

Patent Briefing Paper: *European Patent*

EC DIRECTIVE – ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

This Directive sets out to align and strengthen enforcement measures of intellectual property rights throughout the EU and requires all Member States to provide effective, dissuasive and proportionate remedies against IP infringement. In particular the Directive seeks to ensure a homogenous level of protection in each member state against counterfeiting and piracy.

This Directive was approved by the European Council of Ministers in March 2004 and came into force on 20 May 2004. Member States will have until 30 April 2006 to implement it into their National legislation. Some of the more significant measures concerning evidence, protection of evidence, provisional measures and corrective measures are briefly summarised below.

Evidence:

The Directive sets out the type and format of the evidence required to bring proceedings for IP infringement and requires Member States to take such measures as are necessary to enable the authorities to order the production of banking, financial or commercial evidence under the control of the opposing party.

Member States are also required to take measures to preserve evidence, for example, if there is a demonstrable risk of evidence being destroyed.

Right of Information:

Member States must ensure that, under certain conditions, the judicial authorities may order information concerning the origin and distribution networks of the infringing goods/services.

Provisional and Precautionary Measures:

Judicial authorities may impose interlocutory injunctions intended to prevent imminent or continued infringement, or may order seizure of alleged infringing goods.

Corrective Measures:

The right owner can request the infringing goods be recalled or removed from commerce or destroyed. These measures shall be taken at the expense of the infringer, unless particular reasons are invoked for not doing so. An injunction may be issued to prohibit continuation of the infringement. Compensation of damages for a “knowing” infringement should be appropriate to the losses occurred. The damages can be set either at either:

- a) double the royalties that would have been due if authorisation to use the IP right had been requested or
- b) compensatory damages corresponding to lost profits.

The Directive also provides that Member States may apply other appropriate sanctions.

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