



Intellectual property rights (IP rights)

In this fact sheet, we answer questions about intellectual property rights (IPR)

In this fact sheet

- 1 How do we combat infringements of IP rights?
- 2 Which IP rights do we enforce?
- 3 How do you submit an 'Application for Action (AFA)'?
- 4 How does the Customs action procedure work?
- 5 How does inspection and sampling of goods work?
- 6 How does the 'small consignments procedure' work in the Netherlands?
- 7 Travellers and enforcement of IP rights
- 8 Release of goods under guarantee
- 9 What obligations does the holder of the decision have?
- 10 How is liability for costs and damages regulated?
- 11 Contact details of Team IPR and more information

Introduction

Infringements of intellectual property rights (IP rights), such as counterfeiting and piracy, have an international scope. During inspections, we may find goods suspected of infringing on IP rights. Regulation 608/2013 outlines our course of action in such cases.

This fact sheet briefly explains what IP rights are all about.

1 How do we combat infringements of IP rights?

If you believe that your IP rights are or will be infringed on in the Netherlands or another EU Member State, you can ask Customs to take action against this. If we respond to your request and find goods suspected of infringing your IP rights, we will detain the goods. You will then be notified by us, so you can determine whether there is indeed an infringement and take action against it.

We can also identify a suspected infringement of IP rights without an Application for Action (AFA) being filed prior. In those cases, we also inform the rightsholders so that they can take measures to protect their rights.

2 Which IP rights do we enforce?

Regulation 608/2013 applies to the following IP rights:

- trademark rights
- design and model rights
- copyright
- related rights
- patent rights
- supplementary protection certificates
- plant variety rights
- designations of origin or geographical indications
- geographical designations
- trade names
- utility models
- topographies of semiconductor products

Regulation 2017/1001 specifically pertains to:

- EU Trade marks

Regulation 608/2013 is **not** applicable to:

- IP rights not stated in the regulation
- goods that do not originate from or are not derived from third countries (Community goods)
- goods manufactured under conditions other than those agreed with the rightsholder
- parallel trade and overproduction
- travellers' personal luggage without a commercial nature
- goods released for free circulation under the customs end-use regime

3 How do you submit an 'Application for Action (AFA)'?

You can ask us to take action if you suspect an infringement of your IP rights. In the Netherlands, you do this by submitting an electronic 'Application for Action' (eAFA) through the [Intellectual Property Enforcement Portal \(IPEP\)](#).

To do this, you will need to create an account first.

You can find more information on the [website of the European Union Intellectual Property Office \(EUIPO\)](#). The Team 'Intellectuele Eigendomsrechten' (Intellectual Property Rights - IPR), will decide whether we will process your request. Your request can be a national request or an EU-wide request.

An application is valid for a maximum of 1 year, but can be extended. You will receive our decision on your application within 30 working days.

What does 'ex officio customs action' mean?

We can also identify a suspected infringement of IP rights without an Application for Action being filed prior. We do this 'ex officio'. We try to identify the rightsholder, who can then ask us to take action. We also notify the declarant or holder of the goods. This notification starts the suspension of the release or detention of the goods. If you do not apply for action, we will release the goods.

In case of ex officio customs action, submit application within 4 working days

The rightsholder must ask us to take action within 4 working days after the notification. You can submit this application to Team IPR. Within 2 working days, they will decide whether to take action and detain the goods.

No ex officio customs action for perishable goods

There is no ex officio procedure for perishable goods. For these goods, we only take action if an Application for Action has been made prior.

4 How does the Customs action procedure work?

If we have not yet released the goods or if we are detaining the goods, we inform the applicant who asked us to take action. This is the 'holder of the decision'. We also inform the declarant or holder of the goods.

Response from the holder of the decision within 10 working days

The holder of the decision must respond to our notification within 10 working days. They must state:

- that there is an infringement of an IP right, and
- that they agree to the destruction of the goods

If we do not receive a response within 10 working days or if both conditions are not met, we will release the goods.

Response from declarant or holder of the goods within 10 working days

The declarant or holder of the goods can respond to our notification within 10 working days. The following responses are possible:

- agree to the destruction of the goods
The declarant or holder of the goods and the holder of the decision will make arrangements together, and take care of the destruction.
- object to destruction of the goods
The holder of the decision must start civil proceedings in court. This must be done within the period of 10 working days after the notification. We can extend this period by up to 10 working days.

If we do not receive a response within 10 working days, we will assume that the declarant or holder of the goods agrees to the destruction the goods.

Please note!

Starting civil proceedings is obligatory. You can find more information under 'What obligations does the holder of the decision have?'.

Minimum/threshold quantities

If you do not wish to take action for an infringement of your IP rights when smaller quantities are concerned, you can specify a threshold quantity with us. We will only contact you if the quantities exceed the threshold quantity.

If you have indicated that you want to use the 'small consignments procedure', we will not register minimum quantities for it.

Duration and scope of registration

The indicated threshold quantities apply as long as the decision for customs action remains in effect. The holder of the decision can adjust this quantity if the decision is extended.

If the rightsholder does not take action against quantities above the threshold, we will no longer assist in protecting the IP rights of the rightsholder.

5 How does inspection and sampling of goods work?

Would you like to inspect the goods or obtain a sample? Please make a request to Team IPR. Samples will only be provided if the request pertains to counterfeit or piracy. Remember, you must always return the samples to us.

6 How does the 'small consignments procedure' work in the Netherlands?

For postal and courier shipments, the so-called 'small consignments procedure' can be followed, instead of the regular procedure.

The small consignments procedure is in place to allow work to be done more efficiently when dealing with small quantities.

Under this procedure, we take care of the destruction of goods. The rightsholder only needs to take action if an objection is raised against the destruction. The rightsholder must then intervene and start civil proceedings.

Conditions for small consignments procedure

- The entire shipment weighs a maximum of 2 kilograms or it consists of a maximum of 3 items that infringe on your IP rights
- It only concerns counterfeiting or piracy
- It does not concern perishable goods
- You must request us to use the small consignments procedure

Procedure

We inform the declarant within 1 working day if we are holding and intending to destroy the goods. The declarant has 10 working days to respond. If we do not receive a response, we assume that the declarant agrees with the destruction of the goods.

Declarant disagrees with destruction

If the declarant disagrees with the destruction of the goods, we notify the rightsholder within 2 working days. The latter must then enforce the destruction under civil law. To do so, the rightsholder must start civil proceedings within 10 working days. These proceedings must establish whether an IP right has been infringed on.

The rightsholder must inform us within 10 working days that the proceedings have been started. This term cannot be extended. If we are not informed in time, we will release the goods.

Provision of information

The rightsholder can request information from us regarding goods that have been destroyed during the small consignments procedure. This can be done by contacting Team IPR.

7 Travellers and enforcement of IP rights

In case of goods in travellers' personal luggage, we only take action if the goods are of a commercial nature. This applies when the goods are not intended for personal use or when they are in larger quantities.

8 Release of goods under guarantee

Sometimes we can release goods under certain conditions.

This is possible in case of suspected infringement of these IP rights:

- design and model rights
- patent rights
- plant variety rights
- utility model
- topography of semiconductors

We release the goods or put an end to their detention when a guarantee is provided and all customs formalities are fulfilled. This can be done by either the declarant or the holder of the goods.

9 What obligations does the holder of the decision have?

If you are the holder of the decision, you are required to fulfil the following obligations:

- Use the received information solely for the purposes stated in Regulation 608/2013
- Inform us when requested
- Return any samples, if applicable
- Cover any associated costs
- Provide a valid reason if you choose not to start civil proceedings

Failure to comply with these obligations may result in sanctions. We may, for instance, decide to (temporarily) cease taking action in case of infringement on your IP rights.

10 How is liability for costs and damages regulated?

If costs are incurred by goods not yet being released or by goods being detained, the holder of the decision bears the responsibility for these expenses.

11 Contact details of Team IPR and more information

No rights can be derived from this fact sheet. Regulation 608/2013 is the decisive text. You will find this text in the EUR-Lex. You can find more information at www.ec.europa.eu. This is a website of the European Commission.

Do you suspect infringement on your IP rights? File an electronic 'Application for Action' (eAFA) via the Intellectual Property Enforcement Portal (IPEP). The link to the portal can be found in chapter 3 of this fact sheet.

Douane Groningen
Team Intellectuele Eigendomsrechten (Team IPR)
Postbus 3070
6401 DN Heerlen

Telephone: +31 (0) 88 151 2123
Email address: dutchcustoms-ipr@douane.nl