

Law No.03/L – 170

ON CUSTOMS MEASURES FOR PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Assembly of Republic of Kosovo,

In accordance to the article 65 (1) of the Kosovo Republic Constitution,

Approves

LAW ON CUSTOMS MEASURES FOR PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

**Article 1
Purpose**

1. This law provides the procedures for action by the Customs when goods suspected of infringing intellectual property rights are in the following situations:

1.1. Declared for release for free circulation, export or re-export according to the provisions of Customs and Excise Code;

1.2. Found during the goods control being entered in or leaving the Customs Territory of the Republic of Kosovo, placed under a transit procedure, Customs warehouse procedures, inward-processing procedures, processing under Customs control, temporary import, placed in a free zone, free warehouse in accordance with provisions of Customs and Excise Code.

2. This law also sets out the measures for protection of intellectual property rights to be taken by the Customs when the goods referred to the paragraph 1 of this Article are found to infringe intellectual property rights.

**Article 2
Definitions**

1. For the purposes of this Law, any definition or rule of interpretation by the Article 4 of the Customs and Excise Code of the Republic of Kosovo, shall also apply in this Law

2. Except the paragraph 1 of this Article and if the context is predicted otherwise, the definitions for this Law apply as follows:

2.1. **Intellectual property right** - the right to industrial and intellectual property determined with the applicable legislation in Kosovo.

2.2. **Goods infringing an intellectual property right:**

2.2.1. Counterfeit goods:

2.2.1.1.goods, including packaging, bearing without authorisation from the right-holder a trademark identical to the valid trademark registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the right of the holder of the trademark in accordance with the applicable Law in Kosovo;

2.2.1.2. any trademark symbol (including a logo, words, letters, figures, photos, drawings, colour combinations, three-dimensional forms, forms of the goods and their packaging; combinations of the aforementioned symbols, label, sticker, brochure, instructions for use or guarantee document bearing such a symbol), even if

presented separately from the goods, on the same conditions as the goods referred to the first indent;

2.2.1.3 packaging materials bearing the trademarks of counterfeit goods, even if presented separately from the goods, on the same conditions as the goods referred to the first indent.

2.2.2 Pirated goods- namely goods which are or contain copies made without the consent of the holder of a copyright or related right, where the making of those copies would constitute an infringement of a copyright or related right in accordance with applicable legislation in Kosovo;

2.2.3. goods which infringe a patent, industrial design, protected designation of origin or protected geographical indication right, supplementary protection certificate, national plant variety right, determining the rights and protection of integrated circuit topography rights in accordance with the applicable legislation in Kosovo.

2.2.4. Any mould or matrix which is specifically designed or adapted for the manufacture of goods infringing an intellectual property right shall also be treated as goods infringing an intellectual property right if the use of such moulds or matrices infringes the right-holder's rights in the Republic of Kosovo, such as devices, products, components, smart cards, decoders or software, swap systems or systems for other changes.

2.3. Right Holder:

2.3.1. any domestic or foreign, legal and natural person which is, in accordance with the applicable Law in Kosovo, a holder of a patent right, industrial design right, trademark, supplementary protection certificate, national plant variety right, protected designation of origin, protected geographical indication, copyright or related right, determining the rights and protection of integrated circuit topography rights, or

2.3.2. any other domestic or foreign, legal and natural person authorised to use any of the intellectual property rights mentioned in the indent above, or a representative of the right-holder or of the person authorised to use any of the intellectual property rights.

2.4. **Customs and Excise Code-** the Code No. 03/L-109 of the date 11th November 2008, of Republic of Kosovo.

2.5. **Customs-** Customs of the Republic of Kosovo responsible to implement the customs legislation.

2.6. **Minister-** the Minister of Ministry for Economy and Finance.

Article 3 Application For Action By The Customs Measures prior to an application for action by the Customs (procedure according to official task)

1. Where the Customs, in the course of action in one of the situations referred to the paragraph 1 Article 1 ,of this Law and before an application has been lodged by a right-holder, has sufficient grounds for suspecting that goods infringe an intellectual property right, it may suspend the release of the goods or detain them.

2. The Customs shall notify the right-holder of the measures referred to in paragraph 1 of this Article in order to enable the right-holder to submit an application for action in accordance with Article 4 of this Law. The declarant or the holder of the goods shall be notified as well.

3. The Customs may, without publicizing any information other than the actual or supposed number of items and their nature and before informing the right-holder of the possible infringement, ask the right-holder to provide it with any information they may need to confirm its suspicions.

4. Within three (3) working days after the notification, if the right holder does not submit an application for action in accordance with Article 4 of this Law, the release of the goods shall be allowed or the period of detention stopped, provided that all Customs procedures are completed.

Article 4 **The lodging and processing of application of action by the Customs**

1. The right-holder may apply in written for Customs action when goods are found in one of the situations referred to the paragraph 1 of Article 1 of this Law.

2. The application for action shall be made in a form established by the General Director of Customs. The application shall contain all information needed to enable that the mentioned goods are readily recognized by Customs, in particular:

2.1. Accurate and detailed technical description of the goods;

2.2. Any specific information the right holder has concerned to the type of infringement;

2.3. Name, surname and contact details of the person appointed by the right holder.

3. The application for action shall be submitted together with the declaration of liability by the applicant according to the article 5 of this Law and the proof that the applicant holds the right for the goods in question.

4. Right-holder should also forward any other information that may have in regard to:

4.1. The customs value of the original goods in the Republic of Kosovo;

4.2. The location of goods or their intended destination;

4.3. Details that identify the consignment;

4.4. The scheduled arrival or the departure date of the goods;

4.5. Details on the means used for transport;

4.6. Details on the identity of the importer, exporter or the holder of the goods;

4.7. The country of production and routes used for conveying;

4.8. The technical differences, if known, between the original and goods suspected to infringe the intellectual property right.

5. In addition to the information referred to in paragraphs 2, 3 and 4 of this Article, details may also be required which are specific to the type of intellectual property right.

6. On receiving an application for action, the Customs shall process that application and notify the applicant in written of its decision within thirty (30) working days from the receipt of the application for action.

7. The Customs shall charge a fee to the applicant to cover the costs occasioned by the processing of application. The fee amount charged for applicant will be determined by the Minister with a sub-legal act.

8. Where the application does not contain the mandatory information listed in this Article or they are not sufficient, the Customs shall reject the application for action and in that event it shall provide reasons in writing for its decision. A special appeal against such decision may be presented to Customs within thirty (30) days period from the date of receiving this decision.

Article 5 **Declaration of Liability**

1. With the declaration referring to the paragraph 3 of Article 4, the right holder shall assume the liability towards the involved persons in one of the situation that refer to in paragraph 1 of Article 1, of this law, in case:

1.1. the procedure initiated according to the paragraph 1 of Article 8 is to be extended because of an action or failure from the right holder,

1.2. when the goods in question are not found infringing the intellectual property right.

2. With such declaration, the right holder shall also agree to bear all costs incurred for keeping the goods under Customs supervision according to this Law.

Article 6

Provisions of Articles 4 and 5 of this Law shall apply appropriately to request an extension of the period referred to Article 7 of this Law.

Article 7

Acceptance of the application for action

1. When granting application for action defined in Article 4 of this Law, the Customs shall specify the period during which the action is to be taken. This period shall not exceed one (1) year from the date of acceptance of the application. At least fifteen (15) days before expiry of the period in question, and being subject to the prior discharge of any debt owed by the right-holder under this Law, the right-holder may request the period to be extended.

2. Customs shall send immediately decision for granting an application and the decision for extension of the period to all Customs offices for actions.

3. The right-holder in term of five (5) working days shall notify the Customs for the expiration of the validity of his right.

4. If the right holder does not notify the Customs under paragraph 3 of this Article, Article 18 of this Law is applied.

5. At the request of the Customs, the right-holder shall provide any additional information necessary for the implementation of the decision granting the application.

Article 8

Conditions determining Action by the Customs

1. Where the Customs Office, to which the decision granting an application has been forwarded, considers that goods in one of the situations defined in paragraph 1 of Article 1 of this Law are suspected of infringing an intellectual property right covered by that decision, it shall suspend release of the goods or detain them under Customs supervision. The Customs shall inform the Central Administration of the Customs Administration.

2. The Customs shall inform the right-holder, the declarant or owner of the goods of its action and is authorized to inform them of the actual or estimated quantity and the actual or supposed nature of the goods whose release has been suspended or which have been detained and for the option for a simplified procedure according to Article 9 of this Law.

3. With a purpose to establish whether an intellectual property right has been infringed under Law, and in accordance with the provisions on protection of personal data, commercial and industrial secrecy and confidentiality, the Customs may inform the right-holder, at his request, of the names and addresses of the consignee, the consignor, the declarant or the holder of the goods and the origin and provenance of the goods suspected of infringing an intellectual property right, if known.

4. On request by the right-holder and the persons involved in any of the situations defined to in paragraph 1 of this Article, the Customs shall give them the opportunity to inspect the goods whose release has been

suspended or which have been detained. The Customs may take samples in accordance with the provisions in Customs and Excise Code and it may allow the right holder to inspect them. The customs may also send the samples to the right holder at his express request and strictly for the purposes of analysis and for facilitating the subsequent procedure. The samples must be returned on completion of the technical analysis and, where applicable, before goods are released or their detention is ended.

Article 9

1. Where the Customs detained or suspended the release of goods which are suspected of infringing an intellectual property right in one of the situations determined in paragraph 1 of Article 1 of this Law, abandoned for destruction, the Customs may authorize simplified procedure, to be used with the right-holder's agreement, which enables Customs to have such goods destroyed under Customs supervision, without there being any need to determine whether an intellectual property right has been infringed under Law and provided that:

1.1. the right-holder informs the Customs in writing within eight (8) working days, or three (3) working days in the case of perishable goods, of receipt of the notification provided for in Article 8 of this Law, that the goods concerned by the procedure infringe an intellectual property right and provides that Customs with a written agreement of the declarant, the holder or the owner of the goods to abandon the goods for destruction, and

1.2. that destruction is carried out at the expense and under the responsibility of the right-holder in accordance with provisions of Customs and Excise Code for destruction of goods under Customs supervision, and be proceeded by taking samples by the Customs in accordance with the provisions of Customs and Excise Code.

2. With reference to sub-paragraph 1.1 of this Article, the declarant, the holder or the owner of the goods may directly provide the agreement for abandonment for destruction of the goods to the Customs. It shall be presumed that the declarant, the holder or the owner of the goods has provided agreement for destruction if he has not specifically opposed destruction, of which he has been informed earlier, within the prescribed period. This period may be extended by a further ten (10) working days with the exception of perishable goods.

3. The Customs shall not be liable for the damages that may arise from the destruction of the goods in accordance with this Article.

4. In all other cases, where the conditions of paragraph 2 of this Article are not harmonized, the procedure laid down in Article 11 of this Law shall apply.

Article 10

1. A right-holder shall use the information mentioned in paragraph 3 of Article 8 of this Law for the procedure of determining whether an intellectual property right has been infringed, as well as for the purposes specified in Article 9 paragraph 1 of Article 11 of this Law.

2. In case the information is used contrary to paragraph 1 of this Article, the Customs shall revoke the decision to accept the application for action for the remaining period. If the right holder does not act under this Article, Article 19 of this Law shall be applicable.

3. In the event of a further or more severe breach of the provisions of paragraph 1 of this Article, the Customs may refuse to extend the period referred to in Article 7 of this Law.

Article 11

1. If, within ten (10) working days of receipt of the notification of suspension, of release or of detention, the Customs has not received the written statement by the right-holder according to the Articles 12 and 13 of this Law, or has not received the right holder's agreement defined for in paragraph 1 of Article 9, of this Law, the Customs shall release the goods provided that all Customs formalities are completed. This period may be extended for a further ten (10) working days in appropriate cases.

2. In the case of perishable goods suspected of infringing an intellectual property right, the period referred to in paragraph 1 of this Article shall be three (3) working days and it may not be extended.

Article 12

1. The right-holder shall notify the Customs within ten (10) working days that a procedure determining the infringement of intellectual property rights is initiated:

1.1. By submitting a request to the competent Court for determining temporary measures, or

1.2. By filing a suit to the competent Court.

2. With the initiation of a procedure defined to in paragraph 1 of this Article the period of suspension of the release of the goods or detention is extended until the court will bring decision concerning the goods.

Article 13

1. In the case of goods suspected of infringing intellectual property rights, owner, holder, importer, or consignee of the goods may be able to obtain the release of the goods on provision of a security, provided that:

1.1. The Customs has been notified, in accordance with paragraph 1 of Article 11 of this Law, that a procedure has been initiated to establish whether an intellectual property right has been infringed under the Law;

1.2. Competent Court has not authorized measures for seizure of the goods before the expiry of the period laid down in paragraph 1 of Article 11 of this Law and

1.3. All Customs formalities have been completed.

2. The security provided in paragraph 1 of this Article must be sufficient to protect the interests of the right-holder. Payment of the security shall not affect the other legal compensations available to the right-holder.

3. The type, procedure, way of equipment of a guarantee, collection and release shall be regulated by the Minister with a sub-legal act.

Article 14

1. Storage of the goods during the period of suspension of release or detention shall be carried out in a manner which is in accordance with the provisions of the Customs and Excise Code foreseeing the temporary storage of goods.

2. The costs for storage and maintenance of the goods shall be borne by the person submitting the application for action.

Article 15

Goods Found which Infringe the Intellectual Property Right

1. Goods found which infringe an intellectual property right at the completion of the procedure provided for in Article 8 of this Law shall not be:

1.1. allowed to enter into the Customs territory of Republic of Kosovo,

1.2. released for free circulation,

1.3. removed from the Customs territory of Republic of Kosovo,

1.4. exported

1.5. re-exported

1.6. placed under a suspension procedure or

1.7. placed in a free zone or free warehouse.

2. If the right holder infringes this Article, provision of Article 20 of this Law shall be applied.

Article 16

1.If during the proceedings before the competent authority the decision has been approved to destroy or dispose outside the commercial channels the goods infringing the intellectual property right, the Customs shall order that:

1.1. Goods under Customs supervision should be destroyed or otherwise disposed outside the commercial channels, in such a way as to preclude injury to the right holder, without any sort of compensation and cost to the Customs.

1.2. Any other measures (including the abandonment of goods for humanitarian purposes) to be taken in order to effectively deprive the persons concerned of any economic gains from the transaction. Simply removing the trademarks which have been affixed to counterfeit goods without authorization shall not be regarded as effectively depriving the persons concerned of any economic gains from the transaction.

Article 17

Liability of the Customs and the Right- Holder

1. The acceptance of an application shall not entitle the right-holder to compensation in the event that goods infringing an intellectual property right are not detected by Customs and are released or no action is taken to detain them in accordance with paragraph 1 of Article 8 of this Law.

2. The implementation of the powers and actions taken by the Customs in accordance with this Law shall not render it liable for compensation towards the persons involved in the situations or persons referred to in paragraph 1 of Article 1 of this Law.

Article 18

Offences Provisions

1. For offence the Penalty in amount of two thousand (2.000) € will be charged against the legal person for offence, acting against paragraph 2 of Article 7 of this Law, if he does not notify the Customs about the expiry of his rights within five (5) working days .

2. For offence the Penalty in amount of five hundred (500) € shall be charged as well against the natural person for actions determined in paragraph 1 of this Article.

Article 19

1. For offence the Penalty in amount of two thousand (2.000) € shall be charged against the legal person, who acts contrary to the paragraph 1 Article 10 of this Law, by using information provided by the Customs according to Article 9 and paragraph 1 of Article 11 of this Law out of the procedures and purposes of establishing an infringement to intellectual property right infringement.

2. For offence the Penalty in amount of five hundred (500) € shall be charged as well against the natural person for actions determined to paragraph 1 of this Article.

Article 20

1. For the offence the Penalty in amount from two thousand (2.000) to five thousand (5.000) € shall be charged to the legal person who acts contrary to the Article 15 of this Law, for introducing, releasing for free

circulation, exiting, exporting, putting under a suspension procedure or entering into a free zone or a free warehouse goods for which, in a previously completed procedure in accordance to the Article 8 of this Law, it has been established that they infringe an intellectual property right.

2. For offence the Penalty in amount of two hundred (200) to four hundred (400) € shall be charged as well against the natural person for actions determined to paragraph 1 of this Article.

Article 21 Final Provisions and Exceptions

1. This law shall not apply to:

1.1. the goods bearing a trademark with the consent of the holder of the trademark or to goods bearing a protected designation of origin or protected geographic indication or which are protected by a patent, supplementary protection certificate, national plant variety right, by the copyright or related right or by an industrial design right, determining the rights and protection of integrated circuit topography rights and which have been manufactured with the consent of the right holder, if they are placed in one of situations referred to the paragraph 1 of Article 1, of this Law without the consent of the right holder according to the license.

1.2. Goods referred to in paragraph 1 of this Article which have been manufactured under conditions other than those agreed with the right holder.

1.3. Goods part of the personal luggage of a traveler, items of non-commercial nature of a minimal value entered together with items from personal luggage of a traveler and items of non-commercial nature of a minimal value received from abroad on occasional basis and relieved from import duties payment in accordance with the provisions of the Customs and Excise Code, provided that there are no reasonable grounds to suspect that the goods are part of the commercial traffic.

Article 22 Temporary Provisions

1. If it is not considered otherwise by this Law, the Customs that implements the procedure shall apply the provisions of the Customs and Excise Code. The Law provisions on the General Administrative Procedure shall be applied as an exception.

2. This Law provisions shall not contradict the applicable Laws in Kosovo that regulate the protection of the industrial and intellectual property right.

Article 23 Sub-legal acts

For implementing of this Law, Minister within six (6) months from the date of entry into force of this Law shall issue sub-legal acts.

Article 24

Article 9 shall start to be implemented six (6) months after this Law enters into force.

Article 25 Repealing provision

With the entry into force of this Law, the UNMIK Regulation 2008/22 dated 6th May 2008 and all the provisions which are contrary to this Law are repealed.

Article 26 Entry into force

This Law shall enter into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo.

**Law No. 03/L- 170
29 December 2009**

Promulgated by the Decree No. DL-004-2010, dated 08.01.2010, of the President of Republic of Kosovo, Dr. Fatmir Sejdiu.