



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 22 September 2003 (25.09)  
(OR. fr)**

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**Interinstitutional File:  
2003/0024 (COD)**

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**12450/03**

**LIMITE**

**PI 82  
CODEC 1161**

**WORKING DOCUMENT**

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from : Presidency  
to : Working Party on Intellectual Property

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No prev. doc.: 12055/03 PI 73 CODEC 1092  
No. Cion prop.: 6777/03 PI 19 CULT 17 CODEC 204

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Subject: Proposal for a Directive of the European Parliament and of the Council on measures and procedures to ensure the enforcement of intellectual property rights  
- Presidency proposal for Articles 1 to 9

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## CHAPTER I

### OBJECTIVE AND SCOPE

#### *Article 1*

##### **Subject-matter**

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

#### *Article 2*

##### **Scope**

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 [...].
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").

## CHAPTER II

### MEASURES AND PROCEDURES

#### SECTION 1

##### GENERAL PROVISIONS

###### *Article 3*

###### **General obligation**

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

###### *Article 4*

###### **Penalties**

Merged with Article 3.

###### *Article 5*

###### **Persons entitled to apply for the application of the measures and procedures**

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, exclusive licensees and sub-licensees, as well as all other persons authorised to use those rights in accordance with the applicable law, or their representatives.

2. Member States shall confer upon rights management or professional defence bodies, wherever they represent intellectual property right holders, exclusive licensees and sub-licensees, 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

[...]

#### *Article 6*

### **Presumption of copyright tenure**

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 [...] the work, or whose authorship is referred to on [...] the work by way of a statement, label or other mark.

## **SECTION 2**

### **EVIDENCE**

#### *Article 7*

### **Evidence**

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. Under the same conditions and in order to identify [...] the real beneficiaries of the infringement, Member States shall take such measures as are necessary to enable the responsible authorities to order, at the request of the plaintiff, the communication or seizure of banking, financial or commercial documents under the control of the defendant, subject to the protection of confidential information.

#### *Article 8*

#### **Measures for protecting evidence**

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 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 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..
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 a reasonable interval, which shall be specified by the judicial authority ordering the measures when the law of a Member State permits or, in the absence of such specification, within 31 calendar days of the seizure, at the request of the defendant, the seizure shall be null and void, without prejudice to the damages which may be claimed.

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.

## SECTION 3

### RIGHT OF INFORMATION

#### *Article 9*

#### **Right of information**

1. Member States shall lay down that, in the context of proceedings concerning an alleged 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 or of the persons or bodies referred to in Article 5, 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;
  - (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 involvement in an infringement of an intellectual property right.

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.

