



## PROTECTING INTELLECTUAL PROPERTY

### What is Intellectual Property?

Intellectual Property, often known as IP, is defined as creations of the mind that can be protected by law once they take a tangible form. Import provisions under the *Copyright Act 1968*, *Trade Marks Act 1995* and *Olympic Insignia Protection Act 1987* allow Customs, under certain circumstances, to seize goods that infringe trade marks, copyright and protected Olympic expressions. These provisions give rise to Australia's Notice of Objection Scheme.

### Why protect Intellectual Property?

The decision to protect intellectual property is one that each rights owner must make based on the damage to trade and reputation that the owner considers may result from infringing goods.

### What can I do to protect Intellectual Property?

To protect trade marks, copyright material or protected Olympic expressions from counterfeit, pirated or unauthorised importation, the owner, or in some cases an authorised user, must have a Notice of Objection in place with Customs.

Customs can only seize goods suspected of infringing intellectual property rights if there is a valid Notice of Objection in place. If a Notice is in place, Customs may seize goods when it is considered that they appear to infringe and it appears they are intended for some commercial purposes. In some circumstances, a single product might be subject to seizure if it is believed that it will be used for commercial purposes.

### What is a Notice of Objection?

A Notice of Objection is a legal document that allows Customs to seize imported goods that infringe trade marks, copyright or protected Olympic expressions.

A Notice of Objection under the Trade Marks Act, Copyright Act or Olympic Insignia Protection Act is valid for four years. Notices can be re-lodged to ensure ongoing protection. If the Notice is no longer required, the owner may withdraw it at any time. Separate Notices are required to protect trade marks, copyright or protected Olympic expressions.

The power of Customs is restricted to seizing infringing goods that are subject to the control of Customs and are covered by a Notice of Objection. A Notice of Objection cannot act retrospectively for goods that have already been imported.

For more information on how to lodge a Notice of Objection please refer to the following:

[Guide to Lodging a Trade Mark Notice](#)  
[Guide to Lodging a Copyright Notice](#)

### What happens when Customs seizes goods?

Customs will seize importations that infringe copyright or a registered trade mark where a Notice of Objection has been lodged with Customs by the right owner (objector).

The seized goods will be held for ten working days from the date the objector is notified of the seizure (action period) The action period may be extended by a further 10 working days if approved by the Customs CEO. Both the importer and objector will be notified of the seizure. Before the end of the action period:

- the objector has the option to commence legal action, or
- the objector will consent to release the goods, and
- the importer has the option to voluntarily forfeit the goods, provided civil action has not commenced.

If the objector does not commence legal proceedings within the action period, Customs must release the goods unless the importer has voluntarily forfeited them. This is subject to all other legislative requirements being met.

At the conclusion of any legal action, the court will make an order about the goods – either order the goods be released to the importer or that they be forfeited to the Commonwealth. Customs disposes of forfeited goods as directed by the Customs CEO, usually by destruction or donation to a charity, as appropriate.

### For more information

If you would like further information about importing goods into Australia, protecting Intellectual Property Rights or to obtain copies of the relevant forms, go to the Customs website at [www.customs.gov.au](http://www.customs.gov.au)

Alternatively you can email your inquiry to [information@customs.gov.au](mailto:information@customs.gov.au) or phone the Customs Information and Support Centre on 1300 363 263.