

## EFFECTIVE DATE

Pub. L. 105-304, title II, §203, Oct. 28, 1998, 112 Stat. 2886, provided that: "This title [enacting this section and provisions set out as a note under section 101 of this title] and the amendments made by this title shall take effect on the date of the enactment of this Act [Oct. 28, 1998]."

**§ 513. Determination of reasonable license fees for individual proprietors**

In the case of any performing rights society subject to a consent decree which provides for the determination of reasonable license rates or fees to be charged by the performing rights society, notwithstanding the provisions of that consent decree, an individual proprietor who owns or operates fewer than 7 non-publicly traded establishments in which nondramatic musical works are performed publicly and who claims that any license agreement offered by that performing rights society is unreasonable in its license rate or fee as to that individual proprietor, shall be entitled to determination of a reasonable license rate or fee as follows:

(1) The individual proprietor may commence such proceeding for determination of a reasonable license rate or fee by filing an application in the applicable district court under paragraph (2) that a rate disagreement exists and by serving a copy of the application on the performing rights society. Such proceeding shall commence in the applicable district court within 90 days after the service of such copy, except that such 90-day requirement shall be subject to the administrative requirements of the court.

(2) The proceeding under paragraph (1) shall be held, at the individual proprietor's election, in the judicial district of the district court with jurisdiction over the applicable consent decree or in that place of holding court of a district court that is the seat of the Federal circuit (other than the Court of Appeals for the Federal Circuit) in which the proprietor's establishment is located.

(3) Such proceeding shall be held before the judge of the court with jurisdiction over the consent decree governing the performing rights society. At the discretion of the court, the proceeding shall be held before a special master or magistrate judge appointed by such judge. Should that consent decree provide for the appointment of an advisor or advisors to the court for any purpose, any such advisor shall be the special master so named by the court.

(4) In any such proceeding, the industry rate shall be presumed to have been reasonable at the time it was agreed to or determined by the court. Such presumption shall in no way affect a determination of whether the rate is being correctly applied to the individual proprietor.

(5) Pending the completion of such proceeding, the individual proprietor shall have the right to perform publicly the copyrighted musical compositions in the repertoire of the performing rights society by paying an interim license rate or fee into an interest bearing escrow account with the clerk of the court, subject to retroactive adjustment when a final rate or fee has been determined, in an amount

equal to the industry rate, or, in the absence of an industry rate, the amount of the most recent license rate or fee agreed to by the parties.

(6) Any decision rendered in such proceeding by a special master or magistrate judge named under paragraph (3) shall be reviewed by the judge of the court with jurisdiction over the consent decree governing the performing rights society. Such proceeding, including such review, shall be concluded within 6 months after its commencement.

(7) Any such final determination shall be binding only as to the individual proprietor commencing the proceeding, and shall not be applicable to any other proprietor or any other performing rights society, and the performing rights society shall be relieved of any obligation of nondiscrimination among similarly situated music users that may be imposed by the consent decree governing its operations.

(8) An individual proprietor may not bring more than one proceeding provided for in this section for the determination of a reasonable license rate or fee under any license agreement with respect to any one performing rights society.

(9) For purposes of this section, the term "industry rate" means the license fee a performing rights society has agreed to with, or which has been determined by the court for, a significant segment of the music user industry to which the individual proprietor belongs.

(Added Pub. L. 105-298, title II, §203(a), Oct. 27, 1998, 112 Stat. 2831, §512; renumbered §513, Pub. L. 106-44, §1(c)(1), Aug. 5, 1999, 113 Stat. 221.)

## AMENDMENTS

1999—Pub. L. 106-44 renumbered section 512 of this title as this section.

## EFFECTIVE DATE

Section effective 90 days after Oct. 27, 1998, see section 207 of Pub. L. 105-298, set out as an Effective Date of 1998 Amendments note under section 101 of this title.

**CHAPTER 6—IMPORTATION AND EXPORTATION**

Sec.	
[601.	Repealed.]
602. <sup>1</sup>	Infringing importation of copies or phonorecords.
603.	Importation prohibitions: Enforcement and disposition of excluded articles.

## AMENDMENTS

2010—Pub. L. 111-295, §4(a), (b)(1)(A), Dec. 9, 2010, 124 Stat. 3180, substituted "IMPORTATION AND EXPORTATION" for "MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION" in chapter heading and struck out item 601 "Manufacture, importation, and public distribution of certain copies".

2008—Pub. L. 110-403, title I, §105(a), Oct. 13, 2008, 122 Stat. 4259, substituted "MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION" for "MANUFACTURING REQUIREMENTS AND IMPORTATION" in chapter heading.

<sup>1</sup> So in original. Does not conform to section catchline.

**[§ 601. Repealed. Pub. L. 111-295, § 4(a), Dec. 9, 2010, 124 Stat. 3180]**

Section, Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2588; Pub. L. 97-215, July 13, 1982, 96 Stat. 178; Pub. L. 105-80, § 12(a)(15), (16), Nov. 13, 1997, 111 Stat. 1535; Pub. L. 110-403, title I, § 105(c)(2), Oct. 13, 2008, 122 Stat. 4260, related to manufacture, importation, and public distribution of certain copies of nondramatic English-language literary material protected under this title.

**§ 602. Infringing importation or exportation of copies or phonorecords**

(a) INFRINGING IMPORTATION OR EXPORTATION.—

(1) IMPORTATION.—Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501.

(2) IMPORTATION OR EXPORTATION OF INFRINGING ITEMS.—Importation into the United States or exportation from the United States, without the authority of the owner of copyright under this title, of copies or phonorecords, the making of which either constituted an infringement of copyright, or which would have constituted an infringement of copyright if this title had been applicable, is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under sections 501 and 506.

(3) EXCEPTIONS.—This subsection does not apply to—

(A) importation or exportation of copies or phonorecords under the authority or for the use of the Government of the United States or of any State or political subdivision of a State, but not including copies or phonorecords for use in schools, or copies of any audiovisual work imported for purposes other than archival use;

(B) importation or exportation, for the private use of the importer or exporter and not for distribution, by any person with respect to no more than one copy or phonorecord of any one work at any one time, or by any person arriving from outside the United States or departing from the United States with respect to copies or phonorecords forming part of such person's personal baggage; or

(C) importation by or for an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to no more than one copy of an audiovisual work solely for its archival purposes, and no more than five copies or phonorecords of any other work for its library lending or archival purposes, unless the importation of such copies or phonorecords is part of an activity consisting of systematic reproduction or distribution, engaged in by such organization in violation of the provisions of section 108(g)(2).

(b) IMPORT PROHIBITION.—In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation

is prohibited. In a case where the copies or phonorecords were lawfully made, United States Customs and Border Protection has no authority to prevent their importation. In either case, the Secretary of the Treasury is authorized to prescribe, by regulation, a procedure under which any person claiming an interest in the copyright in a particular work may, upon payment of a specified fee, be entitled to notification by United States Customs and Border Protection of the importation of articles that appear to be copies or phonorecords of the work.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2589; Pub. L. 110-403, title I, § 105(b), (c)(1), Oct. 13, 2008, 122 Stat. 4259, 4260; Pub. L. 111-295, § 4(c), Dec. 9, 2010, 124 Stat. 3181.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

**Scope of the Section.** Section 602, which has nothing to do with the manufacturing requirements of section 601, deals with two separate situations: importation of "piratical" articles (that is, copies or phonorecords made without any authorization of the copyright owner), and unauthorized importation of copies or phonorecords that were lawfully made. The general approach of section 602 is to make unauthorized importation an act of infringement in both cases, but to permit the United States Customs Service to prohibit importation only of "piratical" articles.

Section 602(a) first states the general rule that unauthorized importation is an infringement merely if the copies or phonorecords "have been acquired outside the United States", but then enumerates three specific exceptions: (1) importation under the authority or for the use of a governmental body, but not including material for use in schools or copies of any audiovisual work imported for any purpose other than archival use; (2) importation for the private use of the importer of no more than one copy or phonorecord of a work at a time, or of articles in the personal baggage of travelers from abroad; or (3) importation by nonprofit organizations "operated for scholarly, educational, or religious purposes" of "no more than one copy of an audiovisual work solely for archival purposes, and no more than five copies or phonorecords of any other work for its library lending or archival purposes." The bill specifies that the third exception does not apply if the importation "is part of an activity consisting of systematic reproduction or distribution, engaged in by such organization in violation of the provisions of section 108(g)(2)."

If none of the three exemptions applies, any unauthorized importer of copies or phonorecords acquired abroad could be sued for damages and enjoined from making any use of them, even before any public distribution in this country has taken place.

**Importation of "Piratical" Copies.** Section 602(b) retains the present statute's prohibition against importation of "piratical" copies or phonorecords—those whose making "would have constituted an infringement of copyright if this title has been applicable." Thus, the Customs Service could exclude copies or phonorecords that were unlawful in the country where they were made; it could also exclude copies or phonorecords which, although made lawfully under the domestic law of that country, would have been unlawful if the U.S. copyright law could have been applied. A typical example would be a work by an American author which is in the public domain in a foreign country because that country does not have copyright relations with the United States; the making and publication of an authorized edition would be lawful in that country, but the Customs Service could prevent the importation of any copies of that edition.

**Importation for Infringing Distribution.** The second situation covered by section 602 is that where the cop-