

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 the detention or exclusion of the articles proves to be unjustified.

(c) Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the customs revenue laws. Forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2590; Pub. L. 104–153, § 8, July 2, 1996, 110 Stat. 1388.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

The importation prohibitions of both sections 601 and 602 would be enforced under section 603, which is similar to section 109 of the statute now in effect [section 109 of former title 17]. Subsection (a) would authorize the Secretary of the Treasury and the United States Postal Service to make regulations for this purpose, and subsection (c) provides for the disposition of excluded articles.

Subsection (b) of section 603 deals only with the prohibition against importation of “piratical” copies or phonorecords, and is aimed at solving problems that have arisen under the present statute. Since the United States Customs Service is often in no position to make determinations as to whether particular articles are “piratical,” section 603(b) would permit the Customs regulations to require the person seeking exclusion either to obtain a court order enjoining importation, or to furnish proof of his claim and to post bond.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–153 substituted a period at end for “; however, the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of law.”

CHAPTER 7—COPYRIGHT OFFICE

Sec.	
701.	The Copyright Office: General responsibilities and organization.
702.	Copyright Office regulations.
703.	Effective date of actions in Copyright Office.
704.	Retention and disposition of articles deposited in Copyright Office.
705.	Copyright Office records: Preparation, maintenance, public inspection, and searching.
706.	Copies of Copyright Office records.
707.	Copyright Office forms and publications.
708.	Copyright Office fees.
709.	Delay in delivery caused by disruption of postal or other services.
[710.	Repealed.]

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

Chapter 7 entitled “Copyright Office,” sets forth the administrative and housekeeping provisions of the bill. **Administrative Procedure Act.** Under an amendment to section 701 adopted by the Committee, the Copyright Office is made fully subject to the Administrative Procedure Act [5 U.S.C. 551 et seq. and 701 et seq.] with one exception: under section 706(b), reproduction and distribution of copyright deposit copies would be made