



**OFFICIAL**

# PROTECTING INTELLECTUAL PROPERTY

## What is Intellectual Property?

Intellectual Property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs, symbols, names and images used in commerce. IP may be protected by law by way of trademarks and copyright, Protected Olympic insignia and major sporting events indicia and images once they take a tangible form.

Import provisions under the *Copyright Act 1968*, *Trade Marks Act 1995*, *Olympic Insignia Protection Act 1987* and *Major Sporting Events (Indicia and Images) Protection Act 2014* allow the Australian Border Force (ABF), under certain circumstances to seize goods that infringe trade marks, copyright, protected Olympic expressions, and relating to major sporting events 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 (Notice) 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 in place with the ABF.

The ABF can only seize goods suspected of infringing intellectual property rights if there is a valid Notice 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, and related major sporting events indicia and images.

A Notice must be accompanied by a Deed of Undertaking. This is a formal undertaking by the objector agreeing to repay the costs resulting from any seizures made (i.e. transportation, storage and destruction costs).

A Notice under the *Copyright Act 1968*, *Trade Marks Act 1995*, or *Olympic Insignia Protection Act 1987* is valid for four years. A Notice under the *Major Sporting Events (Indicia and Images) Protection Act 2014* is generally valid for one year or less, depending on the commencement of the Notice.

A separate Notice is required to protect trade marks, copyright, protected Olympic expressions, and indicia and images for major sporting events. A Notice can be re-lodged to ensure ongoing protection, or withdrawn at any time if no longer required. A Notice will no longer be valid should the Notice expire.

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

- [Guide to Lodging a Trade Marks Notice of Objection](#)
- [Guide to Lodging a Copyright Notice of Objection](#)
- [Guide to Lodging a Major Sporting Events Indicia and Images Notice of Objection](#)
- [Guide to Lodging a Olympic Insignia Notice of Objection](#)

### What happens when goods are seized by the ABF

When goods are seized the importer and the objector or legal representative will be notified in writing; the date of issuance of the seizure notice signifies the commencement of the claim period. The claim period is ten working days from the date of notification. The importer must make a claim for the release of the seized goods within the claim period.

A 'working day' means a day that is not a Saturday, a Sunday or a public holiday (of the State/Territory of which the seizure notice was issued). If no claim for release is made within the claim period then the goods are deemed forfeited.

If the importer makes a claim for release of the goods within the claim period, the objector will be notified (this signifies the commencement of the action period) and they will have ten working days to:

- commence legal action
- consent to the release of the goods to the importer.

If the objector does not commence legal action within the action period the ABF must release the goods to the importer subject to all other legislative requirements being met.

Should the objector commence legal action, the ABF will hold the seized goods pending final determination by the courts on whether the goods infringe a rights holders IP rights.

This determination by the courts will make an order that the goods be:

- released to the importer
- forfeited to the Commonwealth.

If the goods are forfeited, the ABF will dispose of the goods as directed by the relevant delegate, usually by destruction.

### Need more Information?

If you would like further information about protecting intellectual property rights or would like to obtain the relevant forms, please contact [IPRights@abf.gov.au](mailto:IPRights@abf.gov.au) or visit the ABF website at [www.abf.gov.au](http://www.abf.gov.au)