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Antigua may violate int'l treaty: Expert

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by Patricia Campbell

An international expert on intellectual property, Jorgen Blomqvist, has warned that Antigua and Barbuda will be in contravention of a major international treaty if it moves ahead with plans to use the suspension of intellectual property rights as a means of imposing trade sanctions on the US.

Blomqvist is the director of the Copyright Law Division of the Geneva-based World Intellectual Property Organization (WIPO), a specialised agency of the United Nations. In an interview with the Antigua Sun, Blomqvist said that as a signatory to the Berne Convention for the Protection of Literary and Artistic



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Works, Antigua and Barbuda would be obligated to protect most intellectual property rights, even if the World Trade Organisation (WTO) rules otherwise.

A WTO arbitration panel has ruled that Antigua and Barbuda could apply to recoup US\$21 million per year in compensation through means including the suspension of US intellectual property trade protections in Antigua and Barbuda. This is governed at the WTO by the Agreement on Trade-Related Aspects of Intellectual Property Rights, also known as the TRIPS Agreement.

Blomqvist questioned the presumption that the WTO ruling would legitimise the suspension of US intellectual property protections.

He pointed out that there are several treaties dealing with intellectual property and that while a suspension of intellectual property protections might be permitted in the WTO, Antigua and Barbuda and the US are both parties to the Bern Convention, which he described as a well established international convention.

"The TRIPS Agreement says that contracting parties shall comply with the Bern Convention, with one exception, but the bulk of the economic protection under the Bern Convention is referred to in the TRIPS Agreement," Blomqvist explained. "Since both parties are parties to the Bern Convention, if they, under some other convention, start to not grant protections to each other, then they will infringe the Bern Convention."

Antigua and Barbuda signed on to the Bern Convention on 17 March 2000, while the US became a party to the Convention in March 1989.

"The fact that under one treaty you can make such sanctions does not relieve a country from responsibilities under other treaties," Blomqvist told the SUN. He noted, however, that the Bern Convention does not have the dispute resolution system that exists in the TRIPS Agreement.

This means that the mechanisms for a country to react and seek sanctions that exist at the WTO do not exist for a violation of the Bern Convention.

"If a country under the Bern Convention is dissatisfied with the way that it is being protected, the reaction possibility it has is basically that its local ambassador knocks on the door of the minister in charge," Blomqvist explained.

He made it clear that the Convention is, nevertheless, considered a legal obligation on signatories, even if the means of enforcement are limited.

The argument that Antigua and Barbuda would be in violation of its Bern Convention obligations if the country fulfils its threat to use intellectual property rights as a vehicle for the Internet gambling trade sanctions against the US was put to Minister of Finance and the Economy Dr. Errol Cort this week.

Dr. Cort said that he did not accept this argument and that he intends to address this issue fully today.

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