

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 mark that is a counterfeit of a trademark that has been registered with the United States Patent and Trademark Office (USPTO) and subsequently recorded with U.S. Customs and Border Protection (CBP) through the e-Recordation Program. <https://iprr.cbp.gov/s/>. Pursuant to 15 U.S.C. § 1124, the importation of articles that bear a mark that infringes a trademark or trade name that has been recorded with CBP is restricted pursuant to 19 U.S.C. § 1595a(c)(2)(C). Likewise, under 17 U.S.C. § 602 and 17 U.S.C. § 603, the importation of articles that constitute a piratical copy of a registered copyrighted work that has subsequently been recorded with CBP is also prohibited. Both 15 U.S.C. § 1124 and 17 U.S.C. § 602 authorize the Secretary of the Treasury to prescribe by regulation 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 recorded trademarks, trade names and copyrights at all U.S. Ports of Entry. 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 to CBP beyond that which they submitted to either the U.S. Patent and Trademark Office or the U.S. Copyright Office to obtain their registration. This revision adds the new e-Recordation online application, located at <https://iprr.cbp.gov/>.

E-Recordation applicants may provide as much additional information as they would like that would aid CBP in authenticating their genuine merchandise and distinguishing it from non-genuine merchandise, such as a Product Identification or Authentication Guides, lists of licensees and authorized manufacturers, and Applicants can supplement their application with additional information at any time by emailing the e-Recordation team at IPRRQuestions@cbp.dhs.gov. All information provided to CBP is housed in a secure database that can be viewed by CBP and Homeland Security Investigations personnel with a need to know. Limited information regarding the recorded trademark, trade name or copyright is published

online to inform the public of which registrations are receiving border enforcement. <https://iprs.cbp.gov/s/>.

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. The final rule added 19 CFR 133.61 in a Subpart H to the CBP regulations which authorizes CBP to accept donations of hardware, software, equipment, and similar technologies, as well as related support services and training, from private sector entities, for the purpose of assisting CBP in enforcing intellectual property rights (IPR). 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 Intellectual Property Enforcement 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 Enforcement Branch, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229-1177." This information collection is used to assist CBP in identifying trademarks, trade names and copyrights that are eligible for border enforcement and distinguishing authentic goods from non-genuine goods.

- 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/>. Over 99 percent of applicants apply using this website. CBP still accepts submission via postal mail, however, that process is not as timely. CBP received two applications via postal mail over the past 5 years.

Instructions for use of this program can also be found on CBP's website at <https://www.cbp.gov/trade/priority-issues/ipr/protection>

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

CBP has conducted extensive usability testing related to this information collection. In FY 2023, CBP conducted thirty-seven training sessions at locations across the country where CBP educated members of the trade community on many aspects of Intellectual Property Rights compliance and enforcement, especially, the e-Recordation Program. These outreach events included a discussion of CBP's information collection related to intellectual property enforcement and CBP received feedback on the collection. Based on this feedback, CBP is confident that use of this collection in the current format continues to be necessary and appropriate.

Usability Testing:

The Intellectual Property Enforcement Branch, RR is tasked with working with intellectual property rights holders to facilitate enforcement of their trademarks and copyrights at the border. Given the nature of the IPE Branch's work, the attorneys and paralegals are in daily communication with rights holders. The use of the IPRR system is limited to these stakeholders and CBP. As a matter of course, rights holders share feedback regarding use of the IPRR system on an ongoing basis. In an effort to consolidate this feedback and make improvements to the system, the IPE Branch conducted usability testing by sending an email survey to several rights holders with which the IPE Branch has frequent communication. The survey is intended to provide an additional opportunity for stakeholder feedback, but we anticipate an open communication channel with the trade going forward to continuously make improvements to the system. Survey respondents have indicated that they understand the IPRR system and how to file the required information and do not have suggestions on how to improve the collection at this time. They report no system outages and high satisfaction with customer support. In addition, they report a drop in burden hours from 2 hours to 1 hour as a result of this system.

- 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 collecting 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 February 24, 2024 (89 FR 14672) on which no comments were received, and on March 30, 2024 (89 FR 34260) 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	2,000	2,000	1	2,000	1 hours (60 minutes)
IPR Donations of Authentication Technology	200	10	1	10	20 hours (1,200 minutes)
IPR Training Requests	40	20	1	20	2 hours (120 minutes)
TOTAL	2,240			2,030	

Public Cost

The estimated cost to the respondents is \$229,712. This is based on the estimated burden hours (2,240) multiplied by the average loaded hourly wage rate for attorneys (\$102.55). CBP calculated this loaded wage rate by first multiplying the Bureau of Labor Statistics’ (BLS) 2022 median hourly wage rate for Lawyers (\$65.26), which CBP assumes best represents the wage for attorneys, by the ratio of BLS’ Q4 2022 total compensation to wages and salaries for Professional and related occupations (1.4686), the assumed occupational group for attorneys, to account for non-salary employee benefits.¹ CBP assumes an annual growth rate of 7.01% based on the prior year’s change in the implicit price deflator, published by the Bureau of Economic Analysis.²

¹ Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment and Wage Statistics, “May 2022 National Occupational Employment and Wage Estimates United States.” Updated April 25, 2023. Available at https://www.bls.gov/oes/2022/may/oes_nat.htm. Accessed August 21, 2023. The total compensation to wages and salaries ratio is equal to the total compensation cost per hour worked for Professional and related occupations (\$62.65) divided by the wages and salaries cost per hour worked for the same occupation category (\$42.66). See “Table 2. Employer Costs for Employee Compensation for civilian workers by occupational and industry group.” Bureau of Labor Statistics, “Employer Costs for Employee Compensation – December 2022.” Released March 17, 2023. Available at https://www.bls.gov/news.release/archives/ecec_03172023.pdf. Accessed August 29, 2023.

The response time per respondent for IPR Donations were bifurcated depending on whether the donation concerns training or authentication technology.

The response time per respondent for IPR Donations of training was estimated to be approximately 2 hour per respondent.

The response time per respondent for IPR Donations of Authenticating Technology was re-estimated and increased from 2 hours to an average of 20 hours, recognizing that the donation application and approval procedure requires an iterative process between the donor and CBP in fine-tuning the specifications of the technological tool to be in compliance with CBP laws and regulations. This estimate is based on what donations of authentication technology CBP has received since implementation of the program and recognizes that response time will vary greatly depending on the type of tool being donated.

Total annual burden was reduced from 4,100 to 2,240, resulting in an 1,860-hour reduction.

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.

18. "Certification for Paperwork Reduction Act Submissions."

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

B. Collection of Information Employing Statistical Methods

No statistical methods were employed.