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WORKING DOCUMENT

from: Estonian delegation
to: Working Party on Intellectual Property

No. prev. doc.: 5862/04 PI 13 CODEC 132
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
- Suggestions for drafting amendments to 16289/03

Delegations will find attached drafting suggestions concerning a number of provisions as set out in 16289/03 PI 134 CODEC 1864.
1. **Justification:**

_We agree to the deletion of Article 20 in the consolidated text and agree to the relevant additions to Article 2(3) as in Presidency compromise proposal of 23.01.2004._

_In case criminal sanctions need to be mentioned in the directive, we suggest recital 25 could read as follows._

**Recital 25**

In addition to the civil and administrative measures and procedures under this Directive, other measures also constitute, in appropriate cases, a means of ensuring the enforcement of intellectual property rights. However, any approximation of these measures should be undertaken, if deemed necessary, under the relevant Treaty provisions, rather that in this Directive.

2. **Justification:**

_We concur with the respective UK proposal (5657/04) on Article 17(1). However, we would like to add (underlined) the aspect of moral prejudice from the respective Swedish proposal (5832/04) on Article 17(1)._  

**Article 17**

**Damages**

1. Member States shall ensure that the competent judicial authorities, on application by the injured party, are able to order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the right holder [appropriate] damages in reparation of the damage incurred by him as a result of the infringement.

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1 See Article 2(3)(b) and (c) in 5802/04.
The damages, which shall be of a non-punitive nature, may take into account all appropriate aspects, such as the foreseeable negative economic consequences which the injured party has suffered, including lost profits and any royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question, or any unfair profits made by the infringer, and may include elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement.

2. Deleted.

3. Member States may lay down that the judicial authorities may order the recovery of profits and/or the payment of damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.