

S.I. 2004 No.

Copyright Act
Cap. 300

**COPYRIGHT (PROHIBITED IMPORTS)
REGULATIONS, 2004**

The Minister in exercise of the powers conferred on him by section 148 of the *Copyright Act*, makes the following Regulations:

1. These Regulations may be cited as the *Copyright (Prohibited Imports) Regulations, 2004*. Citation.

2. For the purposes of these Regulations,

Interpreta-
tion.

"applicant" means the person who gives a notice to the Comptroller of Customs in accordance with regulation 3;

"Comptroller" means the Comptroller of Customs;

"copies" means copies of any work in respect of which the applicant has given a notice.

3. The notice to be given, pursuant to section 49 of the Act, to the Comptroller by the applicant, in respect of

Notice of
importation
of infringing
copies.

(a) any published literary, dramatic or musical work; or

(b) a sound recording or film,

shall be in *Form 1* set out in the *Schedule*.

Form 1.
Schedule.

Conditions
for
acceptance
of notice.

4. (1) A person shall at the time of giving a notice referred to in regulation 3,

- (a) furnish to the Comptroller
 - (i) information that establishes the ownership of the copyright in the work in respect of which the copies are being imported, as belonging to the person giving the notice;
 - (ii) a detailed description of the work in which the copyright, belonging to the person giving the notice, is claimed to subsist;
 - (iii) a copy of the work to which the notice refers;
 - (iv) the following information if it is within the knowledge or reasonable belief of the owner:
 - (A) a description of the infringing copies expected to be imported into the Island;
 - (B) the place of manufacture;
 - (C) port of shipment or trans-shipment of the infringing copies;
 - (D) the name of the vessel or aircraft used in the shipment or trans-shipment of the infringing copies; and
 - (E) any other details respecting the shipment;

- (b) as a means of providing security in respect of any liability or expense which the Comptroller may incur for anything done as a consequence of a notice, enter into a bond in a form approved by the Comptroller for an amount as is determined by the Comptroller in respect of each consignment of the infringing copies imported during the period when the notice is valid;
- (c) enter into an undertaking, in *Form 2* as set out in the *Schedule*, to indemnify the Comptroller against any liability suffered or expense incurred in consequence of the notice by reason of the detention of any article or anything done to an article detained by the Comptroller.

Form 2.
Schedule.

(2) A notice shall be of no effect unless the Comptroller has accepted the notice and has notified the applicant in *Form 3* as set out in the *Schedule* of its acceptance.

Form 3.
Schedule.

5. The Comptroller shall not treat the notice as applying to an article sought to be treated as a copy unless the article matches the description provided by the applicant, of work in respect of which he claims ownership of the copyright or he otherwise satisfies the Comptroller that the article is an infringing copy.

Notice valid only in respect of work described.

6. (1) Where the measures taken by the Comptroller are such that the security provided by the applicant becomes insufficient, the Comptroller may request that the owner provides further security in an amount that would satisfy the circumstances of the case.

Requirement for further security.

(2) Where the security provided by the owner of copyright is insufficient and the owner fails to make good the insufficiency, such amount along with any costs incurred in recovering the amount shall be a debt owing to the Crown and is recoverable by the Crown.

Termination
of notice.

7. A notice referred to in regulation 3

- (a) may be terminated upon the request, in writing, by the applicant to the Comptroller;
- (b) shall be terminated by the Comptroller where
 - (i) the Comptroller has reasonable grounds for believing that the person who has given the notice is not the owner of the copyright in the work in relation to which the notice was given;
 - (ii) the applicant has failed to comply with a request by the Comptroller, for further security; and
 - (iii) the Comptroller is satisfied that the circumstances do not justify the continuation of the notice.

Notice of
detention.

8. (1) Where the Comptroller detains any copies pursuant to section 49 of the Act he shall, within 10 working days of the detention, give notice in writing of the detention to the applicant in *Form 4* and to the importer of the copies in *Form 5* as set out in the *Schedule*.

Forms 4
and 5.
Schedule.

- (2) The notice shall
 - (a) have annexed to it, a copy of the invoice concerning the shipment;
 - (b) inform the applicant and the importer of
 - (i) the grant of permission to inspect the goods and to take a sample of the goods, and
 - (ii) the time and place when the inspection can be done and the sample taken.

(3) The notice to the applicant shall contain in addition to the information referred to in paragraph 2, a statement that the goods detained shall be released unless the applicant informs the Comptroller in *Form 6* as set out in the *Schedule*, within a period of 10 working days from the date of the receipt of the notice, that an action was commenced to determine whether the goods are infringing copies and also informing him of any other merits of the case.

Form 6.
Schedule.

(4) Notwithstanding paragraph 3 the Comptroller, where he is satisfied that circumstances justify an extension of the period referred to in that paragraph, may grant a further period, not exceeding 10 working days, by which he must be informed of the commencement of an action.

9. The Comptroller shall release any copies detained to the importer where

Release of
copies
detained.

- (a) the applicant fails to inform him of the commencement of an action in accordance with section 8(3);
- (b) the court has made an order for the release of the copies;
- (c) the Comptroller has been informed, in writing, by the person who gave the notice, that he is withdrawing the notice and will not be pursuing an action respecting the importation of the copies.

10. Where, in an action respecting the importation of the copies that are the subject of a notice referred to in regulation 3,

Determina-
tion of
action.

- (a) judgment is given in favour of the applicant, the High Court
 - (i) shall order the forfeiture of the copies in accordance with the *Customs Act*;
 - (ii) may by order direct the Comptroller to disclose to the applicant the name of any consignor and consignee of the copies;

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- (b) judgment is given in favour of the importer, the High Court may order
 - (i) the delivery of the detained copies to the importer, and
 - (ii) the payment of such compensation to the importer by the applicant, as the court considers reasonable in the circumstances, for any injury caused through the wrongful detention of the copies.

SCHEDULE

FORMS

*FORM 1

(Regulation 3)

1. I,
Full name of owner in block letters

of
address of Owner of Copyright

.....
.....

give notice that I am the owner of the copyright in the work specified below which subsists under the *Copyright Act, 1998-4* and that infringing copies of the work are expected to be imported into Barbados and I request that these copies be treated as prohibited goods for the period commencing on the date of importation and ending on the day of , 200 .

2. Particulars of Work

Title:
.....

Label, marking or statement borne by work:
.....

Date copyright expires:

3. Expected arrival in Barbados

Form 1 (Concl'd)

Date

Place

4. Details of expected importation

(a) Place of customs declaration

(b) Place of unloading

(c) Country of origin

(d) Country from which goods consigned

(e) Bill of lading / airway bill / consignment reference number
.....

(f) Name of ship / aircraft flight number

(g) Name and address of importer

(h) Tariff classification

I declare that the information given by me in this notice is true.

.....
Signature of Applicant

.....
Date

** To be completed in block letters*

FORM 2

(Regulation 4(1)(c))

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Indemnity against liability

To: The Comptroller of Customs

WHEREAS on the day of I requested that copies infringing my copyright in certain works be treated as prohibited goods under the *Customs Act* upon the condition that I would discharge any liabilities connected with the detention of such goods.

NOW I hereby undertake that I will at all times hereafter well and sufficiently indemnify you and keep you indemnified against the payment of any amounts payable in respect of the said detention and against all liability in respect thereof and against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against you or incurred or become payable by you in respect thereof.

Dated the day of

.....
Signature

FORM 3

(Regulation 4(2))

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Notice of Acceptance

To: The Applicant

TAKE NOTICE that pursuant to the Notice given under section 49 of the *Copyright Act*, your request to treat infringing copies of work in which you are the owner of the subsisting copyright as prohibited goods under the *Customs Act*, is granted.

Dated the day of

The Comptroller of Customs

FORM 4

(Regulation 8(1))

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Notice of detention of Infringing Copies

To:
(applicant)

of

Re:

Further to the Notice of Importation dated:

NOTICE is hereby given that the copies specified in the above-mentioned Notice have been detained pursuant to section 49 of the *Copyright Act, 1998*.

Take Notice that this notice will be given to the importer of the copies.

TAKE FURTHER NOTICE

(a) that you may attend at
.....
on the day of,
20 at to inspect the
goods and to take a sample of the goods;

(b) that the said copies shall be released to the importer unless a notice is given by you within a period not exceeding 2 weeks from the date of this notice that proceedings respecting the merits of this matter have been commenced by you.

The Comptroller of Customs

FORM 5

(Regulation 8(1))

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Notice of detention of Infringing Copies

To:
(applicant)

of

Re:

Further to the Notice of Importation dated:

NOTICE is hereby given that the copies specified in the above-mentioned Notice have been detained pursuant to section 49 of the *Copyright Act, 1998*.

TAKE FURTHER NOTICE

(a) that you may attend at
.....
on the day of,
20 at to inspect the
goods and to take a sample of the goods.

The Comptroller of Customs

FORM 6

(Regulation 8(3))

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Notice of Action for Infringement

To: The Comptroller of Customs

Re:

Further to the Notice of Importation dated:

**I/We

of

being the owner of the copies detained pursuant to section 49 of the Act, hereby give notice that an action was commenced in the High Court with respect to the infringement of copyright in the work to which the above-mentioned Notice relates. The merits of the case are set out below:

Signature

Date

Made by the Minister this day of ,
2004.

Minister responsible for Copyright