

Kingdom of Morocco

Rabat, May 29, 2007

Circular No. 5051/410

Re: Copyright and neighboring rights

- Border measures to combat counterfeiting and piracy

Cf: Law No. 2.00 of February 15, 2000 on Copyright and Related Rights, as amended and completed by Law No. 34.05 of February 14, 2006 [BO No. 5397 of February 20, 2006]

Under Law No. 34-05, amendments were made to Law No. 2.00 of February 15, 2000 on Copyright and Neighboring Rights concerning, *inter alia*, the role of the Department of Customs and Indirect Taxation, as provided for in the fourth part [articles 61.1 to 61.7] relating to border measures.

These provisions empower the Department of Customs and Indirect Taxation to suspend, at borders, the free circulation of merchandise suspected of being counterfeit or pirated, as defined by legislation on copyright and neighboring rights.

With regard to the specific nature of copyright and neighboring rights, procedures for the application of border measures were coordinated with the Moroccan Copyright Office (BMDA) with a view to working out specific guidelines in this respect.

As with the procedures adopted in the field of industrial property, border measures concerning imports, exports and transit operations may be applied:

- at the written request of the holder of a copyright or neighboring right or his authorized representative or by BMDA, pursuant to Article 60 of the said Law, or;
- at the initiative of the Department.

The purpose of this circular is to re-examine the legal and regulatory framework for action by the Department at borders and to provide a road map for such action.

It is hereby stipulated that, subject to the specific characteristics listed below, the procedures for application are identical to those provided for industrial property in Circular No. 4994/410 of March 10, 2006.

1- Purpose of border measures concerning copyright and neighboring rights

Border measures in the field of copyright or neighboring rights concern literary or artistic works when they are imported, exported or in transit in a physical medium such as a book, document, cassette, CD, VCD, DVD or painting.

A work is considered to be any literary or artistic creation as defined by Article 3 of the said Law, which may for example be in the form of writings, computer programs, audiovisual musical works, works of fine art, architecture, photography or applied arts, or drawings of creations from the clothing industry.

As far as neighboring rights are concerned, they refer to intellectual property rights other than copyright which benefit performers, producers of phonograms, broadcasting organizations and publishers, and are covered by this legislation. Some examples are the rights which performers have in their performances, the rights which producers have in their audio recordings and the rights which broadcasting organizations have in their radio and TV broadcasts.

The author of a work is the person who creates it; he is the owner of the work, and is free to decide on its use and control the fate of this work. This person is called the "creator" or "author" or "rights holder".

The counterfeit or pirated merchandise generally consists of copies made without the consent of the rights holder or a person duly authorized by the rights holder in the country of production, which are made directly or indirectly from an article in cases where the making of these copies would have constituted an infringement of copyright [or a neighboring right].

Unlike the field of industrial property, where protection of the right depends on the registration of the mark, copyright and neighboring rights in a literary or artistic work are protected from the time of creation of the work until the expiry of a term ranging, according to the situation, from 50 to 70 years, it being understood that according to the provisions of the above Law, the rights in a work shall be protected during the life of the author and 70 years after his death.

Measures to suspend the free circulation of counterfeit or pirated merchandise are taken in accordance with the following arrangements:

2- Procedure for submission of a request

A request may be submitted to the Central Department by either the copyright holder or his authorized representative or by BMDA. A preliminary examination of the file is made by the Central Department in cooperation with BMDA.

The request is made using a model specially designed for this purpose (see annex 1) which contains information on the applicant and elements making it possible to identify the counterfeit or pirated merchandise.

The applicant must produce the following in support of the request:

- Proof of his status as holder of a right or neighboring right, by means of a certificate issued by BMDA; certificates issued by foreign copyright associations or offices must be validated by BMDA;
- Any document making it possible to identify the merchandise which is the subject of counterfeiting or piracy as well as any useful information enabling the Department to decide in full knowledge of the facts if the request is admissible;
- A specific warrant duly drawn up in case the request is deposited by an authorized representative of the rights holder, it being understood that BMDA, as it is empowered by the law, does not need to produce such a supporting document;
- The statutes of the company or the minutes of the general assembly;
- The commitment, drawn up in accordance with the model attached in Annex 2, to:
 - provide to the Department of Customs, within 10 working days from the date of notification of the measure suspending the free circulation of the merchandise suspected of being counterfeit or pirated;
 - a copy of the ordinance handed down by the President of the court which decides on interim measures concerning the merchandise in question, or;
 - a copy of a document certifying that the matter has been referred to the competent court, with proof that the security required by the said court has been provided;
 - communicate the decisions of the judicial authority which is ruling on the counterfeiting or piracy or any other decision relating to the settlement of the case, in particular the signing of a contract for use, the reaching of an understanding or an amicable arrangement.

Requests for suspension shall only be valid for one year.

Requests for suspension must be backed by a certificate issued by BMDA certifying the copyright or neighboring right and the name and status of the holder of such right.

With regard to copyright held at the international level, the said certificate must come from a foreign copyright society and shall be submitted to BMDA for validation.

In this respect, it is stipulated that BMDA, acting as the body for the collective management of copyright and neighboring rights pursuant to Article 60 of the foregoing Law 2.00, is not required to prove its status as an authorized representative.

The point should be made that the Administration may request the help of the Copyright Office, both in connection with the investigation of the requests for suspension and once the suspension measures have been applied by the operational customs units.

3- Preliminary examination of requests for suspension

The Department shall, together with BMDA, make a preliminary examination of the file and inform the applicant within 30 days of any action taken in response to the request.

With a view to the preliminary examination of the file, the Administration may require the applicant to produce any additional information or documents deemed necessary.

If the request meets the required conditions, the Central Department shall inform the interested party by mail that his request is admissible. The applicant shall then forward the file to the designated customs office(s) so as to enable it (them) to suspend the free circulation of the merchandise suspected of being counterfeit or pirated.

In the event that the request is rejected, the interested party shall be informed by mail of this decision and of the grounds for rejection, within 30 days from the date of submission of the request.

4- Application of a suspension measure

A suspension measure shall be applied by the customs bureau concerned as the merchandise suspected of being counterfeit or pirated is being cleared through customs, during documentary control or at the physical verification stage.

If the customs check confirms the suspicion of the counterfeiting or piracy of the goods which are the subject of a request, the customs service shall suspend the free circulation and the applicant shall immediately be informed by mail of this decision (cf. model, Annex 3), with acknowledgement of receipt.

The declarant or the holder of the merchandise shall also be informed of this measure subject to the same conditions (see Annex 4).

The customs service shall forward to the applicant, on the basis of his written request, information concerning the names and addresses of the importer, the sender, the consignee or the owner of the merchandise, as well as the quantity of the said merchandise, to enable him to institute legal proceedings (interim measures or a lawsuit).

BMDA shall be informed along with the holder of the mark or his authorized representative of steps taken and proceedings instituted. It shall also receive the information provided for in the above-mentioned circular.

For this purpose, in case of suspension, the Department shall contact BMDA directly, as headquartered in Rabat at 6, rue Mohamed Jazouli, by all available means (telephone, fax, e-mail, etc.).

5- Follow-up to suspension measures

In accordance with the provisions of Article 61.2 of Law 2.00, the applicant must justify, to the service that has applied the suspension of the free circulation of the merchandise suspected of being counterfeit or pirated, within 10 working days from the date of notification of the measure taken, either the interim measures ordered by the President of the competent court or the lawsuit brought, and provide proof that he has provided the securities fixed by the court.

The constitution of such security is designed to cover the possible liability of the applicant in the event that the counterfeiting or piracy is not subsequently recognized as such.

Failing the presentation, within the term set, of the said justification, the suspension measure shall be lifted *ipso jure* and the Department of Customs shall inform the applicant and restore the goods in accordance with the regulations.

The suspension measure shall also be lifted at the request of the applicant in the event that the applicant is able to produce, within 10 days, any elements calling into question the foregoing measure (signing of a contract for use, reaching of an understanding or an amicable settlement).

If the merchandise is recognized, by a final judicial decision, as counterfeit or pirated goods, the court shall order their destruction or, exceptionally, another measure.

In the event that the final judicial decision does not confirm the counterfeiting or piracy, the suspension measure shall be lifted and the customs service shall restore the merchandise, in accordance with the regulations.

6- Final provisions

The Department shall not be held responsible if the suspension measure has been introduced in conformity with legal and regulatory provisions.

For this purpose, the attention of the service is hereby drawn to the importance of respecting the time limits laid down in view of the issue of the infringement of the right of the importer or the holder of the copyright or neighboring rights.

Notwithstanding, the applicant may be held responsible for the harm caused to the owner of the merchandise in the event that such merchandise is not recognized as counterfeit or pirated. In this case, the court may order compensation for the damages suffered by the owner of the merchandise.

The suspension measure shall not apply to merchandise which is not of a commercial nature, contained in travelers' personal baggage, in small quantities, or sent in small packages for personal and private use.

Lastly, with regard to judicial action, it is hereby stipulated that, under the Copyright and Neighboring Rights Law, counterfeiting and piracy are criminal offenses and that unlike industrial property, litigation involving copyright and neighboring rights is brought before criminal courts.

Any difficulties in applying these measures shall be reported to the Central Department, using the seal of this circular.

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The Director for Prevention and Disputes

Khadija CHAMI

Annex 1

REQUEST FOR THE SUSPENSION OF THE FREE CIRCULATION OF MERCHANDISE SUSPECTED OF BEING COUNTERFEIT OR PIRATED

- For the first time
- Renewal

Information concerning the applicant:

- Holder of a copyright or neighboring right
- Authorized representative
- Moroccan Copyright Office (BMDA)

The undersigned:¹

Company name:

Address or company headquarters:

Land line:

GSM:

E-mail:

Name or company name of the authorized representative:

Powers of the authorized representative:²

Name and contact details of the correspondent in Morocco:

Other contact person:

(Name, address, land line, fax, cellphone, e-mail, etc.):

Information concerning the protected material:

- Title:

- Type (medium of the material):

- Authorization No.:

- Authorization date:

- Nature of the material:

- Rights holder:

- Deadline for the exclusive right of exploitation:²

As appropriate, other documents to be attached to the request:

Requests that the Department of Customs and Indirect Taxation, pursuant to the provisions of Part Four of Law 2.00 on Copyright and Neighboring Rights, as amended and completed by Law No. 34.05, apply the measure suspending the free circulation of the merchandise designated below:

¹ First name, surname, and position in the company

² Attach supporting document

Information on the merchandise suspected of being counterfeit or pirated:

- Nature of the merchandise:
- Commercial designation:
- Origin:³
- From:³
- Distinctive elements making it possible to identify the merchandise suspected of being counterfeit or pirated:⁴
- Country of production:³
- Name and address of manufacturer:³
- Other useful information:³
- Quantity

Attachments:

- Undertaking:
- Other documents:

Done at

(Stamp and signature)

³ If such information is available.

⁴ Attach documents, such as catalogs, photos, brochures.

Annex 2

UNDERTAKING

I, the undersigned (first name and surname),
(position), hereby declare, pursuant to the provisions of Law
No. 2.00 on Copyright and Neighboring Rights, as amended and completed by Law
No. 34.05, that I undertake to:

1. justify to the service which has suspended the free circulation of merchandise
suspected of being counterfeit or pirated, within 10 working days from the
date of notification of the measure taken, failing which the merchandise shall
be released *ipso jure*:
 - the interim measures taken, through the presentation of a copy of the
ordinance handed down by the President of the competent court, or;
 - application to a competent court, through the presentation of a
document certifying that judicial proceedings have been brought and
that the security required by the said court has been provided.

If the above-mentioned proof is not provided within the term set, the Administration
shall be obliged to lift the measure suspending the free circulation of the
merchandise in question.

2. forward to the customs service that has suspended the free circulation of the
merchandise suspected of being counterfeit or pirated the decisions of the
judicial authority ruling on the counterfeiting or piracy of the said merchandise
upon its notification thereof;
3. assume responsibility for the application of the suspension measure;
4. take the necessary steps to allow the enforcement of the court decision
ordering the destruction of the counterfeit or pirated merchandise;
5. cover the cost of such destruction and other costs inherent in the suspension
measure in the event that the courts do not require that they be paid by the
owner of the merchandise or his beneficiary;
6. report to the Department of Customs and Indirect Taxation any change in the
reasons underlying the requests, in particular the loss of the applicant's right as
well as any other decision relating to the settlement of the case.

Done at , on

Signature (certified)

Annex 3

To

Mr.

.....

Re: Protection of copyright and neighboring rights:
Border measures. Suspension of the free circulation
of merchandise suspected of being counterfeit or pirated.

Cf: Your request of

Dear Sir,
Dear Madam,

In accordance with your request mentioned above and pursuant to the application
of Articles 61.1 and 61.2 of Law 2.00 on Copyright and Neighboring Rights, I have the
honor of informing you that on the unit of the customs service
suspended the free circulation of merchandise consisting of
..... and suspected of being counterfeit or pirated.

It is therefore incumbent upon you to provide the customs service with the following
supporting documents by..... (deadline):

- the court decision ordering the interim measures applicable to the
merchandise affected by the suspension of free circulation; or
- a document approved by the competent court certifying that judicial
proceedings have been brought and that the security required by the
court has been provided, to cover any possible liability on your part in the
event that the counterfeiting or piracy is not subsequently recognized.

If the above supporting documents are not provided within the term set, the
Department shall be obliged to lift the suspension measure in question.

Yours sincerely

Annex 4

TO

Mr.
.....

Re: Protection of copyright and neighboring rights:
Border measures. Suspension of the free circulation of
merchandise suspected of being counterfeit or pirated.

Dear Sir,
Dear Madam,

Pursuant to the provisions of Articles 61.1 and 61.4 of Law No. 2.00 on Copyright and Neighboring Rights, I have the honor of informing you that on the unit of the customs service suspended the free circulation of the merchandise covered by the DUM, which is suspected of being counterfeit or pirated.

The rights holder,, was informed so that he could take action in accordance with the provisions of the above-mentioned Law and provide the customs service with the necessary supporting documents within 10 working days from the date of notification of this document.

It remains understood that if the said supporting documents are not produced within the term set, the Department shall lift the suspension of the free circulation of the merchandise in question.

Yours sincerely