

S.I. No. 48 of 1996 - European Communities (Counterfeit and Pirated Goods) Regulations, 1996 provides the basis whereby Customs can request a right holder to provide security.

32. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please identify the authority/authorities responsible for notifying the importer and applicant and cite to the law or regulations spelling out the procedure.

Customs are responsible for notifying the importer and the right holder. S.I. No. 49 of 1996 - European Communities (Counterfeit and Pirated Goods) Regulations, 1996 sets out the procedures to be followed.

33. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.

The right holder must, within ten days of the detention of the goods, satisfy Customs that the goods are in fact counterfeit or pirated. This period can be extended by a further ten days where Customs are satisfied that it is appropriate to do so.

The right holder may initiate proceedings through the national courts.

34. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

When suspect goods are detained, the right holder is contacted by Customs to confirm whether the goods are counterfeit or pirated. The right holder may also be afforded the opportunity to examine the goods.

35. Article 58 specifies procedures to be followed where the competent authorities can act ex officio. Please identify the types of intellectual property subject to ex officio action.

Counterfeit and Pirated Goods as defined in Council Regulation No. 3295/94 and Commission Regulation No. 1367/95 may be subject to ex officio action.

36. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Ireland.

Goods of a non-commercial nature, up to a value of 175 ECU, contained in travellers' personal luggage are excluded from the scope of Council Regulation No. 3295/94.

Criminal procedures

37. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Ireland comply with that obligation.

Under the Trademarks Act 1996 heavy fines and prison terms up to a period of five years may be imposed for trade Mark counterfeiting. Similar provision is made under the Copyright Act and will also be provided for under new legislation. These penalties are considered to constitute the requisite deterrent.

[Follow-up question from the United States]

Please provide detailed information on the "heavy fines and prison terms" of the Trade Marks Act of 1996, as described in Ireland's answer to question no. 37 from the United States. In addition, please indicate when the government expects to adopt the new copyright law described in the same answer.

The Trade Marks Act 1996 in section 92 provides that a person engaging in the fraudulent application or use of a trademark in relation to goods will be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £1,000 or to both; that a person may be liable on conviction on indictment to imprisonment to a term not exceeding five years or to a fine not exceeding £100,000 or to both.

The Trade Marks Act 1996 in section 93 provides that a person who commits the offence of falsification of the register shall be liable on a summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £1,000 or to both, or on conviction on indictment shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding £200,000 or to both.

The Trade Marks Act 1996 in section 94 provides that in the case of an offence of falsely representing a trademark as registered a person guilty of such an offence shall be liable on summary conviction to a fine not exceeding £1,000 and in the case of a continuing offence to a further fine not exceeding £100 for every day on which the offence continues.

The Trade Marks Act 1996 in section 97 provides that a person guilty of unauthorised use of state emblems of Ireland shall be liable on summary conviction to a fine not exceeding £1,000 and, in the case of a continuing offence, to a further fine not exceeding £100 for every day the offence continues.

In July 1998, Ireland enacted the Intellectual Property (Miscellaneous Provisions) Act 1998 to deal with specific issues dealing with presumptions and penalties, as outlined in the answers to questions 3 and 6 above. In addition, Ireland is preparing draft legislation (the proposed Copyright and Related Rights Bill 1998) to provide for a comprehensive reform of the existing copyright law. Work on the preparation of this legislation is well advanced with a view to publication in the very near future and presentation to Parliament in the Autumn 1998 session.

[Other follow-up questions from the United States]

1. Please provide statistical information related to civil copyright, trademark, geographical indication, industrial design, patent, integrated circuit layout-design and trade secret enforcement for each of the years 1996 and 1997, including the number of cases filed;

injunctions issued; infringing products seized; infringing equipment seized; cases resolved (including settlement); and the amount of damages awarded.

Ireland does not maintain statistics of this nature.

2. Please provide statistical information related to criminal enforcement in the area of copyright piracy and trademark infringement for each of the years 1996 and 1997, including the number of raids, prosecutions, convictions and the amount of fines and/or jail terms (including whether the fines were paid and whether the jail term was actually served or was suspended) and any other information establishing that your criminal system operates effectively to deter copyright piracy and trademark counterfeiting.

Ireland does not maintain statistics of this nature.

3. The United States Government has received reports that some Irish courts and prosecutors refuse to apply appropriate presumptions of subsistence of copyright and ownership of copyright in cases involving video piracy. In light of these reports, please explain how Ireland complies with the requirement of Article 41.2 that enforcement procedures shall not be "unnecessarily complicated or costly".

Ireland does not accept that either Irish courts or prosecutors are reluctant to enforce intellectual property rights where those rights enjoy statutory protection. Ireland has already given detailed responses concerning its enforcement procedures and it is not accepted that those procedures are unnecessarily complicated or costly.

The Intellectual Property (Miscellaneous Provisions) Act 1998 has introduced specific amendments to the Copyright Act 1963 in order to ensure that in respect of actions for infringement of copyright the presumption of copyright subsistence and ownership will be strengthened. In particular, it makes provision for the following:

- (a) that copyright shall be presumed to subsist in a work unless the contrary is proved;
- (b) that the plaintiff shall be presumed to be the owner or exclusive licensee of the copyright unless the contrary is proved;
- (c) that where a work bears a name, statement or mark identifying a person as the author, owner or exclusive licensee of the copyright, this shall be presumed to be correct unless the contrary is proved.

4. The United States Government has received reports that civil lawsuits in video piracy cases often do not reach a hearing on the merits for more than three years. In light of such reports, please explain how Ireland complies with the requirement of Article 41.2 that copyright enforcement procedures "shall not ... entail ... unwarranted delays".

Ireland does not accept that unwarranted delays occur. It is always endeavoured for copyright enforcement procedures to be implemented as quickly as possible.

5. The United States Government has received reports that execution of provisional measures in Ireland is subject to such burdensome conditions that they are unavailable in practice. Please explain how Ireland fulfils its obligations under Articles 41.2 and 50 to make available "prompt and effective" provisional remedies that are not "unnecessarily complicated or costly".

Ireland does not accept that the execution of provisional measures in Ireland is subject to such burdens and conditions that they are unavailable in practice. Strict rules attend the applicability of provisional measures in Ireland and these have been described in answers to initial questions 4, 5, 20 and 21 from the United States.

6. Under current Irish law the maximum fine for criminal copyright infringement is only £1,000 (Irish) and the maximum prison sentence is six months, reportedly the lowest maximum fine and sentences in Europe. In light of these criminal remedies, please explain how Ireland fulfils the obligations in Articles 41 and 61 to provide penalties "sufficient to provide a deterrent".

Ireland does not accept that the current remedies fail to provide penalties "sufficient to provide a deterrent".

The Intellectual Property (Miscellaneous Provisions) Act 1998 has introduced specific amendments to the Copyright Act 1963 concerning penalties. These are:

- (a) in respect of a summary conviction for a copyright offence, a penalty of up to £1,500 or up to one year's imprisonment, or both, and
- (b) in respect of conviction on indictment for a copyright offence, a penalty of up to £100,000 or up to five years' imprisonment, or both.

8. The United States Government has received reports that the Department of Public Prosecutions often fails to initiate prosecutions promptly after raids in video piracy cases and cases against retailers of pirate computer software. In light of these reports, please explain how Ireland fulfils its obligation to provide criminal remedies against commercial piracy that are "expeditious" and without "unwarranted delays".

Ireland has already explained the approach taken in providing the required criminal remedies. It is considered that these remedies are "expeditious" and are without "unwarranted delays".

9. The United States Government has received reports that Irish courts have not permitted participation of industry technical experts in raids not the seizure of video cassette recorders used in video piracy. In light of these reports, please confirm how Ireland complies with the obligations in Article 61 to provide in criminal cases remedies including the seizure, forfeiture and destruction of instrumentalities of piracy.

Ireland has already provided in answers to previous questions the manner in which Article 61 obligations are provided for.

**APPLICATION TO SUSPEND THE RELEASE OF, OR DETAIN COUNTERFEIT AND
PIRATED GOODS ENTERED FOR FREE CIRCULATION, EXPORT, RE-EXPORT OR
FOR A SUSPENSIVE PROCEDURE**

I declare that
(Full name in block letters)

Name and Address of Company etc.
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is the holder of the right (registration number) shown below which registration is valid until, 19..... and I request the Revenue Commissioners to suspend release of, or detain the goods shown hereunder if entered for free circulation, export, re-export or for a suspensive procedure during the period from day of, 19..... to day of, 19....

TRADE MARK/DESIGN RIGHT

A representation of the registered trade mark should be given in an Appendix to this application. Details of a Design Right may also be given in an Appendix.

GOODS

A detailed description of each item below should be attached to this application		
Item.	Tariff Code No.	Country of Origin.
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DETAILS OF IMPORT/EXPORT

As many details as possible of importation/exportation should be given. If necessary attach extra sheet.

Country of consignment/ Place of loading abroad	Date and Place of Importation/Exportation	Place of Loading/Unloading
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.....
.....
Name and Ship/Vehicle Reg. No./Flight No.	Present location of goods	
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.....	

Name and Address of Importer/Exporter	Consignment reference number/Airway bill
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.....	. Number of packages/Identifying Marks
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Persons known to be importers/exporters of the goods which legitimately use the right in question	Other persons who are also registered users of the right in and/or* outside Ireland.
Name and Address	Name and Address
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.....
.....

I hereby indemnify the Revenue Commissioners against all actions, proceedings, claims and demands whatsoever which may be taken or made against them, or costs and expenses which they may incur in consequence of the detention of, or anything done in relation to, any goods to which this application relates.

I hereby undertake to comply with the provisions of the European Communities (Counterfeit and Pirated Goods) Regulations, 1996.

Dated this day of, 19.....

Signed

(*State whether the Sole Proprietor, Partner, Director, Company Secretary, Duly Authorised Person)

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- NOTES**
1. Applications may be lodged only by the holder or authorised user of a right or by an authorised representative of the holder or authorised user.
 2. A fee of £400 is payable upon the grant of an application.
 3. Each application must be accompanied by the following:
 - (a) In the case of applications made by the holder of the right:
 - for Trademark and Design rights - proof of registration, or of lodging of application with relevant office;
 - for copyright or neighbouring rights and unregistered design rights - any proof of authorship or of his status as original holder;
 - (b) In the case of applications made by persons authorised to use the right - as in (a) and in addition the title by virtue of which the use of the right is authorised;
 - (c) In the case of a representative of (a) or (b) above - as in (a) or (b) and in addition, proof of authorisation to act for the holder of the right.
 4. In addition, each certificate of registration must be accompanied by a representation of either the trade mark or the design.
 5. Each application is valid for a maximum period of 3 months.
 6. Completed application forms should be forwarded to Customs Procedures A Branch, Office of the Revenue Commissioners, Castle House, Dublin 2.
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