

## **CUSTOMS DIRECTIVE**

**ORIGINATING OFFICE:** OR&R

**DISTRIBUTION:** S-01

**CUSTOMS DIRECTIVE NO.** 2310-010A

**DATE:** DECEMBER 11, 2000

**SUPERSEDES:** 2310-010 Feb 27, 1991

**REVIEW DATE:** DECEMBER 2002

**SUBJECT: DETENTION AND SEIZURE AUTHORITY FOR COPYRIGHT AND TRADEMARK VIOLATIONS**

**1. PURPOSE.** To outline the detention and seizure authorities to be cited when processing cases involving copyright and trademark violations. The attached outline provides an up-to-date, comprehensive list of authorities for the most common copyright and trademark infringements. It does not address patent matters, which are covered by Customs Directive No. 2310-009A dated December 9, 1999.

**2. BACKGROUND.** The attached outline provides a useful reference guide for identifying the appropriate seizure authority in most copyright and trademark situations. Generally, when detaining or seizing goods for copyright or trademark violations, selecting the most appropriate seizure authority to cite will depend upon:

**2.1** The type of intellectual property right infringed;

**2.2** Whether the right is federally registered;

**2.3** Whether the right is recorded with Customs; and

**2.4** The type of infringement that is alleged.

**2.5** Customs has produced separate Directives covering "Trademark and Tradename Protection" and "Copyright Protection." When using the attached chart, Customs officers should refer to said Directives for additional guidance. In cases where the Directives do not appear to provide adequate guidance in a particular area, Customs officers may contact the Office of Regulations & Rulings (OR&R) IPR Branch, at (202) 927-2330, fax (202) 927-1875. Customs officers should carefully cite all applicable regulatory authority, in addition to all applicable statutory authority, in work documents associated with a given case. In addition, please note that some statutes, such as 19 U.S.C. §1595a(c) (importations contrary to law), require citation to a companion statute establishing an underlying violation.

**3. REFERENCES.** Customs Directive No. 2310-008A dated April 7, 2000; "Trademark and Tradename Protection," and Customs Directive No. 2310-005A dated April 7, 2000; "Copyright Protection."

**4. ACTION.** Retain the attached outline as a reference for citation of seizure authority in copyright and trademark cases.

**5. RESPONSIBILITIES.** Area/Port directors are responsible for ensuring that their managers and supervisors disseminate this information to personnel who draft seizure notices and other seizure related documents.

**6.** The statements made herein are not intended to create or confer any rights, privileges or benefits for any private person, but are intended merely for internal guidance.

Commissioner of Customs

Attachment

**SEIZURE AUTHORITIES FOR COPYRIGHT & TRADEMARK VIOLATIONS**  
Office of Regulations & Rulings, Intellectual Property Rights Branch, (202) 927-2330

<u>TYPE OF IPR TYPE OF VIOLATION</u>	<u>REGULATORY CITATION</u>	<u>STATUTORY CITATION</u>
<b>Copyright</b> (Substantial similarity between protected work and imported work required)		
<b>Recorded with Customs:</b>		
Clearly Piratical	19 CFR §133.42	Seize under 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 602
Possibly Piratical	Detain under 19 CFR §133.43	Release (if ruled non-infringing) or seize under 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 602 (if ruled infringing)
<b>Not Recorded with Customs:</b>		
Clearly Piratical	No regulation	Seize under 19 U.S.C. § 1595a(c)(2)(C) for violation of 17 U.S.C. § 501 in civil cases (17 U.S.C. §§ 506 & 509 in criminal cases)
Possibly Piratical	No regulation	Do not seize (Customs Policy)
<b>Trademark</b> (Likelihood of confusion as to source or sponsorship required in all instances)		
<b>Recorded with Customs:</b>		
Counterfeit ( <i>identical or substantially indistinguishable mark</i> )	19 CFR § 133.21	Seize under 19 U.S.C. § 1526(e)
Confusingly similar (not identical or substantially indistinguishable, but still likely to confuse) and special cases (certain replicas, models, toy cars, and other limited cases)	Detain under 19 CFR §133.25; if no release obtained in 30-day detention period, seize pursuant to statutory citation (as directed by 19 CFR § 133.22(f)).	Seize under 19 U.S.C. § 1595a(c)(2)(C) for violation of 15 U.S.C. § 1124
Protected Gray Market	Detain under 19 CFR §133.25; if no release obtained in 30-day detention period, seize pursuant to statutory citation (as directed by 19 CFR § 133.22(f)).	Seize under 19 U.S.C. § 1526(b)
<b>Not Recorded with Customs:</b>		
Counterfeit ( <i>identical or substantially indistinguishable mark</i> )	No regulation	Seize under 19 U.S.C. § 1595a(c)(2)(C) for violation of 18 U.S.C. § 2320 (requires intent)
Confusingly similar (not identical or substantially indistinguishable but still likely to confuse) and special cases (certain replicas, models, toy cars, and other limited cases)	No regulation	Do not seize (Customs policy)
Protected Gray Market	No regulation	No seizure authority