



INFORMATION SHEET

CUSTOMS

Counterfeit Goods

What are Intellectual Property Rights?

Broadly speaking, 'intellectual property rights' is a collective term used to describe the economic and moral rights of the copyright holder from the unlawful reproduction; publishing; distribution through lending, rental or sale; broadcasting or performance; and importation.

Why should Customs be involved?

Customs is the primary Government agency responsible for regulating all imports arriving into, and all exports departing from the Country.

As part of the 2005 Budget Provisions the Government of Papua New Guinea amended the Customs (Prohibited Imports) Regulations to give Customs certain powers in preventing goods that are pirated, counterfeit or otherwise infringe an intellectual property right or are protection defeating devices from entering or leaving the Country.

How does the Customs Law work for me?

As an intellectual property right holder you can ask Customs to help you protect your copyright or trademark against infringing goods. You can do this by:

- submitting an application, together with a K2000.00 application fee, to Customs requesting Customs to suspend the import or export clearance of any goods that it detects and which infringe your intellectual property right.
- providing an undertaking to cover any possible damages claim as a result of a wrongful suspension of clearance of the goods and their detention.

- providing an undertaking to accept the costs of storage, handling, destruction and other operational costs incurred where the infringer cannot be located.
- providing sufficient proof that you are the rightful owner of the copyright or trademark.

Once your application has been approved it remains valid for 2 years and your details will be retained by Customs.

What happens after Customs detects goods that infringe my intellectual property rights?

When Customs detects goods that infringe your intellectual property right, we will immediately:

- suspend clearance of the goods, detain them and notify you of the detection.
- notify the person attempting to import or export the goods that their clearance has been suspended and that the goods have been detained.

The suspension and detention lasts up to 10 working days during which time you must commence legal proceedings against the importer for breach of your intellectual property right in accordance with sections 26 and 27 of the Copyright & Neighbouring Rights Act 2000 and request the Court impose a provisional seizure order for the goods to be further detained by Customs.

If you do not provide evidence to Customs that such Court proceedings have been commenced within the time allocated, Customs will lift the suspension, provided all conditions for importation or exportation of the goods has been complied with, and release the goods.

The intellectual property right holder has the right to take samples and analyse them to determine if they are pirated, counterfeit or otherwise infringe an intellectual property right or whether the goods are protection defeating devices.

If Court proceedings have been commenced the Court must make an order for a provisional seizure of the goods pending the outcome of the Court case. Customs must abide by this Court order.

What happens if I haven't lodged an application to protect my intellectual property rights?

Customs may suspend the clearance of intellectual property right goods even if the owner of the copyright or trademark has not lodged an application with us. This is called an ex-officio action. If we do this, Customs must inform the right holder and the owner of the goods of our actions and the right holder must formally request Customs within 10 working days to continue the suspension.

The right holder must then take action in the Courts in exactly the same way as described above. If this is not done Customs will lift the suspension and release the goods.

What happens to the goods?

Where the Court orders that the goods infringe an intellectual property right the goods are condemned to the State and Customs can dispose of them in consultation with the rights holder. This can be done in one of two ways, either by destroying them or by any other manner of disposal that is outside normal channels of commerce and is not to the detriment of the right holder.

Customs can dispose of the goods without a Court order in certain circumstances. In general this will only be in cases where the owner of the goods for which clearance has been suspended, has been advised of the suspension and has been given 20-

working days in which to object to Customs seizing and disposing of the goods. In such cases samples will be retained for evidentiary purposes.

Is there any limit to the quantity of intellectual property right related goods before Customs can act?

These laws are designed to protect the intellectual property right holder from commercial exploitation and not to punish individuals who are detected by Customs in possession of small numbers of items that are for the personal use of that person.

Therefore infringing goods contained in the personal luggage of a person arriving at an international airport, sea port or land border post or are sent via small consignments are not subject to the suspension procedure. However, multiple copies of the same product are not allowed under this exemption.

What happens in cases of wrongful suspension and detention of my goods?

Customs is indemnified from liability for any action taken on behalf of an intellectual property right holder provided its officers have acted in good faith and in accordance with the law.

This information is provided as a guide only.

For more information please contact the your nearest Customs office or write to The Commissioner of Customs, PO Box 777, Port Moresby, NCD or visit our website at

www.customs.gov.pg

Legislative References:

Customs (Prohibited Imports) Regulations

Part VI, Sections 7 to 22, Schedule 2 Item 96A