

**1999 PHILIP C. JESSUP
INTERNATIONAL LAW MOOT COURT COMPETITION**

CORRECTIONS AND CLARIFICATIONS TO THE COMPROMIS

The following corrections and clarifications have been agreed by the parties in response to many requests of Jessup Competitors, and the Compromis should be considered amended accordingly. In offering these, the parties remind all participants of the following:

- a. The Compromis is, in essence, a stipulation of facts. Its words have been carefully chosen, and are the results of extensive negotiation. The parties decline to "clarify" the facts by providing conclusory characterizations, *e.g.* of the nature of their political systems. And, obviously, the parties will not stipulate as to what arguments are acceptable or unacceptable.
- b. The response to any request for a clarification **not** addressed in the following paragraphs is already included in the Compromis or has been considered inappropriate or immaterial, or the parties were unable to reach agreement on a mutually acceptable answer.
- c. Except to the extent that corrections and clarifications are set out below, participants are to assume that the Compromis is accurate and complete in all respects.

Corrections

1. The error on line 1 of page 13 of the printed version has already been noted: The Pagonian – not the Bretorian – Foreign Ministry replied to the Bretorian communiqué.
2. In Civil Law Number 51, the cross-reference in Article 2(e) should be to Article 2(d), not 2(a).
3. The last paragraph of the Compromis inadvertently omits reference to the fact that both Bretoria and Pagonia are parties to the Vienna Convention on the Law of Treaties.
4. The last paragraph also inadvertently omits the following final sentence: "Except as otherwise noted in the Compromis, there are no other relevant treaties or international agreements to which either nation is a signatory or a party." Participants may assume that the parties did not cast votes in favor of any UN resolution or other international instrument not specifically referenced in the Compromis.
5. The Special Agreement was signed on 4 November 1998, not 4 October.
6. For the convenience of participants, the Compromis is being reissued with its paragraphs numbered.

Clarifications

1. Although it has never sought official recognition as such, Pagonia meets the criteria established by the United Nations to be considered a "less developed country" (LDC) status. Bretoria is a developed country. The capital cities of the two nations are separated by 2,894 air miles. Bretoria is outside the geographical region encompassed in RATS.

2. Overseas Pagonians have no special rights or obligations under the laws of Pagonia, except that they are considered to be "sons and daughters of the motherland," and are admitted for non-permanent resident status under a special visa category.

3. Bretoria, whose population in 1996 was about 46 million, was a founding member of the United Nations. Pagonia, population estimated at 10 million as of 1994, joined the UN in 1965.

4. Madeleine Crispell was born in Pagonia in 1953. She is a native-born citizen of her country, with a graduate degree from the University of Uppsala, Sweden, awarded in 1979. She inherited her interest in Grace Publications well before her election to Parliament. The parties stipulate that Ms. Crispell's continuing ownership of the company after her election is not prohibited by Pagonian law.

5. The parties agree that the members of the "panel of experts" who visited Pagonia under WIPO auspices in 1996 were independent and objective. None was of either Pagonian or Bretorian nationality.

6. The television stations in Pagonia are privately owned. In none of the stations have Bretorian nationals at any relevant time held more than 3% of the outstanding equity.

7. The 150 prosecutions for alleged theft of intangible property referenced in the Compromis represent an annual average of each of the referenced regions in each of the last four years. No information can be provided about prosecutions in the other regions because the records are simply not available.

8. The version of the Berne Convention to which Bretoria is a party is the most recent one: the Paris Act of 24 July 1971.

9. Pagonia has no system for the registration of copyright ownership.

10. The Pagonian Communication Commission, an independent agency of the Pagonian Government, is a "Regulatory Agenc[y] established by the Administrative Law of Pagonia," as that term is used in Article 21 of Civil Law Number 51.

11. The foreigners who divested themselves of majority ownership interests in Pagonian commercial entities pursuant to Civil Law Number 51 were compensated, in

accordance with Article 2(e), in Pagonian Shuttles, the national currency unit. All awards issued by Pagonian courts in all situations are in that currency, which is convertible.

12. After the Government of Pagonia acquired interests in Regulated Entities pursuant to Civil Law Number 51, it auctioned those interests off to bidders of Pagonian nationality who qualified for licenses to operate in the cultural sector under applicable laws, and who satisfied the Pagonian Communication Commission of their commitment to promotion of Pagonian culture in their operation of the business to be acquired.

13. The term "book value," as used in Article 2(e) of Civil Law Number 51, means the value at which assets are carried on the balance sheet of the company: cost less accumulated depreciation.

14. According to academic studies not specifically endorsed by the Government, persons convicted of theft (without aggravating circumstances) in Pagonia are normally not sentenced to incarceration for a first offense, but are given fines usually on the order of 30-50% of the value of the property stolen. For a second or subsequent offense, a defendant may be given a prison term, not normally to exceed five to seven years. There is no hard evidence of more than five persons ever having been imprisoned for copyright infringement anywhere in Pagonia under the laws of theft over the last 10 years.

15. There are no civil remedies for theft in Pagonia, but the country's legal system does recognize a private cause of action similar to what is called "conversion" in common law regimes. There is no record of anyone criminally prosecuted for theft of intellectual property ever having been sued civilly for the same act.

16. There are no accurate records reflecting the nationality of shareholders in television stations in Pagonia prior to Civil Law Number 51.

17. The parties stipulate that approximately 30% of the total revenue described by the WIPO panel as "lost by copyright owners" would have gone to Bretorians, and that approximately 42% of the television programs broadcast in Pagonia since 1991 originated in Bretoria.

18. Under Article 2(d) of Civil Law Number 51, entities divesting themselves of "Foreign Ownership Interests" are free to do so at whatever price they can negotiate with a willing purchaser during the 90 days allowed by law. The right of the Ministry of Culture to acquire the interest at book value accrues only if there is no completed sale within the 90 days.