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from: Belgian delegation
to: Working Party on Intellectual Property

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measures and procedures to ensure the enforcement of intellectual property rights
- Proposal for amending Article 9 in 5802/04

Delegations will find attached a proposal by the Belgian delegation which was distributed at the
SECTION 3
RIGHT OF INFORMATION

Article 9
Right of information

1. Member States shall ensure that, in the context of proceedings concerning an [...] infringement of an intellectual property right […] , the competent judicial authorities may order, in response to a [justified and proportionate] request of the right holder […], in appropriate cases, the infringer to provide information on the origin of the infringing goods or services.

[...]

2. The information referred to in paragraph 1 may 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

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

[...]

**Justification**

Revealing the source and the distribution network is an important aspect of combating piracy. Obtaining information on the origin, the production and the distributors, can be a particularly efficient means in this respect.

Given the possibly sensitive, confidential and commercial nature of this information, such right of information must be subject to the necessary caution and guarantees. For this reason, it seems essential that the right of information can only be exercised if a judicial authority has found that an infringement was committed.

Concerning the extent of the information which can be ordered, the appropriate flexibility has to be left to the judicial authority. In this way the judicial authority can in an appropriate manner take account of all circumstances of the case, as e.g. the seriousness of the infringement.
The possibility for the responsible administrative authorities to provide to the right holder the information concerned is deleted, since the infringement has to be established first, and administrative authorities cannot establish this infringement. It would also cause to high a work charge for the administrative authorities.