

Operational Directions for Customs Authorities in Implementing Measures for Protecting the Rights and Interests of Patent and Copyright

1. The Directions are adopted for the purpose of protecting the rights and interests of patent and copyright holders in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") of the World Trade Organization ("WTO") as well as the relevant laws and regulations of the Republic of China on the basis of fairness and equality so as to promote normal international trade and avoid the creation of barriers to Customs clearance.
2. In case of infringement on patent rights whereunder the goods in question are suspended from import/export on the ground of provisional measures adjudicated by the judicial authority, the Customs authority shall implement the measures after the patent holder (or exclusive licensee) provides the time of import/export of the goods in question, location, the name of carrier for import/export, flight/voyage number or declaration form number, except for goods which have already been released by the Customs authority.
3. Copyright is protected under the Directions primarily on the ground of complaints made by the copyright holder, right holder licensee, agent of right holder licensee, agent of right holder, right holder association (hereinafter referred to as "copyright holder"). Nevertheless, in the event that the Customs authority discovers imported or exported goods suspected of infringing on copyright upon advice given by the right holder, or upon notice given by other authorities or in the execution of its own duties, the Customs authority shall implement the relevant provisions set out in the Customs Act, Customs Anti-smuggling Act, Foreign Trade Act, Copyright

Act, Code of Civil Procedure and Code of Criminal Procedure.

4. In the event that the copyright holder lodges a complaint that specific imported or exported goods have infringed on his or her copyright, he/she should notify the Directorate General of Customs, Ministry of Finance or the Customs Office at the port of import or export in writing attached with the following information:

(1) Facts of the infringement and explanations which are sufficient to identify the goods that infringe on copyright.

(2) Relevant specified information, such as names of the exporter/importer, description of the goods, the port and date of import/export, number of flight or ship, number of container, place of storing goods.

(3) Copyright certificate or any other document which is sufficient to establish copyright ownership.

In the event that the aforementioned documents are submitted by the proxy of the right holder, an additional proof of proxy must be included as well.

5. When the Customs authority receives the complaint specified in the preceding Article, the Customs authority shall scrutinize and decide whether the contents of the complaint are concrete. Once accepting the complaint, the Customs authority should notify the copyright holder. In the event that the Customs authority rejects the complaint, the Customs authority shall notify the copyright holder and state the rationales for rejection. When necessary, the Customs authority may notify the copyright holder to come to the office and provide explanation.

6. When the Customs authority accepts the complaint in accordance with the preceding Article and suspects from the appearance of exported/imported goods

that there is an infringement of copyright, the Customs authority shall notify the copyright holder and exporter/importer within one (1) business day.

After receiving the aforementioned notification, the copyright holder shall identify on-site the items in question within four (4) hours for export by air freight and within one (1) business day for import/export by sea freight and import by air freight, and then submit evidence of infringement within three (3) business days. Anyone failing to provide such evidence in time should apply in writing with a legitimate reason for an extension of additional three (3) business days prior to the deadline. Application for extension is acceptable only once.

After receiving the aforementioned notification, the importer/exporter should submit documents of authorization within three (3) business days. Anyone failing to provide such evidence in time should apply in writing with a legitimate reason for additional three (3) business days prior to the deadline. Application for extension is acceptable only once.

7. The following procedures shall apply when the copyright holder, in accordance with the preceding Article, has identified the goods in question that have indeed infringed on his/her copyrights and has submitted evidence of infringement:
 - (1) When the importer/exporter fails to submit authorization document prior to the deadline stated in Paragraph 3 of the preceding Article, the Customs authority shall suspend the release of the goods in accordance with Article 90-1 of the Copyright Act and notify the copyright holder.
 - (2) In the event that the right holder fails to apply to the Customs authority for detention in accordance with Article 90-1 of the Copyright Act or initiate protective civil or criminal procedures within three (3) business days after the Customs authority has suspended the release of the goods, the Customs

authority shall immediately release the goods in question if there is no violation of other Customs clearance regulations.

(3) In the event that the importer / exporter provides authorization document within the deadline stated in Paragraph 3 of the preceding Article, the Customs authority shall immediately notify the copyright holder. The copyright holder shall apply to the Customs authority for detention in accordance with Article 90-1 of the Copyright Act, or apply to the court for preservation proceedings within three (3) business days after receiving the notice, and the Customs authority shall implement the detention. If the right holder fails to make either of the above applications within the prescribed time and there is no violation of other Customs clearance regulations, the Customs authority shall immediately release the goods in question.

(4) After the copyright holder has applied to the Customs authority for detention of the goods, where the applicant thereof fails to initiate litigation proceedings against the detained goods and notify the Customs authority within twelve (12) days counting from the date on which the Customs authority has notified its acceptance of detention requested by the said applicant thereof, the Customs authority shall rescind the detention order. If there is no violation of Customs clearance regulations, the Customs authority shall follow relevant regulations on export/import clearance procedures. The Customs authority may extend the preceding period by an additional twelve (12) days if necessary.

8. In the event that the copyright holder does not appear to identify the goods in question in accordance with Article 6, or does not provide evidence of infringement prior to the deadline, or the items in question being identified

without infringing their copyrights, the Customs authority shall immediately release the goods in question if there is no violation of other Customs clearance regulations.

9. While lodging advice that unspecified imported or exported goods are suspected to have infringed on his/her copyrights, the copyright holder shall make it to the Directorate General of Customs, Ministry of Finance or the Customs Office at the port of the export/import in writing and attach the data set out in Subparagraph 1 and Subparagraph 3 of Paragraph 1 of Article 4.

When Customs authority accepts the advice as prescribed in the preceding Paragraph and performs the protection measures, regulations set out in Article 5~8 shall apply *mutatis mutandis*.

The Customs authority shall perform protection measures for the advice as prescribed in the preceding Paragraph for one year starting from the date of acceptance of advice. The copyright holder may update the data and apply for extension of one more year each time prior to the expiration date. Those who do not apply for extension shall lodge new advice to the Customs.

10. When the Customs authority receives a report from other government agencies that imported/exported goods are suspected of infringing on copyrights, or discovers on its initiative that the imported/exported goods are obviously infringing on copyrights, regulations on performing protection measures set out in Article 5~8 shall apply *mutatis mutandis*.

When the Customs authority performs protection measures set out in the preceding Paragraph and fails to obtain the contact information of the copyright holder, the

Customs authority may seek assistance from the Intellectual Property Office, Ministry of Economic Affairs via facsimile.

In the event that the Customs authority fails to obtain the contact information of the copyright holder within one (1) business day after reaching out to the Intellectual Property Office, Ministry of Economic Affairs and cannot find evidence of violating other Customs regulation, the Customs authority shall follow relevant regulations on export/import clearance procedures after taking representative samples.

11. The Customs authority is allowed to provide the copyright holder with information of the consignor, importer, exporter, consignee and quantities of the goods that infringe on the copyrights (including name of the responsible person, name and address of the company, etc.) only after the judicial authority determines and establishes the existence of infringement of copyright.