

Chapter 6

Importation and Exportation¹

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§ 601 · [Repealed]⁴**§ 602 · Infringing importation or exportation of copies or phonorecords⁵**

(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, the United States Customs and Border Protection Service 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 the United States Customs and Border Protection Service of the importation of articles that appear to be copies or phonorecords of the work.

§ 603 · Importation prohibitions: Enforcement and disposition of excluded articles⁶

(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.

Chapter 6 · Notes

1. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended the title of Chapter 6 to add “Exportation” to it, so that now the title is “Manufacturing Requirements, Importation, and Exportation.” Pub. L. No. 110-403, 122 Stat. 4256, 4259. The Copyright Cleanup, Clarification, and Corrections Act of 2010 amended chapter six by repealing section 601, entitled “Manufacture, importation, and public distribution of certain copies.” Pub. L. No. 111-295, 124 Stat. 3180. It also deleted “Manufacturing Requirements” from the beginning of the title for chapter six. *Id.*

2. See note 4, *infra*.

3. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended the title of section 602 in the table of contents by adding “Exportation” to it, so that the new title is “Infringing importation or exportation of copies or phonorecords.” Pub. L. No. 110-403, 122 Stat. 4256, 4260.

4. In 1982, section 601(a) was amended in the first sentence by substituting “1986” for “1982.” Pub. L. No. 97-215, 96 Stat. 178. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended the first sentence of subpart 601(b)(2) by inserting “and Border Protection” after “United States Customs.” Pub. L. No. 110-403, 122 Stat. 4256, 4260. The Copyright Cleanup, Clarification, and Corrections Act of 2010 repealed section 601. Pub. L. No. 111-295, 124 Stat. 3180.

5. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended the title of section 602 by adding “Exportation” to it, so the new title is “Infringing importation or exportation of copies or phonorecords.” Pub. L. No. 110-403, 122 Stat. 4256, 4260. The Act also amended section 602(a) by dividing it into paragraphs (1), (2) and (3); by adding paragraph (2); and by adding references to exports throughout. *Id.* at 4259-60. It further amended subsection 602(b) by inserting the subtitle, “Import Prohibition,” at the beginning and adding references to the United States Customs and Border Protection Service. *Id.* at 4260. The Copyright Cleanup, Clarification, and Corrections Act of 2010 made a conforming amendment to subsection 602(b) to eliminate the reference to section 601, which the Act had repealed, by deleting at the end of the second sentence “unless the provisions of section 601 are applicable.” Pub. L. No. 111-295, 124 Stat. 3180, 3181.

6. The Anticounterfeiting Consumer Protection Act of 1996 amended the last sentence of section 603(c) by deleting the semicolon and all text immediately following the words “as the case may be.” Pub. L. No. 104-153, 110 Stat. 1386, 1388.