



# **Application of Directive 2004/48/EC**

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# Overview Measures, Procedures and Remedies

- Article 4: Standing
- Article 5: Presumption of authorship or ownership
- Article 6: Evidence
- Article 7: Measures for preserving evidence
- Article 8: Right of information
- Article 9: Provisional and precautionary measures
- Article 10: Corrective measures
- Article 11: Injunctions
- Article 12: Alternative measures
- Article 13: Damages
- Article 14: Legal costs
- Article 15: Publication of judicial decisions

## Right of Information (Article 8)

- Civil remedy aiming at information on origin and distribution networks of the infringing goods or services
- C-275/06 (Promusicae): « Community law requires a fair balance to be struck between the various fundamental rights protected by the Community legal order. »

# Right of Information (Article 8)

- Efficient right of information
  - e. g., **UK**
- Problematic implementation of the right of information
  - e. g., **Germany**

## Injunctions (Articles 9, 11)

- Directed against intermediaries (cf. Article 8(3) of the European Copyright Directive 2001/29/EC)
- Injunctive relief granted regardless of liability
- Safe-Harbour provisions in E-Commerce-Directive 2000/31/EC without prejudice to injunctions

# Injunctions (Articles 9, 11)

- Requirement of establishment of liability:
  - e. g., **Bulgaria, Germany, Poland**  
**Sweden (implementation ongoing)**
- No requirement of establishment of liability:
  - e. g., **Belgium, UK**

## Damages (Article 13)

- Negative economic consequences (Article 13(1)(a))
  - **Lost profits**
  - **Infringer's profit**
- Lump sum/hypothetical license fee (Article 13(1)(b))
- Double hypothetical license fee:
  - **e.g., Austria**



**Thank You!**

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