

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: OR&R

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SUBJECT: COPYRIGHT PROTECTION

1. PURPOSE. To provide relevant information and guidelines on Customs policies and procedures with respect to copyright protection.

2. POLICY. In order to fulfill its statutory, regulatory, and treaty-based obligations of preventing the importation of merchandise which violates certain claims to copyright [hereinafter, copyrights] which have been registered with the U.S. Copyright Office, U.S. Customs is vested with the authority to detain and/or seize, piratical copies of protected copyrighted works. For Customs purposes, "piratical copies" are actual or substantially similar copies of a registered copyrighted work, produced and imported in contravention of the rights of the copyright owner.

2.1 In general, a copyright protects original works of authorship, including written music, computer programs, video games, toy designs and other intellectual creations against unauthorized reproductions, derivations, distribution or display. This protection is available to both published and unpublished works. It is the actual, tangible expression, not the concept, which is copyrighted. The Copyright Office is merely the office which records the claim; it does not create or bestow copyright. Some products are protected under both copyright and trademark laws.

2.2 In order to most effectively provide protection against such violative imports, Customs has established an intellectual property rights (IPR) enforcement regime, which offers rights holders a two-tiered enforcement option, while providing Customs officers with up-to-date, detailed information about the rights being protected.

2.3 The first tier of this two-tiered approach involves Customs "recordation" process.

Under this system, copyright holders, once having duly registered their claim(s) to copyright with the U.S. Copyright Office, may request that Customs collect and retain information relative to those rights for a specified time, during which Customs shall, either of its own initiative, or with the assistance of the copyright holder, actively monitor imports in order to prevent the importation of violative articles.

2.4 The second tier is Customs "application" process. Under this system, copyright holders, once having duly registered their claim(s) to copyright with the

U.S. Copyright Office and recorded same with U.S. Customs, may provide Customs with information relative to specific importations of violative imports so that Customs can prevent such importation.

3. AUTHORITY. Relevant statutory and regulatory citations associated with Customs enforcement of copyrights are listed below. The narratives listed below are synopses of the statutory/regulatory mandates; care should be used to cite actual language of statutory/regulatory provisions in the course of enforcement actions. Prior to initiating enforcement actions, officers should undertake to review the descriptions of laws and regulations contained within this Directive in order to gain a comprehensive understanding of their intent and purpose.

4. RESPONSIBILITIES. The Assistant Commissioner, Office of Regulations and Rulings (OR&R), is responsible for formulating policy and procedures pertaining to Customs enforcement of copyrights. Area/Port directors, assistant port directors (trade operations), supervisory import specialists, and supervisory inspectors are responsible for ensuring that their staffs are aware of the content of this Directive and adhere to the guidelines provided.

5. DEFINITIONS

5.1 United States Code

5.1.1 Title 17 U.S.C. § 501 - Infringement of copyright.

5.1.2 Title 17 U.S.C. § 506 - Provides for criminal copyright offenses.

5.1.3 Title 17 U.S.C. § 509 - Provides for seizure and forfeiture of copyright violative goods under 17 U.S.C. § 506.

5.1.4 Title 17 U.S.C. § 602 - Provides right of action regarding importation of infringing copies of phonorecords. Prohibits gray market enforcement of copyright. Authorizes Customs to prescribe regulations and procedures relative to recordation of copyrights and notification of apparent violations.

5.1.5 Title 17 U.S.C. § 1201 - Prohibits the importation of devices which circumvent access control technologies.

5.1.6 Title 18 U.S.C. § 2318 - Provides criminal sanctions for trafficking in counterfeit labels for phonorecords, copies of computer programs, motion pictures or other audio-visual works.

5.1.7 Title 18 U.S.C. § 2319 - Provides criminal fines and prison terms for criminal infringement of copyright.

5.1.8 Title 18 U.S.C. § 2319A - Provides criminal fines and prison terms, as well as

seizure, forfeiture, and destruction authority for the unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances, also known as "Bootleg" works.

5.1.9 Title 19 U.S.C. § 1595a(a) - Provides for seizure and forfeiture of conveyances or other thing used "in, or aid in, or to facilitate, the importation of any article contrary to law."

5.1.10 Title 19 U.S.C. § 1595a(b) - Provides Customs with the authority to issue civil penalties equal to the value of the merchandise attempted to be introduced contrary to law.

5.1.11 Title 19 U.S.C. § 1595a(c)(2)(C) - Provides seizure and forfeiture authority for articles introduced or attempted to be introduced which violate trademarks or copyrights.

5.2 Code of Federal Regulations

5.2.1 Customs Regulations 19 CFR §§ 133.31 – 133.37 - Recordation of copyrights with Customs.

5.2.2 Customs Regulations 19 CFR § 133.42 - Seizure of articles constituting clearly piratical copyright violations.

5.2.3 Customs Regulations 19 CFR § 133.43 - Procedures for cases involving possibly piratical copyright violations.

5.2.4 Customs Regulations 19 CFR § 133.44 - Decisions rendered in disputed claims of infringement.

5.2.5 Customs Regulations 19 CFR § 133.46 - Demand for redelivery of released merchandise.

6. PROCEDURES. In general, Customs policy dictates that U.S. Customs focuses its enforcement efforts on copyrights that are "recorded" with Customs. Unrecorded copyrights, while not a priority, may be enforced when possible so long as the sound administration of Customs laws is not compromised. While Customs may pursue such cases, Customs policy dictates that the majority of resources and emphasis should be placed upon the enforcement of recorded copyrights.

6.1 Prior to the initiation of any intellectual property right action, the IPR Module should be consulted to ascertain whether the copyright in question is in fact recorded with Customs, and if so, the extent to which the copyright should be protected.

The "IPR Module" is a computer function located within the Automated Commercial System which contains individual records and information relative to all IPRs recorded

with U.S. Customs.

6.2 When undertaking a copyright enforcement action, Customs officers should accurately note the copyright recordation number(s) involved and accurately record same in records of the case.

Similarly, Customs officers seeking OR&R, IPR Branch assistance in arriving at infringement determinations are expected to have consulted the IPR Module prior to seeking assistance and should be prepared to accurately cite specific information from the relevant IPR recordation.

6.3 Characterizing Copyright Violations. Generally, the test of whether a copyrighted work has been infringed is, "Whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same." Another way of stating the substantial similarity test is, "Whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work." The substantial similarity test was developed in order to bar a potential infringer from producing a supposedly new and different work by employing the tactic of making deliberate, but trivial, variations of specific features of the copyright protected work.

6.3.1 Two steps are involved in the test for infringement. There must be access to the copyrighted work and substantial similarity not only of the general ideas, but the expression of those ideas as well. Access to the copyrighted work may be presumed even without direct evidence in cases where it is apparent that the importer has ample opportunity to view the copyrighted work, and the substantial similarities between the works are so striking as to preclude the possibility that they were arrived at independently. Since, in most cases, access will be presumed, substantial similarity of expression will be the critical factor of analysis.

6.3.2 As a general matter, Customs recognizes two standards of copyright infringement in its enforcement of registered copyrights: "Clearly Piratical" and "Possibly Piratical." The first of these, "**Clearly Piratical**" is defined as overwhelming and substantial similarity between the copyrighted elements of the protected work and the imported item so as to clearly indicate that one work was based upon the other. The second, "**Possibly Piratical**" encompasses those situations in which articles are suspected of constituting piratical copies, but are not clearly deemed to be such at the time of presentment.

6.3.3 Upon presentation, or at the time of detention or seizure of suspect violative goods, it is incumbent upon the acting Customs officer to **characterize** the nature of the alleged violation, and should be ascribed to one of the following four characterizations:

6.3.3.1 Clearly Piratical copyright violation; protected copyright recorded with Customs;

6.3.3.2 Clearly Piratical copyright violation; protected copyright not recorded with Customs;

6.3.3.3 Possibly Piratical copyright violation; protected copyright recorded with Customs; and

6.3.3.4 Possibly Piratical copyright violation; protected copyright not recorded with Customs.

6.3.4 Each of these is discussed in detail below:

6.4 Processing the Case: Clearly Piratical

6.4.1 "Clearly Piratical" (protected copyright recorded with Customs). Articles constituting "clearly piratical" copies of copyrights recorded with Customs shall be seized, and forfeiture proceedings instituted under 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 602, as implemented by 19 CFR § 133.42. Clear-cut copies, controlling decisions issued by the OR&R, IPR Branch, or (in specifically authorized instances only) decisions or orders issued by a court of law may form the basis for this determination. A sample "Notice of Seizure to Importer, Clearly Piratical Copyrights Recorded with Customs" to be sent to the importer is attached to this Directive at Appendix 1.

6.4.2 "Clearly Piratical" (protected copyright not recorded with Customs). Where administratively feasible and appropriate, such goods may be seized pursuant to 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 501, 17 U.S.C. §§ 506, and, 509 in criminal cases. No corresponding Customs regulations exist. Cases involving suspected criminal copyright actions should be referred to the Office of Investigations. A sample "Notice of Seizure to Importer, Clearly Piratical Copyrights Not Recorded with Customs" is attached to this Directive at Appendix 1A.

6.4.3 Disclosure: Clearly Piratical Cases. When articles are subject to restrictions set forth in 19 CFR § 133.42, Customs officers SHALL disclose to the copyright owner in writing the following information within 30 business days of the date of the seizure as required in 19 CFR § 133.42(c). A sample "Notice to the Copyright Owner, Clearly Piratical Copyrights" is attached to this Directive at Appendix 2.

Date of Importation:

Port of Entry:

Description of Merchandise:

Quantity:

Name and address of Manufacturer:

Name and address of Exporter:

Name and address of Importer (Note: If importer of record is broker or nominal consignee, provide the ultimate consignee if known):

Country of Origin:

6.4.4 Any time after seizure of the merchandise for examination, Customs MAY provide a sample to the copyright owner for exam, testing, etc. If a request for a sample is made, the copyright owner MUST provide Customs with a bond as required in 19 CFR §

133.42(e).

6.4.5 The amount of bond is to be specified by the area/port director. The bond is normally set at 120 percent (120%) of the cost, insurance and freight (CIF) value of the sample, plus duty, taxes, and charges. Bonds should not be accepted in amounts lower than \$100. In cases where the value of the bond would be less than \$100, a cash deposit will be required. For amounts in excess of \$100, cash in lieu of surety bond may be accepted. Customs may demand return of the sample at any time.

6.4.6 The owner must return the sample after exam, testing, etc. If the sample is damaged, lost or destroyed, in lieu of its return the owner must certify to Customs that "the sample described as (full description) and provided pursuant to 19 CFR § 133.21(d) was damaged, destroyed or lost during examination, testing or other use." If the sample is not returned, Customs officers should proceed to collect the full bond amount or deposit any cash submitted in lieu of surety bond.

6.5 Processing the Case: Possibly Piratical. Customs policy mandates that suspect possibly piratical copyright violative goods can only be detained upon a "reasonable suspicion" that said goods constitute possibly piratical copies of protected works.

6.5.1 "Possibly Piratical" (protected copyright recorded with Customs). Under 19 CFR § 133.43, possibly piratical copies shall be detained and the process outlined in that Section is to be followed. Please refer to 19 CFR § 133.43 for specific instructions. If determined to be piratical, the goods are to be seized pursuant to 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 602.

6.5.2 "Possibly Piratical" (protected copyright not recorded with Customs). Customs policy is to neither detain nor seize goods bearing such works.

6.5.3 Possibly Piratical, Detention. In general: In accordance with Customs policy, if a Customs officer can articulate a basis for having such "reasonable suspicion" with respect to copies of copyrighted works recorded with Customs at the time of presentation to Customs, he may detain the goods at that time. Although 19 CFR § 133.43 is silent as to when a detention notice is to be issued with respect to possibly piratical merchandise, Customs policy provides that a decision whether to release or detain the merchandise should be made within 5 days from the date the goods are presented to Customs for examination.

6.5.4 Customs policy further provides that "merchandise which is not released within such 5-day period shall be considered detained." Thus, where a Customs officer is unsure whether such "reasonable suspicion" exists at the time presentation to Customs, he may detain the goods for a 5-day period to determine whether such "reasonable suspicion" exists. If Customs determines that such "reasonable suspicion" exists, Customs shall issue a formal letter of detention to the importer.

6.5.5 The issuance of the formal detention letter may take place before the expiration of

the initial 5-day period, or between the 5th day and the 10th day after presentation, but in no case after the 10th day.

6.5.6 *For internal use only.*

[REDACTED]

[REDACTED]

6.5.7 Notice to Importer. If a Customs officer has reason to believe that an imported article may be a piratical copy 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 a piratical copy. In the absence of receipt within 30 business days of such a denial by the importer, the article in question shall be considered to be such a copy and shall be subject to seizure and forfeiture under 19 CFR § 133.42. A sample "Notice of Detention of Possibly Piratical Goods, Recorded Copyright" initial letter, to be sent to the importer is attached to this Directive at Appendix 3.

6.5.8 Notice to Copyright Holder, Disclosure: Possibly Piratical Cases. If the importer files a denial of piratical copying, the area/port director shall furnish the copyright owner with the following information, if available, within 30 business days of receipt of importer's denial of infringement:

Date of Importation:
Port of Entry:
Description of Merchandise:
Quantity:
Country of Origin:

6.5.8.1 The notice states that the imported article will be released to the importer unless within 30 days the copyright owner files with the area/port director;

6.5.8.1.1 A written demand for the exclusion from entry of the detained imported articles;
and

6.5.8.1.2 A bond in an amount specified by the area/port director, conditioned to hold

Customs and the importer or owner of such imported articles harmless from any material depreciation of those articles, loss, or damage resulting from Customs detention in the event that the Commissioner of Customs or his designee determines that the articles are not piratical copies prohibited from entry under Section 602 of the Copyright Act (17 U.S.C. § 602). The amount of the bond is generally set at 120 percent (120%) of the value of the detained articles, plus taxes and charges. However, factors including but not limited to the value of the merchandise or relevant market factors may be considered by the area/port director in setting the amount of the bond.

6.5.8.2 Upon detaining and/or seizing suspected piratical or possibly piratical copies, contact the local Office of Investigations **before** initiating the requisite disclosure procedures.

6.5.8.3 A sample "Notice of Detention of Possibly Piratical Goods, Recorded with Customs" initial letter, to be sent to the copyright holder is attached to this Directive at Appendix 4.

6.5.8.4 Any time after presentation of the merchandise for examination, but prior to seizure, Customs MAY provide a sample to the copyright owner for exam, testing, etc. If a request for sample is made, the copyright owner MUST provide Customs with a bond as required in 19 CFR § 133.43(c). Prior to release of the sample, Customs officers should remove or obliterate any information indicating the name and/or address of the manufacturer, exporter, and/or importer, including all bar codes or otherwise identifying marks.

6.5.8.5 The amount of bond required to obtain release of the sample is to be specified by the area/port director. The bond is normally set at 120 percent (120%) of the CIF value of the sample, plus duty, taxes, and charges. Bonds should not be accepted in amounts lower than \$100. In cases where the value of the bond is less than \$100, a cash deposit will be required. For amounts in excess of \$100, cash in lieu of surety bond may be accepted. Customs may demand return of the sample at any time.

6.5.8.6 The owner must return the sample after exam, testing, etc. If the sample is damaged, lost or destroyed, in lieu of its return, the owner must certify to Customs that "the sample described as (full description) and provided pursuant to 19 CFR § 133.23a(d) was damaged, destroyed or lost during examination, testing or other use." If the sample is not returned, Customs officers should proceed to collect the full amount of the bond or deposit any cash submitted in lieu of surety bond.

6.5.9 Exclusion Demand by Copyright Owner. As stipulated in 19 CFR 133.43(d)(1), if the copyright owner files a written demand for exclusion of the suspected piratical copies together with a proper bond, the area/port director shall promptly notify the importer and the copyright owner that during a specified time limit of not more than 30 days, they may submit further evidence, legal briefs, or other pertinent material to substantiate the claim or denial of piratical copying. Parties shall thereafter be provided with an additional time period ("rebuttal period"), not to exceed 30 days during which an

exchange of briefs is to take place in order to allow each party an opportunity to respond to the other party's allegations. The burden of proof shall be upon the party claiming that any article is in fact a piratical copy. At the close of the period specified for submission of evidence, the area/port director shall forward the entire file in the case, together with a representative sample of the imported articles and his views or comments to the Chief, IPR Branch, Office of Regulations & Rulings, 1300 Pennsylvania Ave., NW., Washington, D.C. 20229. Sample letters to be sent to both the copyright holder and the importer, are attached to this Directive at Appendices 5 and 6.

6.5.10 Exclusion Contention Disclaimed by Copyright Owner. As stipulated in 19 CFR 133.43(d)(2), if the copyright owner disclaims his contention or concedes that he possesses insufficient evidence or proof to substantiate a claim of piracy, the area/port director shall release the detained shipment to the importer, and shall release all further importations of the same article, by whomever imported, without further notice to the copyright owner.

6.5.11 Failure to File Exclusion Demand. As stipulated in 19 CFR § 133.43(d)(3), if the copyright owner fails to file a written demand for exclusion and an accompanying bond, the area/port director shall release the detained articles to the importer, and notify the copyright owner of the release. The area/port director shall not withhold delivery of all further importations of the same article by the same importer unless the copyright owner has provided a satisfactory explanation as to why he failed to file a written demand for exclusion, and a bond.

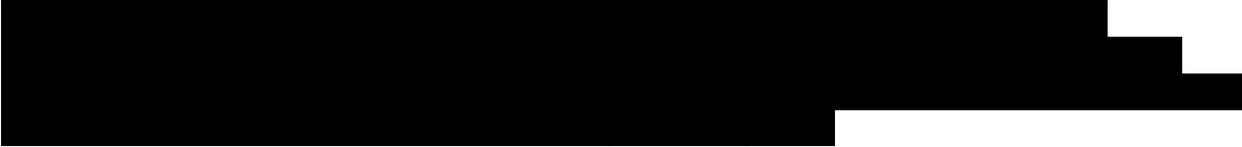
6.5.12 Withdrawal of Bond. Where the copyright owner has posted a bond on the grounds that the imported article is infringing, the copyright owner may not withdraw the bond until a decision on the issue of infringement has been reached.

6.5.13 Claim of Infringement Sustained. As stipulated in 19 CFR § 133.44(a), if the Commissioner of Customs determines that the articles in question are piratical copies, the area/port director shall seize and forfeit them under 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 602, and shall return the bond to the copyright holder. A petition for relief may still be filed under the provisions of 19 CFR §§ 133.51-133.53.

6.5.14 Denial of Infringement Sustained. As stipulated in 19 CFR § 133.44(b), if the Commissioner of Customs determines that the articles are not piratical copies, the area/port director shall release all such detained merchandise and transmit the copyright holder's bond to the importer.

7. DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA). *For internal use only.*





8. MISCELLANEOUS

8.1 Merchandise Not in Customs Custody: Demand for Redelivery. If after goods have been released Customs determines that a violation was likely to have existed, it may order the redelivery of the goods by sending a Notice to Redeliver (CF 4647) or letter to the importer within 30 days of release of the goods, or within 30 days from the

-10-

end of any conditional release period. The importer has 30 days in which to redeliver the merchandise into Customs custody. If the importer does not redeliver the merchandise, a claim for liquidated damages shall be initiated under the procedures set out in 19 CFR § 141.113. The merchandise will be considered restricted. As such, the claim for liquidated damages should be assessed for three times the value of the merchandise (not to exceed the bond amount).

8.1.1 The local Office of Investigations will be notified immediately of all shipments of piratical merchandise which have been released from Customs custody.

8.2 Competing Copyright Registrations. Goods initially believed to be, or suspected of, infringing recorded copyrights have sometimes been released upon the importer's presentation of a certificate of registration of a claim to copyright issued by the United States Copyright Office after their seizure, 19 CFR § 133.42, or detention, 19 CFR § 133.43. This action has sometimes been referred to as the "Ten Dollar Defense" because that was the fee to register a claim to copyright with the Copyright Office.

8.2.1 When evidence clearly indicates piratical copying or reason to suspect piratical copying of a copyright recorded with Customs, and the imported article itself is the subject of a copyright registration certificate (whether obtained before or after importation), Customs officers shall still detain the merchandise under the procedures set out in 19 CFR § 133.43; Customs Service Decision (C.S.D.) 86-23, and proceed as outlined above.

8.3 Office of Trade Operations (OTO)-1 Bulletin Board. Periodically, special alerts pertaining to specific copyrights or commodities may be posted to the Office of Field Operations (OFO) OTO-1 Bulletin Board. Officers should routinely monitor the bulletin board to keep abreast of important developments in IPR enforcement.

8.4 Computer Program Guidelines. *For internal use only.*



[Redacted]

8.4.1 [Redacted]

9. 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

Attachments

Notice of Seizure to Importer, Clearly Piratical Copyrights Recorded with Customs.

Dear (name of importer):

You are hereby notified that under section 133.42 of the Customs Regulations, your importation of _____, entry number _____, has been seized by the U.S. Customs Port of _____ on (date of seizure), as constituting clearly piratical copies of the following registered and recorded copyright:

Title:

U.S. Copyright Office Registration Number:

U.S. Customs Recordation Number:

In accordance with Customs Regulations 19 CFR 133.42, Customs Regulations (Title 19, Code of Federal Regulations), implementing section 602 of the Copyright Act of 1976 (17 U.S.C. § 602), articles constituting clearly piratical copies of registered copyrights are subject to seizure and forfeiture, for violation of 19 U.S.C. § 1595a(c)(2)(C). The aforementioned goods were introduced or attempted to be introduced into the United States contrary law.

Please be advised that under the provisions of 19 U.S.C. § 1618, and 19 CFR 171.2(b), you may file a petition with this office for relief from the above liability within 30 days from the date of mailing of this letter. The petition should include all facts which you believe warrant relief from forfeiture, and filed with this office in duplicate.

If you have any questions regarding this matter, please contact _____ at (tel.no.).

Sincerely,

(Appropriate Official)

Notice of Seizure to Importer, Clearly Piratical Copyrights Not Recorded with Customs.

Dear (name of importer):

You are hereby notified that under the provisions of 19 CFR 133.42, your importation of _____, entry number _____, has been seized by the U.S. Customs Port of _____ on (date of seizure), as constituting clearly piratical copies of the following registered copyright:

Title:

U.S. Copyright Office Registration Number:

In accordance with 19 U.S.C. § 1595a(c)(2)(C), the imported goods listed above have been seized as clearly piratical copies of protected works in violation of 17 U.S.C. § 501, incorporating 17 U.S.C. § 106(3) and/or 17 U.S.C. § 602, or (17 U.S.C. § 506 and § 509 in criminal cases), and are subject to immediate forfeiture. The aforementioned goods were introduced or attempted to be introduced into the United States contrary law.

Please be advised that under the provisions of 19 U.S.C. § 1618, and 19 CFR 171.2(b), you may petition for relief from the above liability within 30 days from the date of mailing of this letter. The petition should include all facts which you believe warrant relief from forfeiture, and filed with this office in duplicate.

If you have any questions regarding this matter, please contact _____ at (tel.no.).

Sincerely,

(Appropriate Official)

Appendix 2

Notice to Copyright Owner, Clearly Piratical

Dear (name of copyright owner):

This is to inform you that the Customs Port of _____ has seized goods which have been found to constitute clearly piratical copies of the following copyright(s) and is notifying you, the copyright holder, of the action:

Title:
U.S. Copyright Office Registration Number:
U.S. Customs Recordation Number:

Pursuant to 19 CFR 133.42, (Title 19, Code of Federal Regulations), implementing section 602 of the Copyright Act of 1976 (17 U.S.C. § 602), articles constituting clearly piratical copies of registered copyrights are subject to seizure and forfeiture under the provisions of 19 U.S.C. §1595a(c)(2)(C).

In accordance with 19 CFR 133.42, you are hereby notified of the following seizure information:

Date of Importation:
Port of Entry:
Description of Merchandise:
Quantity
Name/address of manufacturer
Name/address of exporter
Name/address of importer
Country of Origin:

Please be advised that you may obtain a sample of the seized goods upon request, provided you meet certain conditions set forth under the provisions of 19 CFR 133.42.

Direct any questions regarding this matter to _____ at (tel.no.).

Sincerely,

(Appropriate Official)

Appendix 3

Notice of Detention to the Importer, Possibly Piratical Recorded Copyright

Dear (name of importer):

In accordance with Customs Regulations 19 CFR 133.43 and 17 USC § 602, the

importation (including "in-transit" shipments) of piratical copies of a recorded copyrighted work is prohibited. You are hereby advised that there is reason to believe that your importation of _____ may constitute a piratical copy of the following registered and recorded copyrighted work:

Title:

U.S. Copyright Office Registration Number:

U.S. Customs Recordation Number:

In the absence of receipt within 30 days of a denial by you that the article constitutes a piratical copy, it shall be considered to be such a copy and shall be subject to seizure and forfeiture under the provisions of 19 U.S.C. § 1595a(c)(2)(C), as goods introduced or attempted to be introduced into the United States contrary law. If this merchandise is already in your possession, you may satisfy the requirement of this notice by giving Customs "constructive" custody until such time as the issue of piratical copying is resolved. This may be accomplished by a letter granting us constructive custody and affirming that the subject merchandise will be held intact by you pending further instructions from this office, and the posting of a single entry bond for three times the value of the merchandise. The merchandise may not be sold, used, assigned, leased or disposed of without U.S. Customs permission.

If you believe the facts warrant, you may file a statement denying that the article is in fact a piratical copy and stating that the detention or redelivery of the article will result in a material depreciation of its value or a loss or damage to you. Upon receipt of your denial, a sample of the merchandise in question will be sent to the copyright holder. If he claims that there is a violation of his copyright, both you and he will have up to 30 business days to submit additional evidence and legal briefs in support of your respective positions, before we forward the matter to the Commissioner of Customs for decision. However, if you agree that these items are, in fact piratical, or if you wish to waive your right to contest piracy, you may abandon such items to Customs at the time of redelivery and assent to their forfeiture. Under the provisions of 19 U.S.C. § 1618, and 19 CFR 171.2(b), you may petition for relief from the above liability within 30 days from the date of mailing of this letter. The petition should include all facts which you believe warrant relief from forfeiture, and filed with this office in duplicate.

Please direct any questions regarding this matter to _____ at (tel.no.).

Sincerely,
(Appropriate Official)

Appendix 4

Letter to Copyright Holder, Possibly Piratical Recorded with Customs.

Dear (name of copyright holder or representative):

This is to inform you that the Customs Port of _____ has detained a shipment of

_____ which may constitute a violation of the following copyrighted work:

Title:

U.S. Copyright Office Registration Number:

U.S. Customs Recordation Number:

Pursuant to Customs Regulations 19 CFR 133.43, a sample is hereby submitted for your review. The importer denies that the articles are piratical copies, and alleges that their continued detention will result in a material loss or damage to him. Please be advised that these imported articles will be released to the importer unless, within 30 days from the date of this letter, you file:

1. A written demand for the exclusion of these items; and
2. A bond on Customs Form 301 (copy enclosed) in the amount of _____ conditioned to hold U.S. Customs, and the importer or owner, harmless from the material depreciation, loss or damage resulting from Customs detention in the event that these items are determined not to be piratical. 19 CFR 113.70.

If you file the demand and bond, you and the importer will be notified of a time period for filing further evidence, briefs, or material. You, the copyright holder, have the burden of proving infringement.

At the conclusion of the regulatory and statutory time periods, the entire file will be forwarded to the Commissioner of Customs for review and decision.

Please direct any questions regarding this matter to _____ at (tel.no.).

Sincerely,

Area/Port Director

Appendix 5

Notice to Copyright Owner and Importer (Exclusion Demand)

Dear (name of copyright owner or representative and the importer):

In relation to the exclusion of the suspected piratical copies of:

_____, entry number _____ for suspected violation of the following protected works:

Title of Copyright:
U.S. Copyright Office Registration Number:
U.S. Customs Recordation Number.

Issue is joined as to the claim. Pursuant to 19 CFR 133.43(c)(1)(I), within 30 days from the date of this letter, both parties, or their duly-authorized agents, may submit to Customs any additional information or documentation substantiating their claims. The copyright holder has the burden of proof in this matter. Within this 30-day period, both parties should submit to each other and to Customs:

1. Copies of any and all arguments, legal briefs, evidence, or other pertinent material submitted, whether part of the initial claim or subsequent discovery.
2. A written statement, signed by the importer, confirming that copies of the above were in fact provided to the importer within the 30 day time period.

Please be advised that no additional material to substantiate the claim or denial of infringement will be accepted by this office after this 30-day period expires.

Direct any questions regarding this matter to _____ at (tel.no.)

Sincerely,

(Appropriate Official)

Appendix 6

Notice to Copyright Owner and Importer, Rebuttal Period

Dear (name of copyright owner or representative and importer):

In relation to the exclusion of the suspected piratical copies of _____, entry number _____ for suspected violation of the following protected works:

Title of Copyright:
U.S. Copyright Office Registration Number:
U.S. Customs Recordation Number:

Pursuant to 19 CFR 133.43(c)(1)(I), the parties have submitted to Customs, and exchanged copies of any and all arguments, legal briefs, evidence, or other pertinent material, whether part of the initial claim or subsequently discovered, and a written statement signed by the parties or duly authorized agent confirming that copies of the above were in fact provided to the importer within the initial 30-day time period.

The parties will be afforded an additional 30 days "rebuttal period" (beginning as of the date of this letter) in which to exchange and submit to Customs:

1. Copies of any and all arguments, legal briefs, evidence, or other pertinent material submitted in rebuttal to arguments submitted, and
2. A written statement to the opposing party, confirming that copies of the above were in fact provided to the other party within the 30-day rebuttal period.

Please be advised that no additional material to substantiate the claim or denial of infringement will be accepted by this office once this 30-day rebuttal period expires.

Direct any questions regarding this matter to _____ at (tel.no.)

Sincerely,

(Appropriate Official)