

(c) *Materials to be submitted with application.* An application to renew Customs recordation shall include:

(1) Proof that the recordant's copyright ownership is valid. The proof required shall vary with the date that the work was first copyrighted as follows:

(i) *Works in which copyright subsists on or after January 1, 1978.* An affidavit signed by the recordant attesting to the continued validity of the copyright, stating the date the copyright was registered with the U.S. Copyright Office, whether the author of the work is still alive and, if not, the date of his death, and any additional information that Customs may require of the recordant.

(ii) *Works under statutory copyright on December 31, 1977.* If the copyright is still in its first term when recordation expires, a certificate of registration issued by the U.S. Copyright Office or, if the copyright has been renewed, a certificate of renewal registration issued by the U.S. Copyright Office.

(2) A statement describing any change of ownership or name of owner, in compliance with §§ 133.35 and 133.36, and any change of address of the owner.

(3) Payment of a fee of \$80. A check or money order shall be made payable to the U.S. Customs Service.

(d) *Untimely application.* If the recordant fails to submit a renewal application at least 3 months before the recordation expires, he may not renew the recordation. The recordant shall be required to reapply to record the copyright in accordance with the procedures and requirements of §§ 133.32 and 133.33.

[T.D. 87-40, 52 FR 9475, Mar. 25, 1987, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

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 remedy 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 delivery, notify the importer of his action, and advise him that if the facts so warrant he may file a statement denying that the article is in fact an infringing copy and alleging that the detention of the article will result in a material depreciation of its value, or a loss or damage to him. The port director also shall advise the importer that

in the absence of receipt within 30 days of a denial by the importer that the article constitutes an infringing copy or phonorecord, it shall be considered to be such a copy and shall be subject to seizure and forfeiture.

(b) *Notice to copyright owner.* If the importer of suspected infringing copies or phonorecords files a denial as provided in paragraph (a) of this section, the port director shall furnish to the copyright owner the following information, if available, within 30 days, excluding weekends and holidays, of the receipt of the importer's denial:

- (1) The date of importation;
- (2) The port of entry;
- (3) A description of the merchandise;
- (4) The quantity involved;
- (5) The country of origin of the merchandise; and
- (6) Notice that the imported article will be released to the importer unless, within 30 days from the date of the notice, the copyright owner files with the port director:

(i) A written demand for the exclusion from entry of the detained imported article; and

(ii) A bond, in the form and amount specified by the port director, conditioned to hold the importer or owner of the imported article harmless from any loss or damage resulting from Customs detention in the event the Commissioner or his designee determines that the article is not an infringing copy prohibited importation under section 602 of the Copyright Act of 1976 (17 U.S.C. 602) (See part 113 of this chapter).

(c) *Samples available to the copyright owner.* At any time following presentation of the merchandise for Customs examination, but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the copyright for examination or testing to assist in determining whether the article imported is a piratical copy. To obtain a sample under this section, the copyright owner must furnish 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