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MANUAL ON HANDLING IPR CASES

KOSOVO CUSTOMS



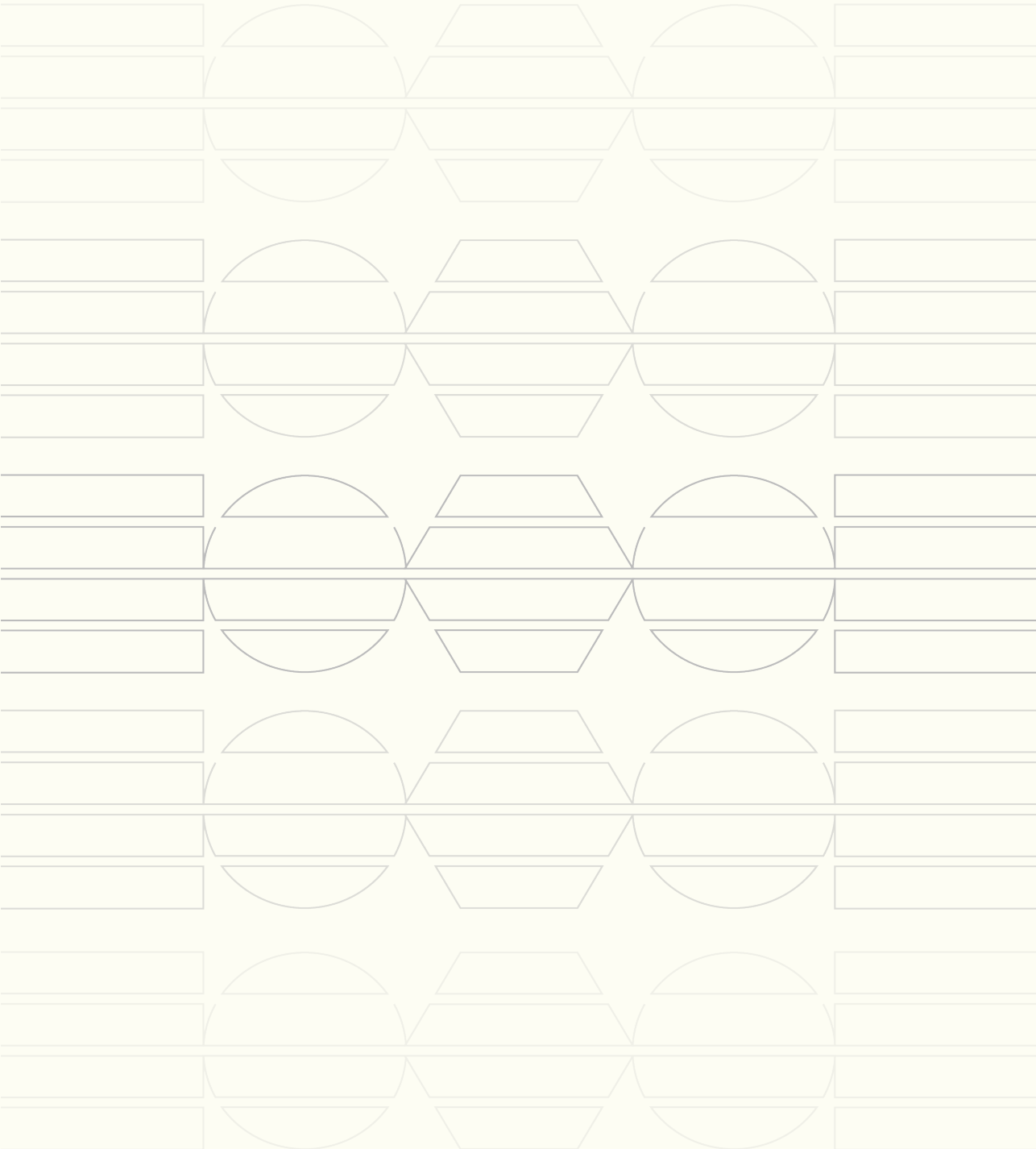


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LIST of ABBREVIATIONS

AFA Application for Action

EU European Union

IPR Intellectual Property Rights

IP Agency Industrial Property Agency

IIPCIC International Intellectual Property Crime Investigators College

MCYS Ministry of Culture, Youth and Sports

OCRR Office of Copyright and Related Rights

WCO World Customs Organization

WIPO World Intellectual Property Organization

INTRODUCTION

The purpose of this manual is to assist customs officers and other economic operators in understanding and implementing procedures under the law on customs measures of intellectual property rights and to promote a better understanding of the functioning of the application procedure. Also, this manual will guarantee a good approach and harmonization of procedures on the application/requests for action by Customs, for the protection of intellectual property, and for the equal treatment of right holders in Kosovo. The Customs officers are empowered to take action against infringements of Intellectual Property Rights (IPR), procedures to be followed are governed by:

- The Customs and Excise Code no.03/L-109-2008
- The Law No. 06/L-015/2018 on Customs Measures for protection of IPR
- The Administrative Instruction no.053/2018.

Thus, these guidelines provide a rough interpretation of the application procedure for the protection of intellectual property by the Custom authorities, who implement custom measures to combat counterfeiting and piracy.

This manual is not a legal act and is not binding, but it only provides instructions and standard information on the application of customs measures for goods that infringe intellectual property rights and instructions on the application/request for action procedure.

This manual will be updated each time we are presented with new developments in legislation and in the system of applications for the protection of intellectual property rights.

These notes provide guidance for staff on the procedures to be followed where goods suspected of infringing an IPR are detected.

The manual:

- Gives an overview of the Application for Action (AFA) process, under which holders of IP rights can request customs action against infringements of those rights.
- Sets out the standard enforcement procedure.

- Outlines the ex officio procedure, under which certain goods suspected of infringing an IPR may be detained where an AFA has not been granted.
- Addresses a procedure introduced by the Law no 06/L-015 for goods in small consignments that are suspected of infringing an IPR
- Addresses a number of other matters related to the operation of the process for enforcement of IPR

It should be noted that the procedures described in these notes cover the full range of actions that may be taken to enforce IPR.

In accordance with Article 2.1, 2.2 and 2.3 of the Law no 06/L-015, the enforcement procedures do not apply to:

- ✓ Goods that have been released under the end-use regime, and
- ✓ Goods of a non-commercial nature contained in passengers' personal luggage

1.THE SCOPE OF LAW NO. 06/L-015

The following describes the type of the rights covered by the Law No. 06/L-015 on Customs Measures for protection of IPR.

1.1.TYPES OF RIGHTS COVERED

By definition, Intellectual Property Rights should be understood as certain kinds of exclusive rights to intellectual capital and creations of the mind. IPR cover all forms of commercial activities and artistic creations. They fall into two categories: industrial property and copyright. Industrial property includes a diversity of rights such as patents, trademarks, geographical indications and designs. Copyright protects literary and artistic works (books, plays, films, musical works, paintings, photographs, sculptures, maps etc.). Copyright also includes related or neighboring rights such as those of performers, producers of films and sound recordings, and broadcasters.

Industrial Property Agency (IP Agency) within the Ministry of Trade and Industry is responsible for legal protection of industrial property rights.

The Office of Copyright and Related Rights (OCRR) is an administrative body within the Ministry of Culture, Youth and Sports (MCYS) in charge of copyright and related rights.

1.1.1. Trademarks

In Kosovo trademarks are protected by Law No. 04/L-026.

A trademark may be every sign which could be represented graphically, particularly words, including personal names, designs, letters, numbers, the shape of goods or their packaging, colors as well as combination of all above under a condition that goods or services of one enterprise can be distinguished from the other enterprises.

Examples:

Word marks: Michael Kors, Apple

Abbreviations: BMW, IBM

Slogans: Just Do It

Figurative shaped words



Pure Figurative logos



Combination of words and figurative logos



1.1.2. Patents

Patents are protected by Law No. 04/L-029.

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, the technical information about the invention must be disclosed to the public in a patent application.

A patent shall be granted for any invention, in any field of technology that is new, involves an inventive step and is susceptible in the industry.

In principle, the patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. In other words, patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner's consent.

1.1.3. Industrial designs

An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

IP Agency is competent for the registration procedures and protection of the industrial design pursuant to Law No. 05/L-058.

In principle, the owner of a registered industrial design or of a design patent has the right to prevent third parties from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

Industrial designs are applied to a wide variety of products of industry and handicraft items: from packages and containers to furnishing and household goods, from lighting equipment to jewelry, and from electronic devices to textiles. Industrial designs may also be relevant to graphic symbols, graphical user interfaces, and logos.

1.1.4. Copyright or any related rights

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings. Related or neighboring rights are a separate set of copyright-type rights given to certain persons or bodies that help make works available to the public. The beneficiaries of related rights are usually performers, producers of phonograms, and broadcasting organizations.¹

Copyright protection is obtained automatically without the need for registration or other formalities.

The legislation for copyrights in Kosovo is comprised of the Law No. 04/L-065 on Copyright and Related Rights.

1.1.5. Geographical indications

A geographical indication is a name used to identify a product as originating in a specific place (region or country) whose given quality, reputation or other characteristics is essentially attributable to its geographical origin. At least one of the production steps of which take place shall be from a defined geographical area.

The Law No. 05/L -051 on Geographical Indications and Designations of Origin provides the legal basis for geographic indicators in Kosovo.

Sharri cheese, a traditional product from the Sharri mountains is a good example for Kosovo.

1.1.6. Designation of origin

A designation of origin is a name used to identify a product as originating in a specific place (region or country) of which the geographical boundaries are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors.

All steps of production must take place in the defined geographical area.

¹<https://www.wipo.int/copyright/en/>

The Law No. 05/L-051 on Geographical Indications and Designations of Origin provides the legal basis for designations of origin in Kosovo.

1.1.7.Plant variety rights

A plant variety is a plant grouping, selected from within a species or sub-species, with a common set of characteristics. Variety shall be protected by granting the plant breeder's right. A plant variety can be protected if it is new, distinct, uniform and stable.

The relevant law is Law No. 02/L-98 on Protection of Plant Varieties. Ministry of Agriculture, Forestry and Rural Development is responsible for plant varieties.

1.1.8.Topography of semi conductor production

Topography of integrated circuit - the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and it is interconnected in the integrated circuit, or three-dimensional disposition prepared for an integrated circuit intended for manufacturing.

IP Agency issues the rights for registration and protection of topographies according to Law No. 03/L-165.

1.1.9. Supplementary Protection Certificates

Supplementary protection certificates serve as extensions to patent rights. They apply to specific medical and plant products. However, they are not applicable in Kosovo.

1.1.10. Utility Models

In many cases, where an enterprise has merely improved an existing product and the said improvement is not sufficiently inventive to be deemed patentable, utility models (or "petty patents" or "utility innovations") may represent a good alternative. They are considered as 'mini patents'.

However, utility models are not applicable as well as supplementary protection certificates in Kosovo.

1.1.11. Trade names

Names or designations used by companies to identify themselves and distinguish their businesses from others in the same field are considered as trade names.

The Law No. 06/L-015 includes also trade name in the list of IP rights. However, in Kosovo trade name is not recognized as an exclusive IP right. For this reason, no customs intervention is possible for these rights at the external border of Kosovo.

1.2. TYPES OF INFRINGEMENTS COVERED

The Law No. 06/L-015 on Customs Measures for protection of IPR does not affect national law on IPR; since it only contains procedural rules for customs authorities, it does not set any criteria for ascertaining the existence of an IPR infringement. The question whether an IPR is infringed is a matter of substantive intellectual property law.

1.2.1. Principle

In principle customs measures should be applied by the Kosovo Customs in terms of IPR protection with regard to counterfeit goods, pirated goods and goods suspected of infringing an IPR.

Counterfeit goods

Goods, including any packaging, label, sticker, brochure, operating instructions, warranty document or similar item (even if presented separately) which is subject of an act infringing a trade mark or a geographical indication.

Pirated goods

Goods which are the subject of an act infringing a copyright or related right or an industrial design.

Goods suspected of infringing an IPR

Goods where there are reasonable indications that they are the subject of an act infringing an intellectual property right in Kosovo. Any model or matrix which is specifically designed or adapted for the manufacture

of goods infringing an IPR are also deemed as goods suspected of infringing IPR.

Counterfeit goods infringe a trade mark and often look the same as the genuine goods. They contain a symbol or mark on the product or on the packaging that look identical to that of the genuine goods for which the trade mark was registered, even though they are not made by the owner of that trade mark or with his consent.

Pirated goods that are copied without the approval of the owner of the copyright or design. The most well-known copied goods are CDs and DVDs containing music, films or video games.

Goods infringing other types of rights, such as MP3 players infringing patents or flowers or plants infringing plant variety rights.

1.2.2. Exclusions

The enforcement procedures do not apply to:

- Goods under the end-use regime as such goods remain under customs supervision,
- Goods of a non- commercial nature contained in travelers' personal luggage.

The Law No. 06/L-015 does not apply, also, in the case of goods manufactured with the consent of the right-holder and to overruns, namely goods manufactured by a person duly authorized by a right-holder to manufacture a certain quantity of goods, in excess of the quantities agreed between that person and the right-holder. However, according to IP legislation Kosovo adopts a national exhaustion regime where IPR holders are entitled to oppose parallel imports unless the relevant good is put on the market for the first time in Kosovo by IPR holder (directly by him or with his consent). This means that the IPR holder loses his right of exclusion only if the good is put on the market in Kosovo. If, in contrast, the first time the good is placed on the market occurs abroad, the IPR holder has not exhausted his domestic rights meaning that he can prevent parallel import into Kosovo from abroad.

1.3. MOVEMENTS OF GOODS COVERED

1.3.1. Customs supervision and control

The customs authorities should be competent to enforce intellectual property rights with regard to goods, which, in accordance to Kosovo customs legislation, are liable to customs supervision or customs control, and carrying out adequate controls on such goods with a view to preventing operations in breach of intellectual property rights laws.

Enforcing intellectual property rights at the border, wherever the goods are, or should have been, under customs supervision or customs control is an efficient way to quickly and effectively provide legal protection to the right-holder as well as the users and groups of producers.

1.3.2. Customs procedures

In particular, the customs authorities should be competent to enforce IPR when:

1-Goods are declared for free circulation, export or re-import

2-Goods enter or leave the customs territory of Kosovo

3-Goods are placed under:

3.1. Transit procedure

3.2. Customs warehouse procedure

3.3. Inward processing procedure

3.4. Processing under customs control

3.5. Temporary import

3.6. Free zone or free customs warehouses

2-THE APPLICATION FOR ACTION

Customs enforcement of an IPR may be carried out only where an application for action (AFA), requesting that action be taken with respect to goods suspected of infringing the IPR, has been granted to the person holding the IPR. AFAs are edited in both the Law No. 06/L-015 and Administrative Instruction No. 53/2018.

2.1. PERSONS ENTITLED TO REQUEST A CUSTOMS ACTION

A full description of the persons and entities entitled to submit an AFA

can be found in Article 4 of the Law No. 06/L-015 and includes:

- Right holders
- IP collective rights management bodies
- In respect of geographical indications; groups of producers or representatives of these groups and business entities being entitled to use a geographical indication or similar competent authorities for such geographical indications
- Persons or entities duly authorized by the right holder to initiate proceedings in order to determine whether an IP right has been infringed

2.2. STANDARD FORMS-CONTENT OF APPLICATION

The application for customs action, which is required by Customs to undertake actions concerning the goods suspicious for infringing the intellectual property rights shall be done using the form in Annex I of the Administrative Instruction No. 53/2018.

Questions in the form marked with an asterisk (*) are mandatory questions and shall be filled in with responses.

Where in a box one or more spaces are marked with a plus sign (+) at least one of those spaces shall be filled in.

The applicant must provide:

- Name, address and contact details along with their status
- IP right or rights to be protected
- Documentary evidence that confirms the relevant rights or the authorization to act on behalf of the right holder
- A sufficiently detailed description of the goods to enable Customs to recognize the goods
- Specific technical data on the authentic goods, for example markings, bar codes, and images as appropriate
- The name and contact details of their appointed legal and technical experts
- Agreement that data provided may be processed by the Kosovo Customs
- Whether they wish to request the use of the “small consignment” procedure and agree to cover the costs of goods destroyed under that procedure.

The applicant will also be required to provide undertakings as follows:

- Notify the Division for the Protection of IPR where an IPR ceases to have effect
- Forward and update information that will enable customs authorities to analyze and assess the risk of an IP infringement
- Assume liability towards the holder of the goods when, following detention:
 - (a) Action is discontinued due to an act or omission on the part of the applicant
 - (b) Samples are either not returned or are damaged and beyond use due to an act or omission on the part of the applicant
 - (c) The goods in question are found not to infringe an IP right
- To reimburse, when requested, the costs incurred by customs authorities or other persons acting on their behalf, from the moment of detention.

Wherever applicable and if known the applicant should also include within the application:

- Any specific information concerning the type or pattern of fraud
- The port or country from which the goods are consigned and their intended port of arrival in Kosovo
- Details identifying the consignment or packages: for example, descriptions, marks and numbers, the container number, waybill or manifest details
- The expected date of arrival or departure of the goods
- The means of transport and the identity of the carrier, logistics operator and/or customs broker/agent involved
- The identity (including address and postcode) of the importer or exporter.
- The country or countries of production and the routes used by traffickers

- The technical differences, if known, between the authentic and suspected infringing goods

2.3. FILING AND GRANTING OF APPLICATIONS FOR ACTION

In Kosovo, AFAs are submitted to the Division for the Protection of Intellectual Property of the Kosovo Customs.

The applicant will not be charged a fee for new applications, or requests for extensions, submitted under the Law No. 06/L-015. However, Kosovo Customs reserve the right to pass on to the applicant any costs they incur in, from the moment of detention including handling, storing and dismantling the suspect goods.

The validity period of an AFA shall not exceed one year but may be extended upon request. Where an AFA is submitted in response to an ex-officio detention which does not contain all of the mandatory information regarding technical data etc. it shall be granted only for the detention period of the goods in question, unless the information is provided within 10 working days after the notification of the suspension for the release or detention of the goods.

The Kosovo Customs shall notify the applicant of its decision granting or rejecting the application within 30 working days of the receipt of the application.

If the applicant has been notified of the suspension of the release or the detention of the goods by the custom authorities before the submission of an application, the Kosovo Customs shall notify the applicant of its decision granting or rejecting the application within 2 working days of the receipt of the application.

2.4. EXTENSION OF THE VALIDITY PERIOD OF AN APPLICATION

The request for extension of the period of time during which the Kosovo Customs are to take action shall be done using the form in Annex II of the Administrative Instruction No. 53/2018.

To ensure continuity of coverage the renewal should be received at least 30 working days before expiry of the application and in any event must be received before the expiry date or a new AFA may be required.

2.5. AMENDMENTS OF DECISIONS GRANTING AN APPLICATION

The Kosovo Customs may modify the list of intellectual property rights

approved by their decision at the request of the holder of the decision.

2.6. SUSPENSION OR REVOCATION OF DECISIONS GRANTING AN APPLICATION

Should an IP right cease to have effect holder of the decision must inform the appropriate customs authority so the AFA can be amended or revoked. Similarly, where an applicant ceases for any reason to be entitled to submit an AFA they must inform the appropriate customs authority; the AFA will be revoked.

The Kosovo Customs may revoke and suspend decisions granting AFAs if the holder of the decision fails to return samples of the goods detained, fails to notify Kosovo Customs regarding changes to the IP rights covered by the decision, fails to initiate proceedings under Article 23 of the Law No. 06/L-015 and misuse of information provided by Kosovo Customs in relation to the declarant.

3-PROCEDURES SET OUT IN LAW No. 06/L-015

3.1. CUSTOMS ACTION

3.1.1. Action Upon Application

When customs intercept goods that they have reason to believe are infringing and are covered by a valid application, the suspect goods should be detained and customs should notify the declarant or holder of the goods of their detention within 1 working day of the decision to detain and give them 10 working days in which to either consent or object to their abandonment for destruction.

The holder of the decision should also be notified of the detention, on the same day as, or promptly after, the notice of detention issues to the declarant or holder of the goods. This letter informs the decision-holder that there is a period of 10 working days in which to indicate:

- Whether or not the holder of the decision believes that the goods infringe any of the decision-holder's IP rights,
- Where it is believed that the goods infringe an IPR, whether the holder of the decision agrees to their destruction.

The response period of 10 working days granted to the declarant or holder of the goods and to the holder of the decision is reduced to 3

working days in cases of perishable goods.²

3.1.2.Ex Officio Action

When goods suspected of infringing an IPR are detected by Customs but no valid AFA is in place, then the ex officio procedure permits the detention of goods which are suspected of infringing an IPR. However, this procedure does not apply in the case of perishable goods.

Prior to detention Customs may seek to identify the relevant right holder. If no right holder has been identified within 1 day of the detection, Customs must release the goods; subject to the completion of all other customs formalities. If an entitled right holder is identified and they express an intention to lodge an AFA covering any IP right they believe is infringed by the consignment, then Customs shall detain the goods.

Customs notify the declarant or holder of the goods of their detention within 1 working day of the decision to detain and give them 10 working days in which to either consent or object to their abandonment for destruction.

Notice of the detention must also be given to the entitled right holder concerning the alleged infringement of IPR, on the same day or promptly after notice of the detention issues to the declarant or holder of the goods. Customs invite them to submit an AFA covering the goods and the right in question and to confirm whether or not they believe the goods to be infringing and if so whether they agree to their destruction. Customs give 10 working days to respond but they must send an acceptable AFA before the end of 4 working days.

If an AFA is not made within that period, or if an application is rejected, the goods must be released on the completion of all customs formalities.

The procedures to be followed in ex officio cases are the same as those for cases falling under the simplified destruction procedure set out in 3.2 of this guide.

² Perishable goods are the goods considered by the Kosovo Customs to deteriorate by being kept for up to 20 days from the date of their suspension of release or detention.

3.1.3.Actions Following the Filing and Acceptance of An Application for Action

Preliminary contacts with the holder of the decision prior to the decision to detain or suspend the release of goods:

Before goods are detained, the holder of the decision should be asked to provide any relevant information about the goods to determine if an IPR infringement has occurred. Likewise, Customs may provide the holder of the decision with information about the actual or estimated quantity of the goods, their actual or presumed nature and images of them.

Information to be provided to the holder of the decision

If the holder of the decision so requests, and if the information is available, the following should be provided:

- Names and addresses of the consignee
- The consignor, and the declarant or holder of the goods
- The customs procedure involved and,
- The origin, provenance and destination of the detained goods.

In case of ex officio action, the only information that can be provided to any such person when making enquiries is the actual or estimated quantity of the goods; their actual or presumed nature or images of the goods. Nothing further can be disclosed at this stage that might identify the declarant, such as the name of an individual or company. Where an AFA has been granted, the holder of the decision may then request the above listed information, when available.

Inspection and sampling of the goods

Kosovo Customs may give all parties the opportunity to inspect the goods; in the case of goods suspected of being counterfeit or pirated, the holder of the decision may request a sample for further analysis. This is strictly for the purposes of analysis and facilitation of any subsequent procedure in relation to counterfeited or pirated goods. The holder of the decision is responsible solely for any analysis of the samples. The samples must be returned when the analysis is completed by the holder of the decision.

3.2. SIMPLIFIED DESTRUCTION PROCEDURE

Goods can be considered as abandoned for destruction under the following conditions:

- The holder of the decision confirms in writing within the required period that, in their opinion, the goods infringe an IPR and they agree to their destruction and,
- The declarant or holder of the goods provides written confirmation of the destruction agreement,

Kosovo Customs may deem that consent has been given when:

- The holder of the decision confirms in writing that, in their opinion, the goods infringe an IP right covered by the AFA and consents to its destruction and,
- The declarant or holder of the goods has not confirmed his agreement to destruction nor notified his opposition to it for example, by failing to respond within the period set out.

Destruction is carried out under customs control and under the responsibility of the holder of the decision. The prescribed detention period is 10 working days from the notification of detention. In the case of perishable goods this is reduced to 3 working days.

If the declarant or holder of the goods opposes their destruction or, in the absence of an objection, Kosovo Customs have chosen not to deem that consent has been given; Kosovo Customs will notify the holder of the decision accordingly. It is then open to the holder of the decision to initiate legal proceedings to determine whether an IPR has been infringed. If the holder of the decision has not submitted a copy of the lawsuit as filed with the competent court to determine whether an IPR has been infringed to Kosovo Customs, and that they have initiated proceedings to determine whether their IP rights have been infringed before the end of the detention period, including any extension, the goods must be released from detention; subject to the completion of all other customs formalities.

Except in the case of perishable goods Customs may, at the request of the holder of the decision and where they agree that it is justified, extend the detention period by a maximum of a further 10 working days. The total period cannot exceed 20 working days.

3.3. SIMPLIFIED DESTRUCTION PROCEDURE FOR SMALL CONSIGNMENTS

The Law No. 06/L-015 establishes an option procedure whereby goods in small consignments may be abandoned for destruction at the holder of the decision's expense without any reference to the holder of the decision or the need for the holder of the decision to commence legal proceedings. A small consignment is defined by the Kosovo Customs as a postal or express courier consignment, which:

- Contains three units or less, or
- Has a gross weight of less than 2 kilograms.

The simplified destruction procedure for small consignments applies only where all the following conditions are fulfilled:

- The goods in the consignment are suspected of being counterfeit or pirated
- The goods are not perishable
- There is an AFA already in place covering the goods in question and,
- The holder of the decision has requested the use of the simplified destruction procedure for small consignments when they submitted their AFA.

When goods in a small consignment are suspected of infringing an IPR are detected at the border, they should be detained and notice of the detention should be given to the declarant or holder of the goods. This letter should be issued within 1 working day of the detention.

The holder of the decision is not notified of the detention at this stage.

The declarant or holder of the goods has a period of 10 working days from the date of the notification to reply indicating either:

1) Agreement to the destruction of the goods, or 2) Objection to their destruction.

If the recipient of the notice of detention responds, within the period specified in the notice, indicating agreement to their destruction, destruction is carried out under customs control.

If no response is received within the specified time, it may be deemed that agreement to destruction has been given, and arrangements for destruction should proceed accordingly.

If the declarant or holder of the goods has notified his opposition to destruction or, in the absence of an objection, Kosovo Customs have chosen not to deem that consent has been given; the holder of the decision must be given the opportunity of initiating proceedings to protect his IP right.

The holder of the decision has a period of 10 working days from that notification in which to advise Kosovo Customs that proceedings have been initiated seeking confirmation that this is the case. It is not possible to extend this period.

Kosovo Customs shall upon request and where the information is available give information about the actual or estimated quantity of destroyed goods and their nature to the holder of the decision.

If upon expiry of the deadline Kosovo Customs has not received a copy of the lawsuit that was filed to the competent court then the goods must be released; subject to the completion of all other customs formalities.

Goods to be destroyed both under regular simplified procedure and simplified procedure for small consignments shall not be:

- Released for free circulation;
- Brought out of the customs territory of Kosovo;
- Exported;
- Re-exported;
- Placed under a suspensive procedure;
- Placed in a free zone or free warehouse.

4- LIABILITIES AND COSTS

4.1. LIABILITY OF THE KOSOVO CUSTOMS

The granting of an AFA shall not entitle the holder of the decision concerned to compensation in the event that goods suspected of infringing an IP right are not detected and are released or no action is taken to detain them.

4.2. LIABILITY OF THE HOLDER OF THE DECISION

The holder of the decision is liable towards the holder of the goods or declarant when, following the detention:

- Action is discontinued due to an act or omission on the part of the holder of the decision
- Samples are either not returned or are damaged and beyond use due to an act of omission on the part of the holder of the decision
- The goods in question are found not to infringe an IP right

Additionally, if the holder of the decision fails to initiate proceedings under simplified destruction procedure, the Kosovo Customs may decide not to act as per the decision granting an AFA and the holder of the decision will not be able to file a new application for the same IP right within 1 year.

4.3. LIABILITY FOR COSTS

Given that customs authorities take action upon application, it is appropriate to provide that the holder of the decision should reimburse all the costs including costs of storage, handling and destruction incurred by the customs authorities in taking action to enforce his intellectual property rights. Nevertheless, this should not preclude the holder of the decision from seeking compensation from the infringer or other persons that might be considered liable under the legislation in force.

The holder of the decision is also liable for the costs for any translation required by the Kosovo Customs with regard to suspected goods.

5- OTHER MATTERS RELATING TO ENFORCEMENT PROCEDURES

5.1. EARLY RELEASE OF GOODS

When a holder of the decision has initiated proceedings to determine whether an industrial design right, patent, topography semiconductor product, utility model or plant variety right has been infringed, the declarant or holder of the goods may request their release from detention before the completion of the proceedings.

Release will only be allowed when:

- A sufficient bank guarantee has been provided by the declarant or the holder of the goods,
- No precautionary measures have been imposed by the court,
- All customs formalities have been complied with.

5.2. RISK INDICATORS FOR INTELLECTUAL PROPERTY INFRINGEMENTS

Risk is the possibility that the enforcement of controls may be adversely affected. Risk analysis aims to concentrate controls on areas of highest risk while at the same time leaving the majority of trade to flow relatively freely through customs. Risk indicators are those factors that can increase or decrease the level or degree of risk to the IPR enforcement function.

5.2.1.Document Based Risk Indicators

Examination of documents and electronic information submitted by the consignor, consignee, importer or their representatives help customs officers to identify goods that pose a high risk against counterfeiting and piracy.

- Description of the goods/risky goods

It is one of the methods used by those dealing with piracy and counterfeiting to make false statements or vague item descriptions.

Luxury goods, designer items, and popular or trendy items carry the greatest risk to counterfeiting (especially of well-known brands) and piracy.

Clothes and accessories; watches and their parts; bags, wallets, backpacks etc.; sound recordings, moving recorded media, including images and computer software (especially optical discs); cigarettes; beer, wine and spirits; toys and video games; computer hardware and accessories; sunglasses; hats; shoes; electronic items; automobile and aircraft spare parts and medicines may be defined as risky goods for counterfeiting and piracy in general.

- Vague description of goods

The goods described in ambiguous terms such as “empty”, “unfinished”, “plastic goods”, “plastic coating”, “metalware”, “metal coating”, “metal disks”, “samples”, “household items” often have a high risk of counterfeiting and piracy.

- Country of origin known as source of counterfeit or pirated goods

The goods that originate in countries known as source of counterfeit or pirated goods pose a risk for countering counterfeiting and piracy.

According to EU IPR report 2018, with regards to countries of provenance in relation to value, China is at the top of the list, followed by Hong Kong, China, Turkey and United Arab Emirates as in former years. Vietnam, Cambodia and Bangladesh complete the top seven.

Goods entering through the land border or goods transiting through a country known to be weak in the protection of IPR rights also pose a risk for counterfeiting.

Free zones are often used as distribution points for counterfeit and pirated goods. These goods either come from countries where imitation and counterfeit goods are produced, or they are produced in the free zone.

- Country of destination has a reputation of demand for counterfeit or pirated goods

Not only when goods are imported, transits, (re) exports with a final destination country who has a reputation of demand for counterfeit or pirated goods become a risk indicator for counterfeiting or piracy.

- Nature and quality of the documentation

Unusual printouts of bill of lading and invoices; poor print quality, handwritten or hand-typed invoices on bill of lading or invoices pose a risk. Normally, invoices are generated electronically and are often printed on special paper with the company logo or address pre-printed. Changes on the documents, strikethrough expressions or other corrections, incomplete invoice or bill of lading may be determined as risk indicators for IPR. Many legal documents contain:

- Telephone / fax number, e-mail address, business registration numbers of the shipper, importer or the manufacturer of the goods

- Sales and Delivery statements; FAS (free alongside), FOB (free on board), Net 30 (payment within 30 days)
- Order number or invoice number and date (business world uses invoices with numbers in serial form.)
- Legal invoices payment discount (e.g., 2% discount if paid within 30 days)

Lack of invoices and bill of lading can also indicate high risk. Importers, owners or buyers of counterfeit goods usually try not to use electronic customs declaration and other systems.

-Manufacturer/Consignor and Importer/Consignee Name and Address

- Importer has little or no import history, having customs violations criminal record
- The name of the manufacturer, consignor or importer appears to be fictitious.
- The name of the manufacturer, shipper or importer is incompatible with the trader of the declared goods. Generally, if there is a relationship between the importer, owner or consignee and the exporter or shipper of the goods, it means less risky in terms of IPR.
- The address of the manufacturer, shipper or importer is missing or they cannot be verified through telephone directories, internet or similar open sources.
- The manufacturer, shipper or importer uses a mailbox or email address or the recipient is known only by their telephone (mobile phone) number.
- The addresses of the manufacturer, shipper or importer belonging to a famous region in the production of counterfeit and pirated goods.

- Place of Production

If the declared country of origin is a country where the right holder does not allow for production, this indicates that the goods may be counterfeited or pirated (however, goods from a non-manufacturing country may be parallel import goods.)

Parts or materials containing a right holder's name or brand which are shipping to a nonmanufacturing country, may be counterfeit or pirated.

For instance, original Rolex watches are produced exclusively in Switzerland. Rolex branded watches coming from a country other than Switzerland is questionable.

- Routing of the goods and means of transport

- Goods arriving at a port other than the usual distribution channels of the rights holder.
- Use of routes or distribution that is different from the one specified by the rights holder. (While this raises a suspicion that the goods could be counterfeited, it also suggests that the goods could be subject to parallel import.)
- The use of an unreasonable route in the shipment of goods (transshipment) or the presence of disproportionately high transportation costs.

- Declared value of the goods

- Unusually high or low declared value
- Goods insured with very low value.
- If the declared customs value (within the framework of the WTO Value Agreement) includes royalties, licenses or other payments for other property rights, it means less risk from counterfeiting and piracy.
- Goods that are invoiced as “Bulk” or goods that are invoiced by weight instead of quantity. For instance; CDs invoiced in kilograms rather than pieces.

- Size of the shipment

Delivery of unusually high or low quantities of goods depending on the type of goods. For example; a shipment of 20,000 Rolex watches is unusually large.

- Terms of sale/delivery

- Sales terms in the form of “Cash” or “COD” (Cash on Delivery)
- Shipping term in the form of “EXW” (Ex-works)
- Prepaid shipments involve risk.

5.2.2. Packaging Based Risk Indicators

During the unloading of the goods, the packaging inspection or the inspection of the storage facilities and warehouses can also help Customs officers to detect goods that pose a high risk of counterfeiting. Generally, right holders use high quality packaging material and they pack it neatly. Goods are individually packaged and they are placed in durable boxes labeled with unit numbers, barcodes and quantities.

- Appearance of packaging

- Goods packaged in a way that does not match with the one that the rights holder uses. (wrapping the entire good with transparent plastic, shipping the CDs in a multi-CD box instead of their own special boxes used for retail sale, CDs without title, the artist's name in the boxes)
- If the appearance (size, shape) of the package of the goods is not standard. (For instance; the watches packed in plastic or transparent bags)
- The quality of the packaging or the marks or brands on the package are bad. (Spelling mistakes)

Examples: High quality watches are normally shipped in wooden boxes. Genuine shoes are boxed in pairs and placed in larger cardboard boxes. Clothes and accessories are usually packaged in high quality breathable, plastic bags with warnings printed in different languages and placed in boxes.

5.2.3. Goods Based Risk Indicators

- Quality of the goods

- Goods of poor quality that do not fit the reputation of the right holder.
- Goods shipped without instructions, warranty or insurance documents, or with low quality printed or photocopied instructions for use, warranty or insurance documents.
- The labels, instructions or insurance documents of the goods are not translated or contain typographical errors.

- Labels and marks on the goods

- Missing lot numbers, barcodes, expiration dates or other standard marks such as the place or date of manufacture. Product labels include generally product number, reference or catalog number, facility or factory information, serial or model number.
- Goods bearing the geographical indication, designation of origin of a source, place or region that is not located in the country of manufacture or export.
- Missing marks for trademark or copyright or incomplete trademark or copyright notices (® for a registered trademark, © for a registered copyright).
- Labels and marks which do not comply with the laws of the country of import or other regulatory standards. (e.g., textiles whose contents or cleaning instructions are not specified; goods whose country of origin is not correctly specified; foods or cosmetics missing the ingredient list).
- Goods and labels that do not conform to the labels and goods produced by the right holder (e.g., watches produced in Switzerland should not be marked with “Made in Japan” or “Made in China”

- Product Details

Right holders often attach secret or other details to their products to facilitate identification of counterfeited goods. In such cases, it will be useful to use the product description booklet provided by the right holder or to contact the right holder directly.

Many right holders use details that are difficult to produce, such as holograms, to document the accuracy and authenticity of their products. Real optical discs (CD, CD-Rom, DVD) carry a code called SID. (SID: Source of Identification Code) Guarantee documents accompanying high quality watches carry special identification features such as watermarks or cold stamps.

- Multiple trademarks in one consignment

Consignments containing goods produced by a large number of trademark holders. For instance; computer software produced by different companies within the same shipment, motion pictures produced by different studios, or sound recordings produced under different labels.

A shipment containing many different brands of handbags or a shipment containing different brands of watches that are not connected with each other.

5.3. AVAILABLE TOOLS ON HANDLING IPR CASES

To help enforcement authorities develop their understanding and to assist them in their daily work, multiple organizations provide a series of guides, as well as access to key resources. Here you may find a list of tools and databases developed to support IPR enforcement:

- [World Intellectual Property Organization \(WIPO\) Gold WIPO GOLD provides a searchable one-stop gateway to WIPO's global collections of IP information and data. WIPO's global brand database, WIPO PATENTSCOPE, WIPO's global design database, WIPO Lex are the](#)
- [European Patent Office Database - The European Patent Office database offers free access to more than 70 million patent documents worldwide, containing information about inventions and technical developments from 1836 to today.](#)
- [European Commission Taxation and Customs Union \(DG TAX-UD\) The indications provided by Taxation and Customs Union can help to identify fakes and other IPR infringing goods.](#)
- [The International Intellectual Property Crime Investigators College \(IIPCIC\) is a fully interactive online training facility that aims to equip enforcers with the skills necessary](#)

[to effectively combat transnational organized IP crime. All law enforcement IP crime investigators including police, customs officers and appropriate regulatory body representatives are able to take the training without charge. The Intellectual Property Rights Enforcement for Customs Officers online training series is developed and maintained by the International Intellectual Property Crime Investigators College \(IIPCIC\) with the assistance of the World Customs Organization \(WCO\).](#)

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