

AUSTRALIAN CUSTOMS NOTICE NO. 2007/01

Amendments to the *Trade Marks Act 1995* and *Copyright Act 1968* - Notices of Objection to Importation

Australian Customs Service (Customs) recently initiated amendments to the *Trade Marks Act 1995* (Trade Marks Act) and the *Copyright Act 1968* (Copyright Act) to ease the administrative burden upon and costs to right holders and make the Notice of Objection Scheme more accessible for trade mark owners and copyright holders.

These amendments are included in the *Trade Marks Amendment Act 2006* and the *Copyright Amendment Act 2006*. (Copies of these Acts are available at www.comlaw.gov.au)

The Trade Marks Act and Copyright Act include provisions which allow the registered trade mark owner, or copyright holder, and in certain circumstances, the authorised/licensed user of a right, to lodge a Notice of Objection with Customs, objecting to the importation of goods which infringe their rights. Although there is no fee for lodging these Notices, the administrative burden and costs to the objector of preparing the Notices can be significant, particular where a large number of rights are notified. To assist in reducing the administrative burden and costs to the objector, particularly when renewing the Notices, the term of a Notice of Objection has been increased from two years to four years in both Acts. The requirement for a security to be paid at the time of filing a Notice which may have discouraged right holders from lodging Notices, has also been replaced with provisions allowing right holders to lodge a written undertaking. In the undertaking the right holder will agree to repay any expenses incurred by the Commonwealth as a result of a seizure.

# Amendments to the Trade Marks Act:

* Subsections 132(4) and 132(5) have been amended so that Notices of Objection remain in force for four years.
* Subsection 133(3) will be repealed and replaced with new provisions whereby a written undertaking to repay an expense may be provided to the Customs CEO, instead of a cash or documentary security.
* New subsection 133(3A) will allow the Customs CEO to require a security in cases where the objector has previously defaulted on an undertaking to repay expenses, or where the CEO otherwise considers it reasonable in all the circumstances.
* New section 141A sets out what actions will be available to the Customs CEO if there is a failure by an Objector to comply with an undertaking, or where the security provided does not cover the Commonwealth’s expenses.

# Amendments to the Copyright Act:

* Subsection 135(5) has been amended so that notices of objection remain in force for four years.
* Section 135AA will be repealed and replaced with new provisions whereby a written undertaking to repay expenses is provided to the Customs CEO, instead of a cash or documentary security.
* New subsection 135AA(2) will allow the Customs CEO to require a security in cases where the objector has previously defaulted on an undertaking to repay expenses, or where the CEO otherwise considers it reasonable in all the circumstances.
* New section 135AJ sets out what actions are available to the Customs CEO if there is a failure by an Objector to comply with an undertaking, or where the security provided does not cover the Commonwealth’s expenses.

# Commencement:

Amendments to the Copyright Act commenced on 01 January 2007. Amendments to the term of notices under the Trade Marks Act commenced on 23 October 2006 and the provisions relating to written undertakings for Trade Mark Notices will commence no later than 23 April 2007.

Right holders, or their advisers, who require further information regarding these changes to the Notice of Objection Scheme should contact the Customs Intellectual Property Rights Group on (02) 6275 6577.

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Trade Policy and Regulation CANBERRA ACT

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