



Australian Government
Department of Foreign Affairs and Trade

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Kevin Bodel
Inquiry Secretary
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Mr Bodel

Following the public hearing on 7 May 2012 of the Joint Standing Committee on Treaties on the Anti-Counterfeiting Trade Agreement, participating agencies undertook to provide information to a question from Senator Ludlam.

This response is on behalf of the Australian Customs and Border Protection Service, IP Australia and the Attorney-General's Department.

Question from Senator Ludlam: What fraction of trade is potentially counterfeit? Evidence of the size of the problem to be addressed? We do not have a sector-by-sector breakdown of who is going to win and who is going to lose.

An Australian Institute of Criminology 2008 report, *Intellectual property crime and enforcement in Australia*,¹ quotes the Organisation for Economic Co-operation and Development (OECD) assessment that 'the magnitude of infringements is impossible to measure with precision [but] there are indications of pronounced growth'.

The Australian Institute of Criminology noted that industry estimates of the loss to various sectors in Australia include:

- \$233m per year due to the piracy and counterfeiting of films
- \$677m of lost sales, in 2002, in the Australian toy, software and video games industry.

¹<http://www.aic.gov.au/en/publications/current%20series/rpp/81-99/rpp94.aspx>

- \$515m in absolute losses in software piracy in 2006
- \$45m per year as the cost to Australian subscription television industry
- \$300m per year in breaches of trade mark as losses to the textile, clothing and footwear industry.

While the methodology for these calculations varies and industry estimates of losses have been criticised, in addition to the monetary value of the loss is the potential cost to consumers. This cost can result from a consumer being sold a poor quality counterfeit product when they believed they were purchasing the genuine item. More seriously, consumers could be exposed to serious health risks from counterfeit products. Customs reports that it has seized counterfeit beverages which were contaminated with foreign matter and mould, electric hair straighteners that have melted when turned on and mobile phone batteries that did not contain internal fuses to prevent them overheating.

Internationally, the OECD report of November 2009² estimated that counterfeit and pirated goods in international trade grew steadily over the period 2000 – 2007 and could amount to up to USD 250 billion in 2007. The share of counterfeit and pirated goods in world trade was estimated by the OECD to have increased from 1.85% in 2000 to 1.95% in 2007. The OECD notes that ‘while numerically small this increase is significant, given that world trade more than doubled over that period’. Additionally, these figures do not include domestically produced and consumed products or pirated digital products.

Australian Customs and Border Protection Service (Customs) have advised, that in Australia, no single figures from enforcement are available, as actions taken to address counterfeiting and piracy occur on three levels:

- border enforcement by the Australian Customs and Border Protection Service;
- domestic enforcement by the Australian Federal Police, and State and Territory Police; and
- private actions by companies or private investigators through the courts.

Enforcement by Customs covers tangible, commercial goods crossing the border. Customs advised that during 2010-2011 the value of potentially counterfeit goods seized by Customs was \$39,979,083 (estimated retail value if the goods were genuine). This consisted of 2020 seizures of 853,026 items. In 2009-2010, Customs seized potentially counterfeit goods worth an estimated \$29,000,000. Customs seizures are restricted to commercial goods subject to a Notice of Objection submitted by the rights holder in Australia.

The Australian Federal Police undertake a number of intellectual property enforcement actions each year, including cases involving digital piracy, but they do not undertake assessments of the value of seized goods. There is no centralised reporting of state and territory police enforcement actions for intellectual property.

Customs also noted that private actions are usually not publicly disclosed, and may often be settled out of court. However two major private investigations services report that approximately 30,000 items were surrendered in 2011 following Cease and Desist Orders, and another 15 cases were jointly undertaken with state police authorities resulting in the seizure of a further 23,000 items. No value estimates are available for these goods.

² http://www.oecd.org/document/23/0,3746,en_2649_34173_44088983_1_1_1_1,00.html

There is also a cost to Australian interests when Australian owned IP is counterfeited or pirated in overseas markets. It is not possible to quantify the impact of this on Australian interests as this involves not only a direct economic loss but also a loss of brand impact and reputation.

Yours sincerely

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