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In Trade Ruling, Antigua Wins a Right to Piracy

By JAMES KANTER and [GARY RIVLIN](#)

PARIS — In an unusual ruling on Friday at the [World Trade Organization](#), the Caribbean nation of Antigua won the right to violate copyright protections on goods like films and music from the United States — an award worth up to \$21 million — as part of a dispute between the countries over online gambling.

The award follows a W.T.O. ruling that Washington had wrongly blocked online gambling operators on the island from the American market at the same time it allowed online wagering on horse racing.

Antigua and Barbuda had claimed damages of \$3.44 billion a year. That makes the relatively small amount awarded Friday, \$21 million, something of a setback for Antigua, which had been struggling to preserve its gambling industry.

The United States argued that its behavior had caused \$500,000 damage.

Yet the ruling is significant in that it grants a rare form of compensation: the right of one country, in this case Antigua, to violate intellectual property laws of another — the United States — by allowing it to distribute copies of American music, movie and software products.

“That has only been done once before and is, I believe, a very potent weapon,” said Mark Mendel, a lawyer representing Antigua, after the ruling. “I hope that the United States government will now see the wisdom in reaching some accommodation with Antigua over this dispute.”

Though Antigua is best known for its pristine beaches and tourist attractions, the dozens of online casinos based there are important to the island’s economy as its second-largest employer.

By pressing its claim, trade lawyers said, Antigua could set a precedent for other countries to sue the United States for unfair trade practices, potentially opening the door to electronic piracy and other dubious practices around the world.

Still, carrying out the ruling will prove difficult, the lawyers say.

“Even if Antigua goes ahead with an act of piracy or the refusal to allow the registration of a trademark, the question still remains of how much that act is worth,” said Brendan McGivern, a trade lawyer with White & Case in Geneva.

“The Antiguan could say that’s worth \$50,000, and then the U.S. might say that’s worth \$5 million.” He predicted that “the U.S. is going to dog them on every step of the way.”

The United States has aggressively fought Antigua’s claims.

A W.T.O. panel first ruled against the United States in 2004, and its appellate body upheld that decision a year later. In April 2005, the trade body gave the United States a year to comply with its ruling.

That deadline passed with little more than a statement from Washington that it had decided it was in compliance.

From the start, the United States asserted that it had never intended to allow free cross-border gambling or betting. Those activities are restricted in the United States, though some form of gambling is legal in 48 states.

In May, the United States said it was rewriting its trade rules to remove gambling from the jurisdiction of the W.T.O.

Washington has agreed on deals with the [European Union](#), Canada and Japan to change the treaty but not with several other nations, including Antigua.

On Friday, the United States trade representative issued a stern warning to Antigua to avoid acts of piracy, counterfeiting or violations of intellectual property rights while talks continue.

The trade office said such behavior would “undermine Antigua’s claimed intentions of becoming a leader in legitimate electronic commerce, and would severely discourage foreign investment” in the country.

James Kanter reported from Paris, and Gary Rivlin from New York.