

Supporting Statement

Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights (Part 133 of the Customs Regulations) 1651-0123

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Title 19 of the United States Code section 1526(e) prohibits the importation of articles that bear a counterfeit mark of a trademark that is registered with the United States Patent and Trademark Office (USPTO) and recorded with U.S. Customs and Border Protection (CBP). Pursuant to 15 U.S.C. § 1124, the importation of articles that copy or simulate the trade name of a manufacturer or trader, or copy or simulate a trademark registered with the USPTO and recorded with CBP is prohibited. Likewise, under 17 U.S.C. § 602 and 17 U.S.C. § 603, the importation of articles that constitute an infringement of copyright in protected copyrighted works is prohibited. Both 15 U.S.C. § 1124 and 17 U.S.C. § 602, authorize the Secretary of the Treasury to prescribe by regulation for the recordation of trademarks, trade names and copyrights with CBP. Additional rulemaking authority in this regard is conferred by CBP's general rulemaking authority as found in 19 U.S.C. § 1624.

CBP officers enforce these intellectual property rights at the border. The information that respondents must submit in order to seek the assistance of CBP to protect against infringing imports is specified for trademarks under 19 CFR 133.2 and 133.3, and the information to be submitted for copyrights is specified under 19 CFR 133.32 and 133.33. Trademark, trade name, and copyright owners seeking border enforcement of their intellectual property rights provide information through the recordation process in order to assist CBP officers in identifying violating articles at the border. Respondents may submit this information through the IPR e-Recordation website at <https://iprr.cbp.gov/>.

Collection Revisions:

On December 15, 2017 CBP published a Final Rule in the *Federal Register* (82 FR 59511) regarding Donations of Technology and Related Support Services to Enforce Intellectual Property Rights. 19 CFR 133.61 Subpart H has been added which authorizes CBP to receive and accept donations of hardware, software, equipment, and similar technologies, as well as training and related support service, for the purpose of assisting CBP in enforcing IPR. CBP is revising this collection of information to include IPR Donations. A donation offer must be submitted to CBP either via email, to dap@cbp.dhs.gov, or mailed to the attention of the Executive Assistant Commissioner, Office of Field Operations, or his/her designee.

The donation offer must describe the proposed donation in sufficient detail to enable CBP to determine its compatibility with existing CBP technologies, networks, and facilities (e.g. operating system or similar requirements, power supply requirements, item size and weight, etc.). The donation offer must also include information pertaining to the donation's scope, purpose, expected benefits, intended use, costs, and attached conditions, as applicable, that is sufficient to enable CBP to evaluate the donation and make a determination as to whether to accept it. CBP will notify the donor, in writing, if additional information is requested or if CBP has determined that it will not accept the donation. If CBP accepts a donation, CBP will enter into a signed, written agreement with an authorized representative of the donor. The agreement must contain all applicable terms and conditions of the donation.

The respondents to this information collection are members of the trade community who are familiar with CBP regulations.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information is collected by electronic submission or postal mail. The electronic process is completed by submitting the required documents to the IPR Branch via the IPR e-Recordation website at <https://iprr.cbp.gov/> . The information can also be submitted via postal mail by sending in the required documents to "U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Intellectual Property Rights Branch, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229-1177." This information collection is used to assist CBP in identifying infringing goods and making infringement determinations concerning intellectual property rights at the U.S. borders.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

CBP developed an online recordation system which allows respondents to apply for recordations using the internet. The CBP recordation site is located at <https://iprr.cbp.gov/>. Approximately 95 percent of applicants apply using this website. CBP still accepts submission via postal mail, however, that process is not as timely.

Instructions for use of this program can also be found on CBP's website at http://www.cbp.gov/sites/default/files/documents/enforce_ipr_3.pdf

A donation offer may be submitted to CBP electronically, to dap@cbp.dhs.gov.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

This information is not duplicated in any other place or any other form.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

This information collection does not have an impact on small businesses or other small entities.

- 6. Describe consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

CBP cannot effectively provide protection against imports that infringe trademarks and copyrights without requiring this information. Individual trademark owners and users of trade names and individuals claiming copyright protection will suffer the effects of increased numbers of infringing importations without this collection of information.

- 7. Explain any special circumstances.**

This information is collected in a manner consistent with the guidelines of 5 CFR 1320.5(d)(2).

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Public comments were solicited through two Federal Register notices published on May 17, 2019 (84 FR 22505) on which no comments were received, and on August 27, 2019 (84 FR 44909) on which no comments have been received.

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

There is no offer of a monetary or material value for this information collection.

- 10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

A PIA called Intellectual Property Rights e-Recordations and Search Systems, dated December 11, 2012 will be included in the ICR. A SORN for Intellectual Property Rights e-Recordations and Search Systems dated January 15, 2013 (78 FR 3015) will also be submitted with this ICR.

- 11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature associated with this collection.

- 12. Provide estimates of the hour burden of the collection of information.**

INFORMATION COLLECTION	TOTAL ANNUAL BURDEN HOURS	NO. OF RESPONDENTS	NO. OF RESPONSES PER RESPONDENT	TOTAL RESPONSES	TIME PER RESPONSE
IPR Recordation Application	4,000	2,000	1	2,000	2 hours (120 minutes)
IPR Donations	100	50	1	50	2 hours (120 minutes)
TOTAL	4,100			2,050	

Public Cost

The estimated cost to the respondents is \$348,131. This is based on the estimated burden hours (4,100) multiplied by the average loaded hourly wage rate for attorneys (\$84.91). CBP calculated this loaded wage rate by first multiplying the Bureau of Labor Statistics' (BLS) 2018 median hourly wage rate for Lawyers (\$58.13), which CBP assumes best represents the wage for attorneys, by the ratio of BLS' average 2018 total compensation to wages and salaries for Professional and Related occupations (1.4606), the assumed occupational group for attorneys, to account for non-salary employee benefits.^{1,2} This figure is in 2018 U.S. dollars and

¹ Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, "May 2018 National Occupational Employment and Wage Estimates United States." Updated April 2, 2019. Available at https://www.bls.gov/oes/2018/may/oes_nat.htm. Accessed June 4, 2019.

² The total compensation to wages and salaries ratio is equal to the calculated average of the 2018 quarterly estimates (shown under Mar., June, Sep., Dec.) of the total compensation cost per hour worked for Professional and Related occupations (\$56.4675) divided by the calculated average of the 2018 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category (\$38.6600). Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. Employer Costs for Employee Compensation Historical Listing March 2004 – December 2018, "Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004-2018." March 2019. Available at <https://www.bls.gov/web/ecec/ececqrtn.pdf>. Accessed June 4, 2019.

CBP assumes an annual growth rate of 0 percent; the 2018 U.S. dollar value is equal to the 2019 U.S. dollar value.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information.

The Recordation fee associated with this collection is \$190. This is collected via credit card through the electronic submission on the CBP recordation site (<https://iprr.cbp.gov/>), or by check via postal mail.

The fee charge associated with this information collection of \$190 multiplied by the number of respondents (2,000) = \$380,000.

14. Provide estimates of annualized cost to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

The estimated annual cost to the Federal Government associated with the review of these documents is \$7,378. This is based on the number of responses that must be reviewed (2,050) multiplied by the time burden to review and process each response (3.5 hours) = 7,175 hours multiplied by the average hourly loaded rate for other CBP employees (\$53.99)³ = \$387,378.

There is also a fee charge associated with this information collection as stated in section 13. While the fee does not directly offset the cost to the federal government, the difference between the government cost (\$387,378) and the amount collected in the fee (\$380,000) is \$7,378.

15. Explain the reasons for any program changes or adjustments reported in Items 12 or 13.

There has been an increase in the estimated annual burden hours previously reported for this information collection due to the addition of the IPR Donations respondents.

16. For collection of information whose results will be published, outline plans for tabulation, and publication.

This information collection will not be published for statistical purposes.

17. If seeking approval to not display the expiration date, explain the reasons that displaying the expiration date would be inappropriate.

CBP will display the expiration date for OMB approval of this information collection.

³ CBP bases this wage on the FY 2019 salary and benefits of the national average of other CBP positions, which is equal to a GS-12, Step 2. Source: Email correspondence with CBP's Office of Finance on June 12, 2019.

18. “Certification for Paperwork Reduction Act Submissions.”

CBP does not request an exception to the certification of this information collection.

A. Collection of Information Employing Statistical Methods

No statistical methods were employed.