

graph (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.)

#### Editorial Notes

##### AMENDMENTS

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

#### Statutory Notes and Related Subsidiaries

##### 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. <sup>1</sup>	Infringing importation of copies or phonorecords.
603.	Importation prohibitions: Enforcement and disposition of excluded articles.

#### Editorial Notes

##### 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

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

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.

#### Editorial Notes

##### 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.

#### Editorial Notes

##### 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.	Emergency relief authority.

#### 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 under the Freedom of Information Act [5 U.S.C. 552] only to the extent permitted by the Copyright Office regulations.

**Retention and Disposition of Deposited Articles.** A recurring problem in the administration of the copyright law has been the need to reconcile the storage limitations of the Copyright Office with the continued value of deposits in identifying copyrighted works. Aside from its indisputable utility to future historians and scholars, a substantially complete collection of both published and unpublished deposits, other than those selected by the Library of Congress, would avoid the many difficulties encountered when copies needed for identification in connection with litigation or other purposes have been destroyed. The basic policy behind section 704 is that copyright deposits should be retained as long as possible, but that the Register of Copyrights and the Librarian of Congress should be empowered to dispose of them under appropriate safeguards when they decide that it has become necessary to do so.

Under subsection (a) of section 704, any copy, phonorecord, or identifying material deposited for registration, whether registered or not, becomes “the property of the United States Government.” This means that the copyright owner or person who made the deposit cannot demand its return as a matter of right, even in rejection cases, although the provisions of section 407 and 408 are flexible enough to allow for special arrangements in exceptional cases. On the other hand, Government ownership of deposited articles under section 704(a) carries with it no privileges under the copyright itself; use of a deposited article in violation of the copyright owner’s exclusive rights would be infringement.

With respect to published works, section 704(b) makes all deposits available to the Library of Congress “for its collections, or for exchanges or transfer to any other library”; where the work is unpublished, the Library is authorized to select any deposit for its own collections or for transfer to the National Archives of the United States or to a Federal records center.