

**Statutory Instruments**

**S.I. No. 360 of 2006**

**European Communities (Enforcement of Intellectual Property Rights)**

**Regulations 2006**

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## **S.I. No. 360 of 2006**

### **European Communities (Enforcement of Intellectual Property Rights) Regulations 2006**

I MICHEÁL MARTIN, Minister for Enterprise, Trade and Employment in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Articles 5, 8, 10 and 15 of Council Directive No. 2004/48/EC of the European Parliament and of the Council of 29 April 2004<sup>1</sup>, hereby make the following regulations:

#### **Citation.**

1. These Regulations may be cited as the European Communities (Enforcement of Intellectual Property Rights) Regulations 2006.

#### **Definitions, application and interpretation.**

2. (1) In these Regulations:

“claimant” includes a plaintiff or applicant in a proceeding in respect of which these Regulations apply;

“Council Directive” means Council Directive No. 2004/48/EC of the European Parliament and of the Council of 29 April 2004<sup>1</sup>;

“court” means, in relation to a proceeding, a court of competent jurisdiction for that proceeding;

“defendant” includes a respondent in a proceeding to which these Regulations apply.

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<sup>1</sup> O.J. No. L.157, 30/04/2004, p.45.

(2) These Regulations apply in respect of civil proceedings concerning an infringement of an intellectual property right.

(3) A word or expression that is used in these Regulations and in the Council Directive has, unless the contrary intention appears, the meaning it has in the Council Directive.

(4) A court shall construe these Regulations in a manner that gives effect to the Council Directive, and for this purpose the court shall have regard to the provisions of that directive, including the preambles.

**Order for disclosure of information.**

3. (1) A claimant may apply to the court for an order that information regarding the origin and distribution networks of goods or services which infringe an intellectual property right shall be disclosed to the claimant by one or more of the relevant persons specified in paragraph (5).

(2) The court may order the information to be disclosed if it considers it just and proportionate having regard to the rights and privileges of the relevant person and others.

(3) An order under paragraph (2) may be subject to any terms or conditions that the court considers appropriate.

(4) For the purposes of paragraph (2), the court may order the disclosure of any of the following types of information:

(a) the names and addresses of -

- (i) each producer, manufacturer, distributor or supplier of the infringing goods or services,
    - (ii) any person who previously possessed the infringing goods, and
    - (iii) the intended wholesaler and retailer of the infringing goods or services;
  - (b) information relating to -
    - (i) the quantities or amount of infringing goods or services provided, produced, manufactured, delivered, received or ordered, and
    - (ii) the price paid for the infringing goods or infringing services in question.
- (5) The relevant person is -
- (a) the alleged infringer,
  - (b) any person who -
    - (i) was found in possession of the infringing goods on a commercial scale,
    - (ii) was found to be using the infringing services on a commercial scale, or
    - (iii) was found to be providing services on a commercial scale, which are used in activities that infringe an intellectual property right, or

- (c) any person who has been identified by a person specified in subparagraph (b) as being involved in -
  - (i) the production, manufacture or distribution of the infringing goods, or
  - (ii) the provision of the infringing services.
  
- (6) Nothing in this Regulation affects -
  - (a) any right of the claimant to receive information under any other enactment or rule of law, and
  - (b) any other power of the court.

**Order for recall, removal or destruction.**

4. (1) If a court finds that there has been an infringement of an intellectual property right involving goods, the claimant may apply to the court for an order under paragraph (2).
- (2) If the court considers it just and proportionate having regard to -
- (a) the seriousness of the infringement,
  - (b) all other remedies available to the claimant, and
  - (c) the interests of third parties,

the court may order the defendant to take appropriate measures, at the defendant's expense, in relation to the infringing goods or any material or implement principally used in their creation or manufacture, including measures providing for their destruction or their recall or definitive removal from the channels of commerce.

(3) An order under paragraph (2) may be subject to any terms or conditions that the court considers appropriate.

**Order for publication of judgments.**

5. If a court finds that an intellectual property right has been infringed, the court may, at the request of the claimant, order appropriate measures for the dissemination and publication of the judgment be taken at the defendant's expense.

**Amendment of Copyright and Related Rights Act 2000.**

6. The Copyright and Related Rights Act 2000 is amended -

(a) by inserting the following section after section 34:

**“Presumption relevant to section 34.**

34A. In civil proceedings for infringement of a right conferred in respect of a work made available to the public under section 34, where copies of the work bear or incorporate a statement, label or other mark that a named person is the owner of rights in the work under that section, the statement, label or mark shall be admissible as evidence of the fact stated or indicated and shall be presumed to be correct, unless the contrary is proved.” , and

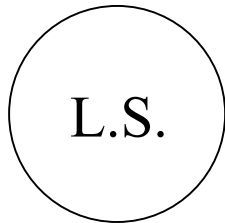
(b) by inserting the following section after section 211:

**“Presumption relevant to civil proceedings.**

211A. In civil proceedings for infringement of the rights in a performance under this Part, where copies of a recording of the performance as issued to the public bear a statement that a named person was the performer, the statement shall be admissible as evidence of the fact stated and shall be presumed to be correct, unless the contrary is proved.”.

GIVEN under my Official Seal,

This 5<sup>th</sup> day of July, 2006.



MICHEÁL MARTIN

Minister for Enterprise,

Trade and Employment.

**EXPLANATORY NOTE**

*(This note is not part of the Instrument and does not purport to be a legal interpretation)*

These Regulations transpose into Irish law those aspects of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the Enforcement of Intellectual Property Rights which are not currently available under Irish law. The directive harmonises civil remedies and measures available for the enforcement of Intellectual Property Rights across the European Community.