5 and 1/4 or 3 and 1/2); the name of the recorded program on the diskettes; a statement that the diskettes are "recorded media;" the proper export classification number for computer software (as defined by the Harmonized Tariff Classification); and the per unit value of the shipment. In listing the unit value of the diskettes, the exporter has to specify either the retail value of the software, or an estimate of how much it cost to produce the program. Even if the diskette is a sampler, a value has to be specified on the invoice.

b. Compliance with Copyright, Trade Mark, and Patent Regulations

The invoice and exporter's certificate of origin document will require the exporter to indicate if the software being shipped through customs is proprietary technology. **If the Canadian software developer has a Canadian copyright on the software, then copyright protection in the U.S. is afforded because of a mutual treaty between the two countries regarding copyrights.** In some instances, however, the software firm in Canada may be transferring a product to a computer manufacturer in New York State for which the latter owns the copyright. In this instance, the Canadian exporter must submit to customs officials a letter from the manufacturer indicating that permission has been given to export copyrighted software into the United States. The most likely instance when any Canadian exporter of software is likely to run into difficulty with U.S. customs officials is when a U.S. software company has a copyright or patent on software and complains to U.S. customs that software is coming into the country in violation of the existing copyright.

In the case of patents and trade marks, the requirements are a bit different than for copyrights. To obtain a patent on software, the developer must prove that the program or application is novel--no other of its kind exists in the world. If this is the case, then the developer can apply for a patent. **In contrast to copyright laws, if the Canadian software developer has received a patent in Canada, application for a patent must also be made in the U.S.** As is the case with copyrights, the only potential problem a Canadian exporter of software is likely to have with U.S. customs officials regarding patents is if a U.S. patent has not been received and a U.S. software company holding a patent complains to customs that software coming in from Canada is violating its existing patent. In a similar manner, Canadian software firms that want to protect a trade mark or brand name in the U.S. must register before exporting begins. Because of the legal nature of copyrights, patents, and trade marks, it is advisable for the Canadian firm to consult with attorneys who specialize in this area.