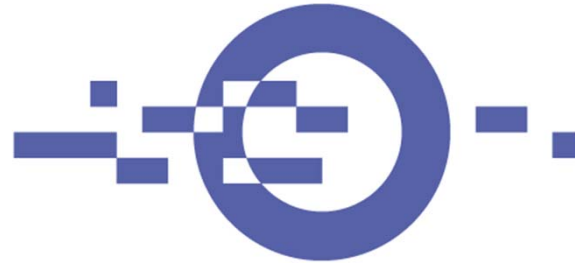


**INTERNATIONAL ASSOCIATION FOR THE  
PROTECTION OF INTELLECTUAL PROPERTY**



**A I P P I**

**EUROPEAN DIRECTIVE ON THE  
ENFORCEMENT OF INTELLECTUAL  
PROPERTY RIGHTS**

**TRILATERAL AIPPI MEETING  
CHINESE, JAPANESE & KOREAN GROUPS**

**SUZHOU, October 27, 2005**

# INTRODUCTION



# GENERAL OBLIGATIONS



**ALL EU MEMBER STATES  
SHALL PROVIDE**

**MEASURES  
PROCEDURES  
REMEDIES**

**NECESSARY**

**TO ENSURE ENFORCEMENT OF IP RIGHTS THAT ARE:**

- **FAIR**
- **EQUITABLE**
- **NOT UNNECESSARILY** { **COMPLICATED  
COSTLY**
- **DO NOT ENTAIL UNREASONABLE TIME LIMITS**
- **DO NOT ENTAIL UNWARRANTED DELAYS**
- **EFFECTIVE**
- **PROPORTIONATE**
- **DISSUASIVE**

# ENTITLEMENT

- **PROPRIETORS OF IP RIGHTS**
- **AUTHORISED LICENSEES**
- **IP COLLECTIVE RIGHT MANAGEMENT BODIES**
- **PROFESSIONAL DEFENSIVE BODIES**

# **PRESUMPTION OF AUTHORSHIP OR OWNERSHIP**

**TO BE ENTITLED TO COPYRIGHT OF  
LITERARY OR ARTISTIC WORKS IT IS  
SUFFICIENT THAT THE NAME OF THE  
AUTHOR APPEARS ON IT**

# EVIDENCE



- **RIGHT TO REQUEST EVIDENCE IF UNDER CONTROL OF DEFENDANT**
- **IN CASE OF INFRINGEMENTS ON COMMERCIAL SCALE, RIGHT TO OBTAIN:**
  - **BANKING**
  - **FINANCIAL**
  - **COMMERCIAL****DOCUMENTS FROM DEFENDANT**
- **ALL SUBJECT TO CONFIDENTIALITY**

# MEASURES TO PRESERVE EVIDENCE



- **RIGHT OF IP HOLDER, EVEN BEFORE COMMENCEMENT OF PROCEEDINGS AND WITHOUT THE DEFENDANT HAVING BEEN HEARD TO:**

## **PROVISIONAL MEASURES TO PRESERVE RELEVANT EVIDENCE OF DEFENDANT:**

- **DETAILED DESCRIPTION WITH SAMPLES**
  - **PHYSICAL SEIZURE OF GOODS**
  - **SEIZURE OF IMPLEMENTS USED FOR INFRINGEMENT**
- **AFTERWARDS, HEARING WITH DEFENDANT**
- **MEASURES MAY BE SUBJECTED TO SECURITY FROM PLAINTIFF**
- **20 WORKING DAYS OR 31 CALENDAR DAYS TO START LEGAL PROCEEDINGS BY PLAINTIFF. OTHERWISE, COMPENSATION FOR DAMAGES TO DEFENDANT FROM PLAINTIFF.**

# RIGHT OF INFORMATION



- NAMES AND ADDRESSES OF

- PRODUCERS
- MANUFACTURERS
- DISTRIBUTORS
- SUPPLIERS
- WHOLESALES, RETAILERS

- INFORMATION ABOUT

- QUANTITIES
  - PRODUCED
  - MANUFACTURED
  - DELIVERED
  - RECEIVED
  - ORDERED
- PRICE OF
  - GOODS
  - SERVICES



# PROVISIONAL / PRECAUTIONARY MEASURES



- INTERLOCUTORY INJUNCTION {
  - TO PREVENT IMMINENT INFRINGEMENT
  - PROVISIONALLY FORBID, SUBJECT TO PENALTY PAYMENT, CONTINUATION OF INFRINGEMENT
  
- ORDER TO SEIZE GOODS SUSPECTED OF INFRINGEMENT
  
- IN COMERCIAL SCALE INFRINGEMENT, PLAINTIFF MAY OBTAIN:
  - PRECAUTIONARY SEIZURE OF PROPERTIES OF DEFENDANT
  - BLOCKING OF BANK ACCOUNTS OR OTHER ASSETS
  
- MEASURES MAY BE ADOPTED SUBJECT TO A SECURITY LODGE BY PLAINTIFF

# **CORRECTIVE MEASURES**



- **RECALL OF GOODS FROM CHANNELS OF COMMERCE**
  - **DEFINITIVE REMOVAL OF GOODS FROM CHANNELS OF COMMERCE**
  - **DESTRUCTION OF GOODS**
- 

# **INJUNCTIONS**

- **PROHIBITING THE CONTINUATION OF INFRINGEMENT**
- **NON-COMPLIANCE SUBJECT TO PENALTY PAYMENT**

# **ALTERNATIVE MEASURES**

**- PECUNIARY COMPENSATION INSTEAD OF MEASURES IF**

**DEFENDANT ACTED** { **UNINTENTIONALLY  
AND  
WITHOUT NEGLIGENCE** } **IF MEASURES**

**MAY CAUSE DISPROPORTIONATE HARM TO DEFENDANT AND**

**PECUNIARY COMPENSATION IS REASONABLY SATISFACTORY**

**TO PLAINTIFF.**

# DAMAGES

- **DAMAGES APPROPRIATE TO ACTUAL PREJUDICE**
- **IN SETTING DAMAGES, JUDICIAL AUTHORITY SHOULD:**
  - **TAKE INTO ACCOUNT ALL ASPECTS:**
    - **NEGATIVE ECONOMIC CONSEQUENCES:**
      - LOSS PROFITS PLAINTIFF**
    - **UNFAIR PROFITS**
    - **MORAL PREJUDICE**
  - **AS AN ALTERNATIVE** → **LUMP SUM (i.e. LICENCE FEE)**
- **UNINTENTIONAL INFRINGEMENT** { **RECOVERY OF PROFITS**  
**OR**  
**PAYMENT OF DAMAGES**

# **LEGAL COSTS**

- **UNSUCCESSFUL PARTY PAYS REASONABLE AND PROPORTIONATE LEGAL COSTS OF THE OTHER PARTY.**
- 

## **PUBLICATION OF DECISION**

- **AT THE EXPENSE OF THE INFRINGER.**