THE CARIBBEAN PERSPECTIVE ON THE 1976 U.S. COPYRIGHT ACT

by Justin Koo[1] and Emma Perot[2]

The development of the Commonwealth Caribbean's copyright law framework and its practical application and enforcement has largely been influenced by jurisprudence from the United Kingdom due to the region's colonial history. However, due to the increasing popularity of U.S. media in the Caribbean in the late twentieth century and the advent of social media in the early twenty-first century, U.S. copyright norms and concepts have increasingly infiltrated Caribbean copyright jurisprudence and social norms. Furthermore, given the international dominance of the U.S. content industries, Caribbean content creators have internalized U.S. copyright norms as a means to gain access to the lucrative market.

Consequently, this article addresses the impact that the 1976 U.S. Copyright Act has had on the development and use of copyright law in the Caribbean, with specific regards to the legal transplants, misconceptions, and extra-legal influences that have ensued. The result is that copyright law in the Caribbean has reached a crossroads where decisive determination is required about the following: continuing along the traditional roots of a colonial-inspired UK approach to copyright jurisprudence, adopting a hybrid approach that preserves UK legal tradition while embracing some of the U.S. copyright norms that have seeped into law and practice, or shifting toward a substantively U.S.-styled copyright framework.

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INTRODUCTION

When one thinks of the Caribbean, the first thoughts are usually about beaches, sunshine, the music, and the culture. Songs like Arrow's "Hot-Hot-Hot" may come to mind.[3] For younger generations, Sean Paul's "Temperature,"[4] Shaggy's "It Wasn't Me,"[5] or Rihanna's "Pon de Replay"[6] may get you moving. The global success of these songs is directly linked to the American market for music distribution. The need to access the U.S. market has resulted in the U.S. Copyright Act of 1976 having a tangible impact on the creative industries of the Caribbean, even though the development of the Commonwealth Caribbean's copyright frameworks has closely resembled the evolution of UK copyright law (with some exceptions, notably in the Bahamas).[7] This connection between the Caribbean and the United Kingdom is deeply entrenched due to the region's colonial past, in which UK laws were imposed on the then-colonies and have continued to be voluntarily received by the now-independent countries.

However, contemporary developments have led to increasing reliance on economic and cultural links with the United States, which has resulted in legal transplants, misconceptions, and extra-legal influences on copyright industry practices. As a result, this Article examines the influence of the U.S. Copyright Act of 1976 on the Commonwealth Caribbean. It considers the penetration of U.S. copyright norms and practices in this region—in particular, legislative provisions, transactional practices, and the trading relationship between the region and the United States. Some of the notable legal issues to be assessed include misconceptions and loose use of terminology such as "works made for hire," "fair use," copyright disclaimers, and registration requirements—and, most curiously, the inclusion of the Section 107 fair use factors to define the traditional UK-inspired fair dealing approach to copyright exceptions and limitations. Similarly, some of the U.S.-induced industry practice influences to be assessed include the improvements in metadata tagging of Caribbean music and the threat of the *Special 301 Report* released by the Office of the U.S. Trade Representative.

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[3] Arrow, *Hot-Hot-Hot*, *on* Hot-Hot-Hot (CD, Chrysalis 1983).
[4] Sean Paul, *Temperature*, *on* The Trinity (CD, Atlantic 2005).
[5] Shaggy, *It Wasn't Me*, *on* Hot Shot (CD, MCA 2000).
[6] Rihanna, *Pon de Replay*, *on* Music of the Sun (CD, Def Jam 2005).
[7] *Compare* Copyright Act 1997 (Trin. & Tobago) (resembling Copyright, Designs and Patents Act 1988, c. 48 (UK)), *with* Copyright Act 2024 (Bah.) (containing provisions featuring U.S. copyright law, such as "works made for hire" (§§ 2, 11(2), 20(2)), and copyright registration (pt. V)). The Bahamas legislation also has provisions on moral rights and performers rights, which are more reflective of the UK system. See Paul Goldstein & P. Bernt Hugenholtz, International Copyright: Principles, Law, and Practice (4th ed. 2019), for a comparison of U.S. and UK Copyright law.

This Article concludes that the Commonwealth Caribbean copyright frameworks have stumbled into a crossroads that requires a decisive decision about whether to align with U.S. copyright norms that are slowly seeping into practice, forge a hybrid pathway accounting for its UK tradition and new U.S. norms, or wholeheartedly embrace a shift toward U.S. doctrine for regional copyright law.

I. CARIBBEAN LEGAL SYSTEMS AND THE UNITED STATES

A. The Caribbean Community and Its Legal Systems

Caribbean law and its legal systems were shaped by the influence of colonialism. The Commonwealth Caribbean consists of twelve independent countries and several British Overseas Territories. Commonwealth Caribbean jurisdictions gained independence from the 1960s onwards, and some subsequently gained republic status by removing the British monarch as their head of state. When Caribbean countries became independent, the legal relationship between the United Kingdom and each of those countries was altered by the approach taken in the relevant constitution regarding "savings law clauses." Also known as "existing law clauses," these constitutional provisions preserved law that existed pre-independence.[8] While the extent of these clauses varied from full/general to partial/special and some include "sunset" dates, the general impact was that British statutes and case law to which the clause applied were retained unless overruled or replaced by local legislation. Apart from Guyana, which gained independence in 1966, the other eleven independent Commonwealth Caribbean countries have adopted their own copyright legislation and have amended them to be compliant with various copyright obligations mandated by international intellectual property treaties.[9]

In the wake of independence, the Caribbean Community, CARICOM, was formed.[10] The seed for CARICOM was planted in 1958 by the establishment of the West Indies Federation.[11] This short-lived Federation, comprised of British West Indies territories,

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[8] ROSE-MARIE BELLE ANTOINE, COMMONWEALTH CARIBBEAN LAW AND LEGAL SYSTEM 101 (2d ed. 2008).

[9] Copyright Act 2003 (Ant. & Barb.); Copyright Act 2024 (Bah.); Copyright Act 1998 (Barb.); Copyright Act 2000 (Belize); Copyright Act 2003 (Dominica); Copyright Act 2011 (Gren.); Copyright Order 1966 (Guy.); Copyright Act 1993 (Jam.); Copyright Act 2024 (St. Kitts & Nevis); Copyright Act 1995 (St. Lucia); Copyright Act 2003 (St. Vincent); Copyright Act 1997 (Trin. & Tobago). Guyana gained independence months after the Copyright Order 1966 came into effect but has never introduced local copyright legislation. A new copyright act is expected to take effect in Barbados soon. The 2025 Copyright Bill passed in the Senate but has not yet been proclaimed at the time of writing. *The Copyright Bill, 2025*, BARB. PARLIAMENT, https://www.barbadosparliament.com/bills/details/860 (last visited Aug. 14, 2026).

[10] All independent Commonwealth Caribbean countries are members of CARICOM. Other member states are Haiti, Montserrat, and Suriname. The associate members are Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Curaçao, and Turks and Caicos Islands. *Member States and Associate Members*, CARICOM, https://caricom.org/member-states-and-associate-members (last visited July 28, 2026).

[11] *The West Indies Federation*, CARICOM, https://caricom.org/the-west-indies-federation (last visited Aug. 13, 2026).

collapsed when Jamaica withdrew in 1961, followed by Trinidad and Tobago a year later.[12] Both countries gained independence in 1962 and talks for Caribbean economic cooperation took place in 1963 onwards, with the formation of the Caribbean Free Trade Association ("CARIFTA") in 1965.[13] CARIFTA was transformed into a Common Market and the broader Caribbean Community in 1973 via the Treaty of Chaguaramas.[14] The Revised Treaty of Chaguaramas 2001 ("RTC") increased regional economic cooperation by establishing the CARICOM Single Market and Economy.[15]

There are two notable inclusions in the RTC regarding intellectual property rights and the Caribbean legal system. First, several provisions deal with these rights: Articles 64(2)(d) establishes their importance, Article 66 speaks to their protection, and Article 74(2)(b) advocates for their harmonization.[16] Harmonization has not yet taken place and does not appear to be on the radar at this time. The second significant contribution of the RTC is the acceptance by CARICOM members of the Caribbean Court of Justice ("CCJ"), which was established by the Agreement Establishing the Caribbean Court of Justice in 2001.[17] The CCJ has two jurisdictions: original jurisdiction, under which it hears matters concerning the interpretation and application of the RTC, and appellate jurisdiction, where the CCJ is the final court of appeal.[18] While all CARICOM members acceded to the original jurisdiction of the CCJ, only five Caribbean countries—Barbados (2005), Belize (2010), Dominica (2015), Guyana (2005), and St. Lucia (2023)—have accepted the CCJ as the final appellate court.[19]

The limited reach of the CCJ as a final appellate court means that the post-independence connection to the United Kingdom cannot be overlooked as the Judicial Committee of the Privy Council ("JCPC") remains the final court of appeal for those CARICOM members that have not accepted the CCJ's appellate jurisdiction. This is even the case for Trinidad and Tobago, despite the CCJ's headquarters in the capital of Trinidad, Port of Spain.[20] The continuous tie to the United Kingdom means that UK

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[12] *Id.*
[13] *The Caribbean Free Trade Association (CARIFTA)*, CARICOM, https://caricom.org/the-caribbean-free-trade-association-carifta (last visited Aug. 13, 2026).
[14] *History of the Caribbean Community*, CARICOM, https://caricom.org/history-of-the-caribbean-community (last visited July 28, 2026).
[15] Desiree Bernard, *Dispute Resolution: The Revised Treaty of Chaguaramas and the Caribbean Court of Justice—Compatibility or Controversy?* 2–9, CARIBBEAN CT. JUST. (Dec. 2013), https://ccj.org/wp-content/uploads/2021/03/Remarks-by-the-Honourable-Mme-Justice-Desiree-Bernard-at-the-2013-Research-Fellow-of-the-Institute-of-Advance-Studies_201312.pdf. Bahamas is a member of CARICOM but not the Caribbean Single Market and Economy.
[16] Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy arts. 64(2)(d), 66, 74(2)(b), July 5, 2001, 2259 U.N.T.S. 293.
[17] Agreement Establishing the Caribbean Court of Justice, Feb. 14, 2001, 2255 U.N.T.S. 319.
[18] For details on the original and appellate jurisdiction, see Timothy Affonso, *Regional Integration Through International Law*, 1 UWI ST. AUGUSTINE L.J. 18 (2023); Solange Joseph, *Through the Revised Treaty of Chaguaramas (RTC) and Beyond: The CCJ's Role in Fostering Caribbean Integration*, 3 UWI ST. AUGUSTINE FAC. L.J. 244 (2005).
[19] *FAQs*, CARIBBEAN CT. JUST., https://ccj.org/about-the-ccj/faqs (last visited Aug. 13, 2026).
[20] *Court Registry*, CARIBBEAN CT. JUST., https://ccj.org/about-the-ccj/court-registry (last visited Aug. 13, 2026).

precedent remains highly persuasive.[21] However, since UK precedent is not binding in light of the introduction of local copyright legislation post-independence, countries are free to look to other jurisdictions for guidance on legal interpretation. No Caribbean copyright case has reached the level of the Privy Council or the CCJ, and very few have gone on appeal, highlighting the dearth of litigation in this area of law and the lack of binding precedent.[22] The consequence of this arrangement is that many key aspects of copyright law remain undefined or ill-defined, and their interpretation is susceptible to external influences.

B. Copyright Law in the Caribbean

The colonial history of legal transplants in the region can be described as the imposition of law on plantation societies for the regulation of the enslaved African, the indentured Chinese and Indian laborers, and, subsequent to the dismantling of these economic systems, the minority ruling class.[23] Yet, with time, nations developed their own agency through independence and thus had freedom to shape indigenous jurisprudence. However, post-independence, in the area of copyright law, there is a continuous reliance on foreign law, whether through copying statutory provisions or citing case law. This modern approach to Caribbean lawmaking is better termed reception,[24] where Caribbean countries have substituted the formerly imposed imperial copyright law—the UK Copyright Act 1911—for "indigenous" legislation that ultimately resembles the UK Copyright Act 1956 or the UK Copyright, Designs and Patents Act 1988 ("CDPA"), together with a sprinkling of provisions derived from international intellectual property treaties.[25]

As a result, there is a notable absence of indigenous or tailored provisions that are specifically designed for domestic needs. The divergences from the UK approach are minor and simply equate to the adoption of provisions reflecting the approaches in international copyright treaties, such as the open-list approach to subject matter and the restrictive approach to exceptions and limitations. Countries like Barbados, Grenada, Jamaica, and St. Kitts and Nevis have stayed very close to the structure and scope of the UK Copyright Act 1956 or the CDPA. Thus, the copyright statutes of most Commonwealth Caribbean countries remain mostly Anglo-influenced with an increasing habit of transposing near-verbatim provisions from international intellectual property treaties. Therefore, the habit of looking to foreign case law—in particular, UK cases—is

[21] ANTOINE, *supra* note 8, at 118–19, 336–37.
[22] Trinidad & Tobago had its first Court of Appeal decision on copyright law in 2025. Caruth v. Tobago House of Assembly, No. CV 2016-03461 (Ct. App. 2025) (Trin. & Tobago).
[23] ANTOINE, *supra* note 8, at 73.
[24] *Id*.
[25] Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, 1161 U.N.T.S. 3 (revised at Paris July 24, 1971); Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement]; Beijing Treaty on Audiovisual Performances, June 24, 2012, 51 I.L.M. 1214; Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, June 27, 2013, 2888 U.N.T.S. 1.

unlikely to diminish, given the deeply entrenched UK connection and the nonlitigious nature of Caribbean society, especially in the context of copyright law where there have been few cases.[26]

Despite the above claim, the Trinidad and Tobago case of *Full Blown Entertainment v. Matthews*, challenged the long-held notion that UK copyright case law would be the de facto go-to precedent.[27] Instead, U.S. case law was cited and applied by counsel in *Full Blown Entertainment*, and the judge (Justice Seepersad) ruled on that basis.[28] The reason for reference to U.S. cases in this case, though not mentioned in the judgment, might have been the precise U.S. influence that this Article seeks to assess—that is, the influence by virtue of the close economic, geographic, and political ties between the Caribbean and the United States. Notwithstanding the long history of colonialism, retention of the JCPC, and statutory drafting that often mirrors UK legislation, the United States and its legal and social norms have strong influence in the Caribbean.

The Caribbean is largely dependent on the United States for tourism, import and export of manufactured goods, and, in the case of Trinidad and Tobago, energy partnerships (as the country was once the largest supplier of liquid natural gas to the United States).[29] The United States is accessible by direct flights from most Caribbean islands with popular destinations, including Atlanta, Houston, Miami, and New York. These routes are often traversed by the diaspora, many of whom migrated to fulfill U.S. labor demands in the early twentieth century.[30] They are also accessed by Caribbean nationals for vacation, due to the significant influence of U.S. media. U.S. media in the form of television, movies, and now social media and music streaming platforms have been prevalent in the region for decades. The successful penetration of U.S. media into the Caribbean has undoubtedly shaped the mindset that recognition in the United States is the hallmark of a successful career in the entertainment industry. Hence, the spotlight has shone on actors with Caribbean heritage, such as Alfonso Ribeiro who played Carlton on *The Fresh Prince of Bel-Air*,[31] Winston Duke who played M'Baku in *Black Panther*,[32] and Cardi B of rap fame.[33] Similarly, Rihanna's empire could not have been built without

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[26] Justin Koo, *Forging a Coherent Copyright Jurisprudence in Trinidad and Tobago*, 25 J. WORLD INTELL. PROP. 652 (2022) [hereinafter Koo, *Copyright Jurisprudence*]; Justin Koo, Full Blown Entertainment*: A Missed Opportunity for Advancing the Copyright Law of Developing Commonwealth Countries with Hybrid Copyright Systems*, 13 J. WORLD INTELL. PROP. 782 (2018) [hereinafter Koo, Full Blown Entertainment].

[27] Full Blown Ent. Co. v. Matthews, No. CV 2015-1073 (High Ct. Just. 2017) (Trin. & Tobago).

[28] *Id.*

[29] Alexei Barrionuevo, *How Trinidad Became a Big Supplier of Liquified Natural Gas to the U.S.*, WALL STREET J. (Mar. 13, 2001), https://www.wsj.com/articles/SB98443474293628576.

[30] Allison Rutland & Jeanne Batalova, *Caribbean Immigrants in the United States*, MIGRATION POL'Y (Nov. 12, 2025), https://www.migrationpolicy.org/article/caribbean-immigrants-united-states.

[31] Caroline Taylor, *Caribbean Hollywood: 40+ Actors of Caribbean Heritage*, CARIBBEAN BEAT (May/June 2015), https://www.caribbean-beat.com/issue-133/caribbean-hollywood.

[32] *Id.*

[33] *Cardi B Celebrates Her Trinidadian and Dominican Heritage*, CARIBBEAN NEWS WKLY. (Feb. 23, 2023), https://www.caribbeannationalweekly.com/posts/cardi-b-celebrates-her-trinidadian-dominican-heritage.

access to the large U.S. market,[34] and Usain Bolt earned far more from endorsement deals, including with U.S. brands such as Visa and Gatorade, compared to his track-and-field income.[35] Therefore, in seeking to follow in the footsteps of the most famous Caribbean people, U.S. law has been influential even when there is no relevant legal basis for it in the region. The next Part will discuss how U.S. copyright law has been translated into practice.

II. U.S. INFLUENCES ON CARIBBEAN COPYRIGHT AND COMMERCIAL PRACTICES

The influence of the U.S. Copyright Act of 1976 and its resultant commercial practices is most visible in the language used in contracts, newspaper articles, social media disclaimers, and common misconceptions and general misunderstandings about Caribbean copyright law.[36] U.S. copyright concepts are often misused in discussing

[34] Zahra Spencer, *Fenty Beauty's Caribbean Expansion Is About More Than Access to Great Makeup*, ALLURE (Oct. 8, 2024), https://www.allure.com/story/fenty-beauty-caribbean-expansion.
[35] *Usain Bolt Net Worth $90 Millon*, CELEBRITY NET WORTH, https://www.celebritynetworth.com/richest-athletes/olympians/usain-bolt-net-worth (last visited Aug. 13, 2026).
[36] Justin Koo, *Ownership of Copyright in Trinidad and Tobago*, CLOVER (June 10, 2026), https://www.clovertt.com/resources/ownership-of-copyright-in-trinidad-and-tobago; Emma Perot, *Myth Busting—Music Copyright*, CLOVER (June 29, 2025), https://www.clovertt.com/news/myth-busting---music-copyright.

Caribbean copyright matters, such as works made for hire,[37] fair use,[38] and copyright registration.[39] For example, with the exception of the Bahamas,[40] no other Caribbean country has the language of "works made for hire" found in Section 201(b) of the U.S. Copyright Act.[41] Instead, the general copyright position in the Caribbean tends to focus

[37] The term "work made for hire" is often used to refer to any situation involving works made in the course of employment or commissioned works, despite the fact that no such term exists in Caribbean statutory law except in the Bahamas. For examples of the loose use of the phrase, see *Copyright*, WWWIP, http://www.wwwipgrenada.com/copyright.html (last visited Aug. 18, 2026); Mark Lyndersay, *Why Copyright Matters*, Trin. & Tobago Newsday (June 2, 2025), https://newsday.co.tt/2025/06/02/why-copyright-matters; Amanda Quest, *Who Owns Commissioned Work*, Jam. Observer (Aug. 24, 2022), https://www.jamaicaobserver.com/2022/08/24/who-owns-commissioned-work. By contrast, the Jamaican law firm Myers, Fletcher and Gordon corrects the misconception about "works made for hire" in the Jamaican context. *Intellectual Content Ownership: Employees and Contractors*, Myers, Fletcher & Gordon (Nov. 15, 2017), https://myersfletcher.com/intellectual-content-ownership-employees-and-contractors.

[38] There is no "fair use" in Trinidad and Tobago; rather, "fair dealing" is provided under § 10 for quotation and § 11 for education. Yet a Facebook post by the National Library and Information Service of Trinidad and Tobago's Educational Library Services Division includes the following disclaimer among a list of copyright resources: "In keeping with Section 9 of Copyright Act 2016, allowance is made for 'fair use' of product content for educational, teaching, scholarship and research purposes ONLY. Fair use is permitted by statute." Educational Library Services Division, Facebook (Apr. 23, 2021), https://www.facebook.com/NALISELSDTT/posts/need-information-about-copyright-in-trinidad-and-tobago-here-is-where-you-need-t/310818183893910. This confusion was also evident in the Parliamentary discussions surrounding the exceptions and limitations provisions, where the terms "fair dealing," "fair use," and "fair practice" were used interchangeably. Copyright Bill Debate, Feb. 18, 1997, 656; Copyright Bill Debate, Feb. 25, 1997, 702. Similarly, the University of the West Indies Cave Hill Campus' Copyright Policy refers to "fair use" four times in the document, yet the Barbados Copyright Act only contains provisions on "fair dealing." *A Guide to Copyright Regulations for Main Library, Cavehill Members*, Univ. W. Indies Main Libr., https://www.cavehill.uwi.edu/smlibrary/wp-content/uploads/sites/37/docs/copyright_policy.pdf (last visited Aug. 14, 2026).

[39] There is no compulsory registration system in any Commonwealth Caribbean jurisdiction, yet the head of the Trinidad and Tobago Copyright Organisation—a collective management organization, not to be confused with the Trinidad and Tobago Intellectual Property Office—made misleading statements to the press regarding registration. *Copyright Collection Boss Urges Creatives to Register Their Work*, CNC3 (May 20, 2025), https://www.cnc3.co.tt/copyright-collection-boss-urges-creatives-to-register-their-work.

[40] Copyright Act 2024 (Bah.) (defining "work made for hire" under § 2, referring to this concept for copyright term under § 11(2), taking these works outside the scope of moral rights under §§ 12(7)(b) and 13(3)(c), and establishing the employer or other person for whom the work was prepared as the owner under § 20(2) and the process for copyright registration under § 38(d)).

[41] 17 U.S.C. § 201(b).

on the author in determining ownership.[42] Similarly, the Bahamas, Jamaica, and St. Kitts and Nevis are the only outliers in the Commonwealth Caribbean in relation to copyright registration: they have a voluntary registration scheme built into their copyright statutes.[43]

In terms of commercial practices, key Caribbean copyright industries like music and film are increasingly embracing U.S. social norms.[44] The consequence is that the commercial practices of copyright owners do not always align with the domestic copyright laws. This Part explores the influence of U.S. copyright concepts and practices in the Commonwealth Caribbean.

A. Works Made for Hire

In most Commonwealth Caribbean countries, the author is the first owner of a copyrighted work unless otherwise specified.[45] For employee-created works, the employer is the first owner in Trinidad and Tobago and Barbados,[46] whereas the employee is the first owner in Jamaica unless otherwise agreed.[47] Jamaican and Trinidadian authors retain ownership of commissioned works unless otherwise agreed,[48] whereas the commissioner is the first owner in Barbados.[49] Barbados's approach is more reflective of the work-made-for-hire doctrine than Trinidad and Tobago, and certainly more so than under the author-centric Jamaican statute, but Barbados's approach can still be distinguished from the U.S. approach in a very significant way. The United States and the Bahamas deem the employer or commissioner the *author* of the work in question.[50] In

[42] Copyright Act 2003 § 22 (Ant. & Barb.); Copyright Act 2024 § 20 (Bah.); Copyright Act 1998 § 22 (Barb.); Copyright Act 2000 § 25 (Belize); Copyright Act 2003 § 18 (Dominica); Copyright Act 2011 § 28 (Gren.); Copyright Order 1966 § 4 (Guy.) (referencing Copyright Act 1956 (UK)); Copyright Act 1993 § 22 (Jam.); Copyright Act 2024 § 20 (St. Kitts & Nevis); Copyright Act 1995 § 24 (St. Lucia); Copyright Act 2003 § 21 (St. Vincent); Copyright Act 1997 § 26 (Trin. & Tobago).

[43] Copyright Act 2024 pt. V (Bah.); Copyright Act 1993 §§ 9A–9I (Jam.); Copyright Act 2024 § 134 (St. Kitts & Nevis).

[44] Shirvana Sookoo, *The Law of Moving Images: Audio-Visual Copyright Ownership in Trinidad and Tobago*, 4 UWI St. Augustine L.J. 176, 178 (2026); *Carnival Catwalk Makes Global Debut on Peacock*, Trin. & Tobago Guardian (Aug. 5, 2025), https://www.guardian.co.tt/news/carnival-catwalk-makes-global-debut-on-peacock-6.2.2370043.3fcc881e32; *Promoting the Export of Caribbean Music to North American Markets*, UNESCO (Aug. 10, 2023), https://www.unesco.org/creativity/en/articles/promoting-export-caribbean-music-north-american-markets; Donovan Watkis, *The Art of the Record Deal: Jamaican Artists Moving from Obscurity to Global Celebrities*, Dancehall Mag. (May 1, 2021), https://www.dancehallmag.com/2020/05/19/features/the-art-of-the-record-deal-jamaican-artists-moving-from-obscurity-to-global-celebrities.html.

[45] *See* Copyright Act 1998 § 22(1) (Barb.); Copyright Act 1993 § 22(1) (Jam.); Copyright Act 2024 § 20(1) (St. Kitts & Nevis); Copyright Act 1997 § 26(1) (Trin. & Tobago).

[46] *See* Copyright Act 1998 § 22(2) (Barb.); Copyright Act 2024 § 20(2) (St. Kitts & Nevis); Copyright Act 1997 § 26(4) (Trin. & Tobago).

[47] Copyright Act 1993 § 22 (Jam.).

[48] Copyright Act 1997 § 26 (Trin. & Tobago).

[49] *See* Copyright Act 1998 § 22(3) (Barb.).

[50] *See* Copyright Act 2024 § 20(2) (Bah.).

contrast, Barbados deems the commissioner the first *owner* but does not extinguish authorial rights. This is an important distinction since both the term of copyright duration for literary, dramatic, musical, and artistic works and the application of moral rights are tied to the concept of authorship. Notably, the Caribbean is more closely aligned with the United Kingdom in recognition of moral rights,[51] whereas the U.S. Copyright Act only recognizes limited moral rights for works of visual art under the amendments introduced by the Visual Artists Rights Act of 1990.[52]

The Bahamas's work-made-for-hire provision has a similar definition under Section 101 of the U.S. Copyright Act. Both definitions refer to employees and works commissioned for specific uses or contributions to collective works (as part of a motion picture or other audiovisual works). Ownership of works made for hire under Section 19(2) of the Bahamas Copyright Act is identical to Section 201(b) of the U.S. Copyright Act. While this is a direct influence of the latter in legislative drafting, the influence is also present in jurisdictions that do not recognize this doctrine. Having read a plethora of Caribbean copyright industry contracts and engaging in conversations, both formal and informal, with Caribbean content creators across a range of copyright industries, including music, film, and software, it has become clear that the use of the term "works made for hire" is increasingly popular, even though it has no legal footing in the Commonwealth Caribbean outside of the Bahamas.[53]

This divergence in legislative provisions renders the work-made-for-hire doctrine irrelevant in every Commonwealth Caribbean nation except the Bahamas. Yet there is misuse of the work-made-for-hire language in contracts, which is not only problematic in itself[54] but also worse when used anecdotally,[55] because it impacts the bargaining position of creators who often do not have the financial resources to pursue legal advice or achieve redress when their works are being used without a license. When the entity that pays for the work, such as a photograph, believes it owns the copyright, it does not entertain objections to this viewpoint. Of course, the law being on the side of the author should be empowering, but unfortunately, there is no norm of contracting despite the use of U.S.-centric copyright language.[56] Many agreements are informal, and copyright ownership is an afterthought. The misunderstanding regarding the relevance of works made for hire in the region is likely to continue, as even the WIPO Diagnostics Tool,[57]

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[51] Koo, *Copyright Jurisprudence*, *supra* note 26, at 664–65.
[52] 17 U.S.C. § 106A.
[53] Lisa Rhooms, *Intellectual Content Ownership: Employees and Contractors*, JAM. OBSERVER (Nov. 7, 2017), https://www.jamaicaobserver.com/2017/11/07/intellectual-content-ownership-employees-and-contractors.
[54] Lisa Rhooms, *Intellectual Content Ownership: Employees and Contractors*, MYERS, FLETCHER & GORDON (Nov. 15, 2017), https://myersfletcher.com/intellectual-content-ownership-employees-and-contractors.
[55] Mark Lyndersay, *Why Copyright Matters*, TRIN. & TOBAGO NEWSDAY (June 2, 2025), https://newsday.co.tt/2025/06/02/why-copyright-matters.
[56] *Id.*
[57] *WIPO IP Diagnostics*, WORLD INTELL. PROP. ORG., https://www.wipo.int/ipdiagnostics-assessment/global/en (last visited July 28, 2026).

which was recently promoted through a workshop in Belize and Dominica,[58] used this terminology in automatically generated reports on copyrighted works, created in response to users filling out an online questionnaire. While the report mentions the United States as an example of a country that takes this approach, it has not made clear to the lay user that most other countries do not use this language. Given the general absence of copyright law awareness in the region, such misconceptions and misunderstandings are further entrenched due to the lack of care exercised in communicating and synthesizing information about copyright law.

The misconception of the work-made-for-hire doctrine undermines the position of an author of a copyrighted work who may in fact have retained ownership unless an agreement to the contrary was entered into in writing, depending on the jurisdiction in question.[59] When disputes arise in this area, they are usually between parties with a relationship, whether written or oral, although it can extend to third parties where licensing occurs without proper due diligence. The nonlitigious nature of the region means that many disputes go unresolved and the lack of resolution perpetuates the impact of the work-made-for-hire doctrine despite the absence of any legal footing.

B. Registration

Copyright law protection subsists, meaning that registration is not a requirement for the exclusive rights to be granted or exercised.[60] Article 5(2) of the Berne Convention for the Protection of Literary and Artistic Works makes clear that no formalities are required for copyright protection.[61] However, the United States is unique in requiring registration with the Copyright Office in order to bring a civil claim and, furthermore, to be entitled to statutory damages and attorney's fees.[62] Despite the uniqueness of the U.S. approach, there is a general misconception that copyright protection requires registration akin to what trademark and patent laws mandate.[63] Likewise, the concept of "poor man's copyright"—the practice in which authors mail copies of their creative works to themselves to provide evidence of creation—continues to be a popular misconception.[64] Again, this misunderstanding is rooted in limited copyright education in the region and the influence of U.S. media on how content pertaining to copyright law in the region is

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[58] Belize Intell. Prop. Off., FACEBOOK (Mar. 5, 2026, 9:49 AM), https://www.facebook.com/belipobz/posts/turn-your-innovation-into-a-competitive-advantageapplications-are-now-open-for-a/122247441746128890.

[59] *See* Copyright Act 1998 § 23(1) (Barb.); Copyright Act 1993 § 23(1) (Jam.); Copyright Act 2024 § 21(1) (St. Kitts & Nevis); Copyright Act 1997 § 28(2) (Trin. & Tobago).

[60] Berne Convention, *supra* note 25, art. 5(2).

[61] *Id.*

[62] *See* 17 U.S.C. §§ 102, 411–412.

[63] Joel Julien, *The Importance of Intellectual Property in a Share-Everything World*, DAILY EXPRESS (Sept. 17, 2025), https://trinidadexpress.com/business/local/the-importance-of-intellectual-property-in-a-share-everything-world/article_26b7a797-f52c-48cf-8ef4-60f076616f2e.html. In this Article, the Trinidad and Tobago Intellectual Property Office clarified that copyright does not require registration, unlike trademarks and patents.

[64] The Jamaica Intellectual Property Office endorses this procedure. *About Copyright and Related Rights*, JAM. INTELL. PROP. OFF., https://www.jipo.gov.jm/node/47 (last visited Aug. 13, 2026).

fashioned in light of the language emanating from the U.S. Copyright Act.[65] The misunderstanding creates an interesting scenario where social norms and habits are notably U.S.-influenced while the legal infrastructure has remained predominantly UK-influenced.

Despite the general lack of a registration requirement across Commonwealth Caribbean countries, the Bahamas, Jamaica, and St. Kitts and Nevis are outliers in the region, having introduced voluntary registration schemes expressly into their copyright statutes.[66] The Copyright (Amendment) Act 2015 in Jamaica amended the 1993 Copyright Act to include voluntary registration under sections 9A–9I but does not affect the operation of the owner's rights and is not a precondition for litigation, as is the case in the Bahamas.[67] Similarly, St. Kitts and Nevis, under Section 134 of its Copyright Act 2024, provides a voluntary register that exists for evidentiary and administrative purposes.[68] Neither the approaches in Jamaica nor St. Kitts and Nevis provide any substantive purpose like the U.S. approach to copyright registration. Alternatively, Sections 37–41 of the Bahamas Copyright Act 2024 contain a more detailed voluntary registration system where registering your copyright serves as prima facie evidence of the validity of the work,[69] mirroring Section 410(c) of the U.S. Copyright Act. However, unlike Section 411 of the U.S. statute, registration is not required in order to bring a civil claim.[70] In fact, Section 41 of the Bahamas Copyright Act explicitly states that registration is not a prerequisite for infringement action.[71]

Although the majority of the Caribbean copyright statutes do not have provisions on voluntary registration, this has not stopped Caribbean individuals from thinking that copyright registration is a requirement under domestic copyright laws. The U.S. approach to copyright registration has become an entrenched social norm that has resulted in many persons mailing copies of their works to themselves to claim "poor man's copyright" before entering into commercial deals.[72] The irony is not lost in persons relying on poor man's copyright, while being averse to written contracts. Much like the discussion on works made for hire in the previous section, the U.S. copyright concept of registration despite lacking in legal basis has influenced the habits of many Caribbean copyright holders and entrenched itself in the minds of the Caribbean public.

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[65] *E.g.*, *Guide to the Research Process: 5c. Copyright*, UWI Campus Libs., https://libguides.uwi.edu/c.php?g=11316&p=59089 (last visited Aug. 13, 2026) (featuring a video produced by Touro College Libraries on aspects of U.S. copyright law, including fair use). Despite the fact that the webpage makes it clear that fair use is a U.S. concept and the former UK colonies use fair dealing, the inclusion of the video demonstrates reliance on U.S. media for informational purposes.

[66] Section 142 of the Belize Copyright Act enables the creation of regulations for optional copyright registration, but no such regulations have yet been created. Copyright Act 2000 § 142 (Belize).

[67] Copyright Act 2024 § 41 (Bah.); Copyright Act 1993 § 9(c) (Jam.).

[68] This is a recent change as the Copyright Act 2000 in St. Kitts & Nevis did not contain any provisions on registration. The 2024 Act created this optional registration system. Copyright Act 2024 § 134 (St. Kitts & Nevis).

[69] *See* Copyright Act 2024 § 39(3) (Bah.).

[70] *Id.* § 41.

[71] *Id.*

[72] Janet Fries & Jennifer Cross, *Debunking Copyright Myths*, Landslide, July/Aug. 2019, at 35.

C. Fair Use

Fair use is arguably the most well-known aspect of U.S. copyright law. As such, when lay persons think about exceptions and limitations to copyright law—or, from their perspective, defenses to copyright infringement—fair use is what comes to mind. Even though only a small number of countries in the world have introduced fair use[73] and no Commonwealth Caribbean country has fair use in its copyright law, the U.S. concept is prominently referred to in online disclaimers and common parlance. Resultantly, the concept of fair dealing is virtually nonexistent to Caribbean persons except for those well versed in copyright law.

However, an interesting feature of many copyright statutes in the Commonwealth Caribbean is the reliance on the Section 107 fair use criteria to define "fair dealing." Fair dealing is the United Kingdom's general approach to copyright exceptions and limitations, whereby certain specific uses of works are permitted without the authorization of the right holder.[74] The fair dealing approach usually lists certain types of "dealings," like research and private study;[75] criticism, review, quotation, and news reporting;[76] caricature, parody, or pastiche;[77] and illustration for instruction.[78] Furthermore, the enumerated dealings must all be conducted "fairly." "Fair" in this context has been interpreted as a "question of degree and impression."[79] To this end, the assessment of fairness has included considerations such as the nature of the work, the amount and substantiality of the portion used, the purpose and character of the use made of the work, the effect of the use on the market for the work, how the work was obtained, motive for the dealing, and whether the purpose could have been achieved by different means.[80]

Given the absence of case law, and perhaps the nonlitigious nature of Caribbean society and the foresight about the need to create legislative clarity and legal certainty,

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[73] § 19, Copyright Act, 5768-2007, LSI 34 (2007) (Isr.); Intellectual Property Act § 9.8 (2016) (Liber.); Intellectual Property Code, §§ 184(b), (e), (h), 185, Rep. Act 8293 (Phil.); Intellectual Property Act 2003 § 11 (Sri Lanka); Zhuzuoquan Fa [Copyright Act] art. 65 (1928) (Taiwan); *see* Amira Dotan, Niva Elkin-Koren, Orit Fischman-Afori & Ronit Haramati-Alpern, *Fair Use Best Practices for Higher Education Institutions: The Israeli Experience*, 57 J. COPYRIGHT SOC'Y U.S.A. 447 (2010); Niva Elkin-Koren & Neil Netanel, *Transplanting Fair Use Across the Globe: A Case Study Testing the Credibility of US Opposition*, 72 HASTINGS L.J. 1121, 1150–80 (2021); Lior Zemer, *Copyright Departures: The Fall of the Last Imperial Copyright Dominion and the Case of Fair Use*, 60 DEPAUL L. REV. 1051 (2011).

[74] LIONEL BENTLY, BRAD SHERMAN, DEV GANGJEE & PHILLIP JOHNSON, INTELLECTUAL PROPERTY LAW 245–49 (6th ed. 2022).

[75] Copyright, Designs and Patents Act 1988 (CDPA), c. 48, § 29 (UK); Copyright Act 2024 § 65 (Bah.); Copyright Act 1998 § 51 (Barb.); Copyright Act 1993 § 52 (Jam.); Copyright Act 2024 § 52 (St. Kitts & Nevis).

[76] Copyright Act 2024 § 66 (Bah.); Copyright Act 1998 § 52 (Barb.); Copyright Act 1993 § 53 (Jam.); Copyright Act 2024 § 53 (St. Kitts & Nevis); Copyright Act 1997 § 10 (Trin. & Tobago); CDPA § 30.

[77] CDPA § 30(a).

[78] CDPA § 32; Copyright Act 1997 § 11 (Trin. & Tobago).

[79] Hubbard v. Vosper [1972] 2 QB 84, 94 (Eng.).

[80] BENTLY ET AL., *supra* note 74, at 247–49.

many Caribbean countries decided to explain "fair" for the purpose of "fair dealing" using the Section 107 fair use criteria.[81] Lionel Bently and his coauthors, in their textbook, opined that "many countries offer a statutory list of factors and it seems surprising that such an approach was not adopted in the 2014 [UK] reforms."[82] Thus, on the one hand, it can be said that Commonwealth Caribbean countries have taken a proactive step in expressly defining "fair" in their statutes. On the other hand, it was strange that they chose to rely on the U.S. fair use criteria to do so despite the long-held tradition of following UK jurisprudence.[83]

By legally transplanting the Section 107 criteria into the copyright statutes of many Commonwealth Caribbean countries, a legal quirk arises that only Dominica and St. Lucia has seemed to address.[84] The Section 107 criteria is copied near verbatim, but the order of the criteria is changed.[85] That aside, the interesting aspect is the retention of the first criterion, "the purpose and character of the use," given that fair dealing systems are close-ended in relation to permitted acts. Taking a literal interpretation, the purpose and character of the use is superfluous under fair dealing because the purpose is already defined within the statute. It is only Dominica and St. Lucia that omit this aspect,[86] whereas other countries like the Bahamas double down on its inclusion and add more description by stating that the commercial nature of the purpose should be assessed.[87] Again, in keeping with a literal interpretation, this should not be necessary because the use has already been approved by the legislature regardless of whether it is for profit or not.

Notwithstanding the inclusion of the Section 107 fair use criteria by the majority of Commonwealth Caribbean countries to explain their fair dealing exceptions, in practice this should not make a difference given that it has been argued that the fair use criteria are indifferent to the considerations asked by the UK courts in determining fair dealing.[88] The major difference is the flexibility afforded to fair use given its lack of prescribed uses, as

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[81] *See* Copyright Act 2003 § 54 (Ant. & Barb.); Copyright Act 2024 § 67 (Bah.); Copyright Act 1998 § 58 (Barb.); Copyright Act 1993 § 54 (Jam.); Copyright Act 2024 §§ 54–55 (St. Kitts & Nevis); Copyright Act 2003 § 52 (St. Vincent).

[82] BENTLY ET AL., *supra* note 74, at 247 n.33.

[83] Only §§ 10–11 of the Trinidad and Tobago Copyright Act 1997, § 10 of the Grenada Copyright Act 2011, and the Guyana Copyright Order 1966 do not follow the approach relying on the fair use criteria to define fair dealing.

[84] Copyright Act 1995 § 57 (St. Lucia).

[85] *Id.*

[86] Copyright Act 2003 § 66 (Dominica); Copyright Act 1995 § 57 (St. Lucia).

[87] Copyright Act 2024 § 67(c) (Bah.).

[88] PATRICIA AUFDERHEIDE & PETER JASZI, RECLAIMING FAIR USE: HOW TO PUT BALANCE BACK IN COPYRIGHT 179 (2d ed. 2018); MARTIN SENFTLEBEN, COPYRIGHT, LIMITATIONS AND THE THREE-STEP TEST 114 (2004); Imran Azmi, *Bridging Fair Dealing and Fair Use Concepts: Malaysia's Transition to a Hybrid System*, *in* THE CAMBRIDGE HANDBOOK OF COPYRIGHT LIMITATIONS AND EXCEPTIONS 221–26 (Shyamkrishna Balganesh, Ng-Loy Wee Loon & Haochen Sun eds., 2021) [hereinafter CAMBRIDGE HANDBOOK]; Giuseppina D'Agostino, *Healing Fair Dealing? A Comparative Copyright Analysis of Canada's Fair Dealing to UK Fair Dealing and US Fair Use*, 53 MCGILL L.J. 309, 356–62 (2008); Isidora Fhima, *Fairness in Copyright Law: An Anglo-American Comparison*, 34 SANTA CLARA HIGH TECH. L.J. 44, 76 (2017).

opposed to the rigid and inflexible fair dealing approach.[89] The more interesting point to note is that U.S. law influenced the statutory approach of Commonwealth Caribbean countries, despite the legal architecture of their copyright laws being rooted in UK traditions, originating with the UK Copyright Act of 1911, the UK Copyright Act 1956, and, most recently, the CDPA.[90] When all the copyright laws of the Commonwealth Caribbean adopted after the 1976 U.S. Copyright Act as well as the CDPA are factored in, the decision to legally transplant the Section 107 criteria becomes more interesting given the choices available. Hence, the move to include the fair use factors to define fair dealing evidences the central thesis of this Article that U.S. copyright law and its concepts have had direct influences on Commonwealth Caribbean copyright law and practice, despite the many divergent legal approaches between the copyright laws of the Commonwealth Caribbean and the United States.

D. The Intent Myth with Copyright Disclaimers

Authors are put in precarious positions when their works are used with a disclaimer. Another misconception regarding the copyright law of the region that has likely been influenced by the Internet and U.S. social media is that there needs to be intent for copyright infringement to occur. This is not a result of the U.S. Copyright Act *per se*, but rather the prevalence with which the phrase "I do not own the rights to this song" or "No copyright infringement intended" are used on YouTube and Instagram in relation to media originating from or targeting the United States.[91] This is particularly prevalent on YouTube where users upload videos with copyrighted music and on Instagram where businesses use personal accounts that provide access to a much broader range of music than do business accounts.[92] The pervasiveness of the "intent" myth is such that YouTube has issued guidance on "common copyright myths," clarifying that giving credit and/or using a disclaimer do not equate to a copyright license.[93]

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[89] BENTLY ET AL., *supra* note 74, at 242; ROBERT BURRELL & ALLISON COLEMAN, COPYRIGHT EXCEPTIONS: THE DIGITAL IMPACT 249, 276 (2005); Michael Handler & Emily Hudson, *Fair Use as an Advance on Fair Dealing? Depolarizing the Debate*, *in* CAMBRIDGE HANDBOOK, *supra* note 88, at 143; Tatsuhiro Ueno, *A General Clause on Copyright Limitations in Civil Law Countries: Recent Discussion on Japanese-Style Fair Use Clause*, *in* CAMBRIDGE HANDBOOK, *supra* note 88, at 211.
[90] Dianne Daley, *Jamaica*, *in* IEL INTELLECTUAL PROPERTY 51–52 (H. Vanhees ed., 2008).
[91] "Over one million YouTube videos state 'no copyright intended' or 'no copyright infringement intended' in a legally misguided belief that such disclaimers provide protection against copyright infringement." Gregory Mandel, Anne Fast & Kristina Olson, *Intellectual Property Law's Plagiarism Fallacy*, 2015 BYU L. REV. 915, 932–33; *see also* Gregory Mandel, *What Is IP for Experiments in Lay and Expert Perceptions*, 90 ST. JOHN'S L. REV. 659, 674–75 (2016).
[92] *Access to the Licensed Music Library on Instagram*, INSTAGRAM, https://help.instagram.com/402084904469945 (last visited July 27, 2026).
[93] *Common Copyright Myths*, GOOGLE, https://support.google.com/youtube/answer/2797449 (last visited July 27, 2026).

Disclaimer statements such as the above act as alerts for copyright enforcement units. Major studios and producers, such as the Universal Music Group[94] and Netflix,[95] have in-house teams dedicated to issuing Digital Millenium Copyright Act notice-and-takedown requests.[96] While there are costs involved in this type of monitoring and enforcement, even the average artist can benefit from the technology deployed by social media platforms to detect and flag infringing content, because such detection allows the copyright owner to remove or monetize the content. However, for these systems to work efficiently, proper metadata and clear copyright management information is necessary.

E. Online Rights Management

The increased formality and consequential increase in opportunities for revenue collection for Caribbean artists are attributable to the global rise of streaming, in conjunction with Section 1202 of the U.S. Copyright Act. Additionally, the Digital Millennium Copyright Act's notice-and-takedown procedure can be availed of where there is proper metadata bolstered by the fact that many Caribbean right holders are opting to vest their rights in U.S. collective management organizations (CMOs), in lieu of or in addition to Caribbean ones. Thus, the lure of the U.S. market, which requires compliance with U.S. copyright law and industry norms, has also impacted the business decisions that Caribbean copyright creators and managers make. Because of the focus on using legitimate streaming platforms, such as Apple Music and Spotify, for distribution and, in turn, for controlling the commercialization of their music in the United States, there have been major improvements in the metadata tagging of more modern Caribbean music. Additionally, signing up with U.S. CMOs like Broadcast Music, Inc. (BMI) and the American Society of Composers, Authors and Publishers (ASCAP) encourages this practice.

By contrast, older untagged Caribbean music is easily accessible on YouTube, is made available without authorization, and remains without any managerial oversight by the respective rightholders. The lack of active rights management is often because ownership of the respective copyrighted works are in dispute or unknown, resulting in lost income as these uploads are not monetized. The fault for this dissatisfactory approach to copyright management lies squarely in the hands of right holders who often fail to clarify copyright ownership before production and, more importantly, during their lifetimes.[97] The situation is often exacerbated when the artist dies, because much like the regional aversion to contracts, succession planning is not an established practice, with many people dying without a will.[98] During a right holder's lifetime, it is imperative that

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[94] Justin Oppelaar, *Benjamin Clicks on UMG*, VARIETY (July 15, 2002), https://variety.com/2002/biz/news/benjamin-clicks-on-umg-1117869744.

[95] Sophia Harris, *Netflix's Anti-Piracy Team Aims to Make Stealing Content Uncool*, CBC (Mar. 28, 2017), https://www.cbc.ca/news/business/netflix-piracy-content-downloading-copyright-1.4043163.

[96] Digital Millennium Copyright Act of 1998, Pub. L. 105-304, 112 Stat. 2860.

[97] GORDON ROHLEHR, CALYPSO AND SOCIETY IN PRE-INDEPENDENCE TRINIDAD 149, 533 (1990).

[98] Joan Byrne, *Why Make a Will?*, TRIN. & TOBAGO NEWSDAY (July 5, 2004), https://archives.newsday.co.tt/2004/07/05/why-make-a-will.

a proactive approach to rights management be taken to ensure revenue is not lost, as is occurring at present.

To demonstrate the practical implications of the above, consider Trinidadian artist David Rudder's legendary tune, "Calypso Music," which is available on his official YouTube page,[99] but it is also available on many other accounts that have not been linked for monetization.[100] The official YouTube video has garnered over 300,000 views whereas an infringing copy, uploaded years earlier, has over 1.6 million views.[101] Notably, this rampant infringement is particularly evident for older music which is often only uploaded to platforms by the official account many years after the initial release. In the interim, users find the tune and share it for listening pleasure. By contrast, the greater formality that has existed in the United States is evidenced when examining Harry Belafonte's catalogue.[102] Belafonte, an American with Jamaican heritage, had phenomenal success with his album *Calypso*, particularly the song "Day-Oh."[103] Unauthorized uploads of Belafonte's catalogue are consistently linked to the authorized version of the video on YouTube, even when uploaded by a random user, such as Gábor Koncz.[104] Comparing Rudder to Belafonte exposes the gaps between the industry norms in the Caribbean and those in the more rights and management–conscious U.S. system, which has been constructed on the back of a well-explored copyright legal system inspired by the litigious approach accompanying the U.S. Copyright Act. This system, in turn, has birthed proactive copyright management practices that have become industry norms in the United States and beyond.

The precarious position of Caribbean right holders that resulted from informal arrangements and lack of knowledge about copyright are thankfully becoming a thing of the past. This marked change can be directly attributed to the rise of music streaming platforms as access to these platforms necessitate formalized arrangements.[105] A 2022 press release by the Caribbean Development Bank reported that their Creative and

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[99] David Rudder, *Calypso Music* (YouTube, Aug. 24, 2015), https://www.youtube.com/watch?v=5m4r91LS9cw.

[100] Infringing copies include the following: Lorenzo Abbott, *David Rudder ~ Calypso Music {Trinidad and Tobago}* (YouTube, Aug. 10, 2018), https://www.youtube.com/watch?v=Z3uOzrj4yBo; IsDePanInMe, *David Rudder—Calypso Music* (YouTube, Dec. 30, 2009), https://www.youtube.com/watch?v=RFh9rFRxTp4; Gregory Lee, *David Rudder: Calypso, Lyrics* (YouTube, Jan. 24, 2025), https://www.youtube.com/watch?v=yxncdY3JfiQ; Mrprofessor18, *Calypso Music—David Rudder* (YouTube, Sept. 12, 2010), https://www.youtube.com/watch?v=w-8WKLTSVMc; The Sweetest Lime, *David Rudder—Calypso Music with Lyrics* (YouTube, Feb. 8, 2014), https://www.youtube.com/watch?v=ntdu9PcC8dU.

[101] IsDePanInMe, *supra* note 100.

[102] *See infra* notes 103–104.

[103] Andrea Park, *Harry Belafonte Explains the Story Behind "Calypso,"* CBS News (Mar. 22, 2018), https://www.cbsnews.com/news/harry-belafonte-explains-the-story-behind-calypso.

[104] Gábor Konez, *Harry Belafonte Banana Boat Song Day O* (YouTube, July 28, 2018), https://www.youtube.com/watch?v=lZABxj718uA, is linked to Harry Belafonte, *Harry Belafonte—(Day-O) Banana Boat Song* (YouTube, Feb. 24, 2017), https://www.youtube.com/watch?v=672yemXmDS4.

[105] *Intellectual Property and Music*, World Intell Prop. Org., https://www.wipo.int/en/web/music (last visited Aug. 14, 2026).

Cultural Industries Innovation Fund supported a project to move from the physical distribution of music to digital distribution.[106] Participants in the project lamented "their inability to realise revenue even when it appeared their music was gaining significant traction online."[107] This project thus aimed to build capacity regarding the procedures for uploading and proper metadata tagging to ensure revenue is being directed accordingly. On Spotify,[108] you can now see credits for the performing artist, composer and lyricist, and producer and sound engineer for Caribbean music such as soca (which originated in Trinidad in the 1970s), dancehall, and reggae (the most popular Caribbean music export). The evolution of data inclusion can be demonstrated via the way in which Kes the Band's music has been distributed. Its 2011 hit, "Wotless," only credits Kes as the artist on Spotify, while the music video on YouTube credits the writers, producer, and director.[109] In contrast, Kes the Band's topical 2026 "Rum and Coca Cola" lists the director of the music video, the writer, producer, instrumentalists, and production team.[110] The Spotify track credits the performers, composers, lyricists, and the producer. Interestingly, many major soca tracks now also credit the producer, which is reflective of the trend that gained prominence in the U.S. music industry in the twentieth century.[111]

Resultingly, the Caribbean's landscape for commercializing copyrighted works has been indelibly shaped by the influence of the United States's market requirements, which include compliance with U.S. copyright law and its resulting norms. Whereas other sections focused on the infiltration of U.S. legal concepts into the Caribbean, this section and the one on copyright disclaimers have demonstrated the adoption of U.S. social norms regarding the use and commercialization of copyrighted works. The requirement of copyright registration and the incentives for greater formality in ownership, rights management, and metadata tagging are becoming increasingly commonplace in Caribbean content industries to ensure coherence with U.S. market practices. Likewise, Caribbean right holders are increasingly opting to register with U.S. CMOs. Unfortunately, this reliance on U.S. norms and practice has been accompanied by the perpetuation of copyright ignorance with the misuse of U.S. concepts, such as "works made for hire" in contracts and "fair use" in common parlance, even when there is no supporting domestic law. The consequence is that the Commonwealth Caribbean is at a crossroads with regard to how it should next develop its copyright laws and accompanying jurisprudence to account for the discrepancies between industry practice and social norms and the region's actual legal requirements.

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[106] *Artistes, Creatives Get on the Right Digital Side*, Caribbean Dev. Bank (Mar. 14, 2022), https://www.caribank.org/newsroom/news-and-events/artistes-creatives-get-right-digital-side.
[107] *Id.*
[108] Luisa Colón, *Spotify*, Britannica (Apr. 9, 2026), https://www.britannica.com/topic/Spotify; Mellisa Doughty, *Spotify Opens Way for Local Podcasters*, Trin. & Tobago Newsday (Aug. 25, 2021), https://newsday.co.tt/2021/08/25/spotify-opens-way-for-local-podcasters.
[109] Kes The Band, *KES WOTLESS Music Video* (YouTube, Feb. 25, 2011), https://www.youtube.com/watch?v=j7VTnU-Zyfg.
[110] Kes The Band, *Kes & Tano—Rum & Coca Cola (Official Music Video)* (YouTube, Dec. 12, 2025), https://www.youtube.com/watch?v=8AtHCWJquU0.
[111] Emma Perot, *Music Royalty Splits: Copyright and Music Industry Practices Behind the Increase in Writer Credits and Rights Clearance*, 14 Berkeley J. Ent. & Sports L. 1, 22–23 (2025).

F. The Curious Case of Full Blown Entertainment

Accounting for all that has been said in the previous sections, the most telling example of U.S. influence on Commonwealth Caribbean copyright law comes from the curious case of *Full Blown Entertainment v. Matthews*, in which the Trinidad and Tobago High Court cited U.S. case law alongside UK case law.[112] The resulting decision mounted a serious challenge to the long-held belief that UK case law would be the most persuasive precedent to explore the scope of copyright law in the Commonwealth Caribbean.[113] This belief was rooted in the fact that the copyright statutes in the Commonwealth Caribbean most closely reflect the UK approach to copyright law and the exclusive rights are directly copied from the United Kingdom. As such, it was surprising to see the High Court engage with U.S. case law in determining whether there was infringement in the reproduction of the lyrics and melody of a local soca song.

A quick synopsis of the case[114] reveals that the court addressed case law from the United States[115] and the United Kingdom,[116] including the House of Lords decision in *Designers Guild Ltd v. Russell Williams (Textiles) Ltd*.[117] Ultimately, the final decision was based on the U.S. Court of Appeals for the Second Circuit's ordinary observer test via the precedent of *McDonald v. West*.[118] Choosing to apply U.S. case law without any reference to the origin of the ordinary observer test over the well-established UK test for reproduction infringement emanating from the House of Lords was unexpected. While it is accepted that there was no binding precedent limiting the judge in the case, disregarding a House of Lords judgment from a jurisdiction with a substantially similar copyright framework was an anomalous decision that, in the grand scheme of the case, remains problematic. The holding in the case did not inspire confidence or legal certainty due to the doctrinal challenges caused by the inconsistent use of conflicting case law from different jurisdictions within the same case. However, that discussion exceeds the scope of this Article.[119] Instead, the focus needs to be on the decisions of the counsel and ultimately the judge to rely on U.S. precedent within a legal system and an area of law that would ordinarily signal a requirement of conformity with UK law.

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[112] *Full Blown Ent.*, No. CV 2015-1073 (High Ct.) (Trin. & Tobago).
[113] *Id*.
[114] For commentary on the case, see Koo, *Copyright Jurisprudence*, *supra* note 26, at 652; Koo, Full Blown Entertainment, *supra* note 26, at 782.
[115] The U.S. cases cited include *McDonald v. West*, 120 U.S.P.Q.2d (BNA) 1308 (2d Cir. 2016); *Repp v. Webber*, 132 F.3d 882 (2d Cir. 1997); and *Laureyssens v. Zdia Gp. Inc.*, 964 F.2d 131 (2d Cir. 1992).
[116] The UK cases cited include *Baigent v. Random House Gp. Ltd* [2007] EWCA (Civ) 247 (Eng.); *Coffey v. Warner/Chappell Music Ltd* [2005] EWHC (Ch) 449 (Eng.); *IPC Media Ltd v. Highbury-Leisure Publ'g Ltd* [2004] EWHC (Ch) 2985 (Eng.); *Creagh v. Hit & Run Publ'g Ltd* [2002] EWHC (Ch) 2512 (Eng.); and *Designers Guild Ltd v. Russell Williams (Textiles) Ltd* [2001] 1 All ER 700 (Eng.).
[117] *Designers Guild*, 1 All ER 700.
[118] *McDonald*, 120 U.S.P.Q.2d 1308.
[119] *See* Koo, *Copyright Jurisprudence*, *supra* note 26, at 652; Koo, Full Blown Entertainment, *supra* note 26, at 782.

The lesson to be drawn from the case is that U.S. case law, despite its lack of coherence with many UK and consequently Caribbean copyright principles, is capable of being persuasive in the Commonwealth Caribbean. In fact, the lack of jurisprudential development of copyright law in the region lends credence to the possibility that U.S. case law can or should be utilized. Given the vagueness of many key copyright concepts, U.S. law can, in theory, be applied, as there is no necessary connection to UK copyright law. While there has clearly been an expectation or belief that UK copyright law would apply, for concepts such as the right of reproduction, nothing prevents the test for infringement from being shaped in the image of a U.S.-styled approach. In this way, the infancy of Commonwealth Caribbean copyright law offers an opportunity for the judiciary to shape the scope of copyright law to achieve the policy needs of the respective country. However, using U.S. case law does come with the burden of applying the relevant principles accurately and consistently in new contexts that may not have been contemplated by U.S. lawmakers and judges.

Accepting that there is nothing stopping Caribbean courts from relying on U.S. copyright cases in the future, the long-held assumption that UK copyright jurisprudence would be the automatic go-to precedent in the Commonwealth Caribbean has dissipated. Whether the Trinidad and Tobago High Court made the correct decision in utilizing U.S. copyright case law is a separate question. What *Full Blown Entertainment* demonstrated is the extent to which U.S. copyright law has infiltrated the Caribbean. Despite this, the subsequent reproduction case in Trinidad and Tobago, *Drakes v. Grant*, chose not to follow any aspect of *Full Blown Entertainment*. Instead, the judge in *Drakes* reverted to the expected approach of following UK precedent and relied on *Designers Guild*, the House of Lords case that was ignored in *Full Blown Entertainment*. Consequently, there is uncertainty and an open question as to what comes next.

G. U.S. Influence in the Future

What has been made clear in this Part is the extent to which the U.S. Copyright Act of 1976 and its resultant norms and practices have impacted on the Commonwealth Caribbean. The doctrinal dominance of UK case law in the region is neither guaranteed nor required. Instead, the Commonwealth Caribbean is at a crossroads for the development of its copyright laws where conscious decisions are needed to forge coherent copyright frameworks that accommodate indigenous interests, achieve policy goals, and, most importantly, create legal certainty.[120] The door is open for U.S. copyright law to further influence the region both legally and practically. Moreover, such influences will increase in the Caribbean with the advent of AI, where much of the training material is likely to be reflective of U.S. media.

[120] Koo, *Copyright Jurisprudence*, *supra* note 26, at 652.

III. CARIBBEAN COPYRIGHT AND TRADE: THE SPECIAL 301 WATCH LIST

Following the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") of the World Trade Organization, intellectual property, including copyright law, and international trade are inextricably intertwined.[121] The linkage between copyright law and trade means that failure to comply with the obligations under the TRIPS Agreement can have major implications for a country's trade prospects.[122] This is taken one step further in the context of relations with the United States, specifically where the Special 301 Watch List has proven to be a thorny issue for many developing countries to negotiate.[123] More so, in recent times with the volatility of trade wars and the constant threat of import tariffs, the consequence of being on this list could be dire.[124]

In the last ten years, Barbados, Jamaica, and Trinidad and Tobago have been on the Special 301 Watch List with a general perception that Caribbean countries have an ambivalent attitude toward copyright enforcement.[125] Barbados has maintained a constant

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[121] TRIPS Agreement, *supra* note 25.

[122] Daniel Gervais, *Intellectual Property, Trade & Development: The State of Play*, 74 FORDHAM L. REV. 505–06, 510–11, 516–19 (2005); Daniel Gervais, *TRIPS Pluralism*, 21 WORLD TRADE REV. 185, 188, 196–97 (2022).

[123] Lina Monten, *The Inconsistency Between Section 301 and TRIPS: Counterproductive with Respect to the Future of International Protection of Intellectual Property Rights*, 9 MARQ. INTELL. PROP. L. REV. 387, 393–94 (2005).

[124] Kevin Fleary, *The Impact of U.S. Tariffs on Caribbean Trade*, ARTHUR LOK JACK GLOB. SCH. OF BUS. BLOG (June 23, 2025), https://lokjackgsb.edu.tt/the-impact-of-u-s-tariffs-on-caribbean-trade-and-caricoms-strategic-response-a-path-to-sustainable-agricultural-production-and-regional-resilience-by-the-impact-of-u-s-tariffs-on-caribbe; Balraj Kistow, *The Risk of Weaponizing Tariffs*, ARTHUR LOK JACK GLOB. SCH. OF BUS. BLOG (Feb. 2025), https://lokjackgsb.edu.tt/the-risk-of-weaponizing-tariffs-by-dr-balraj-kistow-february-2025; Alicia Nicholls, *US Supreme Court Tariff Decision: What Does This Mean for the Caribbean?*, CARIBBEAN TRADE L. & DEV. BLOG (Feb. 20, 2026), https://caribbeantradelaw.com/2026/02/20/us-supreme-court-tariff-decision-what-does-this-mean-for-the-caribbean.

[125] Valerie Hummel, *The Search for a Solution to the U.S.-Caribbean Copyright Enforcement Controversy*, 16 FORDHAM INT'L L.J. 721 (1992). The apathy toward enforcement was also recognized in an argument for a regional intellectual property office. Darryl Wilson, *The Caribbean Intellectual Property Office (CARIPO): New, Useful and Necessary*, 19 MICH. ST. J. INT'L L. 551 (2011). No regional office has been created, but in 2008, several Caribbean states entered into a preferential trade agreement with the European Union under the collective CARIFORUM. In recent years, the EU–CARIFORUM group has made advances in strengthening regional collaboration on intellectual property under the "CarIPI" initiative. *CARIFORUM Intellectual Property Rights and Innovation*, CARIPI, https://internationalipcooperation.eu/en/caripi (last visited Aug. 14, 2026). In 2026, the European Union Intellectual Property Office launched the second phase of CarIPI at a regional event in Belize. *Launch of Second Phase of Cooperation on Intellectual Property Rights and Innovation in the Caribbean*, CARICOM (Apr. 9, 2026), https://caricom.org/launch-of-second-phase-of-cooperation-on-intellectual-property-rights-and-innovation-in-the-caribbean.

presence on the Watch List since it was added to the list in 2013,[126] due to its apathy toward addressing unauthorized broadcasting of U.S. content and the lack of payment of royalties for public performances of musical works.[127] Jamaica was added to the Watch List in 2012 for its failure to address unauthorized broadcasting of U.S. content.[128] However, after activity from the Broadcasting Commission of Jamaica to remove access to as many as ninety-eight illegally transmitted channels, Jamaica was eventually removed from the list in 2016.[129] Trinidad and Tobago has been on and off the Special 301 Watch List, with it first being added to the list in 2013 for failing to manage collective licensing disputes between broadcasters and the CMO handling royalties for public performances of musical works.[130] In 2014, the list of Trinidad and Tobago's infractions was expanded to include copyright piracy.[131] However, Trinidad and Tobago was removed from the Watch List in 2016[132] but subsequently re-added in 2020, due to a continuous lack of management of copyright piracy and failure to ensure payment of royalties for public performances of musical works and, additionally, for failing to address unauthorized broadcasting of U.S. content.[133]

While Barbados has done nothing to directly address its status on the Special 301 Watch List,[134] Jamaica and Trinidad and Tobago have adopted measures to directly remedy their statuses. The Broadcasting Commission of Jamaica took direct measures to remove access to unauthorized broadcasts, and the country also implemented a new Patents and Designs Act 2020, which ultimately led to their removal from the Watch List in 2020.[135] Trinidad and Tobago, on the other hand, boosted its intellectual property education and policing initiatives with the implementation of the National Intellectual Property Training Centre and the provision of increased training to law enforcement.[136] Furthermore, the Telecommunications Authority of Trinidad and Tobago, in late 2025,

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[126] Off. of the U.S. Trade Representative [USTR], 2012 Special 301 Report (2012) [hereinafter 2012 Special 301 Report].
[127] USTR, 2025 Special 301 Report (2025).
[128] 2012 Special 301 Report, *supra* note 126.
[129] USTR, 2016 Special 301 Report (2016) [hereinafter 2016 Special 301 Report].
[130] USTR, 2013 Special 301 Report (2013).
[131] USTR, 2014 Special 301 Report (2014).
[132] 2016 Special 301 Report, *supra* note 129.
[133] Trin. & Tobago Intell. Prop. Off. & World Intell. Prop. Org., Investigating and Prosecuting IP Crime in Trinidad and Tobago 17 (2019), https://ipo.gov.tt/downloads/Relevant_Studies/investigating_prosecuting_ipcrime.pdf; Kalain Hosein, *T&T Back on US Intellectual Property Watchlist*, Trin. & Tobago Guardian (May 1, 2020), https://www.guardian.co.tt/news/tt-back-on-us-intellectual-property-watchlist-6.2.1109028.7f4bdcd953.
[134] Barbados is on the brink of introducing a new Copyright Act. *See* Copyright Bill 2025 (Barb.), https://www.barbadosparliament.com/bills/details/860.
[135] Olivier Dock, *Copyright Infringement and the Availability of Licensed Audiovisual Content in the English-Speaking Caribbean* (World Intell. Prop. Org., BRIP Working Paper No. 1, 2021), https://www.wipo.int/documents/2810628/2827506/case-study-copyright-infringement-caribbean.pdf.
[136] USTR, 2023 Special 301 Report (2023).

issued a directive to broadcasters to remove access to unauthorized channels.[137] What can be gleaned from these developments is that, at least in the context of Jamaica and Trinidad and Tobago, U.S. foreign policy has a direct impact on the development and enforcement of intellectual property laws in the region. It can be argued that, in the context of Trinidad and Tobago, the Telecommunication Authority's decision to finally end its forbearance on unauthorized broadcasts was a direct reaction to the imminent threat of trade tariffs from the United States. Remaining on the Special 301 Watch List would create an added incentive for the United States to penalize Trinidad and Tobago's lack of copyright compliance.

Consequently, the United States's foreign copyright policy adds to the pressure on Commonwealth Caribbean countries to comply not just with international treaties but also with the demands of foreign rightsholders to a standard synonymous with the levels of protection afforded under the U.S. Copyright Act.

CONCLUSION: A COPYRIGHT CROSSROADS FOR THE CARIBBEAN

The colonial history of the Commonwealth Caribbean explains why legislation often reflects the UK approach to copyright law, but the wave of post-independence copyright statutes often included one markedly U.S. feature: the inclusion of the Section 107 fair use factors to explain fair dealing. While this merging of concepts has been codified in several Commonwealth Caribbean countries, it is not the only U.S. copyright concept to be found in the region. The work-made-for-hire doctrine, while only existing in the copyright law of the Bahamas, has permeated contractual dealings throughout the region. Similarly, misconceptions about the need to register copyright, the use of copyright disclaimers, and the availability of fair use have become common in the Caribbean. Consequently, U.S. copyright concepts have clearly and directly influenced aspects of Caribbean copyright law, practice, and social norms. This influence was made evidently clear in the Trinidad and Tobago decision *Full Blown Entertainment*.

More than legal influence, U.S. copyright practices have impacted on the practices of Caribbean creators. For example, Caribbean music creators are more likely to be victims of online infringement due to their own failure to tag their music with appropriate metadata, while foreign rights holders are often redressed through the modern technology available on social media platforms, such as the option to monetize infringing content. Some of the problems faced by Caribbean creators are due to the lack of formality of the regional content industries and hesitancy to use contracts, but some are also due to lack of sophistication regarding music distribution. However, access to major music distribution platforms has spurred on best practices in this regard. Thus, newer music is much more likely to be appropriately metatagged, and newer artists have opted to register with U.S. CMOs. This changing practice, we hope, will put an end to the value gap that exists for the estates of many famous deceased Caribbean artists as well as for living ones.

Additionally, the trading relationship between the region and the United States also means that U.S. copyright policy has a significant influence on the copyright actions in the region. With the exception of Barbados, Caribbean countries have tried to steer clear

[137] Telecomms. Auth. of Trin. & Tobago, Impact on Your Channel Lineup (2025), https://tatt.org.tt/wp-content/uploads/2025/12/IPR-Public-Advisory-IMPACT-ON-YOUR-CHANNEL-LINE-UP-22122025.pdf.

of being placed on the Special 301 Watch List and, in the instance of Jamaica and Trinidad and Tobago, have acted toward their removal from that list. The commercial reality of the close ties between the Commonwealth Caribbean and the United States and the recent threat of imminent trade tariffs has made the potential weaponization of the Special 301 Watch List all the more relevant to the region.

At this juncture, it is crystal clear that the U.S. Copyright Act of 1976 and the legal and commercial practices that it has birthed are influential on the Caribbean. Moreover, it has been made clear by Caribbean legislatures and judiciaries that the possibility exists for U.S. copyright law to make further contributions to the development of Caribbean copyright law. This places the ball in the court of Caribbean countries to decide whether they want to be further influenced by U.S. copyright concepts and policy.