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WTO grants Antigua right to launch 'pirate' site selling US media

By List Click (/search/author/List+Click) | 29 January 13 (Tue, 29 Jan 2013 12:51:33 +00:00)

The World Trade Organisation has granted Antigua's legal representative Mark Mendel of Mendel Blumenfeld (http://www.mendelblumenfeld.com/) said he could not release any details on when we might see a website go live, but that “we are definitely working on it and are hopeful that the US will choose to negotiate fairly and honestly in the very near future so that we do not ultimately have to implement the remedy”.

The act would not, as the US is arguing, “steal” or “government-authored piracy”, but a legitimating means for the Caribbean island to make back some of the billions in earnings lost when the US violated a free-trade agreement that forced Antigua to shutdown its online gambling industry -- reportedly putting five percent of the island’s 90,000-strong population (https://www.cia.gov/library/publications/the-world-factbook/geos/ac.html) out of work. The US continues to refuse to lift this blockade.

"This is probably the most appalling thing to come out of the last couple of days," Mendel told Wired.co.uk, referring to the derogatory accusations made.

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The Wired.co.uk Podcast 41: PRS For Music, probed (podcast/episode-41)
by the US. "For the US to resort to this unique, unhelpful and irresponsible rhetoric and assembling when one of the smallest countries in the world has used, to the letter, the processes of the WTO to get a remedy endorsed by international law to enforce a clear and unambiguous violation of international law by the US. I really am shocked by this, and had expected better of the Obama administration. In essence, they are saying that the US will punish or retaliate against a small country for pursuing its legal rights. Really incredible, sad and reminiscent of the worst of colonial thinking."

"As we said yesterday, 'when you have nothing, you have nothing to lose', and at this point I believe the Antiguan people and government are at the end of their respective tethers."

The saga began when the US did a U-turn on its General Agreement on Trade in Services (GATS) schedule, which allowed cross-border online gambling. In a technically condescending statement (http://www.wired.co.uk/news/archive/2013/01/us-dfs-statement-20130128-as-delivered.pdf) to the WTO Dispute Settlement Body, the US reduced its actions -- actions that led to the loss of billions of dollars and the closure of an entire industry -- to nothing more than an unfortunate mishap.

"As the United States has explained in the past, the United States never intended gambling and betting services to be included in its schedule under the GATS," it stated, blaming the misunderstanding on "ambiguities in drafting". Its intentions, or lack thereof, are irrelevant. In 2005 the WTO ruled (http://www.antigua.govt.com/WTONewshttp.html) that by backtracking on the terms of its GATS schedule, the US had violated free-trade agreements.

Under Article 22.3 of the WTO Dispute Settlement Understanding if a nation has suffered losses because of violation of a WTO agreement, it has the right to seek retribution under a different agreement, if retaliation under the initial agreement is "not practicable or effective".

"Recourse to higher tariffs on goods, or the blocking of goods and services, would not be practicable because the volume of trade is so small that American businesses could easily divert to other markets and in general, to retaliate in goods or services would -- to the extent those goods and services remained available -- only punish Antiguan consumers," explained Mendel.

Therefore Antigua sought to cross-retaliate under Article 22 using the Trade-Related Aspects of Intellectual Property Rights agreement, which the WTO allowed in 2007.

Such a ruling has been passed before (http://www.rcf.us.de/~cork/brief/1/c14-pub05.doc), but no nation has ever actually acted on. However Antigua appears not to have received any kind of meaningful negotiations with the US (in spite of what the latter argues in its statement) so has decided to go ahead.

"The United States is disappointed with Antigua and Barbuda's misplaced decision to abandon constructive settlement discussions and to pursue authorisation to suspend concessions or other obligations," said the US, before delivering a mild threat:dig: "This course will not achieve a positive outcome for the Antiguan economy or people and will make resolution of this longstanding matter more difficult."

According to Mendel, the US made no attempts to remedy the situation or offer compensation that might warrant such an arrogant response.

"Let me be clear on this -- the US has offered nothing in settlement other than the same terms they have offered to other countries if the US gets to amend the treaty to not cover remote gaming, none of which would be useful to Antigua and none of which were negotiated with Antigua (it was basically a US/EU negotiation). Antigua has presented all of the proposed settlement terms, and rather than being rejected by Antigua, all have been either rejected or ignored by the US. It may be hard for many of your readers to believe, but in this case I can give my assurances that the United States is simply being untruthful."

As with other nations which secured cross-retaliation permission from the WTO, Antigua hopes not to have to follow through. The threat could be enough to put Antigua in good stead for further negotiations considering, if it goes
through with launching a download portal for international consumption, there’s nothing to say other far bigger wronged nations wouldn’t be tempted to do the same -- and for a higher cost to the US. The whole affair does however show the US in a poor light, certainly such measures had to be taken just to get them to the negotiating table. One related WikiLeak document (http://cableresearch.org/cable/view.php?id=07STATE165472), dated 2007, reportedly from the US Secretary of State’s office, appears to prove the focus rested mainly on the EU’s position; the US marginalised Antigua, which featured as a mere afterthought: “At a minimum, we are urging the EU to refrain from joining any arbitration which Antigua and Barbuda may request,” the document reads.

“We are not expecting this remedy to be anything other than a means to an end,” said Mendel. "Once put in place, it will, however, not even begin to compensate for the job and economic losses from the wrecking of the gaming industry."

Mendel says the US has just two options now -- comply, or work out a settlement. It can only take its case to the WTO if Antigua implements the ruling incorrectly.

Why then, has the US pursued such a futile course of action, failing to engage in any real negotiations on level-footing with Antigua and resorting to codendescending and unproductive rhetoric that does not appear to take the WTO’s legitimacy and authority into account?

“I do think that the US has a mixed, immature and difficult domestic situation with respect to gambling in general and remote gambling in particular,” Mendel told Wired.co.uk. “However, I think the main reason the US has not complied with the WTO rulings is that Antigua is such a small country they think they can get away with it. I also think that, unfortunately, some people in the US government were almost offended that Antigua chose to challenge the US and have been so persistent in its pursuit of justice that the US government has adopted unusual harsh and unyielding lines that have made it difficult to consider our issue in its proper context.”

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No need to worry about your battery running out when you're on the move as the Sony Vaio Duo 11 packs a lot of power into a slim design.

Let me go buy some bootleg stuff, Congress in the U.S. should have acted faster to keep this from happening. Too bad for them.

J.C. P. | Jan 29th 2013

*Mendel says the US has just two options now -- comply, or work out a settlement. It can only take its case to the WTO if Antigua implements the ruling incorrectly.*

The US "complies" by legalising internet gambling, then real casinos in Nevada, Atlantic City and the Native American Tribes would wipe this worldwide scourge out of the market.

goodjobbob | Jan 29th 2013

This is the second place I’ve seen you post about Antigua as a Scourge. It is exactly that type of American arrogance that has brought this situation to this point. The writer got the story correct. The US went before the WTO which they helped to start and they lost not only once but also on appeal. Even if they started a few gambling online today they have destroyed the Antigua gaming industry, locked people in jail and taken all their monies. Prosecuted one of their own
When you claim damages of 3.4 Billion, and are awarded sanctions of 21 million (about 1/2 of 1%) it hardly constitutes a "victory". As for Antigua being a "scourge", google Sir Allen Stanford, John Allen Mohammad and Lee Mallo, Gerald Bull, Space Research, etc., etc.

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The WTO needs to exclude Online Gambling. Its already too easy to exploit gamblers when they are physically present on your island or your luxury trip but bankrupting families remotely ups the ante. Why should a country of 90000 make billions off people so easily and without anything being produced in return?

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