BARBADOS-COUNTRY REPORT

by

Mr. Jeff Cumberbatch,
Deputy Dean and Senior Lecturer in Law,
Faculty of Law,
University of West Indies, Bridgetown

INTRODUCTION

Barbados is an island in the Caribbean, that group of islands and states which stretches from Bermuda in the northern Atlantic to Guyana on the South American mainland and from Belize in Central America to Barbados itself which is the most easterly island in the group. As part of the Commonwealth (or Anglophone) Caribbean, those islands which once were or still are colonies of Great Britain, the island of Barbados shares the English common law heritage and has, at the apex of its court system the Judicial Committee of the Privy Council. It bears remarking however, that there is at present a well developed initiative by the member states of the Caribbean Community (CARICOM) to establish the Caribbean Court of Justice as the final court of appeal for the region.

As a member of the World Trade Organisation (WTO) and a signatory to all of the major conventions to ensure the protection of intellectual property rights, Barbados has put in place the required legislative framework consistent with the guarantee of these rights. In addition to the Copyright Act 1998 and the Trademarks Act, Cap. 319, Barbados has passed the Patents Act 2001, the Protection of New Plant Varieties Act 2001 and the Integrated Circuits (Amendment) Act 2001.

TEACHING & TRAINING

The University of the West Indies, founded in 1948 as a college of London University (UCWI), is the premier academic institution in the region. The UWI provides training in the Humanities, Education, Social Sciences, Natural Sciences, Medicine, Computer Studies, Engineering, Business Administration, Agriculture and Law.

The Law Faculty, which was established in 1970, has rapidly acquired an international academic reputation through the outstanding achievements of its graduates. Whether through a lack of political will or human resource deficiency, the teaching of a course in intellectual property did not commence until the second semester (January-April) of the last academic year. Even then, the nature of the course has been restricted to copyright protection only (See Appendix).

The course is taught in Part III of the LL.B. (Bachelor of Laws programme) and is optional. However, given the overwhelming response to the course, it has now been decided that it should be offered in both semester one and two so as to accommodate the numerous requests for inclusion. It has also been proposed to enlarge the offerings in IP Law and a recruitment process is ongoing.

There is no formal teaching in IP law outside of this narrow academic confine but this should not be taken for an absence of local expertise. There are those lawyers who would have taken IP courses during undergraduate or postgraduate study abroad and legal professionals have been called upon to tender advice in respect of intellectual property matters.

Some training is carried out by the state Corporate Affairs (Registry) and Intellectual Property Office. I am aware of the training of customs officers, the police and the local artistes in matters pertaining to copyright protection.

Another organisation which plays some part in sensitizing, if not actually training, the public in this context is the local society for composers, authors and performers (COSCAP) which looks after the licencing of its members, works and the collection of royalties therefrom. Public awareness of intellectual property rights has also been heightened through efforts by the Government Information Service (GIS) involving press releases, brochures and booklets, *inter alia*.

PROSPECTIVES

In spite of the prominence of IPR protection in national discourse, one is forced to concede that the populist perception remains that so long as the "property" is intangible, anyone is free to exploit it for his own uses. Hence, "piracy" of popular local and regional songs is rampant and there have been less than a handful of prosecutions. An infringement of intellectual property rights is not something that is going to occupy substantially the mind of a police force currently battling daily soaring crime rates with inadequate numbers and equipment. Nor is there provision for any special IPR section in the Police Force to ensure compliance with the law. Prosecution remains essentially then a matter for the victim of the infringement if she so chooses, being mindful always that recourse of a civil nature is also available. It seems clear that the state must urgently consider measures to ensure a more efficacious policing of IP rights.

The intangible nature of the IP might have also contributed to a local reluctance to protect folkloric and traditional expression. The local game road-tennis appears to be unique to Barbados; however, no efforts have been made to patent or even record the game as our own.

The need for internal public education is urgent and ongoing. I have been impressed with the efforts made in some of the jurisdictions of my fellow participants. Barbados is a highly literate society (97%) and equivalent publications such as "A Handbook of Copyright Law" put out by the BP and Copyright Division of the Government of India in 1999 would assist greatly in this regard. Newspaper articles, television productions or public seminars must also be used to assist in producing a society whose perception of IPR protection keeps pace with its legislative complement.

[Appendix follows]

Appendix

Intellectual Property: Copyright

1. General

This course will be taught in the first and/or second semester of the third year of the LL.B. degree programme. This course is an optional course.

2. Course Objective

The main objective of this course is to introduce students to the general principles of copyright law and to specialized areas of the law relating to the protection of indigenous artistic expressions, namely, folklore, and to issues concerning the music industry.

3. Course Content

The areas to be covered are as follows:

1. Introduction to Intellectual Property Law and Industrial Property Law
2. History of Copyright Law and sources of Copyright Law
3. Nature of Copyright
4. Authorship and Ownership of Copyright
5. Rights of Users of Copyright - Fair dealing in copyright
6. Moral Rights
7. Specialized areas (i) copyright protection of folklore, (ii) copyright and the music industry
8. Copyright Treaties
9. Copyright Infringement
10. Remedies

4. Method of Teaching

This course will be taught by way of two lectures and one tutorial per week, each lecture and tutorial being one hour duration.

5. Method of Assessment

This course will be assessed by means of a two hour final examination at the end of the semester. Students will be required to answer three questions out of a total of six questions.