World Trade and World IP Law and Institutions
FINAL EXAMINATION

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*DIRECTIONS:*

*This is a one-hour examination. Students are allowed to bring any materials they wish into the examination. Students are not allowed to discuss the questions with one another or ask assistance of one another during the examination. Nor should students "comment" or otherwise communicate with one another on the questions at any time during the examination. Answers should be written in an exam booklet. Do not put your name or any other identifying device on your exam booklet -- just your exam number. You should keep your answers BRIEF, but there are no page limitations Write on only one side of the exam book page.*

Select two (2) of the following four (4) questions (30 minutes for each question):

1. In the case *United States -- Section 110(5) of the U.S. Copyright Act*, (Materials p. 35*ff*) theWTO DSB Panel examines Article 13 of the TRIPS Agreement, which states:

> Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

In its report, how does the Panel define "certain special cases?"

2. In the case, *India -- Patent Protection for Pharmaceutical and Agricultural Products*, (Materials p. 100) the Appellate Body stated, "Members...are free to determine how best to meet their obligations under the *TRIPS Agreement*. And, as a Member, India is 'free to determine the appropriate method of implementing' its obligations under the *TRIPS Agreement* within the context of its own legal system." Why, then, did the AB not accept India's interpretation of Indian law but rather ruled in favor of the United States?

3. What is the relationship between Articles 6, 28 and 31(f) of the TRIPS Agreement?

4. In *United States -- Section 211 Omnibus Appropriations Act of 1998 ("Havana Club")*, (Materials p. 133*ff*) the WTO Appellate Body found Section 211(a)(2) to contain a *prima facie* violation of both Article 2.1 of the Paris Convention and Article 3.1 of the TRIPS Agreement. Why is the same behavior a violation of *both* the Paris Convention and the TRIPS Agreement and how is it significant to the outcome of the decision?