

# Enforcement Of Intellectual Property Rights Through Customs

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# Custom Act, 1962 & Intellectual Property Rights Enforcement Rules, 2007



- Apart from the various remedies provided under the IP Laws in India, one of the most efficient ways to protect and enforce intellectual property rights is through Custom Act, 1962
- It prohibits import of goods that infringe Intellectual Property at the Custom Borders thereby restricting the entry of the goods infringing Intellectual Property Rights

- Under Section 156 (1) read with Section 11 (2) (n) and (u) of the Customs Act, 1962, the Central Government has made the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 applicable to imported goods.

- The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 has been amended vide notification no. 56/2018. - Customs (N.T.) dated 22nd June 2018 and the said rules have been called the Intellectual Property Rights (Imported Goods) Enforcement Amendment Rules, 2018.

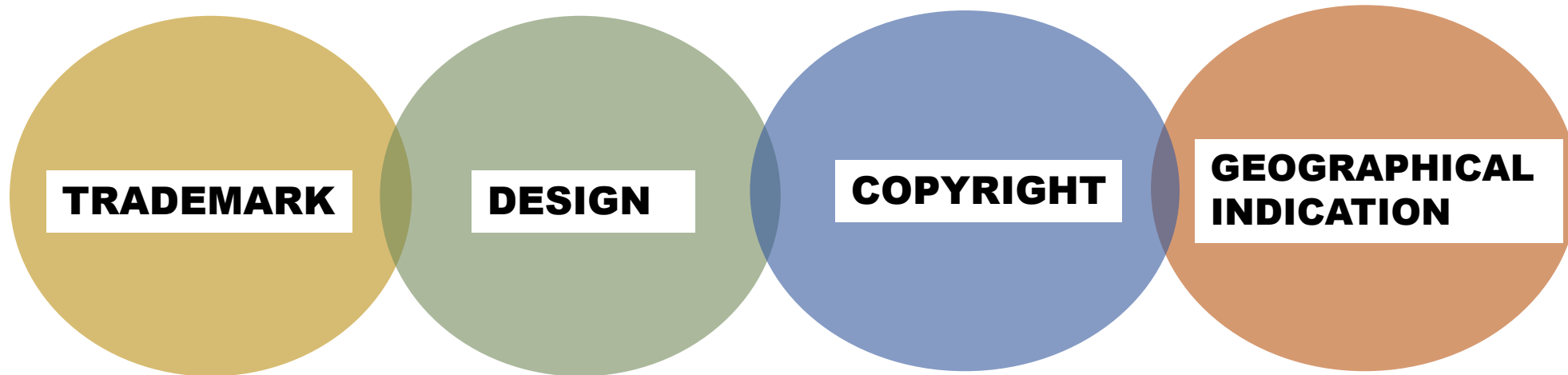


## **Powers conferred by Customs Act, 1962**



# What is Protected under the IPR Enforcement Rules 2007 after the 2018 amendment ?

After the amendment of 2018, the IPR Enforcement Rules 2007 permits a Right Holder to protect the following different types of Intellectual property-



# WHO IS PROTECTED?

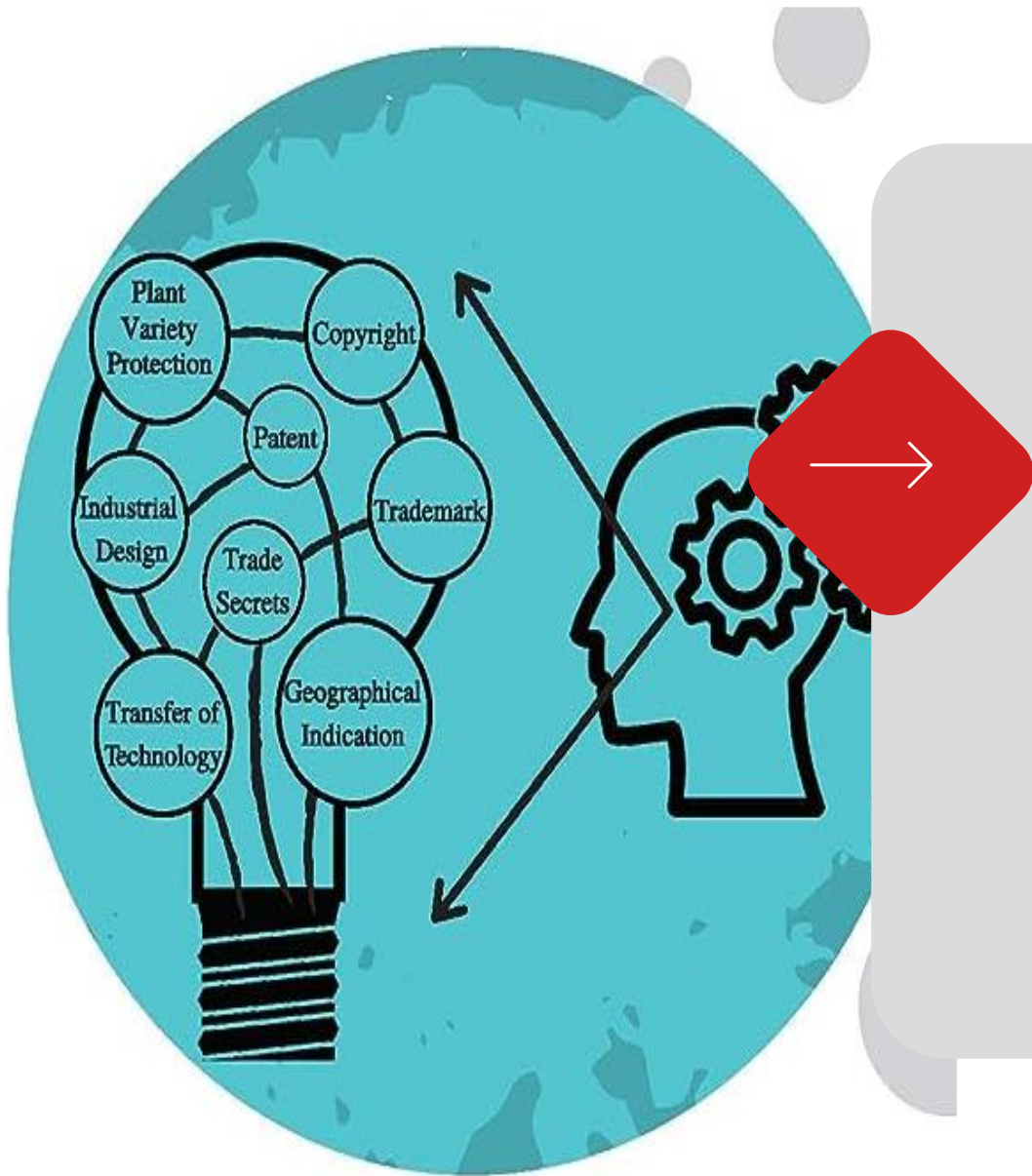
The Right Holder is protected under IPR (Imported Goods) Enforcement Rules, 2007. As per Rule 2(d) of the Rules, Right Holder means:

a Natural Person or a Legal Entity, which is the **owner** of the protected IP under the Indian IP Laws

Its Successors-in-Title

Its Duly Authorized Exclusive Licensee

Any other Individual, Corporation or Association authorized by the Right Holder



# What is Protected ?

Under the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, goods infringing intellectual property rights which are made, reproduced, put into circulation or otherwise used in **breach of the intellectual property laws in India** or outside India and without the consent of the right holder or a person duly authorized to do so by the right holder.

# Procedure for Registration with Custom Authorities – Rule 3

1

Filing of Application/Notice by the Right Holder

- ❑ To the Commissioner of Customs
- ❑ At the port of import of goods infringing IPR
- ❑ Requesting suspension of clearance of such goods.

2

Notice shall be given in the format prescribed in the Annexures to the Rules accompanied by a document as specified by Commissioner evidencing payment of application fees of Rs. 2,000/-.  
Information to be submitted within 15 days

3

The Annexure to the Rules contains the format for notice in respect of goods infringing intellectual property rights as per Rule 3 (2) including the list of documents/ information required.





# Procedure for Registration with Custom Authorities – Rule 4



Notice to be Registered by the Custom Authorities on satisfaction

- Within 30 working days from the date of receipt of the notice under Rule 3 (1) or from the extended period as per Rule 3 (4), the Commissioner shall notify the applicant whether notice is registered or rejected.
- Minimum validity of registration of notice for a period of 1 year

# Registration conditions – Rule 5

01

Right Holder also required to execute a bond with Commissioner of Customs undertaking to protect the importer etc. and competent authorities against all liabilities & to bear costs towards destruction, demurrage and detention charges till destruction or disposal

02

Right Holder shall execute an indemnity bond with Commissioner of Customs indemnifying Customs Authorities against all liabilities & expenses on account of suspension of release of goods.

03

Right Holder shall inform about any change in IPR subsequent to its registration with Customs within 1 month and Commissioner may accordingly amend/suspend/cancel the notice.

# Benefits of Registration of Notice & Suspension Procedure - Rules 6 to 8

1

Prohibition and suspension of import of infringing goods under Section 11 of the Customs Act, 1962.

2

At all the Ports (Custom Borders) in India

3

Notice can be given by the Right Holder of the suspected infringing goods

4

Commissioner of Customs can *suo moto* suspend the clearance of such infringing goods

5

Rule 7(4): Where the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, has suspended clearance of goods on his own initiative and right holder does not give notice under rule 3 of the Rules or does not fulfill the obligation under Rule 5, within five days from the date of suspension of clearance, the goods shall be released provided that all other conditions of import of such goods under the Customs Act, 1962, have been complied with.

# Information to Importer & Right Holder

Procedure for suspension of clearance of imported goods is provided under Rule 7 of the IPR Enforcement Rules, 2007. Where the clearance of goods has been suspended by Customs on its own, they may seek from Right Holder any information/assistance for determining whether goods are counterfeit or infringing or pirated.

**Rule 7(2):** The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall immediately inform the importer and the right holder or their respective authorised representatives through a letter issued by speed post or through electronic mode of the suspension of clearance of the goods and shall state the reasons for such suspension.

**Rule 7(3):** Where clearance of the goods suspected to be infringing intellectual property has been suspended and the right holder or his authorised representative does not join the proceedings within a period of ten working days from the date of suspension of clearance leading to a decision on the merits of the case, the goods shall be released provided that all other conditions of import of such goods under the

1

2

3

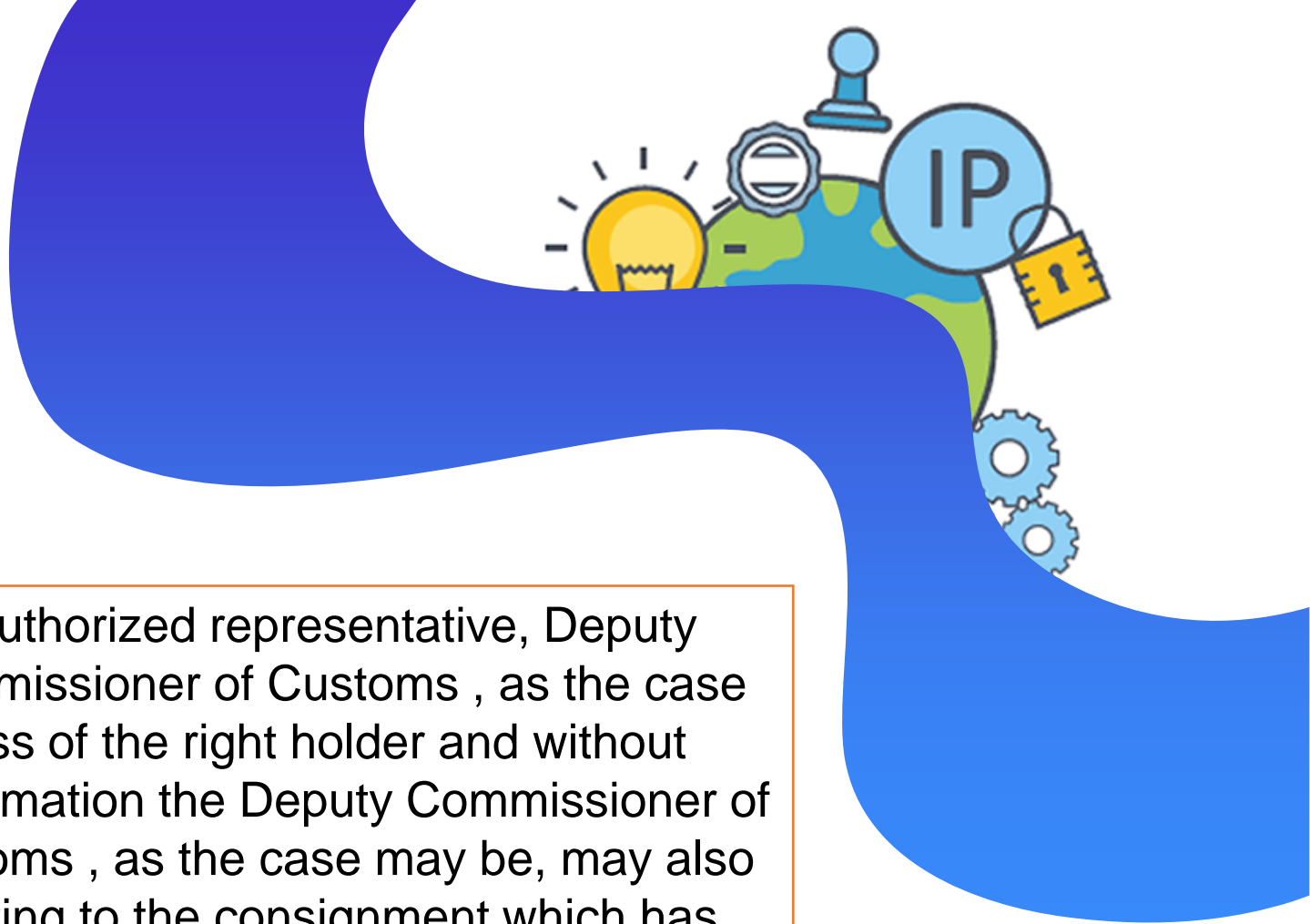


# Supply of information to Right Holder & Importer – Rule 9



At the request of the right holder, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall inform the name and address of the importer and without prejudice to the protection of confidential information the Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, may also provide additional relevant information relating to the consignment which has been suspended from clearance.

# Supply of information to Right Holder & Importer – Rule 10



At the request of the importer or his duly authorized representative, Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, shall inform the name and address of the right holder and without prejudice to the protection of confidential information the Deputy Commissioner of Customs or Assistant Commissioner of Customs , as the case may be, may also provide additional relevant information relating to the consignment which has been suspended from clearance.

# Procedure followed by the Custom Authorities on Suspension

- Once the Commissioner of Customs determines that the goods seized are infringing IPR, they are destroyed under the official supervision.
- Dispose them outside the normal channels of commerce after obtaining “No Objection” from the Right Holder



**01**  
STEP

Confiscation under Section 111 (d) of Customs Act & Seizure of infringing goods under Section 110 of Customs Act

Once the infringing goods are seized, notice is given to the Right Holder to join the proceedings-

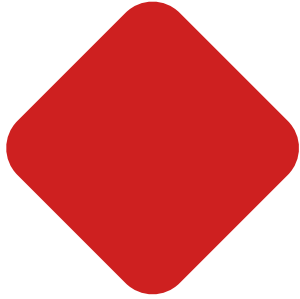
- Within a period of 10 days extendable by another 10 days
- Within a period of 3 days extendable by another 4 days (in case of perishable goods)

Disposal of  
Infringing  
Goods

**02**  
STEP

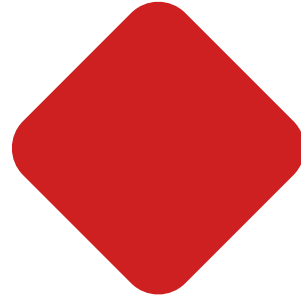


# IMPORTANT LINKS



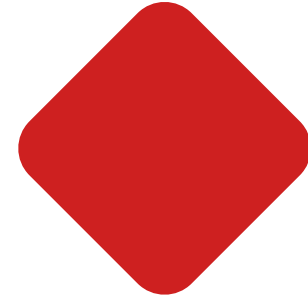
Intellectual Property Rights  
(Imported Goods)  
Enforcement Rules, 2007:

- [https://upload.indiacode.nic.in/showfile?actid=AC\\_CEN\\_2\\_2\\_00042\\_196252\\_1534829466423&type=rule&filename=intellectual\\_property\\_rights.pdf](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_2_2_00042_196252_1534829466423&type=rule&filename=intellectual_property_rights.pdf)



Intellectual Property Rights  
(Imported Goods)  
Enforcement Amendment  
Rules, 2018:

- <https://patentsrewind.files.wordpress.com/2018/07/custom-notification.pdf>



The Customs Act,  
1962:

- [https://www.indiacode.nic.in/bitstream/123456789/15359/1/the\\_customs\\_act%2C\\_1962.pdf](https://www.indiacode.nic.in/bitstream/123456789/15359/1/the_customs_act%2C_1962.pdf)





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