recognized the importance of copyright protection for computer programs. The legislative history of the 1976 Copyright Act,²⁵ the report of the National Commission on New Technological Uses of Copyrighted Works (CONTU),²⁶ the legislative enactment of CONTU's recommendations,²⁷ and subsequent judicial decisions mandate effective copyright protection for computer programs.

In the key 1983 case, *Apple Computer, Inc. v. Franklin Computer Corp.*,²⁸ the Third Circuit held that copyright protects programs in both their source

20. See, e.g., H.R. 3, 100th Cong., 1st Sess. (1987); H.R. 5686, 99th Cong., 2d Sess. (1986); H.R. 4800, 99th Cong., 2d Sess. (1986).

21. See, e.g., S. 2904, 99th Cong., 2d Sess. (1986) (bill to amend U.S. copyright law to implement the Berne Convention).

22. The current U.S. copyright statute was passed only ten years ago. Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (codified as amended at 17 U.S.C. §§ 101-810 (1982 & Supp. III 1985)). In 1980 computer program amendments addressed the rights available to owners of copyrighted computer programs. Computer Software Copyright Act of 1980, Pub. L. No. 96-517, § 10, 94 Stat. 3028 (1980). The increasingly unpopular Manufacturing Clause, 17 U.S.C. § 601 (1982), which required printing in the U.S. of copyrighted works of U.S. authors, has expired and may not be reviewed by the 100th Congress. The Semiconductor Chip Protection Act of 1984, Pub. L. No. 98-620, 98 Stat. 3347 (codified at 17 U.S.C. §§ 901-914 (Supp. III 1985)) appears as chapter 9 of title 17, but is otherwise separate from the copyright law.

23. The United Kingdom and Australia are two such countries. Laurie, *The First Year's Experience under the Chip Protection Act or "Where are the Pirates Now That We Need Them?"*, THE COMPUTER LAWYER, Feb. 1986, at 16.

24. Pub. L. No. 98-620, 98 Stat. 3347 (codified at 17 U.S.C. §§ 901-914 (Supp. III 1985)).

25. See, e.g., H.R. REP. NO. 1476, 94th Cong., 2d Sess. 54 (1976).

26. FINAL REPORT OF THE NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS (1978).

27. In the Computer Software Copyright Act of 1980, *supra* note 22, Congress adopted essentially without change CONTU's recommendation to amend 17 U.S.C. § 117.

28. 714 F.2d 1240 (3d Cir. 1983), *cert. dismissed*, 464 U.S. 1033 (1984).

code and object code forms, and in their embodiment in a ROM (Read Only Memory), irrespective of whether they are application or operating system programs. In so holding, the court recognized what it called "Congress' receptivity to new technology and its desire to encourage, through the copyright laws, continued imagination and creativity in computer programming."²⁹

The trend of cases since then has affirmed this direction. In August 1986, the Third Circuit opinion in the case of *Whelan Associates, Inc. v. Jaslow Dental Laboratory, Inc.*³⁰ confirmed that copyright principles derived from other works, such as motion pictures and greeting cards, are applicable in the field of computer programs. The court concluded that infringement can exist without slavish line-for-line copying of computer software. The copyright owner can prove infringement by showing that the two programs have substantially similar structure, sequence, and organization.

Broderbund Software, Inc. v. Unison World, Inc.,³¹ decided in the Northern District of California in October, applies the *Whelan* rationale in two ways. It holds that a computer's screen displays are protectable expressions under an audiovisual copyright on those displays. And it makes clear that the scope of this protection extends to the "look and feel" of what is expressed on the screen.

A more technical issue recently has been decided in *NEC Corp. v. Intel Corp.*³² by a different judge in the same district court. NEC argued that copyright protection does not extend to a "microprogram" deposited on a semiconductor computer chip because it is part of a physical device. The court disagreed, holding that the micro programs are computer programs (i.e., literary works) under the statute and their status as copyrightable subject matter is not affected by their manner of storage or their functional role.

Patent law, too, has been adapting to new technologies.³³ Consider, for example, a 1980 decision by the U.S. Supreme Court dealing with the patentability of living microorganisms that result from genetic engineering. In *Diamond v. Chakrabarty*³⁴ the Court ruled that living microorganisms may qualify as patentable subject matter. In so ruling, the Supreme Court

29. *Id.* at 1254.

30. 797 F.2d 1222 (3d Cir. 1986), *cert. denied*, 107 S. Ct. 877, (1987).

31. 684 F. Supp. 1127 (N.D. Cal. 1986).

32. 645 F. Supp. 590 (N.D. Cal. 1986).

33. The patentability of computer programs is not discussed here because the question is now firmly settled by a series of cases outlining approaches identifying the line between patentability and nonpatentability.

34. 447 U.S. 303 (1980).

rejected the contention that the inventor had discovered “ ‘only some of the handiwork of nature.’ ”³⁵

Today, six years later, a new genetic engineering industry has developed. And in a very recent case, a Patent and Trademark Office administrative tribunal stated that patentability of new plant products extends to “everything under the sun that is made by man.”³⁶

So it is clear that in the United States, courts and Congress are following the underlying spirit of the constitutional objective to encourage industry and creativity through the protection of innovation.

V. What is Happening Outside the United States?

Can the same spirit be said to prevail outside the United States? One might assume so, since ours is a country only two centuries old and the history of patent protection goes back much further overseas. Ironically, however, we are taking the lead in adapting that protection to fit the arrival of new technologies. This development may be a reflection of the advanced high-technology position that this country has achieved. Indeed, that position, the result of enormous investment and human endeavor, is one that depends on better international protection of intellectual property.

The industrialized nations in Europe and in Asia provide domestic intellectual property protection at varying levels. Nevertheless, their domestic protection is comparable to that provided in the United States. In recent years, the United Kingdom, Germany, France, Italy, Spain, Canada, Australia, and Japan have all enacted new intellectual property laws or are actively considering them.

The situation is very fluid elsewhere. In the People's Republic of China, there is a new patent law, and a new copyright law is being considered. This legislation, too, reflects recognition that the country's modernization process can only be encouraged by adequate protection of intellectual property. On the other hand, as I suggested earlier, current levels of protection and enforcement provided in Argentina, Brazil, Korea, Taiwan, Indonesia, and Singapore are not yet up to the standards available elsewhere. Little by little, one can detect a recognition in these countries that their own long-term interests can be served by stronger laws and enforcement. But the seriousness of the trade distortion caused by a combination of market reservation policies and weak protection of foreign copyright

35. *Id.* at 310 (quoting *Funk Bros. Seed Co. v. Kalo Inoculant Co.*, 333 U.S. 127, 130 (1948)).

36. *Ex parte Hibberd*, 227 U.S.P.Q. (BNA) 443, 444 (Bd. Pat. App. & Inter. 1985).

has led the United States to initiate section 301³⁷ trade actions in some cases, notably Brazil and Korea.

In the case of computer software, with very few exceptions, most countries are moving toward recognition that existing copyright law should provide some level of protection. Last year, a meeting of experts was convened by WIPO and UNESCO to consider whether the Berne Convention or the Universal Copyright Convention needed amendment specifically to include computer software. Although there was no official resolution, the overwhelming sentiment was that these treaties already covered computer software.³⁸

Japan, a country that was, at the time of the meeting, considering a separate, patent-like, lesser level of protection for computer software, thereafter amended its copyright law to bring computer software expressly under its protection.³⁹ Most major industrial countries have done the same,⁴⁰ are studying such action,⁴¹ or have judicial decisions bringing software under copyright protection. The problem remains, however, that not all countries provide this protection. And, particularly among the newly-industrialized and developing countries, where protection is provided, the levels of protection are usually not adequate.

VI. The GATT Provides a Long-Range Solution

Given the inadequacy in both the current scope of intellectual property protection worldwide and in the outlook for reform either through bilateral negotiations or through international intellectual property bodies, the new GATT round provides a most logical and promising vehicle for change.⁴² As recognized by the government ministers preparing for the GATT round, international protection of intellectual property is a legitimate trade issue today.

The GATT provides several advantages—today and tomorrow. Today, trade talks under GATT bring together high-level government officials who can place the issue in a trade context, link it to other trade and

37. Trade Act of 1974, Pub. L. No. 93-618, title III, § 301, 88 Stat. 2041 (1974) (current version at 19 U.S.C. § 2411 (1982 & Supp. III 1985)).

38. *Group of Experts on the Copyright Aspects of the Protection of Computer Software*, WIPO-Geneva and UNESCO-Paris, U.N. Doc. UNESCO/WIPO/GE/CCS/3 (Mar. 8, 1985), reprinted in 21 COPYRIGHT, April 1985, at 146-58.

39. Law for Partial Amendments to the Copyright Law, Law No. 62 of June 1985 (effective Jan. 1, 1986).

40. *E.g.*, Australia, France, West Germany, and the United Kingdom.

41. *E.g.*, Canada, Italy, Spain, and Switzerland.

42. See generally J. Gorlin, *A Trade-Based Approach for the International Copyright Protection for Computer Software*, (1985) (report on major issues in intellectual property law facing the Office of the U.S. Trade Representative, in preparation for Multilateral Trade Negotiations).

investment issues, and make effective decisions that bind clear national action. And, tomorrow, should issues arise in interpreting national actions that are not in line with GATT obligations, GATT provides a dispute settlement mechanism not available in other forums.

Certainly, negotiating an agreement in the GATT could take a number of years. In the meantime, it is imperative to continue pressing on all fronts for improved protection of intellectual property. Bilateral agreements will be particularly important in the cases of countries that are not GATT members. Delay in achieving solutions may make those solutions more difficult as pirate industries take root and try to block legislative progress.

While a negotiating forum like the GATT does involve the risk of trading off intellectual property protection for other objectives, the critical importance of truly meaningful international protection offers assurance that the issue can be resolved in that forum. Moreover, resolution through GATT offers the prospect of an agreement from which both industrial countries and developing nations can gain.

In view of the complexity of the issues and the need for rapid progress, what would be a solid agenda? Certain steps are crucial:

First, we must press ahead in the GATT for an intellectual property agreement that includes minimum acceptable levels of protection, and that requires improved enforcement of intellectual property laws through border controls. Implementation of such provisions will be mandatory for the signatory countries.

Second, we must assure passage of domestic legislation supporting an international effort. In the United States, this includes granting the President authority to negotiate improved intellectual property protection in the new GATT round as well as enacting more effective section 337⁴³ remedies against pirates and counterfeiters. Congress should also approve adherence by the United States to the Berne Convention.

Third, an effort complementary to GATT negotiations should be made by the United States through bilateral contacts. The United States should negotiate directly with those nations whose laws and enforcement need most improvement. We should also offer technical assistance to all developing nations interested in bringing their intellectual property protection up to appropriate international standards.

In moving ahead on these fronts, we must do so in a way that supports WIPO because it is the repository of expertise in this area.

43. Tariff Act of 1930, ch. 497, title III, § 337, 46 Stat. 703 (1930) (codified as amended at 19 U.S.C. § 1337 (1982 & Supp. III 1985)).

VII. The Home Front

There is one basic requirement for progress on any of these fronts. That is grass roots understanding and support. For if there is no perceived political consensus for strengthened international protection of intellectual property—in the United States as well as elsewhere—governments will focus on what they perceive as more pressing trade matters. This would be all the more dangerous as the current environment of increasingly strident trade protectionism may well erode further the chances for adequate law and enforcement.

Intellectual property protection should be pressed with the same determination as market access. Just as the Intellectual Property Committee was formed as a group of interested companies to explain the consequences of the issue and its imperatives to government and public audiences worldwide, we as individuals should do what we can to support continued government and public focus on the issue. Doing this will be particularly important over the next months of preparation for GATT negotiations.

Weaving a truly seamless web of international protection starts at home.