

## Border Enforcement – Ireland

Council Regulation (EU) No. 608/2013 (the “**Regulation**”) and Commission Implementation Regulation (EU) No. 1352/2013 provide measures for Customs action against suspect counterfeit and pirated goods at points of importation into and exportation from the European Union (“**EU**”). Ireland is bound by these Regulations (as they are directly applicable under EU law) which enable Irish custom authorities to detain goods that are suspected of infringing intellectual property rights. The European Union (Customs Enforcement of Intellectual Property Rights) Regulations 2013 (S.I. No. 562 of 2013) gives the Regulation full effect in Irish law and nominates the Revenue Commissioners as the competent customs department to receive and process applications for the purposes of the Council Regulation.

The Regulation permits Customs authorities to take certain actions where goods entering the EU from non-member states are suspected of infringing intellectual property rights recognised in the EU. The following infringements are excluded from the scope of the Regulation:

- goods in free circulation in the European Community moving between Member States;
- goods of a non-commercial nature contained in travellers’ personal luggage within the limits laid down in respect of relief from Customs duty;
- goods manufactured with the consent of the holder of a right but entered for free circulation, export, re-export or for another Customs procedure without his/her consent;
- goods manufactured with the consent of the holder of a right which have been manufactured or bear a trade mark under conditions other than those agreed with the holder.

### Jurisdiction

The Revenue Commissioners has jurisdiction over goods suspected of infringing an intellectual property right which are, or should have been, subject to customs supervision or customs control within the customs territory of the Union in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, particularly goods in the following situations:

- (a) when declared for release for free circulation, export or re-export;
- (b) when entering or leaving the customs territory of the Union;
- (c) when placed under a suspensive procedure or in a free zone or free warehouse.

**Domestic Industry Requirement:** The Regulation does not have an equivalent to the domestic industry requirement.

**Parties:** The right holder is referred to as the applicant.

**Jury:** There are no juries in the customs procedure.

### Procedure:

#### On foot of an application:

The applicant requests the customs authorities to take action with respect to goods suspected of infringing an intellectual property right. The request is called an “application”.

There are two types of applications:

- National application: an application submitted in a Member State requesting its customs authorities to take action in that Member State.

- Union application: an application submitted in a Member State requesting the customs authorities of that Member State and the customs authorities of one or more other Member States to take action in their respective territories.

When granting the application the customs authorities specify the period during which they are going to take action, which shall be no more than one year. The applicant will be called the holder of the decision once customs have granted the application. The request to extend the period of validity of an application on its expiry is called "extension request".

Both the application and the extension request must be completed using official forms and must be submitted to the competent customs authorities in accordance with the Regulation.

A small consignment procedure is also available and allows for goods in small consignments to be destroyed without the explicit agreement of the applicant in each case.

The application, when granted, is valid for a maximum period of 12 months and may be renewed annually. Applications may not extend beyond the end of the period for which the right is validly registered.

#### Ex officio customs action:

The intervention of the customs authorities usually takes place at the request of the right holders, though customs also may detain those goods if no request has been made beforehand, in order to give right holders the opportunity to make such a request.

When customs detain goods suspected of infringing an IPR that are not covered by a valid application, they will try to locate the person or entity entitled to submit an application. This is referred to as an *ex officio* action. Once the person or entity is notified, an application must be submitted to the competent customs department within four working days of the notification.

#### **Burden of Proof:**

Applicants are required to provide evidence of their entitlement, for example by providing certified roll extracts, register extracts or copies of the rights in question. In the case of copyrights, related rights or design rights which are not registered the right-holders have to demonstrate credibly that a claim to a right may be made (e.g. affidavit, declarations concerning the authorship, where available certificates of registration of copyrights).

If the applicant is not the owner of the rights, but a person authorised to use the rights, then the applicant must prove his or her authorisation to use the rights. This can generally be done by submitting the appropriate contracts. It is also possible to submit a separate proxy from the right-holder without the use of any special form.

#### **Review:**

A written decision by the Revenue Commissioners in relation to a customs matter covered by EU customs legislation may be appealed pursuant to Articles 44 and 45 of the Union Customs Code (EU Regulation No. 952/2013).

The basis of the appeal should be set out in writing and forwarded, together with any relevant documentation to the officer who made the decision which is the subject of the appeal. An appeal must be made within 30 days of the event giving rise to the appeal, except in exceptional circumstances.

The appeal will be processed by an officer nominated by the Revenue Commissioners of senior rank and without previous involvement in the matter under appeal. The outcome of the appeal will

be furnished within 30 days from the date of lodgment, with reasons for the Revenue Commissioners' determination.

There is also provision for appealing the Revenue Commissioners' determination to the Appeal Commissioners appointed by the Minister for Finance under the Income Tax Act, 1967.

Written notice of intention to appeal must be given within 30 days of the date of notification of the determination of the initial appeal by the Revenue Commissioners. Before the hearing takes place, written submission may be made direct to the Appeal Commissioners. Equally, the Appeal Commissioners may request further information. The Appeal Commissioners' formal determination is final unless a case is required to be stated for the opinion of the High Court

### **Remedies:**

Right-holders or their representatives can make an application for Customs action to prevent the import or export of suspect IPR infringing goods. Once an application is granted, customs staff may:

- detain suspect infringing goods;
- contact the right holder who will confirm if the goods infringe an IPR;
- arrange for the destruction of any infringing goods (the right holder may be asked to pay destruction costs).