



**BEFORE  
U.S. CUSTOMS AND BORDER PROTECTION**

**Enforcement of Copyrights and the Digital  
Millennium Copyright Act**

**USCBP–2019–0037**

**COMMENTS OF THE COPYRIGHT ALLIANCE**

The Copyright Alliance appreciates the opportunity to submit the following comments in response to the [Notice of Proposed Rulemaking](#) (NPRM) published by the U.S. Customs and Border Protection (CBP) in the Federal Register on October 16, 2019, regarding a proposal to amend CBP regulations “pertaining to importations of merchandise that violate or are suspected of violating the copyright laws, including the Digital Millennium Copyright Act (DMCA).”

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.

Section 133.42 - Piratical Articles; Unlawful Copies or Phonorecords of Recorded Copyrighted Works

Section 133.42(a) amends the definition of “piratical articles” in a way that seems to limit enforcement to copyrights recorded with CBP.<sup>1</sup> Currently, CBP already enforces copyrights at the border—for example, in response to specific reports of infringement—as long as the work is registered with the U.S. Copyright Office. The proposed definition seems unnecessarily narrow, and would seem to exclude works not recorded with CBP (and may unduly limit the enforcement efforts of CBP).

Under section 133.42(b)(4), CBP may disclose certain information to the copyright owner about piratical shipments, including the date of importation, port of entry, description of the merchandise, quantity, and the country of origin. In order to further assist rightsholders in identifying infringer/counterfeiter rings and trace the origin of the infringing goods, it would be beneficial to add information regarding the origin of the shipment, including the sender and owner of the merchandise, and its destination to the list delineated in 133.42(b)(4).

Section 133.47 - Articles Suspected of Violating the Digital Millennium Copyright Act

Section 1201 of Title 17 of the U.S. Code protects technological protection measures (TPMs) used in connection with the dissemination of copyrighted works. Since it was enacted in 1998, it has contributed to an explosion of creativity and innovation. Consumers today have a wealth of ways to access and enjoy all sorts of copyrighted works, and creators have many new platforms to reach their audiences. Section 1201 advances two interrelated goals: (1) minimizing risks associated with infringement in a digital environment and (2) promoting the development of legitimate distribution platforms and technologies and encouraging broad digital distribution of high-value content.

In order to effectuate those goals, Section 1201(a)(2) protects against circumvention of TPMs that effectively control access to a work protected under title 17,<sup>2</sup> while 1201(b) protects

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<sup>1</sup> Enforcement of Copyrights and the Digital Millennium Copyright Act, 84 Fed. Reg. 55,251, 55,253 (Oct. 16, 2019) (to be codified at 19 CFR Pt. 113, 133, 148, 151 and 177), <https://www.govinfo.gov/content/pkg/FR-2019-10-16/pdf/2019-21980.pdf>.

<sup>2</sup> 17 U.S.C. 1201(a)(3)(B).

against circumvention of TPMs that effectively protect a right of a copyright owner.<sup>3</sup> As Congress explained, “the two sections are not interchangeable, and many devices will be subject to challenge only under one of the subsections.” For example, “an effective technological protection measure [that] does nothing to prevent access to the plain text of the work, but is designed to prevent that work from being copied” would constitute the kind of TPM protected in 1201(b), while “an effective technological protection measure [that] limits access to the plain text of a work only to those with authorized access, but provides no additional protection against copying, displaying, performing or distributing the work” would constitute the sort of TPM protected by 1201(a)(2).<sup>4</sup>

While the NPRM acknowledges protection against circumvention of both kinds of TPMs,<sup>5</sup> section 133.47 of the proposed rule omits those measures that effectively protect a right of a copyright owner from its definition of “Copyright protection measure.”<sup>6</sup> We suggest revising the definition as follows:

“(1) Copyright protection measure. A technological measure that effectively controls access to, *or effectively protects a right of a copyright owner in*, a copyrighted work for which the copyright has been recorded with CBP.”

We thank you for the opportunity to submit these comments, and for the CBP’s dedication to border enforcement of U.S. copyright law. Please let us know if we can provide any additional input.

Respectfully submitted,

Keith Kupferschmid  
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<sup>3</sup> 17 U.S.C. 1201(b)(2)(B)

<sup>4</sup> S. REP. NO. 105-190, at 12 (1998).

<sup>5</sup> Enforcement of Copyrights and the DMCA, 84 Fed. Reg. at 55,255.

<sup>6</sup> *Id.* at 55,262-63.