I. INTRODUCTION

In accordance with the provisions of Article 251 (2) of the EC Treaty and the Joint Declaration on the Practical Arrangements for the Implementation of the Co-decision procedure, a number of informal contacts were made between the Council, the European Parliament and the Commission with a view to reaching agreement on this dossier at first reading, thereby avoiding the need for a second reading and a conciliation.

In this context, the Rapporteur Ms. Fourtou (EPP/DE - FR) and representatives of three other political groups (PSE, ELDR and UEN) tabled 45 compromise amendments, which had been agreed during the informal meetings referred to above.

---

II. VOTE

The Plenary adopted all 45 of the compromise amendments. All other amendments were rejected. The amendments adopted correspond to what was agreed between the three institutions and ought therefore to be acceptable to the Council.

The text of the amendments adopted and the European Parliament’s legislative resolution are set out in the annex hereto.

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 46)\(^1\);

– having regard to Articles 251(2) and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0055/2003),

– having regard to Rule 67 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinion of the Committee on Industry, External Trade, Research and Energy (A5-0468/2003),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

\(^1\) Not yet published in OJ.
<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendments by Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Amendment 56</strong>&lt;br&gt;Recital 10</td>
<td><strong>Amendment 56</strong>&lt;br&gt;Recital 10</td>
</tr>
<tr>
<td>(10) The objective of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market. <strong>This protection is essential against infringements carried out on for commercial purposes or which cause significant harm to the right holder, apart from minor and isolated infringements.</strong></td>
<td>(10) The objective of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market.</td>
</tr>
<tr>
<td><strong>Amendment 57</strong>&lt;br&gt;Recital 12</td>
<td><strong>Amendment 57</strong>&lt;br&gt;Recital 12</td>
</tr>
<tr>
<td>(12) This Directive shall not affect the application of the rules of competition, and in particular Articles 81 and 82 of the Treaty.</td>
<td>(12) This Directive should not affect the application of the rules of competition, and in particular Articles 81 and 82 of the Treaty. <strong>The measures provided for in this Directive should not be used to unduly restrict competition in a manner which is contrary to the Treaty.</strong></td>
</tr>
<tr>
<td><strong>Amendment 58</strong>&lt;br&gt;Recital 13</td>
<td><strong>Amendment 58</strong>&lt;br&gt;Recital 13</td>
</tr>
<tr>
<td>(13) It is necessary to define the scope of this Directive as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field <strong>and by the resulting national provisions, while excluding certain activities which do not involve intellectual property in the strict sense.</strong> Nevertheless, that requirement does not affect the possibility, on the part of those Member States which so wish, to extend, for internal purposes, the provisions of this Directive to include acts involving unfair competition or similar activities.</td>
<td>(13) It is necessary to define the scope of this Directive as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field <strong>and/or by the national law of the Member State concerned.</strong> Nevertheless, that requirement does not affect the possibility, on the part of those Member States which so wish, to extend, for internal purposes, the provisions of this Directive to include acts involving unfair competition, <strong>including parasitic copies,</strong> or similar activities.</td>
</tr>
</tbody>
</table>
Amendment 59
Recital 13a (new)

(13a) The measures provided for in Articles 7(2), 9(1) and 10(1a) of this Directive need to be applied only in respect of acts committed on a commercial scale. This is without prejudice to the possibility for Member States to apply these measures also in respect of other acts. The acts which are committed on a commercial scale are those carried out for direct or indirect economic or commercial advantage; this would normally exclude acts done by end consumers acting in good faith.

Amendment 60
Recital 15

(15) The provisions of this Directive are without prejudice to the particular provisions for the enforcement of rights and on exceptions in the domain of copyright and related rights set out in Community instruments and notably Article 8 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.


Amendment 61
Recital 16

(16) The measures and procedures designed to enforce intellectual property rights must be effective and place the right holder in the situation in which he would have been were it not for the infringement in question.

(16) The measures and remedies provided for in this Directive should be determined in each case in such a manner as to take due account of the specific characteristics of that case, including the specific features of each intellectual property right and, where appropriate, the intentional or unintentional character of the infringement.
(17) **In order to improve and extend access to justice,** the persons entitled to request application of these measures and procedures should be not only the right holders but also the professional organisations in charge of the management of those rights or for the defence of the collective and individual interests for which they are responsible.

(18) It is appropriate to adopt the rule in Article 15 of the Berne Convention, which establishes the presumption whereby the author of a literary or artistic work is regarded as such if his name appears on the work. **Moreover, as copyright exists as from the creation of a work and does not require formal registration as in the case of an industrial property right, it is useful to recall the principle that a work is considered to be sufficiently creative enjoy copyright protection until proven otherwise. This principle is of particular importance when an author seeks to defend his rights in a legal dispute and represents largely current practice in Member States’ national jurisdictions.**

(19) Given that evidence is an element of paramount importance for establishing the infringement of intellectual property, it is appropriate to ensure that effective means of presenting and obtaining evidence are available to all parties.
Amendment 65
Recital 20

(20) If there is a duly established danger that evidence may be destroyed, an effective and inexpensive procedure must be made available to the parties which allows for the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods and, in appropriate cases, of the documents relating thereto. The procedure must have regard to the rights of the defence and must provide the necessary guarantees.

Amendment 66
Recital 21

(21) Other measures designed to ensure a high level of protection exist in certain countries and must be made available in all the Member States. This is the case with the right of information, which allows precise information to be obtained on the origin of the infringing goods, the distribution channels and the identity of the third parties involved in the infringement, as well as the publication of judicial decisions on infringements of intellectual property, which makes it possible to inform the public and deter third parties from committing such infringements.

Amendment 67
Recital 22a (new)

(22a) Without prejudice to any other measures and remedies available, rightholders should have the possibility of applying for an injunction against an intermediary whose services are being used by a third party to infringe the rightholder's industrial property right. The conditions and modalities relating to such injunctions should be left to the national law of the Member States. As far as infringements of copyright and related rights are concerned, a comprehensive level of harmonisation is already provided for in Directive 2001/29/EC. The provision of Article 8, paragraph 3 of Directive 2001/29/EC should therefore not be affected by this Directive.
Amendment 68
Recital 23

(23) Depending on the particular case, and if justified by circumstances, the measures and procedures to be provided for must include prohibitory measures aimed at preventing further infringements of intellectual property, as well as preventive and corrective measures, such as the confiscation of the infringing goods and other objects used predominantly for illegal purposes, removal from the channels of commerce, possible destruction and the recall, at the infringer's expense where appropriate, of the infringing goods placed on the market.

(23) Depending on the particular case, and if justified by circumstances, the measures and procedures to be provided for should include prohibitory measures aimed at preventing further infringements of intellectual property rights. Moreover there should be corrective measures, where appropriate at the expense of the infringer, such as the recall, the removal definitively from the channels of commerce, or destruction of the infringing goods and in appropriate cases the materials and implements principally used in the creation or manufacture of these goods. These corrective measures should take account of the interests of third parties including, in particular, consumers and private parties acting in good faith.

Amendment 69
Recital 23a (new)

(23a) Member States should have the option of providing, in cases where an infringement has been carried out unintentionally and without negligence and where the corrective measures or injunctions provided for by this Directive would be disproportionate, for the possibility, in appropriate cases, of pecuniary compensation being awarded to the injured party as an alternative measure. However, where the commercial use of counterfeit goods or the supply of services would constitute an infringement of law other than intellectual property law or would be likely to harm consumers, such use or supply should remain prohibited.
(24) With a view to compensating for the prejudice suffered as a result of an infringement committed by an infringer who has engaged in an activity in the knowledge, or with reasonable grounds for knowing, that it would give rise to such an infringement, the amount of damages awarded to the right holder should be set either at a fixed rate equal to double the royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question (the aim being to allow for compensation based on an objective criterion while taking account of the expenses incurred by the right holder, such as the costs of identification and research), or according to the actual prejudice (including loss of earnings) suffered by the right holder (compensatory damages), to which must be added the profits made by the infringer, which are not taken into account in calculating the compensatory damages. It must also be possible to take into account other elements, such as the moral prejudice caused to the right holder.

(24a) To act as a supplementary deterrent to future infringers and contribute to the awareness of the public at large, it is useful to publicise judgments in intellectual property infringement cases.
Amendment 72
Recital 25

(25) In order to ensure the proper functioning of the Internal Market, and in accordance with the undertakings entered into under the TRIPS Agreement, and in particular Article 61 thereof, Member States are required to punish serious infringements of intellectual property in an effective, proportionate and deterrent fashion under criminal law. To this end, “serious infringement” means acts which are carried out intentionally and for commercial purposes. All or some of those participating in the infringement or attempted infringement, should be declared responsible, according to the particular country's internal law, as accomplices or instigators.

Amendment 73
Recital 26

(26) Protection measures make a major contribution towards combating infringements of intellectual property. Appropriate legal protection of security and authentication devices which protect against copying, manipulation or neutralisation is therefore necessary in the field of industrial property, and already exists in the field of copyright. Moreover, these protection measures targeting the abuse of technical devices to infringe intellectual property rights are in line with Article 6 of the Convention on Cybercrime adopted by the Council of Europe in Budapest on 23 November 2001.

(25) In addition to the civil and administrative measures and procedures provided for under this Directive, criminal sanctions also constitute, in appropriate cases, a means of ensuring the enforcement of intellectual property rights.
Amendment 74
Recital 28

(28) In order to facilitate the uniform application of the provisions set out in this Directive, it is appropriate to provide for systems of cooperation and mutual assistance between Member States, on the one hand, and between the Member States and the Commission on the other, in particular by creating a network of correspondents designated by the Member States. Within this framework, a Contact Committee made up of national correspondents could also be set up within the Commission.

(28) In order to facilitate the uniform application of the provisions set out in this Directive, it is appropriate to provide for cooperation and the exchange of information between Member States, on the one hand, and between the Member States and the Commission on the other, in particular by creating a network of correspondents designated by the Member States and by providing regular reports assessing the application of this Directive and the effectiveness of the measures taken by the various national bodies.

Amendment 75
Recital 29

(29) Since the objectives of this Directive cannot be sufficiently achieved by the Member States for the reasons already described, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve its objectives.

(29) Since, for the reasons already described, the objectives of this Directive can best be achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve its objectives.

Amendment 76
Article 1

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

This Directive concerns the measures and procedures necessary to ensure the enforcement of intellectual property rights. For the purposes of this Directive, the term "intellectual property rights" includes industrial property rights.
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 when the infringement is committed for commercial purposes or causes significant harm to the right holder.

2. This Directive shall be without prejudice to the particular provisions on the enforcement of rights and on exceptions contained in Community legislation concerning copyright and notably those found in Directive 91/250/EEC and, in particular, Article 7 of that Directive, or Directive 2001/29/EC and, in particular, Articles 2 to 6 and Article 8 of that Directive.

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”).

   (ba) any national provisions in Member States relating to criminal procedures or penalties in respect of infringement of intellectual property rights.
Amendment 78
Article 3
Member States shall provide for the measures and procedures needed to ensure the enforcement of the intellectual property rights covered by this Directive.

These measures and procedures shall be such as to remove from those responsible for an infringement of an intellectual property right the economic benefits of that infringement. They shall be fair and equitable, and shall not be unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays.

These measures and procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade.

The measures and remedies 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 and to provide for safeguards against their abuse.

Amendment 79
Article 4
Penalties
Member States shall ensure that any infringement of an intellectual property right covered by Article 2 is punishable by penalties. These penalties must be effective, proportionate and deterrent.

Amendment 80
Article 5
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, as well as all other persons authorised to use those rights in accordance with the applicable law, or their representatives.

Member States shall recognise as persons entitled to seek application of the measures and procedures referred to in this Chapter:

- the holders of intellectual property rights in accordance with the provisions of the applicable law,
2. Member States shall confer upon rights management or professional defence bodies, wherever they represent intellectual property right holders 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. The first and second subparagraphs shall be without prejudice to the applicable rules on the representation of parties in court proceedings.

Amendment 81
Article 6

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 copies of the work, or whose authorship is referred to on a copy of the work by way of a statement, label or other mark. For the purposes of applying the measures and procedures provided for in this Directive,
(a) in order that the author of a literary or artistic work, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings, it shall be sufficient for his name to appear on the work in the usual manner;

(b) the provision under (a) shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.

Amendment 82
Article 7

1. Member States shall ensure that, on application by a party which has presented reasonably available evidence sufficient to support its claims, and has, in substantiating those claims, cited evidence which lies in 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. In order to identify and prosecute the real beneficiaries of the infringement, Member States shall take such measures as are necessary to enable the competent judicial authorities to order the communication or seizure of banking, financial or commercial documents, subject to the protection of confidential information.
Amendment 83
Article 8

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 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 been empowered to order the applicant, at the defendant’s request, to provide the defendant with adequate compensation for any injury caused by the measures.

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.

1. Member States shall ensure that even before the commencement of proceedings on the merits of the case the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in regard to the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. These measures shall be taken, if necessary without the other party having been heard, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

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 ensure that the evidence-protection measures may be subject to the applicant’s lodging of an adequate security or equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in paragraph 4.
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 31 calendar days of the seizure, the seizure shall be null and void, without prejudice to the damages which may be claimed.

3. Member States shall ensure that the evidence-protection measures shall be revoked or otherwise cease to have effect upon request by the defendant, without prejudice to the damages which may be claimed, if the applicant has not instituted legal proceedings leading to a decision on the merits of the case before the competent judicial authority within a reasonable period, to be determined by the judicial authority ordering the measures when the law of a Member State so permits or, in the absence of such determination, within a period not to exceed 20 working days or 31 calendar days, whichever is the longer.

3a. Where the evidence-protection measures have been revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of any intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant with appropriate compensation for any injury caused by these measures.

3b. Member States may take measures to protect witnesses' identity.

Amendment 84
Article 9

1. Member States shall lay down that, in order to deal with proceedings involving an 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, 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 in possession of the infringing goods on a commercial scale;

1. Member States shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:
(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 the existence of an infringement of an intellectual property right.

(b) was found to be using the infringing services on a commercial scale;

(ba) was found to be providing on a commercial scale services used in infringing activities; or

(c) was indicated by the person referred to in point (a) or (b) as being involved in the production, manufacture or distribution of the goods or the provision of the services.

2. The information referred to in paragraph 1 shall, as appropriate, 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
   (da) 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 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.

Amendment 85
Article 10

1. Member States shall lay down that the judicial authorities may serve the alleged infringer, or the intermediary whose services are being used by a third party to infringe a right, with an interlocutory injunction intended to prevent any impending infringement of an intellectual property right, or to forbid, on a provisional basis and subject to a recurrent fine, the continuation of the alleged infringements of an intellectual property right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. The judicial authorities shall be empowered to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant’s right is being infringed or, that such infringement is imminent.

1. Member States shall ensure that the judicial authorities may, at the request of the applicant:
   (a) issue against the alleged infringer an interlocutory injunction intended to prevent any impending infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by national law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder; an interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right; injunctions against intermediaries whose services are used by a third party to infringe a copyright or a related right are covered by Directive 2001/29/EC;
   (b) order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.
1a. In cases of infringement committed on a commercial scale, the Member States shall ensure that, if the injured party demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his bank accounts and other assets. To this end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

1b. The judicial authorities shall, in respect of the measures referred to in paragraphs 1 and 1a, have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed, or that such infringement is imminent.

2. Member States shall lay down that the provisional measures referred to in paragraph 1 may in appropriate cases be taken without the defendant having been heard, in particular when any delay would cause irreparable prejudice to the right holder. In the event of this happening, the defendant shall be so informed without delay after the execution of the measures.

A review, including the right to be heard, shall take place at the request of the defendant in order to decide, within a reasonable time after notification of the measures, whether they are to be amended, revoked or confirmed.

2. Member States shall ensure that the provisional measures referred to in paragraphs 1 and 1a may, in appropriate cases, be taken without the defendant having been heard, in particular when any delay would cause irreparable prejudice to the right holder. In the event of this happening, the parties shall be so informed without delay after the execution of the measures at the latest.

A review, including the right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether these measures shall be modified, revoked or confirmed.
3. Member States shall lay down that a prohibitory measure shall be revoked if the applicant does not institute proceedings leading to a decision on the merits of the case within thirty-one calendar days from the day on which the right holder became aware of the facts on which it is based.

4. The judicial authorities may make the prohibition subject to the lodging by the applicant of adequate guarantees intended to ensure any compensation of the prejudice suffered by the defendant if the proceedings on the merits are subsequently judged to be unfounded.

5. Where the provisional measures have been revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant adequate compensation for any injury caused by these measures.

3. Member States shall ensure that the provisional measures referred to in paragraphs 1 and 1a shall be revoked, or otherwise cease to have effect, upon request by the defendant, if the applicant does not institute proceedings leading to a decision on the merits of the case before the competent judicial authority within a reasonable period to be determined by the judicial authority ordering the measures where the Member State’s law so permits or, in the absence of such determination, within a period not to exceed 20 working days or 31 calendar days, whichever is the longer.

4. The competent judicial authorities may make the provisional measures referred to in paragraphs 1 and 1a subject to the lodging by the applicant of adequate security or equivalent assurance intended to ensure any compensation of the prejudice suffered by the defendant as provided for in paragraph 5.

5. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant with appropriate compensation for any injury caused by these measures.
Article 11  

Precautionary measures  

1. The Member States shall lay down that, in appropriate cases, and in particular if the injured party demonstrates circumstances likely to threaten the recovery of damages, and if necessary without the other party having been heard, the judicial authorities may authorise the precautionary seizure of the fixed and non-fixed assets of the infringer, including the blocking of his bank accounts and other assets.  

In order to ensure the implementation of the provisions set out in the first paragraph, Member States shall also take the necessary steps to allow the judicial authorities to order the communication or seizure of bank, financial or commercial documents.  

2. The judicial authorities may make the measures provided for in paragraph 1 subject to the lodging by the applicant of guarantees adequate to ensure possible compensation for the prejudice suffered by the defendant if the proceedings on the merits are subsequently judged to be unfounded.  

3. Where the precautionary measures are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant adequate compensation for any injury caused by these measures.
Recall of goods
Without prejudice to the damages due to the right holder by reason of the infringement, Member States shall lay down that the judicial authorities may order the recall, at the infringer's expense in appropriate cases, of the goods which have been found to infringe an intellectual property right.

Corrective measures
Without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, Member States shall ensure that the competent judicial authorities may order, at the request of the applicant, that appropriate measures be taken with regard to goods that they have found to be infringing an intellectual property right and, in appropriate cases, with regard to materials and implements principally used in the creation or manufacture of these goods. Such measures shall include:
(a) recall from the channels of commerce,
(b) definitive removal from the channels of commerce or
(c) destruction.
The judicial authorities shall order that these measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so. In considering a request for corrective measures, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

Disposal outside the channels of commerce
Member States shall lay down that the judicial authorities may order that the goods which have been found to infringe an intellectual property right, as well as the materials and implements used primarily for the creation or the manufacture of the goods in question, be disposed of outside the channels of commerce, without any compensation being due.

Article 13
Disposal outside the channels of commerce
Member States shall lay down that the judicial authorities may order that the goods which have been found to infringe an intellectual property right, as well as the materials and implements used primarily for the creation or the manufacture of the goods in question, be disposed of outside the channels of commerce, without any compensation being due.

Article 13
Disposal outside the channels of commerce
Member States shall lay down that the judicial authorities may order that the goods which have been found to infringe an intellectual property right, as well as the materials and implements used primarily for the creation or the manufacture of the goods in question, be disposed of outside the channels of commerce, without any compensation being due.

Article 13
Disposal outside the channels of commerce
Member States shall lay down that the judicial authorities may order that the goods which have been found to infringe an intellectual property right, as well as the materials and implements used primarily for the creation or the manufacture of the goods in question, be disposed of outside the channels of commerce, without any compensation being due.

Article 13
Disposal outside the channels of commerce
Member States shall lay down that the judicial authorities may order that the goods which have been found to infringe an intellectual property right, as well as the materials and implements used primarily for the creation or the manufacture of the goods in question, be disposed of outside the channels of commerce, without any compensation being due.

Article 13
Disposal outside the channels of commerce
Member States shall lay down that the judicial authorities may order that the goods which have been found to infringe an intellectual property right, as well as the materials and implements used primarily for the creation or the manufacture of the goods in question, be disposed of outside the channels of commerce, without any compensation being due.
Amendment 89  
Article 14  

**Article 14**  

Destruction of goods  

Member States shall lay down that the judicial authorities may order the destruction of the goods which have been found to infringe an intellectual property right, without there being any entitlement to compensation.

Amendment 90  
Article 15  

**Preventive measures**  

1. Member States shall lay down that, when a judicial decision has been taken finding an infringement of an intellectual property right, the judicial authorities may serve the infringer with an injunction aimed at prohibiting the continuation of the infringement. **Non-compliance** with an injunction shall be punishable by a fine accompanied, where applicable, by a recurring fine, with a view to ensuring compliance.

2. Member States shall ensure that right holders are able to apply for an injunction to be addressed to intermediaries whose services are used by third parties to infringe an intellectual property right.

**Injunctions**  

Member States shall ensure that, when a judicial decision has been taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. **Where provided for by national law, non-compliance** with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. **Member States shall also ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right, without prejudice to Article 8(3) of Directive 2001/29/EC.**
Amendment 91
Article 16

In appropriate cases, Member States shall lay down that, if the person liable to be subjected to the measures provided for in this Section has acted without fault or negligence but has nevertheless caused injury to the applicant, that person may, if execution of the measures in question would cause him disproportionate harm and if the injured party could reasonably be satisfied with pecuniary compensation, compensate that party in cash, with the latter’s agreement.

Member States may provide that, in appropriate cases and at the request of the person liable to be subjected to the measures provided for in this Section, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the above measures if that person has acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Amendment 92
Article 17

1. Member States shall lay down that the judicial authorities shall order an infringer to pay the right holder adequate damages in reparation of the damage incurred by the latter as a result of his intellectual property right being infringed through the infringer having engaged in an activity in the knowledge, or with reasonable grounds for knowing, that it would give rise to such an infringement.

To this end, the competent authorities shall award, at the request of the prejudiced party:

(a) either damages set at double the royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question;

(b) or compensatory damages corresponding to the actual prejudice (including lost profits) suffered by the right holder as a result of the infringement.

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

When the judicial authorities set the damages:

(a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement;

(b) as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.
In appropriate cases, Member States shall lay down that the prejudice suffered can also be deemed to include elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement.

2. In the case provided for in paragraph 1, point (b), Member States may provide for the recovery, for the benefit of the right holder, of all the profits made by the infringer which are attributable to that infringement and which are not taken into account when calculating the compensatory damages.

For calculating the amount of the profits made by the infringer, the right holder is bound to provide evidence only with regard to the amount of the gross income achieved by the infringer, with the latter being bound to provide evidence of his deductible expenses and profits attributable to factors other than the protected object.

2. In cases where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, Member States may lay down that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

Amendment 93

Article 18

Member States shall lay down that the legal costs, lawyer's fees and any other expenses incurred by the successful party shall be borne by the other party, unless equity or the economic situation of the other party does not allow this. The responsible authorities shall determine the sum to be paid.

Member States shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall as a general rule be borne by the unsuccessful party, unless equity does not allow this.
Amendment 94
Article 19

1. Member States shall lay down that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the right holder and at the expense of the infringer, that the decision be displayed and published in full or in part in the newspapers designated by the right holder.

2. Member States may also provide for other publicity measures which are appropriate to the particular circumstances.

Member States shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part. Member States may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.
1. Member States shall ensure that all serious infringements of an intellectual property right, as well as attempts at, participation in and instigation of such infringements, are treated as a criminal offence. An infringement is considered serious if it is intentional and committed for commercial purposes.

2. Where natural persons are concerned, Member States shall provide for criminal sanctions, including imprisonment.

3. As regards natural and legal persons, the Member States shall provide for the following sanctions:
   (a) fines;
   (b) confiscation of the goods, instruments and products stemming from the offences referred to in paragraph 1, or of goods whose value corresponds to those products.
   In appropriate cases, Member States shall also provide for the following sanctions:
   (a) destruction of the goods infringing an intellectual property right;
   (b) total or partial permanent or temporary closure of the establishment used primarily to commit the infringement;
   (c) a permanent or temporary ban on engaging in commercial activities;
   (d) placing under judicial supervision;
   (e) judicial winding-up;
   (f) a ban on access to public assistance or subsidies;
   (g) publication of judicial decisions.

4. For the purposes of this Chapter, the term “legal person” shall be understood to mean any legal entity having such status under the applicable national law, except for States or any other public bodies acting in the exercise of their prerogative of public power, as well as public international organisations.

Without prejudice to the civil and administrative measures and procedures laid down by this Directive, Member States may apply other appropriate sanctions in cases where intellectual property rights have been infringed.
Amendment 96
Article 21

Legal protection of technical devices
1. Without prejudice to particular provisions applicable in the field of copyright, related rights and the sui generis right of the creator of a database, Member States shall provide for appropriate legal protection against the manufacture, import, distribution and use of illegal technical devices.

2. For the purposes of this Chapter, (a) “technical device” means any technology, device or component which, in the normal course of its functioning, is designed for the manufacture of authentic goods and the incorporation therein of elements which are manifestly identifiable by customers and consumers and which make it easier to recognise the goods as being authentic.

(b) “illegal technical device” means any technical device which is designed to circumvent a technical device which permits the manufacture of goods infringing industrial property rights and incorporating the manifestly identifiable elements described in point (a).

Amendment 97
Article 22

I. Member States shall encourage:
(a) the development by trade or professional associations or organisations of codes of conduct at Community level aimed at contributing towards the enforcement of the intellectual property rights referred to in Article 2;
(b) Member States shall encourage:
(a) the development by trade or professional associations or organisations of codes of conduct at Community level aimed at contributing towards the enforcement of the intellectual property rights referred to in Article 2, particularly by recommending the use on optical discs of a source code enabling the identification of the origin of their manufacture;
(b) the establishment, by optical disc manufacturers and the professional organisations concerned, of codes of conduct aimed at helping manufacturers to combat infringements of intellectual property, particularly by recommending the use on optical discs of a source code enabling the identification of the origin of their manufacture;

(c) the submission to the Commission of draft codes of conduct at national and Community level and of any evaluations of the application of these codes of conduct.

2. The codes of conduct must be in accordance with Community law and notably the rules on competition and protection of personal data.

Amendment 98
Article 23, paragraph 1

1. Three years after the date laid down in Article 26(1), each Member State shall submit to the Commission a report informing it of the situation with regard to implementation of this Directive. On the basis of those reports, the Commission shall draw up a report on the application of this Directive, including an assessment of the effectiveness of the measures taken by the various competent bodies and instances, as well as an evaluation of its impact on innovation and the development of the information society. That report shall then be transmitted to the European Parliament, the Council and the European Economic and Social Committee. It shall be accompanied, if necessary, by proposals for amendments to this Directive.

(b) the submission to the Commission of draft codes of conduct at national and Community level and of any evaluations of the application of these codes of conduct.

1. Three years after the date laid down in Article 25(1), each Member State shall submit to the Commission a report informing it of the situation with regard to implementation of this Directive. On the basis of those reports, the Commission shall draw up a report on the application of this Directive, including an assessment of the effectiveness of the measures taken, as well as an evaluation of its impact on innovation and the development of the information society. That report shall be transmitted to the European Parliament, the Council and the European Economic and Social Committee. It shall be accompanied, if necessary, and in the light of developments in the Community legal order, by proposals for amendments to this Directive.
Correspondents

1. Each Member State shall designate one or more correspondents (referred to hereinafter as “the national correspondents”) for any question relating to the implementation of the measures provided for by this Directive. It shall communicate the details of the correspondent(s) to the other Member States and to the Commission.

2. For the purposes of applying this Directive, the Member States shall co-operate with the other Member States and with the Commission via the national correspondents. They shall provide the assistance and information requested by the other Member States or the Commission as rapidly as possible, including by appropriate electronic means.

Exchange of information and correspondents

For the purpose of promoting cooperation, including the exchange of information, among Member States and between Member States and the Commission, each Member State shall designate one or more national correspondents for any questions relating to the implementation of the measures provided for by this Directive. It shall communicate the details of the correspondents to the other Member States and to the Commission.

Amendment 100
Article 25, paragraph 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than eighteen months after the date of its adoption. They shall immediately inform the Commission thereof. When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by … * at the latest. They shall forthwith inform the Commission thereof. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

* Twenty-four months after the date of adoption of this Directive.