



Ottawa, June 17, 2008

# MEMORANDUM D19-4-3

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## **In Brief**

### **COPYRIGHT AND TRADEMARKS**

Paragraphs 11 and 34 have been updated to reflect new contact information. In addition, other paragraphs contain minor changes to reflect new terminology.



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Ottawa, June 17, 2008

# MEMORANDUM D19-4-3

## COPYRIGHT AND TRADEMARKS

This memorandum outlines and explains the legislation governing the role of the Canada Border Services Agency (CBSA) in dealing with counterfeit trademark goods or pirated copyright goods.

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### LEGISLATION

The applicable sections of the *Copyright Act*, the *Trade-marks Act* and the *Customs Tariff* are provided in appendices A, B and C.

### GUIDELINES AND GENERAL INFORMATION

#### Intellectual Property

1. Intellectual property 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) that can be protected through a copyright, trademark, patent, etc.

#### What is an Intellectual Property Right?

2. An intellectual property right (IPR) is the right of the intellectual property owner to produce and distribute his or her products. The IPR holder may allow someone else the use of this right. For example, an author may give a publisher the right to produce and sell his or her book.

3. The following key terms are used in this memorandum (source: Canadian Intellectual Property Office):

(a) Trademarks — words, symbols and designs (or a combination of these) that are used to distinguish the goods and services of one person or organization from those of others (e.g. a logo).

(b) Copyright — protects literary, artistic, dramatic or musical works (including computer programs).

(c) Performer's and producer's rights (also known as neighbouring rights) — the rights of performers and sound recording producers to be remunerated when their performances and sound recordings are performed publicly or broadcast.

4. For example, the writer of a song owns the copyright to the song; the performer(s) of the song own(s) the rights to the performance.

#### 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 trademark without the authorization of the rights holder to a watch that is not manufactured by the company that holds the trademark;

(b) manufacturing a doll or toy that represents a popular television, movie or comic book character without the authorization of the rights holder; or

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

#### Legislation and International Agreements

6. IPR holders worldwide have asked their respective governments for assistance in protecting their IPRs from infringement. In Canada, there is legislation that protects their rights: the *Copyright Act*, the *Industrial Design Act*, the *Integrated Circuit Topography Act*, the *Patent Act*, the *Plant Breeders' Rights Act* and the *Trade-marks Act*. All of

these acts, with the exception of the *Plant Breeders' Rights Act* that 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, Canada has agreed to establish procedures at the border to assist IPR holders in protecting their rights in two areas: copyright and trademarks. With the exception of a possibility of a court order issued under the *Integrated Circuit Topography Act*, the Canada Border Services Agency (CBSA) plays a role **only** with respect to **copyright or trademark goods**; it does not act upon any other IPR infringements such as patents or industrial designs.

8. An IPR is a private right and the actions of the CBSA in dealing with copyright or trademark-infringing goods are initiated only by a private rights holder who begins action through the courts. Although court orders generally apply only to commercial shipments, orders could be directed towards personal importations. A special provision for books is addressed in paragraphs 29 to 32.

#### Application to Court

9. In accordance with the *Copyright Act* and the *Trade-marks Act*, the owner of a registered trademark, 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 Public Safety 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 Public Safety to notify the applicant and the importer if goods are detained and the reason(s) why (see paragraph 20).

#### Notice to the Minister

11. The application for the order may be made *ex parte* (i.e. the applicant applies for the order in court without the presence of the other party, normally the importer), **but all applications must be made on notice to the Minister of Public Safety**. Although not required by law, the applicant generally forwards a copy of the draft court order to the CBSA so that officials can make suggestions about its content. The notification will be accepted on behalf of the Minister by the Manager of the Environment and Trade Unit. Notices should be sent by the applicant or his or her representative to the following address:

Manager, Environment and Trade Unit  
Partnerships Division  
Admissibility Branch  
Canada Border Services Agency  
150 Isabella Street, 5th floor

Ottawa, ON K1A 0L8  
Fax: 613-946-1520

Any inquiries concerning the order may be made by telephone at 613-957-6868.

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

13. If books are the subject of a court order, the CBSA will advise both the applicant and the court about the *Book Importation Regulations* so that the order is only applied to new books. In this way, border enforcement action on IPRs does not become a barrier to trade for "used" or "other than new" books.

14. The notice may be served to the Minister by fax, registered mail or messenger.

#### Presentation of the Court Order

15. When an order is obtained by the applicant, he or she should submit a copy to the Environment and Trade Unit (see paragraph 11). Similarly, if an order is received directly from the applicant at a CBSA regional office, it must be forwarded immediately to the same unit.

16. Requests for information are to be directed the Environment and Trade Unit (see paragraph 11).

17. The Environment and Trade Unit will immediately acknowledge receipt of the order to the applicant.

#### Information Reasonably Required

18. To help the CBSA detect shipments of goods under an order, it may require some or all of the following information to be provided by the applicant:

- (a) a complete description of the goods;
- (b) the classification of the goods under the Harmonized System;
- (c) the quantity and value of the goods;
- (d) the identity of the importer, e.g. name, address (location), business number;
- (e) the identity of the exporter and vendor;
- (f) the country of export;
- (g) the country of origin;
- (h) the place of importation or release;
- (i) the approximate date of arrival;
- (j) the mode of transportation (e.g. sea, rail, land); and
- (k) the notification procedure for the applicant in the event the goods are detected (e.g. letter, fax).

## Distribution of the Order

19. The distribution of the order is as follows:

- (a) The Environment and Trade Unit will deliver information taken from the order to the CBSA's National Risk Assessment Centre.
- (b) The National Risk Assessment Centre will then input a target and/or lookout into the Accelerated Commercial Release Operations Support System (ACROSS) that identifies 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 his or her region so that all CBSA offices are aware of the subject goods and the procedures to be followed.
- (d) Officials in the Environment and Trade Unit will forward a paper copy of the order to any CBSA office upon request.

## Notification Procedures

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

- (a) When goods have been detained under the order, the CBSA will immediately notify both the applicant and the importer using one of the formats found in appendices D, E or F. The sample notice in Appendix D is used for a court order obtained under the *Copyright Act*, in Appendix E for a court order obtained under the *Trade-marks Act* and in Appendix F for a court order obtained under both the *Copyright Act* and the *Trade-marks Act*.
- (b) Each region will determine whether the notification and follow-up are to be done in the office where the goods are detained or whether the CBSA 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 because the applicant has two weeks from this date to notify the CBSA office that issued the notification whether he or she will undertake further action (see paragraph 22).
- (d) The Environment and Trade Unit (see 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 the CBSA's control**, the importer or the applicant will normally inspect the goods where they are being held by the CBSA. 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 CBSA, arrangements can be made to have the goods moved to a more convenient CBSA 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 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 or she 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 CBSA office that issued the notice of detention of goods. This office should forward a copy of the applicant's intent to the Environment and Trade Unit (see paragraph 11). This is important because the Unit needs to be aware of the court action so that it 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 Begin Further Action

23. The statutory two-week period (or other period as may be specified in the court order) will be closely monitored by the CBSA office where the notice of detention of goods was issued. If the applicant has not notified that office that further court action will begin, normal importation procedures leading to the release of the goods will continue without further notice to the applicant. The Environment and Trade Unit (see 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 CBSA office concerned that an action is being undertaken in the court, the goods will be detained until the court issues a final judgment concerning the disposition of the goods or until the action is withdrawn. The CBSA 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 CBSA office, highway frontier examining warehouse, sufferance warehouse or bonded warehouse can be found in 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 CBSA 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, border services officers 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, the Environment and Trade Unit will contact CBSA Legal Services for instruction **prior** to the disposal of the goods. The Unit should forward all court orders to the appropriate CBSA office. If the order is sent directly from the court to the CBSA office, then the Unit should be contacted (see paragraph 11). Trademark-infringing goods **should not** be exported with the infringing trademark intact.

28. Any questions regarding the disposition of detained goods under this legislation should be directed to the Environment and Trade Unit (see 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 CBSA 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 CBSA in writing that he or she wishes to prevent the importation of the 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 copyright owner of a book may, however, choose to obtain a court order in which case all of the procedures dealing with court orders set out above would apply.

#### **Penalties**

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

#### **ADDITIONAL INFORMATION**

34. The CBSA's Border Information Service (BIS) line responds to public inquiries related to import requirements of other government departments, including Industry Canada. You can access BIS toll-free throughout Canada by calling **1-800-461-9999**. If you are calling from outside Canada, you can access BIS by calling 204-983-3500 or 506-636-5064 (long-distance charges will apply). To speak directly to an agent, please call during regular business hours from Monday to Friday (except holidays), 8 a.m. to 4 p.m. local time. More BIS information can be found on the CBSA's Web site at [www.cbsa.gc.ca](http://www.cbsa.gc.ca).

## APPENDIX A

### EXCERPTS FROM THE *COPYRIGHT ACT*

#### 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 Border Services 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 Public Safety and Emergency Preparedness;

“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) Subsections (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****EXCERPTS FROM THE TRADE-MARKS ACT****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 Public Safety and Emergency Preparedness;

“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**

**EXCERPTS FROM THE *CUSTOMS TARIFF***

Section 136 of the *Customs Tariff*:

“The importation of goods of tariff item No. 9897.00.00...is prohibited.”

Under tariff item No. 9897.00.00 in the schedule to the *Customs Tariff*:

“Reprints of Canadian copyrighted works and reprints of British copyrighted works that have been copyrighted in Canada.”

**APPENDIX D**

**NOTICES OF DETENTION (COPYRIGHT)**

**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 the [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 of Public Safety 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 Border Services 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 the [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 of Public Safety 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 that all 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 following Canada Border Services Agency office:

[NAME AND ADDRESS OF REGIONAL CONTACT]

**APPENDIX E**

**NOTICES OF DETENTION (TRADEMARKS)**

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

[DATE]

[NAME OF APPLICANT]

[ADDRESS]

This is to inform you that the following goods have been detained pursuant to an order issued by the [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 of Public Safety 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 Border Services 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  
(TRADEMARKS)

[DATE]

[NAME OF IMPORTER]

[ADDRESS]

This is to inform you that the following goods have been detained pursuant to an order issued by the [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 of Public Safety 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 that all provisions of any other acts 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 following Canada Border Services Agency office:

[NAME AND ADDRESS OF REGIONAL CONTACT]

**APPENDIX F**

**NOTICES OF DETENTION (COPYRIGHT AND TRADEMARKS)**

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

[DATE]

[NAME OF APPLICANT]

[ADDRESS]

This is to inform you that the following goods have been detained pursuant to an order issued by the [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 of Public Safety 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 trademarks, 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 Border Services 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 the [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 of Public Safety 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 his or her copyright or trademarks, and provided that all 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 following Canada Border Services Agency office:

[NAME AND ADDRESS OF REGIONAL CONTACT]

**REFERENCES**

<p><b>ISSUING OFFICE –</b></p> <p>Environment and Trade Unit Partnerships Division Admissibility Branch</p>	<p><b>HEADQUARTERS FILE –</b></p> <p>4581-0, 4581-1, 4581-2, 4581-2-1, 4581-2-2, 4581-5, 4581-5-1, 4581-5-2</p>
<p><b>LEGISLATIVE REFERENCES –</b></p> <p><i>Copyright Act</i> <i>Customs Tariff</i> <i>Trade-marks Act</i></p>	<p><b>OTHER REFERENCES –</b></p> <p>D4-1-4, D4-1-5, D4-1-7 and D9-1-2</p>
<p><b>SUPERSEDED MEMORANDA “D” –</b></p> <p>D9-4-3, dated May 19, 2000</p>	

Services provided by the Canada Border Services Agency are available in both official languages.

