

MRA Customs IPR Border protection An Overview

Presented By

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- Introduction
- Importance of border control for local producers/inventors
- MRA CUSTOMS role as agency for enforcement of IPR Laws as defined under Section 66A-E of the Customs Act 1988
- Procedures for suspension
- Some statistics

- **Economic role** – collection of Govt revenue through taxes
- **Social Role** - Guaranteeing Health and safety of the citizen by controlling health requirements for food, medicines etc.
- **Protection of the environment** (pollution, controlling ODS)
- **National Security** – prevent illegal entry of arms and weapons
- **Prevent the entry of illicit substances** – narcotics and dangerous drugs
- **Prevent illegal immigration**
- **Protection of endangered species** (CITES – for fauna & flora)
- **Fight against the entry and export of counterfeit goods**

Importance of Border Protection

- Customs by its strategic geographical position at borders has an important role to play in the fight against the entry and exit of counterfeit products.
- Most of the counterfeit or pirated products intercepted are effected by the world's Customs administrations.
- Border protection not the sole concern of foreign marks.
- Risk of having your invention being manufactured outside Mauritius and being imported here.
- Risk of your invention being copied locally and being exported abroad.

- Co-operation between Customs & Right holders is a sine-qua-non condition for combating counterfeiting and piracy.
- Right holders as legal owners, have **primary** responsibilities for taking measures to protect their rights.
- Customs has the role **to assist** in the enforcement of IPR.
- How does MRA Customs do this?
- Customs Laws provide for the suspension of clearance of goods suspected to infringe IPR.
- However Right Holders need to submit an application to MRA Customs as per Section 66 A- E of the Customs Act.

PART VIA – INFRINGEMENT OF PATENT, INDUSTRIAL DESIGN, COLLECTIVE MARK, MARK OR COPYRIGHT

66A. Application for suspension of clearance of goods

- (1) Any owner or authorised user of a *patent, industrial design, collective mark or mark or copyright* may apply in writing to the Director-General to suspend the clearance of any goods imported or being exported on the grounds that his *patent, industrial design, collective mark or mark or copyright* is being or is likely to be infringed.
- (2) An application made under subsection (1) shall specify a period not exceeding 2 years during which the Director-General may suspend the clearance of such goods.
- (3) An application under subsection (1) shall be accompanied
 - (a) any evidence that the applicant is the owner or the authorised user of the *patent, industrial design, collective mark or mark, or of the copyright*;
 - (b) a statement of the grounds for the application, and in particular, the prima facie evidence showing that his right has been or is likely to be infringed; and
 - (c) particulars relating to the description of the goods making them readily recognisable by Customs, and the place where such goods are to be found.
- (4) The applicant shall furnish adequate security to protect the Director-General for any loss or damage that may result from the suspension of the clearance of the goods and to cover any reasonable expenses likely to be incurred as a result of such suspension.

66B. Decision in respect of application

- (1) On receipt of an application under section 66A the Director-General shall within 7 days of the date of receipt of the application –
 - (a) grant or reject the application; and
 - (b) notify the applicant in writing of his decision.
- (2) The Director-General shall reject an application where the applicant fails to comply with section 66A(4).
- (3) Where the application is granted, the Director-General shall notify in writing the *applicant, importer, exporter, or his agent* of the suspension of the clearance of the goods.

66C. Duration of suspension

- (1) Where, within a period of not more than 10 working days after the applicant has been served notice of the suspension under section 66B(3), the Director-General has not been informed in writing that legal proceedings have been initiated by the applicant, the goods shall be released, provided that all other conditions for importation or exportation have been complied with.
 - (1A) *Notwithstanding sub-section (1), where the suspension relates refrigerated goods, the period to release the goods shall be 3 working days.*
- (2) The Director-General may, in appropriate cases and on the applicant's request, extend the time limit referred to in subsection (1) by another period of not more than 10 working days.
- (3) The Director-General shall release the goods forthwith where he is informed by the registered owner or authorised user referred to in section 66A that the collective mark, mark or copyright registered in the name of the owner has ceased to be valid provided that all other conditions for importation or exportation have been complied with.

66D. Inspection and taking of samples

Without prejudice to the protection of confidential information, the Director-General may authorise the owner of a *patent, industrial design, collective mark or mark, or copyright owner, or importer, exporter or agent, to -*

- (a) inspect the goods of which the clearance has been suspended;
- (b) remove samples for examination, testing and analysis.

66E. Interpretation of this Part

In this Part –

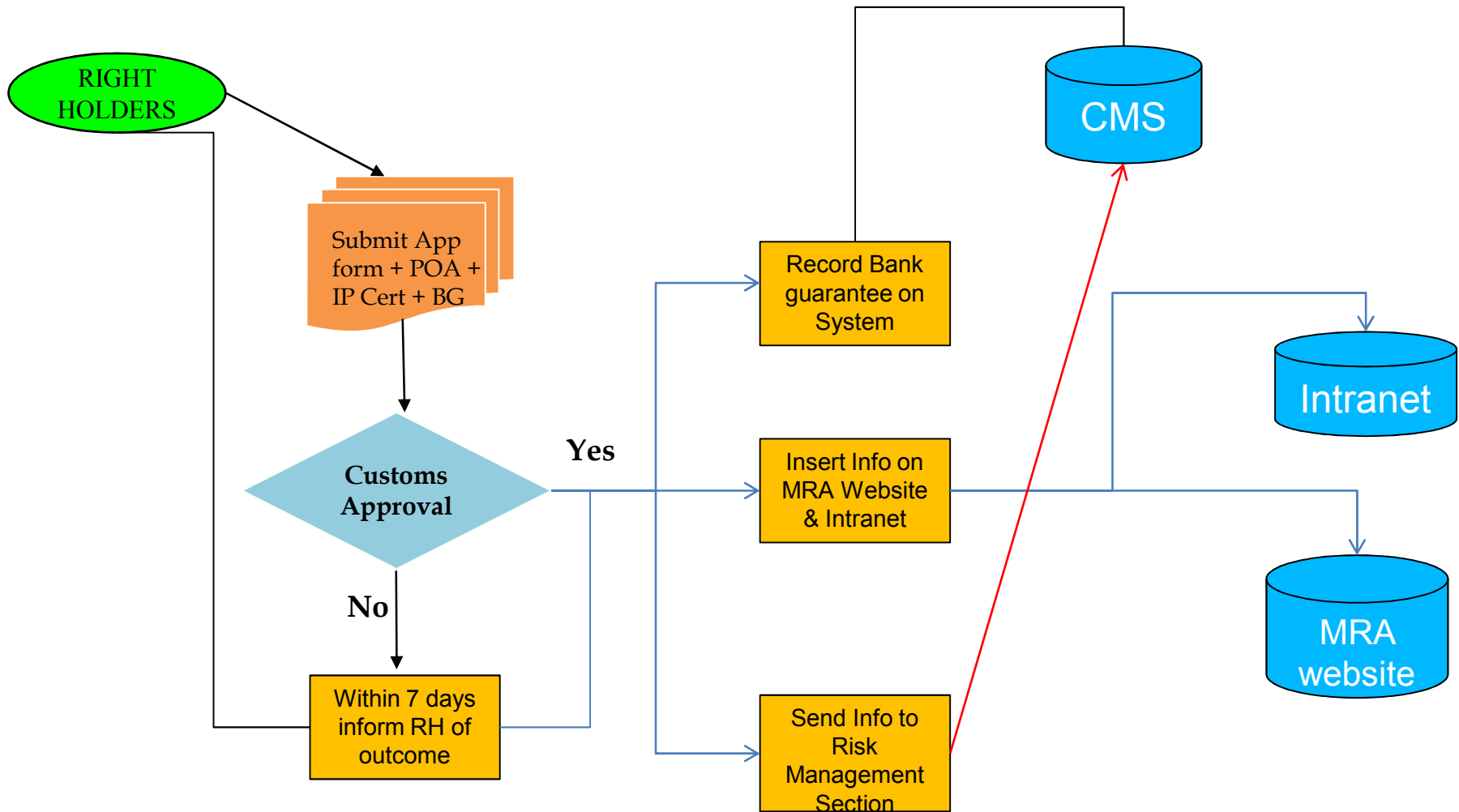
"owner" means the registered owner of a collective mark or mark under the Patents, Industrial Designs and Trademarks Act 2002 or the copyright owner under the Copyright Act and includes the owner of a collective mark or mark or copyright, registered with a competent authority outside Mauritius as approved by the Director-General.

Added by [Act No. 28 of 2004]

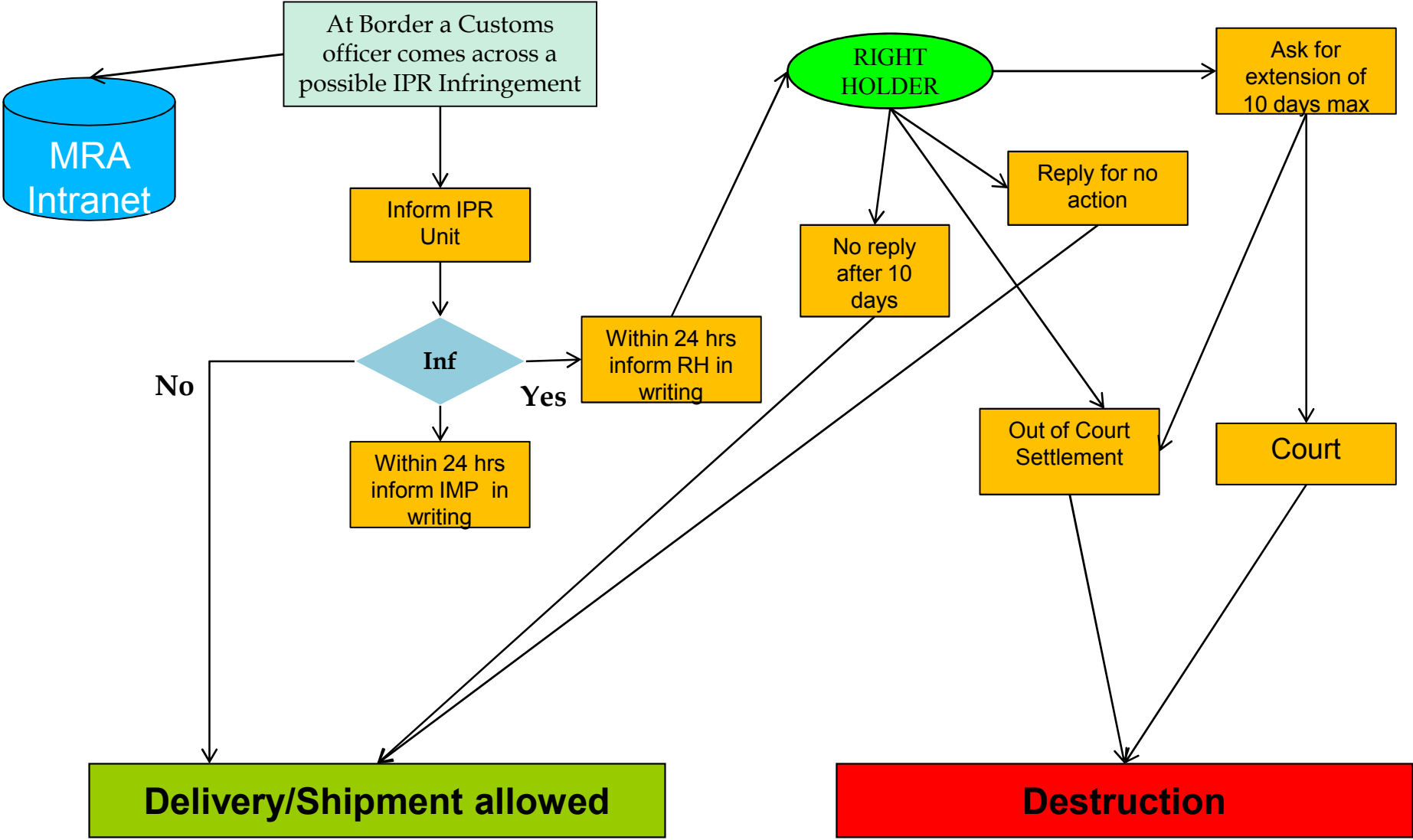
Legal Requirements for application for suspension of IPR infringed goods

- Documentary evidence of registration of collective mark, mark industrial design, **patent** or copyright under the Patent, Industrial Design and Trademark Act 2002 or under Copyright Act 1997.
- Power of attorney (procuration/pouvoir) ; duly registered in Mauritius under the Registration Duty Act.
- Proof of ownership/ authorization
- Initial (minimum) security in the form of bank guarantee amounting to Rs 20,000 for each mark/ copyright
- Catalogue / Photo / samples if any.
- However do note that we can only act for imports and exports.

Procedures for Application



Procedures for Suspension



- Most legal action entered by right holders against the importer/exporter constitute:
 - claim for civil damages
 - seizure and destruction of goods by Customs to be determined by the Court.
- Out of court settlement between right holder and infringer whereby importer/exporter admits infringement and agrees that goods to be seized and destroyed by Customs.

SEIZURES



SEIZURES



DISPOSAL



Some more info

- Actually 80 applications for border protection are registered at MRA Customs.
- Out of these, there are only 20 from local rights' owners – 25%
- No costs claimed by MRA Customs.
- Storage costs are claimed when goods are moved for destruction to the Customs warehouse but this may be claimed by Right Holders as damages.
- Also note that additional bank guarantee will be required in case value of goods suspended exceeds the initial amount of Rs 20,000.
- Application forms can be downloaded from our website www.mra.mu or you may contact us at the Customs House in person or by phone 202 0500.

Period / Year	Notices of suspension of clearance	Seizures	Quantity
2008	461	93	25,425
2009	244	98	13,714
2010	225	95	20,246
2011	199	41	11,941
2012 to date	78	14	6,004

Year	No. of cases filed by right holders	Settled cases in favour of right holder
2008	50	35
2009	26	19
2010	4	3
2011	21	13
2012 to date	10	1

THANK YOU