



**Australian  
BORDER FORCE**

# 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* (CR Act), *Trade Marks Act 1995* (TM Act), *Olympic Insignia Protection Act 1987* (OIP Act) and *Major Sporting Events (Indicia and Images) Protection Act 2014* (MSEP Act) allows the Australian Border Force (ABF), under certain circumstances, to seize goods that infringe trade marks, copyright, protected Olympic expressions, and protected indicia and images. These provisions give rise to Australia's Notice of Objection Scheme.

## Why protect Intellectual Property?

The decision to protect intellectual property by lodging a Notice of Objection is one that each rights owner must make based on the potential damage to trade and reputation that the owner considers may result from the importation of infringing goods.

## What can I do to protect Intellectual Property

To protect trade marks, copyright material, protected Olympic expressions, or protected indicia and images from counterfeit, pirated or unauthorised importation, the owner (or in some cases an authorised user) must have a Notice of Objection in place with the Department of Home Affairs (The Department).

The ABF 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, ABF may seize goods when it is considered that they appear to infringe and it is suspected that they are intended for some commercial purpose. In some circumstances, a single product might be subject to seizure if it is believed that it will be used for a commercial purpose.

## What is a Notice of Objection

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

A Notice of Objection under the TM Act, CR Act or OIP 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. A Notice of Objection under the MSEP Act is valid for the period of protection granted to the indicia and images of a particular event, as specified within the MSEP Act.

Separate Notices are required to protect trade marks, copyright, protected Olympic expressions, and protected indicia and images.

The power of the ABF is restricted to seizing infringing goods that are subject to the control of the ABF 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](#)
- [Guide to Lodging a Major Sporting Events Indicia and Images Notice](#)
- [Guide to Lodging a Olympic Insignia Notice](#)

### What happens when goods are seized by the Australian Border Force?

The ABF will seize importations that are suspected of infringing copyright, a registered trade mark or protected indicia and images where a Notice of Objection has been lodged with the department by the rights owner (objector). When goods are seized the importer/designated owner and objector will be notified in writing.

The importer/designated owner must make a claim for release of seized goods within ten working days of notification. This is called the Claim Period. If a claim for release is made by the importer/designated owner, the objector will be notified and will have ten working days to commence legal action. This is called the Action Period. At any point prior to the commencement of legal action, the importer/designated owner may voluntarily forfeit the goods.

Before the end of the Action Period:

- The objector has the option to commence legal action, or
- The objector can consent to the release of the goods to the importer/designated owner.

If the objector does not commence legal action within the Action Period, the ABF must release the goods unless they have been voluntarily forfeited by the importer/designated owner. 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/designated owner or that they be forfeited to the Commonwealth. The ABF will dispose of the forfeited goods as directed by the Comptroller-General of Customs, usually by destruction or donation to a charity, as appropriate. This process does not apply to OIP seizures.

### Need more Information?

If you would like further information about protecting Intellectual Property Rights or to obtain copies of the relevant forms, please visit the Home Affairs website at [www.homeaffairs.gov.au](http://www.homeaffairs.gov.au).