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from: Italian delegation
to: Working Party on Intellectual Property
No. prev. doc.: 16289/03 PI 134 CODEC 1864
No. Cion prop.: 6777/03 PI 19 CULT 17 CODEC 204
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

-- Drafting proposal on Articles 7 and 9

Delegations will find in Annex a drafting proposal submitted by the Italian delegation on Articles 7 and 9 of the proposed Directive.

The amendments in relation to 16289/03 are indicated.
ANNEX

Article 7

Evidence

1. Member States shall lay down that, on application by a party which 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 competent judicial authorities may order that such evidence be produced by the opposing party, subject to the protection of confidential information.

2. Deleted (see Art. 9(1)(A) below)

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 order to comply with a request for provisional or precautionary measures, the competent judicial authorities, at the request of the right holder or of other persons or bodies referred to in Article 5, in appropriate cases and unless particular reasons are invoked for not doing so, may order:

A) the communication of banking, financial or commercial documents under the control of the defendant, subject to the protection of confidential information in order to identify those directly involved in the infringement carried out on a commercial scale:
B) any person to provide information on persons involved in the production, manufacture or distribution of the goods or the provision of the services, on the origin of the goods or services which are alleged 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;

(ba) was found to be providing for commercial purposes services used in infringing activities. [...]

(c) Deleted.

2. Deleted.

First variant

3. Paragraph 1 shall apply without prejudice to other statutory provisions which limit or extend the right holder's rights to receive fuller information.

Second variant

3. Paragraph 1 [...] 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 involvement in an infringement of an intellectual property right; [...] 

(e) 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 administrative 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.