

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 Amendment note under section 101 of this title.

CHAPTER 6—IMPORTATION AND EXPORTATION

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	Repealed.]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

¹ So in original. Does not conform to section catchline.

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.

§ 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 an 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 copies or phonorecords were lawfully made but their distribution in the United States would infringe the U.S. copyright owner’s exclusive rights. As already said, the mere act of importation in this situation would constitute an act of infringement and could be enjoined. However, in cases of this sort it would be impracticable for the United States Customs Service to attempt to enforce the importation prohibition, and section 602(b) provides that, unless a violation of the manufacturing requirements is also involved, the Service has no authority to prevent importation, “where the copies or phonorecords were lawfully made.” The subsection would authorize the establishment of a procedure under which copyright owners could arrange for the Customs Service to notify them wherever articles appearing to infringe their works are imported.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111-295 struck out “unless the provisions of section 601 are applicable” after “prevent their importation” in second sentence.

2008—Pub. L. 110-403, § 105(c)(1)(A), inserted “or exportation” after “importation” in section catchline.

Subsec. (a). Pub. L. 110-403, § 105(b), inserted heading, designated introductory provisions as par. (1), struck out “This subsection does not apply to—” at end in par. (1), added par. (2) and par. (3) designation, heading, and introductory provisions, redesignated former pars. (1) to (3) as subpars. (A) to (C) of par. (3), respectively, and realigned margins, inserted “or exportation” after “importation” in par. (3)(A), and substituted “importation or exportation, for the private use of the importer or exporter” for “importation, for the private use of the importer” and inserted “or departing from the United States” after “United States” in par. (3)(B).

Subsec. (b). Pub. L. 110-403, § 105(c)(1)(B), inserted heading and substituted “United States Customs and Border Protection has” for “the United States Customs Service has” and “United States Customs and Border Protection of” for “the Customs Service of”.

§ 603. Importation prohibitions: Enforcement and disposition of excluded articles

(a) The Secretary of the Treasury and the United States Postal Service shall separately or jointly make regulations for the enforcement of the provisions of this title prohibiting importation.

(b) These regulations may require, as a condition for the exclusion of articles under section 602—

(1) that the person seeking exclusion obtain a court order enjoining importation of the articles; or

(2) that the person seeking exclusion furnish proof, of a specified nature and in accordance with prescribed procedures, that the copyright in which such person claims an interest is valid and that the importation would violate the prohibition in section 602; the person seeking exclusion may also be required to post a surety bond for any injury that may result if