



# FICPI 17TH OPEN FORUM

International Association of Intellectual Property Attorneys/Fédération  
Internationale des Conseils en Propriété Intellectuelle (FICPI)

## Border Control: Special Programmes to Prevent Piracy and Counterfeiting: Canada – A Challenge

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Presented by

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# Combating Counterfeit Products Act (CCPA)

- Pre-January 2015 – Anti-counterfeit and Anti-piracy Enforcement in Canada





# Combatting Counterfeit Products Act (CCPA)

CCPA amended the  
*Trademarks Act*,  
the *Copyright Act*, and the *Customs Act*  
to curtail commercial activity  
involving counterfeit goods and pirated works



# Combatting Counterfeit Products Act (CCPA)

## 4 Take-A-Ways

- It is now a criminal offence to import or export goods or packaging bearing unauthorized trademarks having all the essential elements of a trademark registered for such goods
  - (*identical trademarks on identical goods*)
- It is a criminal offence to import or export copies of works made without consent of the owner of copyright in the country where they were made that infringe copyright in Canada
- Exceptions: Did not prohibit shipments/importation for (1) personal use, (2) in-transit shipments or (3) grey market shipments of counterfeit or pirated works
- Creation of a Border Enforcement Regime



# Border Enforcement

Power of CBSA	Pre-2015	Post-2015
Ex officio detention of counterfeit goods	no	yes
Ex officio seizure and destructions of counterfeit goods	no	no
Provide samples and/or information to Intellectual Property Rights Holders	no	Yes (in certain circumstances)
Recordation of Trade-marks with CBSA	no	yes
Administrative or Simplified Procedure	no	no
Seizure of in transit shipments	no	no
Detention of grey market goods	no	no



# Combating Counterfeit Products Act (CCPA)

## *What kind of copies are caught by the legislation*

### **Trade-marks**

- Goods shall not be imported or exported if the goods or their labels or packaging bear – without the consent of the owner of a registered trade-mark for such goods – a trade-mark that is *identical to, or that cannot be distinguished in its essential aspects from,* that registered trade-mark.

### **Copyrights**

- Copies of a work or other subject-matter in which copyright subsists shall not be imported or exported *if they were made without the consent of the owner of the copyright in the country where they were made;* and they infringe copyright or, if they were not made in Canada, they would infringe copyright had they been made in Canada by the person who made them.

**HOW DOES THE NEW  
BORDER ENFORCEMENT REGIME WORK?**



## Purpose of Procedure:

Owners of Canadian trade-mark registrations or owners of copyrights can now seek assistance/information from the Canada Border Services Agency to detain suspected counterfeit and pirated goods at the border and proceed with civil enforcement of their rights.

## How the New Border Enforcement System Works:

### Procedure: File Request for Assistance:

- Brand Owners can “seek assistance” from Customs (by filing /registering a “Request for Assistance” document (RFA) with customs) (*Section 44.02(1) Copyright Act*)
- Cost to file/register
- Canada’s official languages – English and French
- Valid for 2 years and renewable

# Border Enforcement



What is an RFA?

Who should file an RFA?

How do you file an RFA?

Email address:

[cbsa-asfc\\_ipr-dpi@cbsa-asfc.gc.ca](mailto:cbsa-asfc_ipr-dpi@cbsa-asfc.gc.ca)

Canada Border Services Agency / Agence des services frontaliers du Canada		Restore/Restaurer	
REQUEST FOR ASSISTANCE - DEMANDE D'AIDE		PROTECTED / PROTÉGÉ B when completed / une fois rempli	
SEE INSTRUCTIONS ON PAGE TWO		VOIR LES INSTRUCTIONS À LA PAGE DEUX	
<p>The filing of this application begins the enrollment process for the Canada Border Services Agency (CBSA) Intellectual Property Rights Program. This form has been developed by the CBSA in accordance with s. 44.02 of the Copyright Act and s. 51.04 of the Trade-marks Act to assist right owners in protecting their rights against the prohibited importation of counterfeit, trademark and pirated copyright goods into Canada.</p> <p>Le dépôt de cette demande commence le processus d'inscription pour l'Agence des services frontaliers du Canada (ASFC) Programme des droits de propriété intellectuelle. Ce formulaire a été développé par l'ASFC conformément à l'art. 44.02 de la Loi sur le droit d'auteur et s. 51.04 de la Loi sur les marques de commerce pour aider les titulaires de droits à protéger leurs droits contre l'importation illicite de la contrefaçon, de marque et de marchandises pirates au Canada.</p>			
Section A: Rights Owner Information - Information sur le détenteur des droits			
1. Legal name of rights holder - Nom légal du détenteur des droits			
2. Rights holder address - Adresse du détenteur des droits			
Address - Adresse			
Country - Pays			Postal code - Zip code - Code postal - Zip code
3. Representative for Service in Canada - Représentant du service à la clientèle au Canada			
Contact name - Nom du contact			Phone number - Numéro de téléphone
Address (street) - Adresse (rue)			
City - Ville		Province	Postal code - Code postal
4. E-mail address - Adresse courriel		5. Alternate e-mail address - Adresse courriel de remplacement	
Section B: Copyright and/or Trademark Information - Données sur l'intérêt de propriété			
(Attach separate sheet if required - Joindre feuille supplémentaire si nécessaire)			
6. Trademark or copyright - Marque de commerce ou droit d'auteur		7. Trademark or copyright registration number (from CIPO) - Numéro d'enregistrement de la marque de commerce ou du droit (émis par l'OPIC)	
<input type="checkbox"/> Trademark <input type="checkbox"/> Copyright			
8. Canadian intellectual property office (CIPO) number - Numéro de la demande de l'Office de la propriété intellectuelle du Canada (OPIC)		9. Harmonized system code - Code du système harmonisé	
		10. Bond included? - Cautionnement inclus? (Amount of bond - Montant du cautionnement)	
		<input type="checkbox"/> No / Non <input type="checkbox"/> Yes / Oui	
11. Provide name and description of authentic goods, such as product features, packaging and trademark location. - Fournir le nom et la description des biens authentiques, comme les descriptifs des produits, l'emballage et l'emplacement de la marque de commerce.			
12. List known authorized importers permitted to bring these products into Canada (if applicable) - Faire la liste des importateurs autorisés qui ont la permission de faire rentrer ces produits au Canada (si applicable)		13. Known distributors of illegitimate or suspect goods - Distributeurs connus des biens illégitimes ou suspects	
1		1	
2		2	
3		3	
4		4	
5		5	
Section C: Authorization - Autorisations			
Authorizing CBSA's use and confirmation of information provided: - Autorisant l'usage et la confirmation de l'information fournie par l'ASFC :			
14. Authorized signature - Signature autorisée		15. Name (Print) - Nom (en majuscules)	16. Date of signature and application * - Date de la signature et de la demande *
Section D: File data (For CBSA's Use only) - Données du fichier (pour utilisation par l'ASFC seulement)			
17. CBSA request for assistance number - Numéro de la demande d'aide à l'ASFC		18. Urgent - <input type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non	19. Date of application * (YYYY-MM-DD) - Date de la demande * (AAAA-MM-JJ)
			20. CBSA officer's user ID - Numéro d'identification de l'agent de l'ASFC
21. Additional comments - Commentaires supplémentaires			

# Border Enforcement

Restore/Restaurer



Canada Border  
Services Agency

Agence des services  
frontaliers du Canada

## REQUEST FOR ASSISTANCE - DEMANDE D'AIDE

PROTECTED  
PROTÉGÉ **B** when completed  
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### Section A:

### Rights Owner Information - Information sur le détenteur des droits

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2.

#### Rights holder address - Adresse du détenteur des droits

Address - Adresse

Country - Pays

Postal code - Zip code - Code postal - Zip code

3.

#### Representative for Service in Canada - Représentant du service à la clientèle au Canada

Contact name - Nom du contact

Phone number - Numéro de téléphone

Address (street) - Adresse (rue)

City - Ville

Province

Postal code - Code postal

4. E-mail address - Adresse courriel

5. Alternate e-mail address - Adresse courriel de remplacement

# Border Enforcement

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## Procedure: Timeframe and Steps

- If CBSA suspects counterfeit – contact representatives on RFA form filed
- 3 day period for Brand Owner to advise of intention (*Memorandum D-19-4-3, paras. 18-19*)
- Customs Can **Detain** for up to 10 days Brand Owners assess if counterfeit –  
Pictures? Samples? Physical Attendance?
- Customs can share Information with the Brand Owners
- If counterfeit Brand Owner can seek detention and destruction by commencing an action

If RFA is filed, then the brand/company gets:

- access to information about suspicious importations;
- if counterfeit, ability to commence proceedings and obtain seizure and destruction orders etc.
- must furnish a security\*
- must pay for costs of storage and destruction of fake goods after they are determined to be illegal.

\* not being requested at this time

## What is Customs Doing and How are they doing it?

### CBSA Training

email address: [cbsa-asfc\\_ipr-dpi@cbsa-asfc.gc.ca](mailto:cbsa-asfc_ipr-dpi@cbsa-asfc.gc.ca)



### CBSA Protocol – Memorandum D19-4-3 issued - November 2, 2015

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.

<http://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-4-3-eng.html>



# Border Enforcement Regime - STATUS

- Since January 1, 2015
- Training of customs officers
- # of Requests for Assistance filed
- # of detentions
- “Renewals”
- Security (Bonds)?
- Case Examples



# The Canadian Anti-fraud Centre

- The CAFC is jointly managed by the RCMP, Competition Bureau, and the OPP.
- Works with payment processors cancelling merchant accounts.
- Purchasing counterfeit/pirated works through credit/debit card, PayPal etc
- 2016 – CAFC received over 18,000 complaints involving cyber-related fraud
- <http://www.antifraudcentre-centreantifraude.ca>

# The Future



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