

[DE] Law on Better Enforcement of Intellectual Property Rights

IRIS 2008-6:1/8

Martin Kuhr
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 11 April 2008, the German *Bundestag* (Parliament) adopted the *Gesetz zur Verbesserung der Durchsetzung von Rechten des geistigen Eigentums* (Law on Better Enforcement of Intellectual Property Rights). The law is designed to implement the so-called EC Enforcement Directive (2004/48/EC) and will enter into force on 1 July 2008.

Under Art. 101 of the *Urhebergesetz* (Copyright Act - UrhG), rightsholders are entitled to information in respect of a third party who was not involved in an infringement in cases where the infringement is obvious and serves a commercial purpose. This right was introduced because an infringing party can often only be identified with the help of information held by a third party who was not involved in the infringement, such as an Internet Service Provider. However, if the third party can only disclose the requested information by using traffic data in the sense of Art. 3 no. 30 of the *Telekommunikationsgesetz* (Telecommunications Act - TKG), a court order is required in advance under the terms of Art. 101 para. 9 UrhG.

According to Art. 97a para. 2 UrhG, in simple cases in which the infringement is considered insignificant and does not involve commercial operations, the cost of a first caution is limited to EUR 100. In order to calculate the amount of compensation actually due, Art. 97 para. 2 UrhG states that the injured party can choose between the profit made by the offending party or a reasonable fictitious licence fee.

Entwurf eines Gesetzes zur Verbesserung der Durchsetzung von Rechten des geistigen Eigentums

<http://dip21.bundestag.de/dip21/btd/16/087/1608783.pdf>

