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**NOTE**

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from : General Secretariat  
to : Permanent Representatives Committee / Council

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Subject : Proposal for a Directive of the European Parliament and of the Council on the measures and procedures to ensure the enforcement of intellectual property rights – Outcome of the European Parliament's first reading (Strasbourg, 8 to 11 March 2004)

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**I. INTRODUCTION**

In accordance with the provisions of Article 251 (2) of the EC Treaty and the Joint Declaration on the Practical Arrangements for the Implementation of the Co-decision procedure<sup>1</sup>, a number of informal contacts were made between the Council, the European Parliament and the Commission with a view to reaching agreement on this dossier at first reading, thereby avoiding the need for a second reading and a conciliation.

In this context, the Rapporteur Ms. Fourtou (EPP/DE - FR) and representatives of three other political groups (PSE, ELDR and UEN) tabled 45 compromise amendments, which had been agreed during the informal meetings referred to above.

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<sup>1</sup> OJ C 148, 28.5.1999, p.1.

## II. VOTE

The Plenary adopted all 45 of the compromise amendments. All other amendments were rejected.

**The amendments adopted correspond to what was agreed between the three institutions and ought therefore to be acceptable to the Council.**

The text of the amendments adopted and the European Parliament's legislative resolution are set out in the annex hereto.

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## 1. P5\_TA-PROV(2004)0147

**European Parliament legislative resolution on the proposal for a directive of the European Parliament and of the Council on measures and procedures to ensure the enforcement of intellectual property rights (COM(2003) 46 – C5-0055/2003 – 2003/0024(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 46)<sup>1</sup>,
  - having regard to Articles 251(2) and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0055/2003),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinion of the Committee on Industry, External Trade, Research and Energy (A5-0468/2003),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> Not yet published in OJ.

## Amendment 56

## Recital 10

(10) The objective of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market.

***This protection is essential against infringements carried out on for commercial purposes or which cause significant harm to the right holder, apart from minor and isolated infringements.***

(10) The objective of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market.

## Amendment 57

## Recital 12

(12) This Directive shall not affect the application of the rules of competition, and in particular Articles 81 and 82 of the Treaty.

(12) This Directive should not affect the application of the rules of competition, and in particular Articles 81 and 82 of the Treaty. ***The measures provided for in this Directive should not be used to unduly restrict competition in a manner which is contrary to the Treaty.***

## Amendment 58

## Recital 13

(13) It is necessary to define the scope of this Directive as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field ***and by the resulting national provisions, while excluding certain activities which do not involve intellectual property in the strict sense.*** Nevertheless, that requirement does not affect the possibility, on the part of those Member States which so wish, to extend, for internal purposes, the provisions of this Directive to include acts involving unfair competition or similar activities.

(13) It is necessary to define the scope of this Directive as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field ***and/or by the national law of the Member State concerned.*** Nevertheless, that requirement does not affect the possibility, on the part of those Member States which so wish, to extend, for internal purposes, the provisions of this Directive to include acts involving unfair competition, ***including parasitic copies,*** or similar activities.

Amendment 59  
Recital 13a (new)

***(13a) The measures provided for in Articles 7(2), 9(1) and 10(1a) of this Directive need to be applied only in respect of acts committed on a commercial scale. This is without prejudice to the possibility for Member States to apply these measures also in respect of other acts. The acts which are committed on a commercial scale are those carried out for direct or indirect economic or commercial advantage; this would normally exclude acts done by end consumers acting in good faith.***

Amendment 60  
Recital 15

(15) The provisions of this Directive are without prejudice to the particular provisions for the enforcement of rights in the domain of copyright and related rights set out in Community instruments and notably **Article 8 of Directive 2001/29/EC** of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

(15) The provisions of this Directive are without prejudice to the particular provisions for the enforcement of rights **and on exceptions** in the domain of copyright and related rights set out in Community instruments and notably **those found in Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs<sup>1</sup>** or Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

<sup>1</sup> ***OJ L 122, 17.5.1991, p. 42.***

Amendment 61  
Recital 16

(16) The measures and ***procedures designed to enforce intellectual property rights must be effective and place the right holder in the situation in which he would have been were it not for the infringement in question.***

(16) The measures and ***remedies provided for in this Directive should be determined in each case in such a manner as to take due account of the specific characteristics of that case, including the specific features of each intellectual property right and, where appropriate, the intentional or unintentional character of the infringement.***

Amendment 62

Recital 17

(17) ***In order to improve and extend access to justice***, the persons entitled to request application of these measures and procedures should be not only the right holders but also ***the*** professional organisations in charge of the management of those rights or for the defence of the collective and individual interests for which they are responsible.

(17) The persons entitled to request application of these measures and procedures should be not only the right holders but also ***persons who have a direct interest and legal standing in so far as permitted by and in accordance with the applicable law, which may include*** professional organisations in charge of the management of those rights or for the defence of the collective and individual interests for which they are responsible.

Amendment 63

Recital 18

(18) It is appropriate to adopt the rule in Article 15 of the Berne Convention, which establishes the presumption whereby the author of a literary or artistic work is regarded as such if his name appears on the work. ***Moreover, as copyright exists as from the creation of a work and does not require formal registration as in the case of an industrial property right, it is useful to recall the principle that a work is considered to be sufficiently creative enjoy copyright protection until proven otherwise. This principle is of particular importance when an author seeks to defend his rights in a legal dispute and represents largely current practice in Member States' national jurisdictions.***

(18) ***Since copyright exists from the creation of a work and does not require formal registration***, it is appropriate to adopt the rule in Article 15 of the Berne Convention, which establishes the presumption whereby the author of a literary or artistic work is regarded as such if his name appears on the work. ***A similar presumption should be applied to the owners of related rights since often it is the holder of a related right, such as a phonogram producer, who will seek to defend rights and engage in fighting acts of piracy.***

Amendment 64

Recital 19

(19) Given that evidence is an element of paramount importance for establishing the infringement of intellectual property, it is appropriate to ensure that effective means of presenting ***and*** obtaining evidence ***is*** available ***to all parties.***

(19) Given that evidence is an element of paramount importance for establishing the infringement of intellectual property ***rights***, it is appropriate to ensure that effective means of presenting, obtaining ***and*** ***protecting*** evidence ***are*** available. ***The procedures must have regard to the rights of the defence and must provide the necessary guarantees including the protection of confidential information. For infringements carried out on a commercial scale it is also important that the courts may order access, where appropriate, to banking, financial or commercial documents under the control of the alleged infringer.***

Amendment 65

Recital 20

***(20) If there is a duly established danger that evidence may be destroyed, an effective and inexpensive procedure must be made available to the parties which allows for the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods and, in appropriate cases, of the documents relating thereto. The procedure must have regard to the rights of the defence and must provide the necessary guarantees.*** *deleted*

Amendment 66

Recital 21

***(21) Other measures designed to ensure a high level of protection exist in certain countries and must be made available in all the Member States. This is the case with the right of information, which allows precise information to be obtained on the origin of the infringing goods, the distribution channels and the identity of the third parties involved in the infringement, as well as the publication of judicial decisions on infringements of intellectual property, which makes it possible to inform the public and deter third parties from committing such infringements.***

*(21) Other measures designed to ensure a high level of protection exist in certain countries and must be made available in all the Member States. This is the case with the right of information, which allows precise information to be obtained on the origin of the infringing goods **or services**, the distribution channels and the identity of the third parties involved in the infringement.*

Amendment 67

Recital 22a (new)

***(22a) Without prejudice to any other measures and remedies available, rightholders should have the possibility of applying for an injunction against an intermediary whose services are being used by a third party to infringe the rightholder's industrial property right. The conditions and modalities relating to such injunctions should be left to the national law of the Member States. As far as infringements of copyright and related rights are concerned, a comprehensive level of harmonisation is already provided for in Directive 2001/29/EC. The provision of Article 8, paragraph 3 of Directive 2001/29/EC should therefore not be affected by this Directive.***

Amendment 68

Recital 23

(23) Depending on the particular case, and if justified by circumstances, the measures and procedures to be provided for **must** include prohibitory measures aimed at preventing further infringements of intellectual property, **as well as preventive and corrective measures, such as the confiscation of the infringing goods and other objects used predominantly for illegal purposes, removal from the channels of commerce, possible destruction and the recall, at the infringer's expense where appropriate, of the infringing goods placed on the market.**

(23) Depending on the particular case, and if justified by circumstances, the measures and procedures to be provided for **should** include prohibitory measures aimed at preventing further infringements of intellectual property **rights. Moreover there should be** corrective measures, **where appropriate at the expense of the infringer,** such as **the recall, the removal definitively from the channels of commerce, or destruction** of the infringing goods and **in appropriate cases the materials and implements principally used in the creation or manufacture of these goods. These corrective measures should take account of the interests of third parties including, in particular, consumers and private parties acting in good faith.**

Amendment 69

Recital 23a (new)

**(23a) Member States should have the option of providing, in cases where an infringement has been carried out unintentionally and without negligence and where the corrective measures or injunctions provided for by this Directive would be disproportionate, for the possibility, in appropriate cases, of pecuniary compensation being awarded to the injured party as an alternative measure. However, where the commercial use of counterfeit goods or the supply of services would constitute an infringement of law other than intellectual property law or would be likely to harm consumers, such use or supply should remain prohibited.**

Amendment 70

Recital 24

(24) With a view to compensating for the prejudice suffered as a result of an infringement committed by an infringer who has engaged in an activity in the knowledge, or with reasonable grounds for knowing, that it would give rise to such an infringement, the amount of damages awarded to the right holder should ***be set either at a fixed rate equal to double*** the royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question (the aim being to allow for compensation based on an objective criterion while taking account of the expenses incurred by the right holder, such as the costs of identification and research), ***or according to the actual prejudice (including loss of earnings) suffered by the right holder (compensatory damages), to which must be added the profits made by the infringer, which are not taken into account in calculating the compensatory damages. It must also be possible to take into account other elements, such as the moral prejudice caused to the right holder.***

(24) With a view to compensating for the prejudice suffered as a result of an infringement committed by an infringer who has engaged in an activity in the knowledge, or with reasonable grounds for knowing, that it would give rise to such an infringement, the amount of damages awarded to the right holder should ***take account of all appropriate aspects, such as loss of earnings incurred by the right holder, or unfair profits made by the infringer and, where appropriate, any moral prejudice caused to the right holder. As an alternative, for example where it would be difficult to determine the amount of the actual prejudice suffered, the amount of the damages might be derived from elements such as*** the royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question (the aim being ***not to introduce an obligation to provide for punitive damages but*** to allow for compensation based on an objective criterion while taking account of the expenses incurred by the right holder, such as the costs of identification and research).

Amendment 71

Recital 24a (new)

***(24a) To act as a supplementary deterrent to future infringers and contribute to the awareness of the public at large, it is useful to publicise judgments in intellectual property infringement cases.***

Amendment 72

Recital 25

*(25) In order to ensure the proper functioning of the Internal Market, and in accordance with the undertakings entered into under the TRIPS Agreement, and in particular Article 61 thereof, Member States are required to punish serious infringements of intellectual property in an effective, proportionate and deterrent fashion under criminal law. To this end, “serious infringement” means acts which are carried out intentionally and for commercial purposes. All or some of those participating in the infringement or attempted infringement, should be declared responsible, according to the particular country's internal law, as accomplices or instigators.*

*(25) In addition to the civil and administrative measures and procedures provided for under this Directive, criminal sanctions also constitute, in appropriate cases, a means of ensuring the enforcement of intellectual property rights.*

Amendment 73

Recital 26

*(26) Protection measures make a major contribution towards combating infringements of intellectual property. Appropriate legal protection of security and authentication devices which protect against copying, manipulation or neutralisation is therefore necessary in the field of industrial property, and already exists in the field of copyright. Moreover, these protection measures targeting the abuse of technical devices to infringe intellectual property rights are in line with Article 6 of the Convention on Cybercrime adopted by the Council of Europe in Budapest on 23 November 2001.*

*deleted*

Amendment 74

Recital 28

(28) In order to facilitate the uniform application of the provisions set out in this Directive, it is appropriate to provide for **systems of** cooperation and **mutual assistance** between Member States, on the one hand, and between the Member States and the Commission on the other, in particular by creating a network of correspondents designated by the Member States. **Within this framework, a Contact Committee made up of national correspondents could also be set up within the Commission.**

(28) In order to facilitate the uniform application of the provisions set out in this Directive, it is appropriate to provide for cooperation and **the exchange of information** between Member States, on the one hand, and between the Member States and the Commission on the other, in particular by creating a network of correspondents designated by the Member States **and by providing regular reports assessing the application of this Directive and the effectiveness of the measures taken by the various national bodies.**

Amendment 75

Recital 29

(29) Since the objectives of this Directive **cannot be sufficiently achieved by the Member States for the reasons already described, and can therefore be better** achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve its objectives.

(29) Since, **for the reasons already described**, the objectives of this Directive can **best be** achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve its objectives.

Amendment 76

Article 1

This Directive concerns the measures necessary to ensure the enforcement of intellectual property rights.

This Directive concerns the measures **and procedures** necessary to ensure the enforcement of intellectual property rights. **For the purposes of this Directive, the term "intellectual property rights" includes industrial property rights.**

Amendment 77

Article 2

1. Without prejudice to the means which are or may be provided for in Community or national legislation, in so far as those means may be more favourable for right holders, the measures provided for by this Directive shall apply to any infringement of *the rights deriving from Community and European acts on the protection of intellectual property, as listed in the Annex, and from the provisions adopted by the Member States in order to comply with those acts when the infringement is committed for commercial purposes or causes significant harm to the right holder.*

2. This Directive shall be without prejudice to the particular provisions on the enforcement of rights contained in Community legislation concerning copyright and notably those found in Directive 2001/29/EC.

3. This Directive shall not affect :

(a) the Community provisions governing the substantive law on intellectual property, Directive 95/46/EC, Directive 1999/93/EC or Directive 2000/31/EC;

(b) Member States' international obligations and notably the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement").

1. Without prejudice to the means which are or may be provided for in Community or national legislation, in so far as those means may be more favourable for right holders, the measures **and procedures** provided for by this Directive shall apply, **in accordance with Article 3**, to any infringement of **intellectual property rights as provided for by Community law and/or by the national law of the Member State concerned.**

2. This Directive shall be without prejudice to the particular provisions on the enforcement of rights **and on exceptions** contained in Community legislation concerning copyright and **rights related to copyright**, notably those found in **Directive 91/250/EEC and, in particular, Article 7 of that Directive, or Directive 2001/29/EC and, in particular, Articles 2 to 6 and Article 8 of that Directive.**

3. This Directive shall not affect:

(a) the Community provisions governing the substantive law on intellectual property, Directive 95/46/EC, Directive 1999/93/EC or Directive 2000/31/EC **in general, and the provisions of Articles 12 to 15 in particular of that Directive;**

(b) Member States' international obligations and notably the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement"), **including those relating to criminal procedures and penalties;**  
**(ba) any national provisions in Member States relating to criminal procedures or penalties in respect of infringement of intellectual property rights.**

Amendment 78

Article 3

Member States shall provide for the **proportionate** measures **and** procedures needed to ensure the enforcement of the intellectual property rights covered by this Directive.

*These measures and procedures shall be such as to remove from those responsible for an infringement of an intellectual-property right the economic benefits of that infringement. They shall be fair and equitable, and shall not be unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays.*

These measures and **procedures** shall be applied in such a manner as to avoid the creation of barriers to legitimate trade.

Member States shall provide for the measures, procedures **and remedies** needed to ensure the enforcement of the intellectual property rights covered by this Directive. ***These measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays.***

The measures and **remedies shall also be effective, proportionate and dissuasive and** shall be applied in such a manner as to avoid the creation of barriers to legitimate trade **and to provide for safeguards against their abuse.**

Amendment 79

Article 4

**Article 4**  
**Penalties**

***Member States shall ensure that any infringement of an intellectual property right covered by Article 2 is punishable by penalties. These penalties must be effective, proportionate and deterrent.***

***deleted***

Amendment 80

Article 5

***1. Member States shall recognise as persons entitled to **apply for** application of the measures referred to in this Chapter **the holders of intellectual property rights, as well as all other persons authorised to use those rights in accordance with the applicable law, or their representatives.*****

Member States shall recognise as persons entitled to **seek** application of the measures **and procedures** referred to in this Chapter:

***- the holders of intellectual property rights in accordance with the provisions of the applicable law,***

*- all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law,*  
*- intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the applicable law,*

*- professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the applicable law.*

**2. Member States shall confer upon rights management or professional defence bodies, wherever they represent intellectual property right holders or other persons authorised to use these rights according to the applicable law, an entitlement to seek application of the measures and procedures referred to in this Chapter, including the authority to initiate legal proceedings for the defence of those rights or of the collective or individual interests for which they are responsible.**

**Such entitlement shall be accorded to any properly constituted rights management body or professional defence body, regardless of the Member State in which it is established.**

**The first and second subparagraphs shall be without prejudice to the applicable rules on the representation of parties in court proceedings.**

Amendment 81

Article 6

***Until proved otherwise, authorship of a work shall be presumed to be vested in the person whose name, presented as being that of the author, is featured on copies of the work, or whose authorship is referred to on a copy of the work by way of a statement, label or other mark.***

***For the purposes of applying the measures and procedures provided for in this Directive,***

*(a) in order that the author of a literary or artistic work, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings, it shall be sufficient for his name to appear on the work in the usual manner;*  
*(b) the provision under (a) shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.*

Amendment 82

Article 7

1. Member States shall *lay down* that, *where* a party has presented reasonably *accessible* evidence sufficient to support its claims, and has, in substantiating those claims, *cited* evidence which *is to be found under* the control of the opposing party, the judicial authorities may order that such evidence be produced by the opposing party, subject to the protection of confidential information.

2. *In order to identify and prosecute the real beneficiaries of the infringement*, Member States shall take such measures as are necessary to enable the *responsible* authorities to order the communication *or seizure* of banking, financial or commercial documents, subject to the protection of confidential information.

1. Member States shall *ensure* that, *on application by* a party *which* has presented reasonably *available* evidence sufficient to support its claims, and has, in substantiating those claims, *specified* evidence which *lies in* the control of the opposing party, the *competent* judicial authorities may order that such evidence be produced by the opposing party, subject to the protection of confidential information. *For the purposes of this paragraph, Member States may provide that a reasonable sample of a substantial number of copies of a work or any other protected object be considered by the competent judicial authorities to constitute reasonable evidence.*

2. *Under the same conditions, in the case of an infringement carried out on a commercial scale*, Member States shall take such measures as are necessary to enable the *competent judicial* authorities to order, *where appropriate, on application by a party*, the communication of banking, financial or commercial documents *under the control of the opposing party*, subject to the protection of confidential information.

Amendment 83

Article 8

1. Member States shall *lay down* that, *where there is a demonstrable risk that evidence may be destroyed* even before the commencement of proceedings on the merits of the case, the judicial authorities may, *in the event of an actual or imminent infringement of an intellectual property right, authorise in any place either* the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the documents relating thereto. These measures shall be taken *by order issued on application*, if necessary without the other party having been heard.

Where *the evidence protection* measures have been *revoked, or where they lapse owing to any act or omission by the applicant, or where it is subsequently found that there has been no infringement of any intellectual property right, the judicial authorities shall have be empowered to order the applicant, at the defendant's request, to provide the defendant with adequate compensation for any injury caused by the measures.*

2. Member States shall *lay down* that *physical seizure* may be subject to the applicant's lodging of an adequate *guarantee* intended to ensure compensation for any prejudice suffered by the defendant *if the proceedings instituted against him are subsequently judged to be unfounded.*

1. Member States shall *ensure* that even before the commencement of proceedings on the merits of the case the *competent* judicial authorities may, *on application by a party who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in regard to the alleged infringement, subject to the protection of confidential information. Such measures may include* the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, *the materials and implements used in the production and/or distribution of these goods and* the documents relating thereto. These measures shall be taken, if necessary without the other party having been heard, *in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.*

Where *evidence-protection* measures have been *adopted without the other party having been heard, the affected parties shall be given notice immediately after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the affected parties with a view to deciding, within a reasonable period after the notification of the measures, whether the measures shall be modified, revoked or confirmed.*

2. Member States shall *ensure* that *the evidence-protection measures* may be subject to the applicant's lodging of an adequate *security or equivalent assurance* intended to ensure compensation for any prejudice suffered by the defendant *as provided for in paragraph 4.*

3. Member States shall **lay down** that, if the applicant has not instituted legal proceedings leading to a decision on the merits of the case within 31 calendar days **of the seizure, the seizure shall be null and void, without prejudice to the damages which may be claimed.**

3. Member States shall **ensure** that **the evidence-protection measures shall be revoked or otherwise cease to have effect upon request by the defendant, without prejudice to the damages which may be claimed,** if the applicant has not instituted legal proceedings leading to a decision on the merits of the case **before the competent judicial authority within a reasonable period, to be determined by the judicial authority ordering the measures when the law of a Member State so permits or, in the absence of such determination, within a period not to exceed 20 working days or 31 calendar days, whichever is the longer.**

**3a. Where the evidence-protection measures have been revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of any intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant with appropriate compensation for any injury caused by these measures.**

**3b. Member States may take measures to protect witnesses' identity.**

Amendment 84  
Article 9

1. Member States shall **lay down** that, **in order to deal with** proceedings **involving** an infringement of an intellectual property right, **or** in response to a request **for provisional or precautionary measures,** the judicial authorities **shall** order, **at the request of the right holder, unless particular reasons are invoked for not doing so, any person to provide information on the origin of the goods or services which are thought to infringe an intellectual property right and on the networks for their distribution or provision, respectively, if that person:**

(a) was found in possession, **for commercial purposes,** of the infringing goods;

1. Member States shall **ensure** that, **in the context of** proceedings **concerning** an infringement of an intellectual property right **and** in response to a **justified and proportionate** request **of the claimant,** the **competent** judicial authorities **may** order **that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:**

(a) was found in possession of the infringing goods **on a commercial scale;**

(b) was found to be using the infringing services *for commercial purposes; or*

(c) was indicated by the person referred to in point (a) *or* (b) as being *at the origin* of the goods or services *or as being a link in the network for distributing those goods or providing those services.*

2. The information referred to in paragraph 1 shall comprise:

(a) the names and addresses of the producers, distributors, suppliers and other previous holders of the *product or service*, as well as the intended wholesalers and retailers;

(b) information on the quantities produced, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 shall apply without prejudice to other provisions which:

(a) grant the right holder rights to receive fuller information;

(b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;

(c) govern responsibility for misuse of the right of information; *or*

(d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to *the existence of an infringement of an intellectual property right.*

(b) was found to be using the infringing services *on a commercial scale;*

*(ba) was found to be providing on a commercial scale services used in infringing activities; or*

(c) was indicated by the person referred to in point (a), (b) *or (ba)* as being *involved in the production, manufacture or distribution* of the goods or *the provision of the* services.

2. The information referred to in paragraph 1 shall, *as appropriate*, comprise:

(a) the names and addresses of the producers, *manufacturers*, distributors, suppliers and other previous holders of the *goods or services*, as well as the intended wholesalers and retailers;

(b) information on the quantities produced, *manufactured*, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 shall apply without prejudice to other *statutory* provisions which:

(a) grant the right holder rights to receive fuller information;

(b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;

(c) govern responsibility for misuse of the right of information;

(d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to *his own participation or that of his close relatives in an infringement of an intellectual property right; or*

*(da) govern the protection of confidentiality of information sources or the treatment of personal data.*

**4. Apart from the cases referred to in paragraph 1, Member States shall lay down that, when the responsible authorities are in possession of the information referred to in paragraph 2, they may so inform the right holder, provided the latter is known, while complying with the rules on the protection of confidential information, in order to allow the right holder to institute proceedings leading to a decision on the merits of the case or to obtain provisional or precautionary measures.**

Amendment 85  
Article 10

1. Member States shall **lay down** that the judicial authorities may **serve the alleged infringer, or the intermediary whose services are being used by a third party to infringe a right, with an interlocutory injunction intended to prevent any impending infringement of an intellectual property right, or to forbid, on a provisional basis and subject to a recurrent fine, the continuation of the alleged infringements of an intellectual property right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. The judicial authorities shall be empowered to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or, that such infringement is imminent.**

1. Member States shall **ensure** that the judicial authorities may, **at the request of the applicant:**  
**(a) issue against the alleged infringer an interlocutory injunction intended to prevent any impending infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by national law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder; an interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right ; injunctions against intermediaries whose services are used by a third party to infringe a copyright or a related right are covered by Directive 2001/29/EC;**  
**(b) order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.**

**1a. In cases of infringement committed on a commercial scale, the Member States shall ensure that, if the injured party demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his bank accounts and other assets. To this end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.**

**1b. The judicial authorities shall, in respect of the measures referred to in paragraphs 1 and 1a, have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed, or that such infringement is imminent.**

2. Member States shall **lay down** that the provisional measures referred to in paragraph 1 may in appropriate cases be taken without the defendant having been heard, in particular when any delay would cause irreparable prejudice to the right holder. In the event of this happening, the **defendant** shall be so informed without delay after the execution of the measures.

A review, including the right to be heard, shall take place **at the** request of the defendant **in order to decide**, within a reasonable time after notification of the measures, whether **they are to be amended**, revoked or confirmed.

2. Member States shall **ensure** that the provisional measures referred to in paragraphs 1 **and 1a** may, in appropriate cases, be taken without the defendant having been heard, in particular when any delay would cause irreparable prejudice to the right holder. In the event of this happening, the **parties** shall be so informed without delay after the execution of the measures **at the latest**.

A review, including the right to be heard, shall take place **upon** request of the defendant **with a view to deciding**, within a reasonable time after notification of the measures, whether **these measures shall be modified**, revoked or confirmed.

3. Member States shall **lay down** that a **prohibitory measure** shall be revoked if the applicant does not institute proceedings leading to a decision on the merits of the case within **thirty-one calendar days from the day on which the right holder became aware of the facts on which it is based**.

4. The judicial authorities may make the **prohibition** subject to the lodging by the applicant of adequate **guarantees** intended to ensure any compensation of the prejudice suffered by the defendant **if the proceedings on the merits are subsequently judged to be unfounded**.

5. Where the provisional measures **have been** revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have **be empowered** to order the applicant, **at the** request of the defendant, to provide the defendant **adequate** compensation for any injury caused by these measures.

3. Member States shall **ensure** that **the provisional measures referred to in paragraphs 1 and 1a** shall be revoked, **or otherwise cease to have effect, upon request by the defendant**, if the applicant does not institute proceedings leading to a decision on the merits of the case **before the competent judicial authority** within a **reasonable period to be determined by the judicial authority ordering the measures where the Member State 's law so permits or, in the absence of such determination, within a period not to exceed 20 working days or 31 calendar days, whichever is the longer**.

4. The **competent** judicial authorities may make the **provisional measures referred to in paragraphs 1 and 1a** subject to the lodging by the applicant of adequate **security or equivalent assurance** intended to ensure any compensation of the prejudice suffered by the defendant **as provided for in paragraph 5**.

5. Where the provisional measures **are** revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have **the authority** to order the applicant, **upon** request of the defendant, to provide the defendant **with appropriate** compensation for any injury caused by these measures.

**Article 11*****Precautionary measures***

***1. The Member States shall lay down that, in appropriate cases, and in particular if the injured party demonstrates circumstances likely to threaten the recovery of damages, and if necessary without the other party having been heard, the judicial authorities may authorise the precautionary seizure of the fixed and non-fixed assets of the infringer, including the blocking of his bank accounts and other assets.***

***In order to ensure the implementation of the provisions set out in the first paragraph, Member States shall also take the necessary steps to allow the judicial authorities to order the communication or seizure of bank, financial or commercial documents***

***2 The judicial authorities may make the measures provided for in paragraph 1 subject to the lodging by the applicant of guarantees adequate to ensure possible compensation for the prejudice suffered by the defendant if the proceedings on the merits are subsequently judged to be unfounded.***

***3. Where the precautionary measures are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant adequate compensation for any injury caused by these measures.***

Amendment 87

Article 12

***Recall of goods***

Without prejudice to ***the*** damages due to the right holder by reason of the infringement, Member States shall ***lay down*** that the judicial authorities may order ***the recall, at the infringer's expense*** in appropriate cases, ***of the goods which have been found to infringe an intellectual property right.***

***Corrective measures***

Without prejudice to ***any*** damages due to the right holder by reason of the infringement, ***and without compensation of any sort,*** Member States shall ***ensure*** that the ***competent*** judicial authorities may order, ***at the request of the applicant, that appropriate measures be taken with regard to goods that they have found to be infringing an intellectual property right*** and, in appropriate cases, ***with regard to materials and implements principally used in the creation or manufacture of these goods. Such measures shall include:***  
***(a) recall from the channels of commerce,***  
***(b) definitive removal from the channels of commerce or***  
***(c) destruction.***  
***The judicial authorities shall order that these measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.***  
***In considering a request for corrective measures, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.***

Amendment 88

Article 13

***Article 13***

***deleted***

***Disposal outside the channels of commerce***  
***Member States shall lay down that the judicial authorities may order that the goods which have been found to infringe an intellectual property right, as well as the materials and implements used primarily for the creation or the manufacture of the goods in question, be disposed of outside the channels of commerce, without any compensation being due.***

**Article 14****Destruction of goods**

**Member States shall lay down that the judicial authorities may order the destruction of the goods which have been found to infringe an intellectual property right, without there being any entitlement to compensation.**

**deleted****Preventive measures**

**1. Member States shall lay down that, when a judicial decision has been taken finding an infringement of an intellectual property right, the judicial authorities may serve the infringer with an injunction aimed at prohibiting the continuation of the infringement. Non-compliance with an injunction shall be punishable by a fine accompanied, where applicable, by a recurring fine, with a view to ensuring compliance.**

**2. Member States shall ensure that right holders are able to apply for an injunction to be addressed to intermediaries whose services are used by third parties to infringe an intellectual property right.**

**Injunctions**

Member States shall ensure that, when a judicial decision has been taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Where provided for by national law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance.

**Member States shall also ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right, without prejudice to Article 8(3) of Directive 2001/29/EC.**

Amendment 91

Article 16

*In appropriate cases, Member States shall lay down that, if the person liable to be subjected to the measures provided for in this Section has acted without fault or negligence but has nevertheless caused injury to the applicant, that person may, if execution of the measures in question would cause him disproportionate harm and if the injured party could reasonably be satisfied with pecuniary compensation, compensate that party in cash, with the latter's agreement.*

Member States *may provide* that, *in appropriate cases and at the request of* the person liable to be subjected to the measures provided for in this Section, *the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the above measures if that person has acted unintentionally and without negligence*, if execution of the measures in question would cause him disproportionate harm and if *pecuniary compensation to the injured party appears* reasonably *satisfactory*.

Amendment 92

Article 17

1. Member States shall *lay down* that the judicial authorities shall order *an* infringer to pay the right holder *adequate* damages *in reparation of the damage incurred by the latter as a result of his intellectual property right being infringed through the infringer having engaged in an activity in the knowledge, or with reasonable grounds for knowing, that it would give rise to such an infringement.*

*To this end, the competent authorities shall award, at the request of the prejudiced party:*

*(a) either damages set at double the royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question;*

*(b) or compensatory damages corresponding to the actual prejudice (including lost profits) suffered by the right holder as a result of the infringement.*

1. Member States shall *ensure* that the *competent* judicial authorities, *on application by the injured party*, shall order *the* infringer *who knowingly, or with reasonable grounds to know, engaged in an infringing activity*, to pay the right holder damages *appropriate to the actual prejudice suffered by him as a result of the infringement.*

*When the judicial authorities set the damages:*

*(a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement;*

*(b) as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.*

*In appropriate cases, Member States shall lay down that the prejudice suffered can also be deemed to include elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement.*

*2. In the case provided for in paragraph 1, point (b), Member States may provide for the recovery, for the benefit of the right holder, of all the profits made by the infringer which are attributable to that infringement and which are not taken into account when calculating the compensatory damages.*

*For calculating the amount of the profits made by the infringer, the right holder is bound to provide evidence only with regard to the amount of the gross income achieved by the infringer, with the latter being bound to provide evidence of his deductible expenses and profits attributable to factors other than the protected object.*

*2. In cases where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, Member States may lay down that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.*

Amendment 93

Article 18

Member States shall *lay down* that *the* legal costs, *lawyer's fees* and *any* other expenses incurred by the successful party shall be borne by the *other* party, unless equity *or the economic situation of the other party* does not allow this. *The responsible authorities shall determine the sum to be paid.*

Member States shall *ensure* that *reasonable and proportionate* legal costs and other expenses incurred by the successful party shall *as a general rule* be borne by the *unsuccessful* party, unless equity does not allow this.

Amendment 94

Article 19

**1.** Member States shall *lay down* that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the *right holder* and at the expense of the infringer, *that the decision be displayed and published* in full or in part *in the newspapers designated by the right holder*.

**2.** *Member States may also provide for other publicity measures which are appropriate to the particular circumstances.*

Member States shall *ensure* that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the *applicant* and at the expense of the infringer, *appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it* in full or in part. *Member States may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.*

**1. Member States shall ensure that all serious infringements of an intellectual property right, as well as attempts at, participation in and instigation of such infringements, are treated as a criminal offence. An infringement is considered serious if it is intentional and committed for commercial purposes.**

**2. Where natural persons are concerned, Member States shall provide for criminal sanctions, including imprisonment.**

**3. As regards natural and legal persons, the Member States shall provide for the following sanctions:**

**(a) fines;**

**(b) confiscation of the goods, instruments and products stemming from the offences referred to in paragraph 1, or of goods whose value corresponds to those products.**

**In appropriate cases, Member States shall also provide for the following sanctions:**

**(a) destruction of the goods infringing an intellectual property right;**

**(b) total or partial permanent or temporary closure of the establishment used primarily to commit the infringement;**

**(c) a permanent or temporary ban on engaging in commercial activities;**

**(d) placing under judicial supervision;**

**(e) judicial winding-up;**

**(f) a ban on access to public assistance or subsidies;**

**(g) publication of judicial decisions.**

**4. For the purposes of this Chapter, the term “legal person” shall be understood to mean any legal entity having such status under the applicable national law, except for States or any other public bodies acting in the exercise of their prerogative of public power, as well as public international organisations.**

**Without prejudice to the civil and administrative measures and procedures laid down by this Directive, Member States may apply other appropriate sanctions in cases where intellectual property rights have been infringed.**

*Article 21**deleted**Legal protection of technical devices*

*1. Without prejudice to particular provisions applicable in the field of copyright, related rights and the sui generis right of the creator of a database, Member States shall provide for appropriate legal protection against the manufacture, import, distribution and use of illegal technical devices.*

*2. For the purposes of this Chapter,*

*(a) “technical device” means any technology, device or component which, in the normal course of its functioning, is designed for the manufacture of authentic goods and the incorporation therein of elements which are manifestly identifiable by customers and consumers and which make it easier to recognise the goods as being authentic.*

*(b) “illegal technical device” means any technical device which is designed to circumvent a technical device which permits the manufacture of goods infringing industrial property rights and incorporating the manifestly identifiable elements described in point (a).*

*I. Member States shall encourage:*

*(a) the development by trade or professional associations or organisations of codes of conduct at Community level aimed at contributing towards the enforcement of the intellectual property rights referred to in Article 2;*

Member States shall encourage:

*(a) the development by trade or professional associations or organisations of codes of conduct at Community level aimed at contributing towards the enforcement of the intellectual property rights referred to in Article 2, particularly by recommending the use on optical discs of a source code enabling the identification of the origin of their manufacture;*

***(b) the establishment, by optical disc manufacturers and the professional organisations concerned, of codes of conduct aimed at helping manufacturers to combat infringements of intellectual property, particularly by recommending the use on optical discs of a source code enabling the identification of the origin of their manufacture;***

***(c) the submission to the Commission of draft codes of conduct at national and Community level and of any evaluations of the application of these codes of conduct.***

***2. The codes of conduct must be in accordance with Community law and notably the rules on competition and protection of personal data.***

***(b) the submission to the Commission of draft codes of conduct at national and Community level and of any evaluations of the application of these codes of conduct.***

Amendment 98

Article 23, paragraph 1

1. Three years after the date laid down in ***Article 26(1)***, each Member State shall submit to the Commission a report informing it of the situation with regard to implementation of this Directive. On the basis of those reports, the Commission shall draw up a report on the application of this Directive, including an assessment of the effectiveness of the measures taken ***by the various competent bodies and instances***, as well as an evaluation of its impact on innovation and the development of the information society. That report shall then be transmitted to the European Parliament, the Council and the European Economic and Social Committee. It shall be accompanied, if necessary, by proposals for amendments to this Directive.

1. Three years after the date laid down in ***Article 25(1)***, each Member State shall submit to the Commission a report informing it of the situation with regard to implementation of this Directive. On the basis of those reports, the Commission shall draw up a report on the application of this Directive, including an assessment of the effectiveness of the measures taken, as well as an evaluation of its impact on innovation and the development of the information society. That report shall be transmitted to the European Parliament, the Council and the European Economic and Social Committee. It shall be accompanied, if necessary, ***and in the light of developments in the Community legal order***, by proposals for amendments to this Directive.

## Correspondents

1. Each Member State shall designate one or more correspondents (*referred to hereinafter as “the national correspondents”*) for any question relating to the implementation of the measures provided for by this Directive. It shall communicate the details of the *correspondent(s)* to the other Member States and to the Commission.

2. *For the purposes of applying this Directive, the Member States shall cooperate with the other Member States and with the Commission via the national correspondents. They shall provide the assistance and information requested by the other Member States or the Commission as rapidly as possible, including by appropriate electronic means.*

*Exchange of information and correspondents*

*For the purpose of promoting cooperation, including the exchange of information, among Member States and between Member States and the Commission, each Member State shall designate one or more national correspondents for any questions relating to the implementation of the measures provided for by this Directive. It shall communicate the details of the correspondents to the other Member States and to the Commission.*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive *not later than eighteen months after the date of its adoption*. They shall *immediately* inform the Commission thereof.  
When Member States adopt these *provisions, these* shall contain a reference to this Directive or shall be accompanied by such reference *at the time* of their official publication. *The procedure for* such reference shall be *adopted* by Member States.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive *by ... \* at the latest*. They shall *forthwith* inform the Commission thereof. When Member States adopt these *measures, they* shall contain a reference to this Directive or shall be accompanied by such reference *on the occasion* of their official publication. *The methods of making* such reference shall be *laid down* by Member States.

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*\* Twenty-four months after the date of adoption of this Directive.*