

LAW OF GEORGIA
ON BORDER MEASURES RELATED TO INTELLECTUAL PROPERTY

CHAPTER I.

GENERAL PROVISIONS

ARTICLE 1. OBJECTIVES OF THE LAW

The Law establishes the rule of applying the special border measures at the time of importation to the economic territory of Georgia, at putting for storage at a warehouse/terminal/other place for storage or exportation from Georgia of the goods produced by infringement of copyright or neighbouring rights, rights of a database maker, rights on an appellation of origin and geographical indication of goods or counterfeit goods. It is based on the provisions on Special Border Measures of the Agreement on Trade Related Aspects of Intellectual Property Rights concluded in the framework of the World Trade Organization. (12.11.2010. N3806 shall enter into force from January 1, 2011)

ARTICLE 2. EXPLANATION OF DEFINITIONS USED IN THE LAW

The definitions used in the Law shall have the following meaning:

- a) right holder - any natural person or legal entity, which according to the legislation of Georgia has copyright or neighbouring right, rights of a database maker, exclusive right on a trademark or the right to use of a registered appellation of origin or geographical indication; (28.12.2005 N 2558 after 6 months from the publication)
- b) goods produced by infringement of copyright or neighbouring rights - any goods which are copies made without consent of the right holder or person duly authorized by the right holder in the country of origin, and which, if originated in Georgia are produced by the infringement of the legislation of Georgia on copyright or neighbouring rights; (28.12.2005 N 2558 after 6 months from the publication)

- c) goods infringing the rights on an appellation of origin and geographical indication of goods - any goods on which the appellation of origin or geographical indication is used illegally;
- d) counterfeit goods - any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods or which cannot be distinguished essentially from such a trademark, and which thereby infringes the trademark holder's rights defined by the legislation of Georgia;
- e) "De Minimis" imports - small quantity of goods having a non-commercial nature contained in a traveler's luggage or sent in small containers.

CHAPTER II (28.12.2005 N 2558 after 6 months from the publication)

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS BY THE REVENUE SERVICE – LEGAL ENTITY OF PUBLIC LAW UNDER THE MINISTRY OF FINANCE OF GEORGIA

(Title. 12.11.2010. N3806 shall enter into force from January 1, 2011)

ARTICLE 3. PROTECTION OF RIGHTS OF A RIGHT HOLDER
(23.12.2011 N 5596)

1. Legal entity of public law – the Revenue Service (hereinafter – Relevant Service) shall enforce protection of the rights of a right holder on an intellectual property object whose request for implementation of the border measures is registered by legal entity of public law – National Intellectual Property Center of Georgia Sakpatenti (hereinafter – Sakpatenti).

2. The relevant service shall implement protection of the rights of a right holder on an intellectual property object by the border measures provided for by this Law.

ARTICLE 4. REQUEST FOR IMPLEMENTATION OF BORDER MEASURES (23.12.2011 N 5596)

1. An application of a right holder or his representative (hereinafter – applicant) concerning implementation of border measures with respect to goods produces by the infringement of copyright and neighbouring rights on an intellectual property object or appellation of origin or geographical indication of goods or counterfeited goods shall be submitted to Sakpatenti.

2. Together with the application provided for by paragraph 1 of this Article, detailed information on the goods which contain the intellectual property object, other data, which will facilitate identification of the goods, as well as information on the origin, location, movement or owner of the goods produced by the infringement of rights on an intellectual property object (if such information exists).

3. A person also has the right to submit the request provided for by paragraph 1 of this Article at the time of filing an application for the registration of an intellectual property object with Sakpatenti.

4. Within 5 working days from the receipt of the application provided for by paragraph 1 of this Article, and together with the registration of an intellectual property object - in case defined by paragraph 3 of this Article, Sakpatenti shall take a decision to register or to refuse registration of the request of the right holder in the relevant Register (hereinafter – the Register).

5. The right holder's request shall be registered for a 2-year term, which can be extended upon the applicant's request, but no longer than the term of validity of rights on an intellectual property object.

6. Sakpatenti shall without delay provide the information on the registration of a request for implementation of border measures with respect to the goods produces by the infringement of copyright and neighbouring rights on an intellectual property object or rights on an appellation of origin or geographical indication or counterfeit goods, together with the data provided for by paragraph 2 of this Article, to the Relevant Service.

ARTICLE 5. SUSPENSION OF GOODS (29.12.2006 N4276)

1. If at the time of importation of goods, putting for storage at a warehouse/terminal/other place for storage or exportation from Georgia the Relevant Service has grounds for suspecting that the goods are produced by the infringement of rights of an intellectual property object and the request of right holder of such an object on implementation of border measures is registered in accordance with paragraph 4 of this Article, the service takes a decision on movement of such goods and/or suspension for 10 working days (for 6 working days in case of perishable goods) according to procedures provided for by the tax legislation of Georgia. (23.12.2011 N 5596)

2. The applicant shall be informed without delay about the decision of the Relevant Service and the name (title) and address of the importer, exporter and/pr owner of the goods. The owner of the goods shall also without delay be informed about the decision and the name (title) and address of the applicant.

ARTICLE 6. INSPECTION AND RIGHT TO OBTAIN INFORMATION
(29.12.2006 N4276)

1. With the consent of the Relevant Service, an applicant has the right, in the presence of the owner of the goods, to inspect the suspended goods and take a sample of the goods to be inspected. (29.12.2006 N4276)

2. The applicant has the right to request extension of the suspension term of the goods by 10 working days in order to conduct examination of the sample of the goods. In case of the perishable goods the term shall not be extended.

3. The Relevant Service shall provide to the applicant and the owner of the goods (or his representative) information which is necessary for identifications and inspection of goods. This information is confidential and its disclosure is prohibited, except the cases defined by the legislation of Georgia. Disclosure of such information by the applicant entails the cancellation of the registration of the request for the implementation of border measures and termination of procedure of suspension of the goods. (23.12.2011 N 5596)

ARTICLE 7. CANCELLATION OF THE DECISION ON SUSPENSION OF GOODS

1. The Relevant Service shall cancel the decision on suspension of goods: *(29.12.2006 N4276)*

a) upon the applicant's request;

b) in case if the procedure provided for by paragraph 1 of Article 8 of this Law was not implemented and during the period of validity of the decision on the suspension of the goods the applicant did not suit a case with the court concerning the infringement of his intellectual property rights;

c) if Sakpatenti has taken a decision on cancellation of the registration of the right holder's request; *(23.12.2011 N 5596)*

d) in the case defined by paragraph 3 of Article 6 of this Law. *(23.12.2011 N 5596)*

2) If during the period of validity of the decision on the suspension of the goods the applicant sues a case with the court concerning the infringement of his intellectual property rights, all relations linked with suspension of the goods (including duration of suspension of the goods, amount of the damages, existence of the fact of infringement of rights) shall be regulated according to the legislation of Georgia.

3. If during the period of validity of the decision on the suspension of the goods the applicant sues a case with the court concerning the infringement of his intellectual property rights, he shall inform the Relevant Service about this. *(12.11.2010. N3806 shall enter into force from January 1, 2011)*

4. **Repealed** *(12.11.2010. N3806 shall enter into force from January 1, 2011)*

5. **Repealed** *(12.11.2010. N3806 shall enter into force from January 1, 2011)*

6. The applicant shall compensate to the importer, exporter, owner of the goods and/or other person for suffered material damage and expenses of the Relevant Service linked with the suspension of goods after the applicant is given an opportunity of inspection of the suspended goods and groundlessness of the suspicion of the Relevant

Service and/or applicant is confirmed. *(23.12.2011 N 5596)*

7. During the period of validity of the decision on the suspension of the goods before submitting a written agreement provided for by paragraph 1 of Article 8 of this Law the expenses of storage of the goods shall be imposed on the importer, exporter and/or owner of the goods, and after submitting this agreement or from expiration of the period of validity of the decision on the suspension of the goods to destruction of the goods – on the applicant. *(23.12.2011 N 5596)*

ARTICLE 8. SEIZURE AND DESTRUCTION OF GOODS BY THE RELEVANT SERVICE *(29.12.2006 N4276)*

1) If before expiration of the period of validity of the decision on suspension of goods the importer, exporter and/or owner of the goods does not appeal against the applicant's request, or if the applicant and importer, exporter and/or owner of the goods within 7 working days from the notification provided for by paragraph 2 of Article 5 of this Law submits to the Relevant Service a written agreement that the owner of the goods refuses the suspended goods, the goods shall be destroyed at the expense and with the responsibility of the applicant, under the supervision of the Relevant Service. In case of perishable goods the term of submission of the written agreement shall be 4 working days. *(23.12.2011 N 5596)*

2. The Relevant Service shall keep a copy of the destroyed goods in order that its use as evidence can be possible. *(29.12.2006 N4276)*

3. The suspended goods can be not destroyed and can be used for humanitarian or charitable, only with the applicant's consent, provided that the suspended goods will not endanger human life or health.

ARTICLE 9. "DE MINIMIS" IMPORT

This Law shall not apply to small quantities of goods of a non-commercial nature contained in a traveler's luggage or sent in a small container.

CHAPTER III

TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 10. TRANSITIONAL PROVISION

The Chairman of the State Customs Department of Georgia shall be entrusted within two months from enacting the Law to issue the rule on destruction and disposal of the goods produced by the infringement of copyright, rights on an appellation of origin or geographical indication or counterfeit goods.

ARTICLE 11. FINAL PROVISION

The Law shall be enacted upon publication.

President of Georgia

Eduard Shevardnadze

Tbilisi, June 23, 1999

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