

MEMORANDUM D19-4-3

Ottawa, May 19, 2000

SUBJECT

COPYRIGHT AND TRADE-MARKS

This Memorandum outlines and explains the legislation governing the role of the Canada Customs and Revenue Agency (CCRA) in dealing with counterfeit trade-mark or pirated copyright goods.

TABLE OF CONTENTS

	Page
Legislation	2
Guidelines and General Information	2
Intellectual Property (IP)	2
What is an Intellectual Property Right (IPR)?	3
When does an infringement occur?	3
Legislation and International Agreements	4
Application to Court	5
Notice to Minister	5
Presentation of the Court Order	6
Information Reasonably Required	6
Distribution of the Order	7
Notification Procedures	8
Inspection of Detained Goods	9
Time Limits for Action	9
Failure to Commence Further Action	9
Control of Detained Goods	10
Disposition of Detained Goods	10
Printed Matter	11
Penalties	12
Appendix A – <i>Copyright Act</i> , sections 44 to 45	
Appendix B – <i>Trade-marks Act</i> , sections 52 to 53.3	
Appendix C – <i>Customs Tariff</i> , section 136 and tariff item No. 9897.00.00	

Appendix D – Notice of Detention of Goods to the Applicant (Copyright)

Notice of Detention of Goods to the Importer (Copyright)

Appendix E – Notice of Detention of Goods to the Applicant (Trade-marks)

Notice of Detention of Goods to the Importer (Trade-marks)

Appendix F – Notice of Detention of Goods to the Applicant (Copyright and Trade-marks)

Notice of Detention of Goods to the Importer (Copyright and Trade-marks)

Legislation

The applicable sections of the *Copyright Act*, the *Trade-marks Act*, and the *Customs Tariff* are outlined in Appendices A, B, and C to this Memorandum

GUIDELINES AND GENERAL INFORMATION

Intellectual Property (IP)

1. Intellectual Property (IP) includes such things as sound recordings, books, patented inventions (e.g., chemicals, pharmaceuticals), computer chips (e.g., for use in cartridge-type computer games), and products bearing specific trade names (e.g., watches, clothing).

What is an Intellectual Property Right (IPR)?

2. Intellectual Property Right (IPR) includes the right of the IP owner to produce and distribute his or her IP products. The IPR holder may allow someone else the use of the right. For example, an author may give a publisher the right to produce and sell his or her book.

3. While the terms “trade-mark,” “copyright,” and “performers’ performance” are defined in the legislation, it may help to define them in layman’s terms.

(a) A “trade-mark” is often thought of as the logo (e.g., golden arches).

(b) A “copyright” is the material form of the good (e.g., a book, a movie, a video).

(c) The owner of a “performer’s performance” is merely the rights that the singer, actor, etc. has for their performance.

4. A performer’s performance is also thought of as “neighbouring rights.” For example, you have the writer of a song who owns the copyright in the song. Then you have the performers of the song who also wants their rights protected. These performers’ rights are called neighbouring rights.

When does an infringement occur?

5. An infringement occurs when the IPR is used without the consent of the IPR holder. For example:

(a) applying a trade-mark without the authorization of the right holder to a watch that is not manufactured by the company that holds the trade-mark;

(b) manufacturing a doll or toy representing a popular television, movie, or comic book character without the authorization of the right holder; and

- (c) making copies of a videotape or an audio tape without the authorization of the copyright owner.

Legislation and International Agreements

6. IPR holders worldwide have asked their respective government for assistance in protecting their IPRs from infringement. In Canada, there is legislation available to the IPR holders to protect their rights i.e., the *Copyright Act*, *Industrial Design Act*, *Integrated Circuit Topography Act*, *Patent Act*, *Plant Breeders' Rights Act*, and *Trade-marks Act*. All of these Acts, with the exception of the *Plant Breeders' Rights Act* which is promulgated by Agriculture and Agri-Food Canada, are under the auspices of Industry Canada.

7. Pursuant to international agreements, namely the North American Free Trade Agreement, the Canada-Israel Free Trade Agreement, the Canada-United States Free Trade Agreement, and the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Canada has agreed to establish customs procedures at the border to assist IPR holders in protecting their rights in two areas: copyright and trade-mark. With the exception of a possibility of a court order issued under the *Integrated Circuit Topography Act*, the CCRA plays a role **only** with respect to **copyright or trade-mark goods**; it does not act upon any other IPR infringements such as patents or industrial designs.

8. IPR is a private right and the actions of the CCRA in dealing with copyright or trade-mark infringing goods are initiated only by a private rights holder initiating action through the courts. Although court orders generally apply only to commercial shipments, orders could be directed towards personal importations. A special provision that exists for books will be addressed in paragraphs 29 to 32 of this Memorandum.

Application to Court

9. In accordance with the *Copyright Act* and the *Trade-marks Act*, the owner of a registered trade-mark, the owner or exclusive licensee of a copyright, or the owner of a performer's performance may apply to the court for an order directing the Minister of National Revenue to take reasonable measures to detect and detain alleged infringing goods. The party who applies for the order is known as the "applicant."

10. The order also directs the Minister of National Revenue to notify the applicant and the importer of the detention of the goods and the reasons therefore (see paragraph 20).

Notice to Minister

11. The application for the order may be made ex parte (i.e., the applicant applies for the order without the presence in court of the other party, normally the importer), **but all applications must be made on notice to the Minister of National Revenue**. Although not required by law, the applicant generally forwards a copy of the draft court order to the CCRA providing the opportunity for officials to make suggestions as to its content. The notification will be accepted on behalf of the Minister by the Manager, Interdepartmental Programs, Section B. Notices shall be sent by the applicant or their representative to:

Manager, Interdepartmental Programs, Section B
Admissibility Programs Division
Trade Policy and Interpretation Directorate
Customs Branch
10th floor, Sir Richard Scott Building
191 Laurier Avenue West
Ottawa ON K1A 0L5

Facsimile: (613) 946-1520

Any inquiries concerning the order may be made by telephone at (613) 954-7031.

12. When prior notice of the application to the court is received, the CCRA may have a representative available in court to ensure that the court order is specific enough for CCRA officials to be able to detect the goods.

13. If the applicant indicates that books are the subject of the court order, CCRA officials will draw to the attention of both the applicant and the court the *Book Importation Regulations*. By taking this action, CCRA officials attempt to ensure that border enforcement action on intellectual property rights does not become a barrier to trade for “used” or “other than new” books, given that existing legislation allows all such books entry into Canada. By drawing the applicant’s and court’s attention to these regulations, the CCRA hopes to ensure that the order is only applied to new books.

14. The notice may be served to the Minister of National Revenue by facsimile, registered mail, or messenger, rather than by a personal service.

Presentation of the Court Order

15. When an order is obtained by the applicant, he or she should submit a copy of the order to the address shown in paragraph 11. Similarly, if an order is received directly from the applicant at a regional office, it must be forwarded immediately to the headquarters address indicated in paragraph 11.

16. Requests for information are to be directed as indicated in paragraph 11.

17. Interdepartmental Programs, Section B, of the Customs Branch, will immediately acknowledge receipt of the order to the applicant.

Information Reasonably Required

18. To assist in detecting shipments of any goods under the order, the CCRA may require some or all of the following information to be provided by the applicant:

- (a) Complete description of the goods;
- (b) Classification of goods under the Harmonized System;
- (c) Quantity and value of goods;
- (d) Identity of importer, e.g., name, address (location), Business Number;
- (e) Identity of exporter and vendor;
- (f) Country of export;
- (g) Country of origin;
- (h) Place of importation or release;
- (i) Approximate date of arrival;
- (j) Mode of transportation (e.g., sea, rail, land); and
- (k) Notification procedure for the applicant in the event of the detection of the goods (e.g., letter, fax).

Distribution of the Order

19. The distribution of the order is as follow:

- (a) Interdepartmental Programs, Section B, will deliver information taken from the order to the Import Verification Unit, Compliance Management Division, Trade Policy and Interpretation Directorate, Customs Branch.

- (b) The Import Verification Unit will then input a target and/or lookout into the Accelerated Commercial Release Operations Support System (ACROSS) identifying the subject goods and the procedures to be applied once the goods are detained.
- (c) The Release Commercial Analyst in each region will disseminate this information throughout their region so that all customs ports are aware of the subject goods and the procedures to be followed.
- (d) Officials in Interdepartmental Programs, Section B, will forward a hard copy of the order to any region/port office upon request.

Notification Procedures

20. Notification is required for each individual shipment of goods that is the subject of the court order. Notification procedures are as follow:

- (a) When goods have been detained under the order, a CCRA official will immediately notify both the applicant and the importer using one of the formats found in Appendices D, E, or F. Use the notice of detention of goods in Appendix D for a court order obtained under the *Copyright Act*; Appendix E for a court order obtained under the *Trade-marks Act*; and Appendix F for a court order obtained under both the *Copyright Act* and the *Trade-marks Act*.
- (b) Each region shall determine whether the notification and follow-up are to be done in the office where the goods are detained or whether the regional office will be responsible.
- (c) Notification may be made by registered mail, messenger, or by any reasonable means that will ensure timely receipt of the notification by both the applicant and the importer. The method of delivery chosen must have a mechanism whereby the date of receipt by the applicant can be verified. This date of receipt by the applicant must be noted, as the applicant has two weeks from this date to notify the office issuing the notification whether they will undertake further action as outline in paragraph 22.
- (d) The CCRA office at the address shown in paragraph 11 must also be sent a copy of the notice of detention of goods.

Inspection of Detained Goods

21. The importer and the applicant will be given the opportunity to inspect the detained goods for the purpose of substantiating or refuting the applicant's claim. As **the goods must always remain under customs' control**, the importer or the applicant normally inspect the goods where they are being held by the CCRA. However, **if the court order allows for it**, if it is practical, and if the importer or the applicant, as the case may be, is willing to pay for any added costs to the CCRA, arrangements can be made to have the goods moved to a more convenient CCRA facility. Practicality is determined after considering, among other things, the size of the item, the perishable status of the item, and the number of items to be moved.

Time Limits for Action

22. Unless the order mentioned in paragraph 9 provides otherwise, legislation requires that within two weeks from the date that the notice of detention of goods was received by the applicant, the applicant must notify the Minister that he has commenced an action for a final determination of the issue by the court. Any notification that the applicant is required to give to the Minister under subsection 44.1(8) of the *Copyright Act* or subsection 53.1(6) of the *Trade-marks Act* should be given to the CCRA office that issued the notice of detention of goods. This office should forward a copy of the applicant's intent to the CCRA office at the address shown in paragraph 11. This is important, as Interdepartmental Programs, Section B, needs to be aware of the court action so that they can be prepared to have input into the court order obtained under subsection 44.1(9) of the *Copyright Act* or subsection 53.1(7) of the *Trade-marks Act*.

Failure to Commence Further Action

23. The statutory two week time period (or other time period as may be specified in the court order) will be closely monitored by the CCRA office where the notice of detention of goods was issued. If the applicant has not notified that office that further court action will commence, normal importation procedures leading to release of the goods will continue without further notice to the applicant. The CCRA office at the address shown in paragraph 11 should be advised of the action taken (i.e., release of the goods or detention for another reason).

Control of Detained Goods

24. In the event that the applicant notifies the CCRA office concerned that an action is being undertaken in the court, the goods will be detained until the court issues a final judgment concerning disposition of the goods, or the action is withdrawn. The CCRA office that detained the goods will ensure that the goods are held and not disposed of until instructions are received from the court.

25. The time limits for imported goods to be held in a customs office, highway frontier examining warehouse, sufferance warehouse, or bonded warehouse can be found in Memorandum D4-1-0, *Customs Bonded Warehouses Regulations*, Memorandum D4-1-4, *Customs Sufferance Warehouses*, and Memorandum D4-1-5, *Storage of Goods Regulations*. Where extenuating circumstances preclude the clearance of goods within the prescribed time limits, the CCRA may grant an extension under subsection 37(3) of the *Customs Act*. Memorandum D4-1-7, *Extension of Time Limits for the Storage of Goods*, outlines the procedures to be followed.

26. Shipments that are detained pursuant to a court order for possible infringement of copyright or trademark are to be documented on Form K24, *Non-Monetary General Receipt*. This form is used whether the shipment is from the commercial stream or the traveller stream.

Disposition of Detained Goods

27. Once the court has issued a final judgment regarding the disposition of the goods, the CCRA officials where the goods are detained will act in accordance with the judgment. If the court finds in favour of the applicant, it will issue an order considered appropriate under the circumstances, including that the goods be destroyed, exported, or delivered to the applicant. Should the judgment not specify disposition of the goods, Interdepartmental Programs, Section B will contact Legal Services for instruction **prior** to disposal of the goods. Interdepartmental Programs, Section B should forward all court orders to the appropriate regional/port office. If the order is sent directly from the court to the regional/port office, then Section B should be contacted at the address given in paragraph 11. It should be noted that goods infringing trademark **should not** be exported with the infringing trade-mark intact.

28. Any questions regarding the disposition of detained goods under this legislation should be directed to the responsible office indicated in paragraph 11.

Printed Matter

29. Tariff item No. 9897.00.00 of the *Customs Tariff*, in conjunction with section 136, prohibits, at the request of the copyright holder, the importation of reprints of certain copyrighted works. The term "reprints" refers only to printed matter (e.g., books). Copyright holders may request assistance from the CCRA in stopping infringing copies of their works from being imported.

30. In such cases, the owner of the copyright of the printed material must notify the CCRA in writing that he/she wishes to prevent the importation of copies of the work, usually a book, into Canada (see Memorandum D9-1-2, *Copyrighted Books*).

31. Prohibition of the book is then considered to be a tariff classification decision. In such cases, no court order is required and the steps outlined in paragraphs 9 to 15 of this Memorandum do not apply.

32. The owner of a copyright of a book may, however, choose to obtain a court order as mentioned above, in which case all of the procedures dealing with court orders set out above would apply.

Penalties

33. There are penalty provisions for infringement of IPR in the relevant legislation. It is not up to the CCRA to determine how to proceed nor does the CCRA assess penalties or prosecute. **The Canada Customs and Revenue Agency only acts upon the direction of the court.**

APPENDIX A

COPYRIGHT ACT

Sections 44 to 45 of the *Copyright Act* read as follows:

Importation of certain copyright works prohibited

44. Copies made out of Canada of any work in which copyright subsists that if made in Canada would infringe copyright and as to which the owner of the copyright gives notice in writing to the Canada Customs and Revenue Agency that the owner desires that the copies not be so imported into Canada, shall not be so imported and are deemed to be included in tariff item No. 9897.00.00 in the List of Tariff Provisions set out in the schedule to the *Customs Tariff* and section 136 of that Act applies accordingly.

Definitions

44.1 (1) In this section and sections 44.2 and 44.3,

“court” means the Federal Court or the superior court of a province;

“duties” has the same meaning as in the *Customs Act*;

“Minister” means the Minister of National Revenues;

“release” has the same meaning as in the *Customs Act*.

Power of court

(2) A court may make an order described in subsection (3) where the court is satisfied that

(a) copies of the work are about to be imported into Canada, or have been imported into Canada but have not yet been released,

(b) either

(i) copies of the work were made without the consent of the person who then owned the copyright in the country where the copies were made, or

(ii) the copies were made elsewhere than in a country to which this Act extends; and

(c) the copies would infringe copyright if they were made in Canada by the importer and the importer knows or should have known this.

Who may apply

(2.1) A court may make an order described in subsection (3) on application by the owner or exclusive licensee of copyright in a work in Canada.

Order of court

- (3) The order referred to in subsection (2) is an order
- (a) directing the Minister
 - (i) to take reasonable measures, on the basis of information reasonably required by the Minister and provided by the applicant, to detain the work, and
 - (ii) to notify the applicant and the importer, forthwith after detaining the work, of the detention and the reasons therefor; and
 - (b) providing for such other matters as the court considers appropriate.

How application made

(4) An application for an order made under subsection (2) may be made in an action or otherwise, and either on notice or *ex parte*, except that it must always be made on notice to the Minister.

Court may require security

- (5) Before making an order under subsection (2), the court may require the applicant to furnish security, in an amount fixed by the court,
- (a) to cover duties, storage and handling charges, and any other amount that may become chargeable against the work; and
 - (b) to answer any damages that may by reason of the order be incurred by the owner, importer or consignee of the work.

Application for directions

(6) The Minister may apply to the court for directions in implementing an order made under subsection (2).

Minister may allow inspection

(7) The Minister may give the applicant or the importer an opportunity to inspect the detained work for the purpose of substantiating or refuting, as the case may be, the applicant's claim.

Where applicant fails to commence action

(8) Unless an order made under subsection (2) provides otherwise, the Minister shall, subject to the *Customs Act* and to any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, release the copies of the work without further notice to the applicant if, two weeks after the applicant has been notified under subparagraph (3)(a)(ii), the applicant has not notified the Minister that the applicant has commenced a proceeding for a final determination by the court of the issues referred to in paragraphs (2)(b) and (c).

Where court finds in plaintiff's favour

(9) Where, in a proceeding commenced under this section, the court finds that the circumstances referred to in paragraphs (2)(b) and (c) existed, the court may make any order that it considers appropriate in the circumstances, including an order that the copies of the work be destroyed, or that they be delivered up to the plaintiff as the plaintiff's property absolutely.

Other remedies not affected

(10) For greater certainty, nothing in this section affects any remedy available under any other provision of this Act or any other Act of Parliament.

Importation of books

44.2 (1) A court may, subject to this section, make an order described in subsection 44.1(3) in relation to a book where the court is satisfied that

- (a) copies of the book are about to be imported into Canada, or have been imported into Canada but have not yet been released;
- (b) copies of the book were made with the consent of the owner of the copyright in the book in the country where the copies were made, but were imported without the consent of the owner in Canada of the copyright in the book; and
- (c) the copies would infringe copyright if they were made in Canada by the importer and the importer knows or should have known this.

Who may apply

- (2) A court may make an order described in subsection 44.1(3) in relation to a book on application by
- (a) the owner of the copyright in the book in Canada;
 - (b) the exclusive licensee of the copyright in the book in Canada; or
 - (c) the exclusive distributor of the book.

Limitation

(3) Subsection (1) and (2) only apply where there is an exclusive distributor of the book and the acts described in those subsections take place in the part of Canada or in respect of the particular sector of the market for which the person is the exclusive distributor.

Application of certain provisions

(4) Subsections 44.1(3) to (10) apply, with such modifications as the circumstances require, in respect of an order made under subsection (1).

Limitation

44.3 No exclusive licensee of the copyright in a book in Canada, and no exclusive distributor of a book, may obtain an order under section 44.2 against another exclusive licensee of the copyright in that book in Canada or against another exclusive distributor of that book.

Importation of other subject-matter

44.4 Section 44.1 applies, with such modifications as the circumstances require, in respect of a sound recording, performer's performance or communication signal, where a fixation or a reproduction of a fixation of it

- (a) is about to be imported into Canada, or has been imported into Canada but has not yet been released;

- (b) either
- (i) was made without the consent of the person who then owned the copyright in the sound recording, performer's performance or communication signal, as the case may be, in the country where the fixation or reproduction was made, or
 - (ii) was made elsewhere than in a country to which Part II extends; and
- (c) would infringe the right of the owner of copyright in the sound recording, performer's performance or communication signal if it was made in Canada by the importer and the importer knows or should have known this.

Exceptions

45. (1) Notwithstanding anything in this Act, it is lawful for a person
- (a) to import for their own use not more than two copies of a work or other subject-matter made with the consent of the owner of the copyright in the country where it was made;
 - (b) to import for use by a department of the Government of Canada or a province copies of a work or other subject-matter made with the consent of the owner of the copyright in the country where it was made;
 - (c) at any time before copies of a work or other subject-matter are made in Canada, to import any copies, except copies of a book, made with the consent of the owner of the copyright in the country where the copies were made, that are required for the use of a library, archive, museum or educational institution;
 - (d) to import, for the use of a library, archive, museum or educational institution, not more than one copy of a book that is made with the consent of the owner of the copyright in the country where the book was made; and
 - (e) to import copies, made with the consent of the owner of the copyright in the country where they were made, of any used books, except textbooks of a scientific, technical or scholarly nature for use within an educational institution in a course of instruction.

Satisfactory evidence

(2) An officer of customs may, in the officer's discretion, require a person seeking to import a copy of a work or other subject-matter under this section to produce satisfactory evidence of the facts necessary to establish the person's right to import the copy.

APPENDIX B

TRADE-MARKS ACT

Sections 52 to 53.3 of the *Trade-marks Act* read as follows:

Definitions

52. In sections 53 to 53.3,

“court” means the Federal Court or the superior court of a province;

“duties” has the same meaning as in the *Customs Act*;

“Minister” means the Minister of National Revenue;

“release” has the same meaning as in the *Customs Act*.

Proceedings for interim custody

53. (1) Where a court is satisfied, on application of any interested person, that any registered trade-mark or any trade-name has been applied to any wares that have been imported into Canada or are about to be distributed in Canada in such a manner that the distribution of the wares would be contrary to this Act, or that any indication of a place of origin has been unlawfully applied to any wares, the court may make an order for the interim custody of the wares, pending a final determination of the legality of their importation or distribution in an action commenced within such time as is prescribed by the order.

Security

(2) Before making an order under subsection (1), the court may require the applicant to furnish security, in an amount fixed by the court, to answer any damages that may by reason of the order be sustained by the owner, importer or consignee of the wares and for any amount that may become chargeable against the wares while they remain in custody under the order.

Lien for charges

(3) Where, by the judgment in any action under this section finally determining the legality of the importation or distribution of the wares, their importation or distribution is forbidden, either absolutely or on condition, any lien for charges against them that arose prior to the date of an order made under this section has effect only so far as may be consistent with the due execution of the judgment.

Prohibition of imports

(4) Where in any action under this section the court finds that the importation is or the distribution would be contrary to this Act, it may make an order prohibiting the future importation of wares to which the trade-mark, trade-name or indication of origin has been applied.

How application made

(5) An application referred to in subsection (1) may be made in an action or otherwise, and either on notice or ex parte.

Limitation

(6) No proceedings may be taken under subsection (1) for the interim custody of wares by the Minister if proceedings for the detention of the wares by the Minister may be taken under section 53.1.

Proceedings for detention by Minister

53.1 (1) Where a court is satisfied, on application by the owner of a registered trade-mark, that any wares to which the trade-mark has been applied are about to be imported into Canada or have been imported into Canada but have not yet been released, and that the distribution of the wares in Canada would be contrary to this Act, the court may make an order

- (a) directing the Minister to take reasonable measures, on the basis of information reasonably required by the Minister and provided by the applicant, to detain the wares;
- (b) directing the Minister to notify the applicant and the owner or importer of the wares, forthwith after detaining them, of the detention and the reasons therefor; and

(c) providing for such other matters as the court considers appropriate.

How application made

(2) An application referred to in subsection (1) may be made in an action or otherwise, and either on notice or ex parte, except that it must always be made on notice to the Minister.

Court may require security

(3) Before making an order under subsection (1), the court may require the applicant to furnish security, in an amount fixed by the court,

(a) to cover duties, storage and handling charges, and any other amount that may become chargeable against the wares; and

(b) to answer any damages that may by reason of the order be sustained by the owner, importer or consignee of the wares.

Application for directions

(4) The Minister may apply to the court for directions in implementing an order made under subsection (1).

Minister may allow inspection

(5) The Minister may give the applicant or the importer of the detained wares an opportunity to inspect them for the purpose of substantiating or refuting, as the case may be, the applicant's claim.

Where applicant fails to commence an action

(6) Unless an order made under subsection (1) provides otherwise, the Minister shall, subject to the *Customs Act* and to any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, release the wares without further notice to the applicant if, two weeks after the applicant has been notified under paragraph (1)(b), the Minister has not been notified that an action has been commenced for a final determination by the court of the legality of the importation or distribution of the wares.

Where court finds in plaintiff's favour

(7) Where, in an action commenced under this section, the court finds that the importation is or the distribution would be contrary to this Act, the court may make any order that it considers appropriate in the circumstances, including an order that the wares be destroyed or exported, or that they be delivered up to the plaintiff as the plaintiff's property absolutely.

Power of the court to grant relief

53.2 Where a court is satisfied, on application of any interested person, that any act has been done contrary to this Act, the court may make any order that it considers appropriate in the circumstances, including an order providing for relief by way of injunction and the recovery of damages or profits and for the destruction, exportation or other disposition of any offending wares, packages, labels and advertising material and of any dies used in connection therewith.

Re-exportation of wares

53.3 Where in any proceeding under section 53.1 or 53.2 the court finds

(a) that wares bearing a registered trade-mark have been imported into Canada in such manner that the distribution of the wares in Canada would be contrary to this Act, and

(b) that the registered trade-mark has, without the consent of the owner, been applied to those wares with the intent of counterfeiting or imitating the trade-mark, or of deceiving the public and inducing them to believe that the wares were made with the consent of the owner, the court may not, other than in exceptional circumstances, make an order under that section requiring or permitting the wares to be exported in an unaltered state.

APPENDIX C

CUSTOMS TARIFF

1. Section 136 of the *Customs Tariff* reads in part: “The importation of goods of tariff item No. 9897.00.00 . . . is prohibited.”
2. Tariff item No. 9897.00.00 of the *Customs Tariff* reads, in part: “Reprints of Canadian copyrighted works and reprints of British copyrighted works that have been copyrighted in Canada.”

APPENDIX D

**NOTICE OF DETENTION OF GOODS TO THE APPLICANT
(COPYRIGHT)**

Date

NAME OF APPLICANT
ADDRESS

This is to inform you that the following goods have been detained pursuant to an order issued by NAME OF COURT (Court file No. _____).

Description of goods:

Location of goods:

Control document number:

In accordance with subsection 44.1(8) of the *Copyright Act*, unless the Minister has been notified within two weeks from the date of your receipt of this notice that you have commenced an action for a final determination by the court as to whether the goods infringe your copyright, and provided that all provisions of any other Acts of Parliament are met, the goods will be released to the importer.

Notification of commencement of an action must be made to the Canada Customs and Revenue Agency office indicated below.

In accordance with subsection 44.1(7) of the *Copyright Act*, you are hereby authorized to inspect the above mentioned goods for the purpose of substantiating your claim.

NAME AND ADDRESS OF REGIONAL CONTACT:

**NOTICE OF DETENTION OF GOODS TO THE IMPORTER
(COPYRIGHT)**

Date

NAME OF IMPORTER
ADDRESS

This is to inform you that the following goods have been detained pursuant to an order issued by NAME OF COURT (Court file No. _____).

Description of goods:

Location of goods:

Control document number:

In accordance with subsection 44.1(8) of the *Copyright Act*, unless the Minister has been notified within two weeks from the date of the applicant's receipt of the notice of detention that the applicant has commenced an action for a final determination by the court as to whether the goods infringe copyright, and provided all other provisions of any other Acts of Parliament are met, the goods will be released to you.

In accordance with subsection 44.1(7) of the *Copyright Act*, you are hereby authorized to inspect the above mentioned goods for the purpose of refuting the applicant's claim.

Any questions on this matter may be directed to the undersigned.

NAME AND ADDRESS OF REGIONAL CONTACT:

APPENDIX E

**NOTICE OF DETENTION OF GOODS TO THE APPLICANT
(TRADE-MARKS)**

Date

NAME OF APPLICANT
ADDRESS

This is to inform you that the following goods have been detained pursuant to an order issued by NAME OF COURT (Court file No. _____).

Description of goods:

Location of goods:

Control document number:

In accordance with subsection 53.1(6) of the *Trade-marks Act*, unless the Minister has been notified within two weeks from the date of your receipt of this notice that you have commenced an action for a final determination by the court of the legality of the importation or distribution of the goods, and provided that all provisions of any other Acts of Parliament are met, the goods will be released to the importer.

Notification of commencement of an action must be made to the Canada Customs and Revenue Agency office indicated below.

In accordance with subsection 53.1(5) of the *Trade-marks Act*, you are hereby authorized to inspect the above mentioned goods for the purpose of substantiating your claim.

NAME AND ADDRESS OF REGIONAL CONTACT:

**NOTICE OF DETENTION OF GOODS TO THE IMPORTER
(TRADE-MARKS)**

Date

NAME OF IMPORTER
ADDRESS

This is to inform you that the following goods have been detained pursuant to an order issued by NAME OF COURT (Court file No. _____).

Description of goods:

Location of goods:

Control document number:

In accordance with subsection 53.1(6) of the *Trade-marks Act*, unless the Minister has been notified within two weeks from the date of the applicant's receipt of the notice of detention that the applicant has commenced an action for a final determination by the court of the legality of the importation or distribution of the goods, and provided all provisions of any other Act of Parliament are met, the goods will be released to you.

In accordance with subsection 53.1(5) of the *Trade-marks Act*, you are hereby authorized to inspect the above mentioned goods for the purpose of refuting the applicant's claim.

Any questions on this matter may be directed to the undersigned.

NAME AND ADDRESS OF REGIONAL CONTACT:

APPENDIX F

**NOTICE OF DETENTION OF GOODS TO THE APPLICANT
(COPYRIGHT AND TRADE-MARKS)**

Date

NAME OF APPLICANT
ADDRESS

This is to inform you that the following goods have been detained pursuant to an order issued by NAME OF COURT (Court file No. _____).

Description of goods:

Location of goods:

Control document number:

In accordance with subsection 44.1(8) of the *Copyright Act* and subsection 53.1(6) of the *Trade-marks Act*, unless the Minister has been notified within two weeks from the date of your receipt of this notice that you have commenced an action for a final determination by the court as to whether the goods infringe your copyright or trade-marks, and provided that all provisions of any other Acts of Parliament are met, the goods will be released to the importer.

Notification of commencement of an action must be made to the Canada Customs and Revenue Agency office indicated below.

In accordance with subsection 44.1(7) of the *Copyright Act* and subsection 53.1(5) of the *Trade-marks Act*, you are hereby authorized to inspect the above mentioned goods for the purpose of substantiating your claim.

NAME AND ADDRESS OF REGIONAL CONTACT:

**NOTICE OF DETENTION OF GOODS TO THE IMPORTER
(COPYRIGHT AND TRADE-MARKS)**

Date

NAME OF IMPORTER
ADDRESS

This is to inform you that the following goods have been detained pursuant to an order issued by NAME OF COURT (Court file No. _____).

Description of goods:

Location of goods:

Control document number:

In accordance with subsection 44.1(8) of the *Copyright Act* and subsection 53.1(6) of the *Trade-marks Act*, unless the Minister has been notified within two weeks from the date of the applicant's receipt of the notice of detention that the applicant has commenced an action for a final determination by the court as to whether the goods infringe copyright or trade-marks, and provided all other provisions of any other Acts of Parliament are met, the goods will be released to you.

In accordance with subsection 44.1(7) of the *Copyright Act* and 53.1(5) of the *Trade-marks Act*, you are hereby authorized to inspect the above mentioned goods for the purpose of refuting the applicant's claim.

Any questions on this matter may be directed to the undersigned.

NAME AND ADDRESS OF REGIONAL CONTACT:

REFERENCES

ISSUING OFFICE –

Interdepartmental Programs, Section B
Admissibility Programs Division
Trade Policy and Interpretation Directorate
Customs Branch

LEGISLATIVE REFERENCES –

Copyright Act, sections 44 to 45
Customs Tariff, section 136 and tariff item No. 9897.00.00
Trade-marks Act, sections 52 to 53.3

HEADQUARTERS FILE –

4581-0, 4581-1, 4581-2, 4581-2-1, 4581-2-2, 4581-5, 4581-5-1, 4581-5-2

SUPERSEDED MEMORANDA “D” –

D9-4-3, May 24, 1996

OTHER REFERENCES –

D4-1-10, D4-1-4, D4-1-5, D4-1-7 and D9-1-2

Services provided by the Canada Customs and Revenue Agency are available in both official languages.

This Memorandum is issued under the authority of the Commissioner of Customs and Revenue.