

# **Implementation of the Enforcement Directive - Right of Information**

*Anne Funch Jensen, Legal Advisor  
IFPI European Regional Office*



# Overview - Framework

Main copyright and related rights EU instruments:

Copyright Directive (2001/29/EC) - legal protection in the information society, including:

- Basic rights and exceptions
- Article 8 on sanctions and remedies

Enforcement Directive (2004/48/EC) – civil enforcement of IP-rights

# The Enforcement Directive

**Aim:** to ensure effective enforcement of intellectual property rights across the Internal Market

**Acknowledging:** “without effective means of enforcing intellectual property rights, innovation and creativity are discouraged and investment diminished”, (recital 3)

**Reality:** The creative sectors are struggling more than ever to enforce their rights in the online environment



# Article 8 – “Right of Information”

Allows injured parties, upon a “justified and proportionate request”, to obtain information, including from intermediaries, relating to goods or services which infringe an intellectual property right.

Article 8 of the Enforcement Directive is a crucial tool for enforcement of rights, in particular in the online environment, as we often do not know who the infringer is

# Article 8 in the Light of Privacy Law

“Without prejudice” clause in Article 8 refers to data protection provisions.

Preliminary ruling from the ECJ, case C-275/06 “Promusicae”, interpreted the relation between data protection rules and Article 8.

## **Decision:** Guidelines to Member States

- A fair balance needs to be struck between the fundamental right to privacy and the fundamental rights to protection of property and to an effective remedy
- Processing of data can take place to protect the rights and freedoms of others.

Result: EU data protection law does not prevent a right of information



# Result – Harmonisation?

All Member States except Luxembourg and Sweden have now implemented the Enforcement Directive

However, there are problems re Article 8:

- Badly implemented in some Member States
- Not effectively applied in a number of Member States as it is seen as conflicting with data protection law

# Examples from Different Member States

Problem countries – examples: Spain, Italy

Examples of good implementation and application:  
Denmark, the UK

Implementation underway following consultation:  
Sweden

**Result:** a very patchy situation with serious implications for online enforcement of rights.

**Conclusion:** Clarification needed to ensure effective application of the right of information

