

Anti-Piracy Regulation – Q&A

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In the European Union the battle against trade in goods infringing intellectual property rights has long been high on the agenda. Over the years, an EU-wide system has been developed to combat infringement. The possibilities offered by the Anti-Piracy Regulation have proven to be an interesting enforcement tool for right-holders, especially in The Netherlands.

What?

Regulation (EC) 1383/2003 is the fourth so-called Anti-Piracy Regulation (APR). Under the provisions of the regulation, national customs authorities have the right to detain or suspend the release of goods if they are suspected of infringing an IP right. Customs can take action based on an application by the right-holder or *ex officio*.

What does the APR cover?

The current APR covers almost all IP rights, including patent, trademark and design rights as well as copyright. Furthermore, customs authorities can take action against all movements of goods, including import, export and trans-shipment. Two important exceptions however apply: goods moving within the EU and legitimate parallel imports are not covered by the APR.

APR: also for goods in transit?

Not uncontroversially, the APR has also been applied to *in transit* goods, at least in The Netherlands. This means that goods merely transiting the Netherlands from one country outside the EU to another country outside the EU may also be detained by customs authorities.

How?

Right-holders should file an application for action with the customs authority. For Community IP rights, the right-holder may request action by customs in all EU Member States by means of a single application. In making the application, customs should be provided with as much information as possible, since this increases the chances of infringing goods being found. Together with the application, a standard declaration accepting liability and indemnifying customs must also be submitted.

What happens once customs has detained goods?

If the customs authorities detain goods, the right-holder is notified and allowed to inspect the goods. The right-holder then has ten working days (with a possible extension of ten working days) to initiate legal proceedings to establish whether an IP right has actually been infringed. For perishable goods, this period is limited to three working days, and no extension is possible. Customs provide the right-holder with information on the declarant, holder and/or owner of the goods.

The APR also provides for a simplified procedure for destruction of infringing goods. If the declarant, holder or owner of the goods does not respond to a notification by the right-holder within a reasonable period, he is presumed to have abandoned the goods. Customs can then have the goods destroyed.

Why?

Dutch customs are very active in their pursuit of infringing goods, and unlike some other countries, also act on patent rights. Uniquely in Europe, Dutch customs also have a fully equipped mobile

laboratory for the investigation of bulk chemical products. This can be particularly useful in pharmaceutical patent cases. The Dutch customs are also service-minded: they are happy to discuss the possibilities for action with right-holders. As 25% of all imported goods enter the EU through the Netherlands, the impact of an action taken in The Netherlands may extend well beyond the territory of The Netherlands. As a result, the system has in practice provided for an important enforcement tool in the Netherlands.

This publication describes the legal situation as of 12 June 2009.

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