

### Subpart E—Importations Violating Copyright Laws

#### § 133.41 [Reserved]

#### § 133.42 Infringing copies or phonorecords.

(a) *Definition.* Infringing copies or phonorecords are “piratical” articles, i.e., copies or phonorecords which are unlawfully made (without the authorization of the copyright owner).

(b) *Importation prohibited.* The importation of infringing copies or phonorecords of works copyrighted in the U.S. is prohibited by Customs. The importation of lawfully made copies is not a Customs violation.

(c) *Seizure and forfeiture.* The port director shall seize any imported article which he determines is an infringing copy or phonorecord of a copyrighted work protected by Customs. The port director also shall seize an imported article if the importer does not deny a representation that the article is an infringing copy or phonorecord as provided in § 133.43(a). In either case, the port director also shall institute forfeiture proceedings in accordance with part 162 of this chapter. Lawfully made copies are not subject to seizure and forfeiture by Customs.

(d) *Disclosure.* When merchandise is seized under this section, Customs shall disclose to the owner of the copyright the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

- (1) The date of importation;
- (2) The port of entry;
- (3) A description of the merchandise;
- (4) The quantity involved;
- (5) The name and address of the manufacturer;
- (6) The country of origin of the merchandise;
- (7) The name and address of the exporter; and
- (8) The name and address of the importer.

(e) *Samples available to the copyright owner.* At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the copyright for examination, testing, or any other use in pursuit of a related private civil rem-

edy for copyright infringement. To obtain a sample under this section, the copyright owner must furnish to Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the copyright owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for copyright infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the copyright owner, the owner shall, in lieu of return of the sample, certify to Customs that: “The sample described as [insert description] provided pursuant to 19 CFR 133.42(e) was (damaged/destroyed/lost) during examination, testing, or other use.”

(f) *Referral to the U.S. Attorney.* In the event that phonorecords or copies of motion pictures arrive in the U.S. bearing counterfeit labels, Customs officers should consider referring the violation to the U.S. Attorney, Department of Justice, for possible criminal prosecution pursuant to the “Piracy and Counterfeiting Amendments Act of 1982” (18 U.S.C. 2318). This law provides a minimum fine of \$25,000 or imprisonment for not more than one year, or both, for willful infringement of a copyright for commercial advantage, and a maximum fine of \$250,000 or imprisonment for not more than 5 years, or both, where trafficking in counterfeit labels for phonorecords or copies of motion pictures or other audiovisual works is involved.

[T.D. 87-40, 52 FR 9475, Mar. 25, 1987; 52 FR 10668, Apr. 2, 1987, as amended by T.D. 97-30, 62 FR 19493, Apr. 22, 1997; T.D. 98-21, 63 FR 12000, Mar. 12, 1998]

#### § 133.43 Procedure on suspicion of infringing copies.

(a) *Notice to the importer.* If the port director has any reason to believe that an imported article may be an infringing copy or phonorecord of a recorded copyrighted work, he shall withhold