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MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Ligi mressaq mill-Onorevoli Censu Galea, M.P., Ministru għall-Kompetittività u Komunikazzjoni u moqri għall-Ewwel darba fis-Seduta tas-16 ta' Ottubru, 2006.

A BILL introduced by the Honourable Censu Galea, M.P., Minister for Competitiveness and Communication, and read for the First time at the Sitting of the 16th October, 2006.

ATT li jirregola l-Infurzar ta' Drittijiet ta' Proprjetà Intellettwali.

AN ACT to regulate the Enforcement of Intellectual Property Rights.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

RICHARD J. CAUCHI
Clerk of the House of Representatives

ABBOZZ TA' LIĠI
msejjah

*ATT li jirregola l-Infurzar ta' Drittijiet ta' Proprjetà
Intellettuali*

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:-

1. It-titolu fil-qosor ta' dan l-Att hu Att ta' l-2006 li jirregola l-Infurzar ta' Drittijiet ta' Proprjetà Intellettuali. Titolu fil-qosor.

TAQSIMA I

ĠENERALI

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tkunx tehtieg xort'ohra – Tifsir.
Kap. 415.
Kap. 416.
Kap. 417.

“qorti kompetenti” u “Qorti”, kemm-il darba ma jiġix ordnat xort'ohra permezz ta' regolamenti magħmulin taht dan l-Att, ifissru

dik il-Qorti li tkun kompetenti li tisma' każ skond ir-regoli stabbiliti fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili;

“drittijiet ta' proprjetà intellettuali” tfisser dawk id-drittijiet li jiġu mogħtijin taħt l-Att dwar id-Drittijiet ta' l-Awtur, l-Att dwar it-*Trademarks* u l-Att dwar il-Privattivi Industrijali u d-Disinni, jew kull liġi oħra li tista minn żmien għal żmien tidhol minflokhom u “liġijiet rilevanti” għandha titfisser bl-istess mod;

“il-Ministru” tfisser il-Ministru responsabbli għall-proprjetà intellettuali.

Persuni b'jedd li jagħmlu użu mill-miżuri, proċeduri u rimedji provduti b'dan l-Att.

3. Dawn il-persuni għandu jkollhom, b'żjieda ma' kull mezz ieħor provdut bil-liġi għall-infurzar tad-drittijiet tagħhom ta' proprjetà intellettuali, il-jedd li jagħmlu użu mill-miżuri, proċeduri u rimedji provduti b'dan l-Att:-

(a) kull min skond id-disposizzjonijiet ta' kull liġi li tkun tapplika tkun id-detentur ta' dritt ta' proprjetà intellettuali;

(b) kull min ikun awtorizzat juża dritt ta' proprjetà intellettuali u, b'mod partikolari, kull min ikun detentur ta' liċenza ta' dritt bħal dak;

(ċ) *collecting societies* rikonoxxuti; u

(d) soċjetajiet professjonali ta' difiża li huma regolarment rikonoxxuti bħala li għandhom dritt jirrapprezentaw lil detenturi ta' drittijiet ta' proprjetà intellettuali.

Preżunzjoni li persuna tkun l-awtur jew is-sid.

4. (1) Kull min ismu jidher fuq xi xogħol litterarju jew artistiku b'tali mod li soltu persuna tiġi indikata bħala l-awtur tax-xogħol għandu, sakemm ma jkunx hemm prova kuntrarja, jiġi kkunsidrat bħala l-awtur ta' dak ix-xogħol u jkollu jedd jagħmel użu mill-miżuri, proċeduri u rimedji provduti b'dan l-Att.

(2) Id-disposizzjonijiet tas-subartikolu (1) ta' dan l-artikolu għandhom japplikaw *mutatis mutandis* għad-detentur ta' drittijiet li għandhom x'jaqsmu mad-drittijiet ta' l-awtur għar-rigward tal-materja koperta tagħhom.

TAQSIMA II

PROVI

5. (1) Kull min ikollu jedd jagħmel użu mid-disposizzjonijiet ta' dan l-Att jista' jipprezenta rikors fil-Qorti kompetenti fejn jitlob il-hruġ ta' ordni tal-Qorti li tkun tiddikjara li dawk il-provi li jkunu qegħdin jinżammu minn parti li toponi jiġu pprezentati fil-Qorti mill-parti li toponi, bla hsara għall-protezzjoni ta' informazzjoni kunfidenzjali: Provi.

Iżda biex persuna jkollha jedd tagħmel użu mid-disposizzjonijiet ta' dan l-artikolu hija għandha, flimkien mar-rikors, tippreżenta provi li jkunu raġonevolment disponibbli u li jkunu suffiċjenti biex isostnu t-talbiet tagħha. Għal dan l-iskop, kampjun raġonevoli ta' għadd sostanzjali ta' kopji ta' xi xogħol jew xi oġġett protett iehor għandu jiġi kkunsidrat bħala li jikkostitwixxi provi raġonevoli.

(2) Fil-każ ta' ksur ta' drittijiet ta' proprjetà intellettuali li jsir fuq skala kummerċjali, il-Qorti tista', taht l-istess kundizzjonijiet stipulati fis-subartikolu (1) ta' dan l-artikolu, tordna li jiġu komunikati lir-rikorrent dawk id-dokumenti bankarji, finanzjarji jew kummerċjali li jkunu taht il-kontroll tal-parti li toponi, bla hsara għall-protezzjoni ta' kull informazzjoni kunfidenzjali.

6. (1) Il-Qorti kompetenti tista', anke qabel ma jinbdew il-proċedimenti fuq il-merti tal-każ, wara li jsir rikors minn persuna li tkun ipprezentat provi li jkunu raġonevolment disponibbli biex isostnu l-pretensjoni tagħha li d-dritt ta' proprjetà intellettuali li jkollha, ikun ġie miksur jew ikun ser jiġi miksur, tordna li jittiehdu dawk il-miżuri proviżorji immedjati u effettivi skond ma jiġu kkunsidrati li jkunu adatti sabiex jiġu preservati provi rilevanti fir-rigward tal-ksur allegat, bla hsara għall-protezzjoni ta' informazzjoni kunfidenzjali. Dawk il-miżuri jistgħu jinkludu deskrizzjoni dettaljata, bit-tehid jew minghajr it-tehid ta' kampjuni jew il-qbid fiżiku ta' l-oġġetti involuti fil-ksur u, f'każijiet adatti, tal-materjal u tagħmir li jiġu użati fil-produzzjoni u, jew id-distribuzzjoni ta' dawn l-oġġetti u tad-dokumenti li jkollhom x'jaqsmu magħhom. Il-Qorti kompetenti tista' wkoll, jekk tqis li jkun hekk adatt, tordna li dawk il-miżuri għandhom jittiehdu minghajr ma tkun instemgħet il-parti l-oħra, b'mod partikolari meta jkun hemm dewmien li x'aktarx jikkaguna hsara li ma tisewwixx lid-detenturi tad-dritt jew fejn il-Qorti tikkunsidra li jkun hemm riskju evidenti li l-provi jkunu qegħdin jiġu meqruda. Miżuri li jippreservaw il-provi.

(2) Meta jiġu adottati miżuri sabiex jiġu preservati l-provi minghajr ma tkun instemgħet il-parti l-oħra, il-partijiet affettwati għandhom jiġu notifikati minghajr ebda dewmien wara l-eżekuzzjoni tal-miżuri. Tista' ssir reviżjoni, li tkun tinkludi d-dritt ta' smigh mill-

Qorti, wara li ssir talba permezz ta' rikors minn xi wahda mill-partijiet affettwati, bil-ghan li jiġi deċiż, fi żmien raġonevoli wara n-notifika tal-miżuri, jekk il-miżuri għandhomx jiġu modifikati, revokati jew konfermati.

(3) Bi tkompliġa tat-talba tiegħu għal miżuri biex jippreserva l-provi, ir-rikorrent għandu jippreżenta fil-Qorti dik il-malleverija jew assikurazzjoni li tkun intiża biex tiżgura li jingħata kumpens għal kull preġudizzju li jista' jiġi mgarrab mill-parti l-oħra, kif provdut fis-subartikolu (5) ta' dan l-artikolu, skond ma tista' tordna l-Qorti.

(4) Il-miżuri biex jiġu preservati l-provi għandhom jiġu revokati mill-Qorti wara li ssir talba permezz ta' rikors mill-persuna li dawk il-miżuri jkunu ttiehdu kontriha, mingħajr ebda preġudizzju għal dawk id-danni li jistgħu jintalbu, jekk ir-rikorrent li dawk il-miżuri jkunu ttiehdu fuq talba tiegħu, jonqos, fi żmien wiehed u tletin ġurnata mill-hruġ ta' dawk il-miżuri, milli jibda proċedimenti li jkunu jwasslu għal deċiżjoni fuq il-merti tal-każ quddiem il-Qorti kompetenti.

(5) Jekk il-miżuri biex il-provi jiġu preservati jiġu revokati, jew meta dawn jiskadu minhabba f'xi att jew ommissjoni tar-rikorrent jew meta sussegwentement jirriżulta li ma kien hemm ebda ksur jew theddida ta' ksur ta' xi dritt ta' proprjetà intellettuali, il-Qorti kompetenti tista' tordna lir-rikorrent, fuq talba tal-persuna li dawk il-miżuri jkunu indirizzati kontriha, biex tipprovdi lil dik il-persuna kumpens adatt għad-danni li jkunu ġew kaġunati b'dawk il-miżuri skond ma dawn jistgħu jiġu likwidati mill-Qorti.

(6) Meta tkun qegħda tikkunsidra każijiet u rikorsi magħmulin skond dan l-Att, il-Qorti kompetenti tista' wkoll tiehu dawk il-miżuri li tista' tqis li jkunu adatti għall-iskop li tiġi protetta l-identità tax-xhieda, bla hsara għall-fatt li jiġi rispettata id-dritt għal proċedimenti xierqa.

(7) Filwaqt li jkunu qegħdin isiru proċedimenti li jkunu jinvolvu l-ghemil ta' rikors biex jiġu provduti miżuri li jkunu jippreservaw il-provi, il-Qorti għandha tiehu dawk il-miżuri kollha li hija tqis li jkunu meħtieġa biex tipproteġi l-identità tax-xhieda.

Dritt li tingħata jew tinkiseb informazzjoni.

7. (1) Matul il-proċedimenti li jirrigwardaw il-ksur ta' dritt ta' proprjetà intellettuali, il-Qorti tista' tordna, fuq talba li ssir minn persuna li tagħmel rikors għaldaqstant u li dik il-Qorti tqis li tkun wahda ġustifikata u proporzjonata, li xi informazzjoni fuq l-orijini u n-nisġiet ta' distribuzzjoni ta' l-oġġetti jew tas-servizzi li jkunu jiksru d-dritt ta' proprjetà intellettuali, għandha tingħieb quddiemha minn min ikun qieghed jikkommetti l-ksur u, jew minn kull persuna oħra li:

(a) jirrizulta li kellha pussess ta' l-oġġetti involuti fil-ksur fuq skala kummerċjali ;

(b) jirrizulta li kienet qeghda tuża s-servizzi involuti fi ksur fuq skala kummerċjali;

(ċ) jirrizulta li kienet qeghda tippovdi fuq skala kummerċjali servizzi li jiġu użati f'attivitajiet ta' ksur; jew

(d) tkun ġiet indikata minn xi waħda mill-persuni msemmijin fil-paragrafu (a), (b) u (ċ) ta' dan is-subartikolu bhala li huma involuti fil-produzzjoni, manufattura jew distribuzzjoni ta' oġġetti jew l-ghoti ta' servizzi.

(2) L-informazzjoni mitluba msemmijin fis-subartikolu ta' qabel ghandu, skond ma jkun adatt li jsir, jkun fiha:

(a) l-ismijiet u l-indirizzi tal-produtturi, manufatturi, distributuri, fornituri u detenturi ohrajn preċedenti ta' l-oġġetti jew tas-servizzi kif ukoll tal-bejjiegha bl-ingrossa u tal-bejjiegha bl-immnut li x-xoghol ikun mahsub li jghaddi ghal ghandhom;

(b) informazzjoni fuq il-kwantitajiet prodotti, manufatturati, kunsinnati, riċevuti jew ordnati, kif ukoll il-prezz li jinkiseb ghal oġġetti jew servizzi in kwistjoni.

(3) Is-subartikoli preċedenti ghandhom japplikaw minghajr ebda preġudizzju ghal provvedimenti ohra statutorji li:

(a) jagħtu lid-detentur ta' drittijiet il-jedd li jirċievi informazzjoni aktar kompleta;

(b) jirregolaw l-użu, fi provvedimenti ċivili jew kriminali, ta' l-informazzjoni li tkun ġiet komunikata b'mod konformi ma' dan l-artikolu;

(ċ) jirregolaw ir-responsabbiltà ghal kull użu hażin li jsir mid-dritt ta' informazzjoni; jew

(d) jagħtu l-opportunità li ma tithalliex li tiġi provduta informazzjoni li tkun iġġieghel lill-persuna msemmija fis-subartikolu (1) ta' dan l-artikolu tammetti l-partecipazzjoni tiegħu jew tagħha jew dik ta' qrafa fil-viċin bi ksur ta' xi dritt ta' proprjetà intellettuali; jew

(e) jirregolaw il-protezzjoni ta' kunfidenzjalità ta' ghejjun ta' informazzjoni jew l-ipproċessar ta' "data personali.

TAQSIMA IV

MIŻURI PROVIŻORJI U KAWTELATORJI

Miżuri li għandhom jittiehdu mill-Qorti.

8. (1) Kull persuna msemmija fl-artikolu 3 ta' dan l-Att tista' permezz ta' rikors titlob lill-Qorti:

(a) tohroġ kontra min ikun qiegħed allegatament jikkommetti l-ksur ta' dritt ta' proprjetà intellettuali, digriet li jkun intiż biex jipprevjeni kull ksur imminenti ta' dritt ta' proprjetà intellettuali bħal dak, jew li jipprojbixxi, fuq bażi proviżorja u, fejn ikun adatt, bla ħsara għal hlas ta' penali li jista' jsir għal diversi drabi fejn ikun hemm provdut dwar dan skond il-liġi, milli jitkompla jsehh kull tali ksur allegat ta' dak id-dritt, jew li tagħmel dik it-tkomplija soġġetta għal garanziji li jkunu intiżi biex jiżguraw li jinghata kumpens lid-detentur tad-dritt. Tista' wkoll tinhareġ projbizzjoni interlokutorja, taht l-istess kundizzjonijiet, kontra kull intermedjarju li jkollu s-servizzi tieghu qegħdin jiġu użati minn terzi hekk li dawn ikunu jiksru dritt ta' proprjetà intellettuali;

(b) jordna l-qbid jew il-kunsinna ta' l-oġġetti li jkunu suspettati li qegħdin jiksru d-dritt ta' proprjetà intellettuali.

(2) Meta ksur ta' dritt ta' proprjetà intellettuali jkun sar fuq dik li l-Qorti tqis li tkun skala kummerċjali hija tista' tordna, jekk l-attur juri li jkun hemm ċirkostanzi li x'aktarx jipperikolaw l-irkupru tal-hlas għad-danni, l-qbid kawtelatorju tal-proprjetà mobbli u immobbli ta' min ikun qiegħed allegatament jikkommetti l-ksur, inkluż is-sekwestru tal-kontijiet tal-bank u ta' kull attiv ieħor ta' l-istess persuna li tkun qegħda tikkommetti dak il-ksur. Iktar minn hekk, il-Qorti għandu jkollha s-setgħa tordna li jiġu komunikati d-dokumenti bankarji, finanzjarji jew kummerċjali, jew inkella titlob li tinghata aċċess xieraq għal informazzjoni rilevanti, skond ma jidhrilha li jkun adatt.

(3) Fir-rigward tal-miżuri msemmija fis-subartikoli (1) u (2) ta' dan l-artikolu, il-Qorti għandu jkollha l-awtorità tehtieg lir-rikorrent jipprovdi kull prova li tkun raġonevolment disponibbli biex tkun raġonevolment sodisfatta li r-rikorrent ikun id-detentur ta' drittijiet u li d-dritt tieghu jew ikun qiegħed jiġi miksur jew ikun f'periklu imminenti li jiġi miksur.

(4) F'każijiet adatti, u partikolarment meta tqis li kull dewmien ikun ser jikkaguna hsara lid-detentur tad-dritt li ma tissewwiex, il-Qorti għandha tiehu dawk il-miżuri li hemm imsemmija fis-subartikoli (1) u (2) ta' dan l-artikolu minghajr il-htieġa li qabel tisma' lill-konvenut. F'każ bħal dak, il-partijiet għandhom jiġu mgharrfa b'dan minghajr ebda dewmien u f'kull każ mhux iżjed tard minnufih wara li jkunu ġew eżegwiti dawk il-miżuri:

Iżda l-konvenut ikollu d-dritt jitlob lill-Qorti permezz ta' rikors li din tirrevedi l-miżuri hawn qabel imsemmija bil-ghan li jiġi deċiż, fi żmien raġonevoli wara n-notifika ta' dawk il-miżuri, jekk dawk il-miżuri għandhomx jiġu modifikati, revokati jew konfermati.

(5) Jekk ir-rikorrent fi żmien wiehed u tletin ġurnata kalendarja ma jibdiex proċedimenti li jwasslu għal deċiżjoni fuq il-merti tal-każ quddiem il-Qorti kompetenti, il-Qorti għandha fuq talba li ssir mill-konvenut tghaddi biex tirrevoka l-miżuri proviżorji msemmija fis-subartikoli ta' qabel dan.

(6) Il-Qorti tista', meta tkun qegħda tilqa' l-miżuri proviżorji msemmija hawn qabel, tehtieġ lir-rikorrent jiddepożita garanzija adegwata jew assikurazzjoni ekwivalenti li tkun intiża biex tiżgura kumpens għal kull preġudizzju mġarrab mill-konvenut skond ma hemm provdut dwaru fis-subartikolu (7) ta' dan l-artikolu.

(7) Meta l-miżuri proviżorji msemmija hawn qabel jiġu revokati mill-Qorti, jew meta dawn jiskadu minhabba f'xi att jew ommissjoni tar-rikorrent, jew meta l-Qorti sussegwentement tiddeċiedi li ma kien hemm ebda ksur jew theddida ta' ksur ta' dritt ta' proprjetà intellettuali, il-Qorti għandu jkollha s-setgħa tordna lir-rikorrent, fuq talba li ssirilha permezz ta' rikors tal-konvenut, biex jagħti lill-istess konvenut kumpens adatt għal kull hsara li huwa seta' għarrab minhabba f'dawk il-miżuri.

TAQSIMA V

MIŻURI LI JIRRIŻULTAW MINN DEĊIŻJONI FUQ IL-MERTI TAL-KAŻ

9. (1) Fuq talba tar-rikorrent u minghajr ebda preġudizzju għal Miżuri korrettivi. danni dovuti lid-detentur ta' drittijiet minhabba f'xi ksur ta' dritt ta' proprjetà intellettuali, il-Qorti tista' tordna it-tehid ta' kull miżura li tista' tqis li tkun adatta għar-rigward ta' oġġetti li jinsabu li jkunu bi ksur ta' dritt ta' proprjetà intellettuali kif ukoll għar-rigward ta' kull materjal u tagħmir li jiġi użat fil-produzzjoni jew il-manufattura ta' dawk l-oġġetti. Dawk il-miżuri għandhom ikunu jinkludu:

(a) li l-oġġetti jissejhu lura miċ-ċirkolazzjoni fis-sistemi eżistenti tal-kummerċ;

(b) li l-oġġetti jitnehhew definittivament miċ-ċirkolazzjoni fis-sistemi eżistenti tal-kummerċ; jew

(ċ) li l-oġġetti jiġu meqrudin.

(2) Il-Qorti għandha tordna li daww il-miżuri jitwettqu għas-spejjeż ta' min ikun qiegħed jikkommetti l-ksur, kemm-il darba ma jiġux invokati raġunijiet partikulari biex dan ma jsirx.

(3) Meta tkun qegħda tikkunsidra talba għal miżuri korrettivi, il-Qorti għandha tara li jkun hemm bilanċ ta' proporzjonalità bejn il-gravità tal-ksur u r-rimedji li jiġu ordnati filwaqt li jkun qiegħed jiġi tenut kont ta' l-interessi ta' terzi.

Projbizzjonijiet.

10. (1) Meta l-Qorti jirriżultalha li jkun hemm xi ksur ta' dritt ta' proprjetà intellettuali, din tista' fuq rikors li jsir mill-attur tohrog' projbizzjoni kontra min ikun qiegħed jikkommetti l-ksur bil-għan li tiġi projbita t-tkomplija ta' dak il-ksur. Jekk persuna tonqos milli tottempera ruhha ma' dik il-projbizzjoni, dan ikun jikkostitwixxi disprezz tal-Qorti.

(2) Ir-rikors imsemmi fis-subartikolu (1) ta' dan l-artikolu jista' wkoll isir fir-rigward ta' intermedjarji li jkollhom is-servizzi tagħhom użati minn terzi biex jiksru dritt ta' proprjetà intellettuali, mingħajr ebda preġudizzju għall-artikolu 42 ta' l-Att dwar id-Drittijiet ta' l-Awtur.

Miżuri alternattivi.

11. F'każijiet fejn ikunu jistgħu jiġu applikati l-miżuri stipulati fit-Taqsima V ta' dan l-Att, ikun fid-diskrezzjoni tal-Qorti, wara li jsir rikors mill-persuna li dwarha jistgħu jittiehdu daww il-miżuri, li żżomm lura milli tapplika daww il-miżuri u minflok tordna li jsir il-hlas ta' kumpens ta' flus lill-parti li tkun garrbet il-hsara jekk hija tkun tal-fehma li min ikun qiegħed jikkommetti l-ksur in kwistjoni jkun aġixxa bla ma kellu ebda intenzjoni u mingħajr ebda negligenza, jekk l-eżekuzzjoni tal-miżuri in kwistjoni tikkaguna hsara sproporzjonata lil min ikun qiegħed jikkommetti l-ksur u jekk l-ghoti ta' kumpens ta' flus lill-parti li tkun garrbet il-hsara jidher li jkun raġonevolment sodisfaċenti.

TAQSIMA VI

DANNI

12. (1) Il-Qorti għandha wara li jsirilha rikors mill-parti li tkun ġarrbet il-hsara, tordna lil min ikun qiegħed jikkommetti l-ksur u li jkun, sew xjentement jew ghax ikun raġonevolment mistenni li jaf, wettaq xi attività li tinvolvi ksur, iħallas lid-detentur ta' drittijiet danni daqsinsaw mal-preġudizzju attwali mġarrab minn dak id-detentur tad-dritt bħala riżultat tal-ksur. Danni.

(2) Meta tkun qegħda tistabbilixxi l-ammont ta' danni dovuti, għandu jiġi tenut kont mill-Qorti ta' kull aspett rilevanti, inklużi l-konsegwenzi ekonomiċi negattivi kollha li setgħu ġew imġarrba mill-parti li tkun ġarrbet il-hsara inkluż kull telf ta' profitti, kif ukoll profitt ingust li jkun sar minn min ikun qiegħed jikkommetti l-ksur u, skond ma tqis li jkun adatt, elementi oħra, bħalma huma l-preġudizzju morali, kaġunati lid-detentur ta' drittijiet b'dak il-ksur:

Izda minflok il-metodu ta' stima ta' danni hawn qabel imsemmi, il-Qorti tista', meta tqis li jkun hekk adatt, tagħzel li tapplika metodu ta' stima alternattiv li jkun jinvolvi l-ghoti ta' somma globali ta' danni li għandhom jithallsu u li tkun tinkludi elementi bħalma huma, mill-inqas, l-ammont ta' *royalties* jew hlasijiet li kienu jkunu dovuti kieku l-persuna li tkun qegħda tikkommetti l-ksur kienet talbet li tiġi awtorizzata tuża d-dritt intellettuali in kwistjoni.

(3) Meta l-Qorti tkun tal-fehma li min ikun qiegħed jikkommetti l-ksur ma kienx qiegħed iwettaq dik l-attività ta' ksur xjentement, hija tista' tordna l-irkupru ta' profitti jew il-hlas ta' danni, skond ma dawn jistgħu jiġu stabbiliti bil-quddiem b'regolamenti maġmulin taht il-liġijiet rilevanti.

TAQSIMA VII

MIXXELLANJI

13. F'azzjoni ġudizzjarja li tkun konformi ma' xi disposizzjoni ta' dan l-Att, il-Qorti għandha bħala regola ġenerali tordna li l-ispejjeż legali u l-ispejjeż l-oħra kollha li tkun għamlet il-parti rebbieha għandhom jiġu mġarrba mill-parti telliefa kemm-il darba ma tikkunsidrax li l-ekwità tkun tehtieg xort'oħra. Spejjeż legali.

14. Il-Qorti tista', fuq talba tar-rikorrent u għas-spejjeż ta' min ikun qiegħed jikkommetti l-ksur, tordna li jittiehdu miżuri adatti għat-tixrid ta' l-informazzjoni li tirrigwarda d-deċiżjoni tagħha, inkluż Pubblikazzjoni ta' deċiżjonijiet ġudizzjarji.

il-wiri tad-deċiżjoni u l-pubblikazzjoni tagħha kollha kemm hi jew parti minnha. Il-Qorti tista' wkoll tipprovdi għal miżuri ta' pubbliċità addizzjonali oħrajn li hija tqis li jkunu adatti għal dawk iċ-ċirkostanzi partikulari tal-każ, inkluż ir-reklamar b'mod prominenti.

Setgħa ta' għemil ta' regolamenti.

15. Il-Ministru jista' jagħmel regolamenti għall-implimentazzjoni ahjar tad-disposizzjonijiet ta' dan l-Att u, mingħajr preġudizzju għall-ġeneralità ta' dak hawn qabel imsemmi, huwa jista' b'dawk ir-regolamenti:

- (a) jordna dak kollu li jista' jiġi ordnat b'dan l-Att;
- (b) jestendi l-kategoriji ta' persuni li jkollhom jedd japprofittaw ruhhom mill-miżuri, proċeduri u rimedji provduti b'dan l-Att;
- (ċ) jordna xi jkunu t-termini għall-eżerċizzju ta' xi azzjoni taht dan l-Att;
- (d) jiddetermina metodi biex jiġu stmati d-danni dovuti taht dan l-Att;
- (e) jistabbilixxi regoli speċifiċi ta' proċedura jew ta' provi għar-rigward ta' azzjonijiet taht dan l-Att;
- (f) jiddetermina liema Qorti jew Qrati jkollhom jittrattaw azzjonijiet taht dan l-Att;
- (g) jordna miżuri bil-għan li jkun hemm konformità ma' kull obligazzjoni internazzjonali li Malta jista' jkollha jew ma' kull obligazzjoni ta' Malta bhala Stat Membru ta' l-Unjoni Ewropea dwar affarijiet li jkollhom x'jaqsmu ma' dan l-Att.

Għanijiet u Raġunijiet

L-għan ta' dan l-Abbozz hu biex jittrasponi fil-liġi ta' Malta id-disposizzjonijiet tad-Direttiva 2004/48/KE tal-Parlament Ewropew u tal-Kunsill tad-29 ta' April, 2004 fuq l-infurzar ta' drittijiet ta' proprjetà intellettwali.

**A BILL
ENTITLED**

AN ACT to regulate the enforcement of intellectual property rights

BE IT ENACTED BY THE President, by and with the advice and consent of the House of Representatives, in the present Parliament assembled and by the authority of the same, as follows:-

1. The short title of this Act is the Enforcement of Intellectual Property Rights (Regulation) Act, 2006. Short title.

PART I

GENERAL

2. In this Act, unless the context otherwise requires -

‘competent court’ and ‘Court’, unless otherwise prescribed by regulations made under this Act mean the Court that is competent to take cognizance of a case according to the rules established in the Code of Organization and Civil Procedure;

‘intellectual property rights’ means those rights accorded under the Copyright Act, the Trademarks Act and the Patents and Designs Act, or any other law which may from time to time substitute the said Acts and ‘relevant legislation’ shall be interpreted accordingly;

Definitions
Cap. 415.
Cap. 416.
Cap. 417.

‘the Minister’ means the Minister responsible for intellectual property.

Persons entitled to avail themselves of the measures, procedures and remedies provided by this Act.

3. The following persons shall, in addition to all other means provided by law for the enforcement of their intellectual property rights, be entitled to avail themselves of the measures, procedures and remedies provided by this Act:-

(a) any person who in accordance with the provisions of any applicable law is the holder of an intellectual property right;

(b) any person who is authorised to use an intellectual property right and, in particular, any person who is a licensee of such right;

(c) recognised collecting societies; and

(d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights.

Presumption of authorship or ownership.

4. (1) Any person whose name appears on a literary or artistic work in a manner that is usual for indicating a person as the author of the work shall, in the absence of proof to the contrary, be considered as the author thereof and such person shall be entitled to avail himself of the measures, procedures and remedies provided by this Act.

(2) The provisions of sub-article (1) hereof shall apply *mutatis mutandis* to the holder of rights related to copyright with regard to their protected subject matter.

PART II

EVIDENCE

Evidence.

5. (1) Any person who is entitled to avail himself of the provisions of this Act may file an application in the competent Court requesting a Court order to the effect that evidence which is in the control of an opposing party be presented in Court by the opposing party, subject to the protection of confidential information:

Provided that for a person to be entitled to avail himself of the provisions of this article he shall, together with the application, file reasonably available evidence sufficient to support his claims. For this

purpose a reasonable sample of a substantial number of copies of a work or any other protected object shall be considered to constitute reasonable evidence.

(2) In the case of an infringement of intellectual property rights committed on a commercial scale, the Court may, under the same conditions stipulated in sub-article (1) hereof, order the communication to the applicant of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

6. (1) The competent Court may, even before the commencement of proceedings on the merits of the case, upon an application by a person who has filed reasonably available evidence to support his claim that his intellectual property right has been infringed or is about to be infringed, order such prompt and effective provisional measures as it considers appropriate to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples or the physical seizure of the infringing goods and, in appropriate cases, the materials and implements used in the production and, or distribution of the said goods and the documents relating thereto. The competent Court may also, if it considers it necessary, order that such measures be taken without the other party having been heard, in particular where any delay is likely to cause irreparable harm to the rightholders or where the Court considers that there is an evident risk of the evidence being destroyed.

Measures
preserving
evidence.

(2) When measures to preserve evidence are adopted without the other party having been heard, the parties affected shall be given notice without delay after the execution of the measures. A review, including a right to be heard by the Court, shall take place upon request by application of any of the parties affected with a view to deciding, within a reasonable period after the notification of the measures, whether the measures shall be modified, revoked or confirmed.

(3) In pursuing his demand for measures to preserve evidence, the applicant shall lodge in Court such security or assurance intended to ensure compensation for any prejudice suffered by the other party, as provided in sub-article (5) hereof, as the Court may order.

(4) Measures to preserve evidence shall be revoked by the Court upon the request made by application of the person against whom such measures were taken, without prejudice to the damages which may be claimed, if the applicant at whose instance such measures were taken fails, within thirty-one days from the issuing of such measures, to institute proceedings leading to a decision on the merits of the case before the competent Court.

(5) Where the measures to preserve evidence are revoked, or where they lapse due to any act or omission by the applicant or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the competent Court may order the applicant, upon the request of the person against whom such measures are directed, to provide such person with appropriate compensation for the damages caused by those measures as may be liquidated by the Court.

(6) In considering cases and applications made in terms of this Act, the competent Court may also take such measures as it may consider appropriate for the purpose of protecting the identity of witnesses, subject to respect for the right to a fair trial.

(7) In the course of proceedings involving an application for measures to preserve evidence, the Court shall take any measures that it deems necessary to protect the identity of witnesses.

Right of
information.

7. (1) During proceedings concerning an infringement of an intellectual property right the Court may order, on a request by the claimant to this effect made by application which the said Court deems to be justified and proportionate, that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be produced before it by the infringer and, or any other person who:

(a) has been found in possession of the infringing goods on a commercial scale;

(b) has been found to be using the infringing services on a commercial scale;

(c) has been found to be providing on a commercial scale services used in infringing activities; or

(d) has been indicated by any of the persons referred to in paragraph (a), (b) and (c) hereof as being involved in the production, manufacture or distribution of the goods or the provision of the services.

(2) The requested information referred to in the preceding sub-article shall, wherever appropriate, comprise:

(a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services as well as the intended wholesalers and retailers;

(b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

(3) The preceding sub-articles shall apply without prejudice to any other statutory provisions which:

(a) grant the rightholder rights to receive fuller information;

(b) govern the use in civil or criminal proceedings of the information communicated pursuant to this article;

(c) govern responsibility for misuse of the right of information; or

(d) afford an opportunity for refusing to provide information which would force the person referred to in sub-article (1) hereof to admit to his or her own participation or to that of close relatives in an infringement of an intellectual property right; or

(e) govern the protection of confidentiality of information sources or the processing of personal data.

PART IV

PROVISIONAL AND PRECAUTIONARY MEASURES

8. (1) Any person referred to in article 3 of this Act may by application request the Court to:

Measures to be taken by the Court.

(a) issue against the alleged infringer of an intellectual property right a decree intended to prevent any imminent infringement of such intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the rightholder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right;

(b) order the seizure or delivery up of the goods suspected of infringing an intellectual property right.

(2) Where an infringement of an intellectual property right has been committed on what is deemed by the Court to be a commercial scale it may, if the plaintiff demonstrates the existence of circumstances likely to endanger the recovery of damages, order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the same infringer's bank accounts and other assets. Moreover, the Court shall have the power to order the communication of bank, financial or commercial documents, or demand appropriate access to the relevant information, as it deems fit.

(3) In respect of the measures referred to in sub-articles (1) and (2) hereof, the Court shall have the authority to require the applicant to provide any reasonably available evidence so as to be reasonably satisfied that the applicant is the rightholder and that his right is either being infringed or is in imminent danger of being infringed.

(4) In appropriate cases, and particularly where it deems that any delay would cause irreparable harm to the rightholder, the Court shall take the measures mentioned in sub-articles (1) and (2) hereof without first hearing the defendant. In such an event, the parties shall be so informed without delay and in any case not later than immediately after the measures have been executed:

Provided that the defendant shall have the right to request the Court by application to review the measures above referred to with a view to deciding, within a reasonable time after notification of the measures, whether such measures should be modified, revoked or confirmed.

(5) If the applicant does not within thirty-one calendar days institute proceedings leading to a decision on the merits of the case before the competent Court, the Court shall upon a request by the defendant proceed to revoke the provisional measures mentioned in the preceding sub-articles.

(6) The Court may, on according the provisional measures mentioned above, require the applicant to lodge adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in sub-article (7) hereof.

(7) Where the provisional measures mentioned above are revoked by the Court, or where they lapse due to any act or omission of the applicant, or where the Court subsequently concludes that there has

been no infringement or threat of infringement of an intellectual property right, the Court shall have the power to order the applicant, upon a request by application of the defendant, to provide the same defendant with appropriate compensation for any injury that he may have suffered on account of such measures.

PART V

MEASURES RESULTING FROM A DECISION ON THE MERITS OF THE CASE

9. (1) At the request of the applicant and without prejudice to any damages due to the rightholder by reason of an infringement of an intellectual property right, the Court may order the taking of any measures it shall deem appropriate with regard to goods that are found to be infringing an intellectual property right and also with regard to any materials and implements used in the creation or manufacture of such goods. Such measures shall include:

Corrective measures.

- (a) recall from circulation within the channels of commerce;
- (b) definitive removal from circulation within the channels of commerce; or
- (c) destruction of the items.

(2) The Court shall order that such measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

(3) In considering a request for corrective measures, the Court shall seek to strike a balance of proportionality between the seriousness of the infringement and the remedies ordered whilst taking into account the interests of third parties.

10. (1) Where the Court finds that an infringement of an intellectual property right has occurred, it may on an application by the plaintiff issue an injunction against the infringer aimed at prohibiting the continuation of the infringement. Failure to abide by the injunction shall constitute contempt of Court.

Injunctions.

(2) The application referred to in the subarticle (1) hereof may also be made in respect of intermediaries whose services

are used by a third party to infringe an intellectual property right, without prejudice to article 42 of the Copyright Act.

Alternative
measures.

11. In cases where the measures laid down in Part V of this Act may be applied, it shall be within the discretion of the Court, on an application by the person liable to such measures, to refrain from applying the said measures and order instead the payment of pecuniary compensation to the injured party if it is of the opinion that the infringer involved has acted unintentionally and without negligence, if execution of the measures in question would cause the infringer disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

PART VI

DAMAGES

Damages.

12. (1) The Court shall on an application filed by the injured party, order any infringer who has, either knowingly or being reasonably expected to know, engaged in an infringing activity, to pay the rightholder damages commensurate with the actual prejudice suffered by the said rightholder as a result of the infringement.

(2) In setting the amount of damages due, the Court shall take into account all relevant aspects, including all the negative economic consequences that may have been suffered by the injured party including lost profits, as well as any unfair profits made by the infringer and, where it deems appropriate, other elements such as the moral prejudice caused to the rightholder by the infringement:

Provided that instead of the above method of calculation of damages, the Court may, where it so considers appropriate, choose to apply an alternative method of calculation involving the setting of a lump sum of damages payable which shall include elements such as at least the amount of royalties or fees which would have been due had the infringer requested authorisation to use the intellectual right in question.

(3) Where the Court is of the opinion that the infringer did not knowingly engage in infringing activity, it may order the recovery of profits or the payment of damages, as may be pre-established in regulations made under the relevant legislation.

PART VII

MISCELLANEOUS

13. In an action pursuant to any provision of this Act, the Court shall as a general rule decree that the judicial costs and other expenses incurred by the successful party be borne by the unsuccessful party unless it considers that equity otherwise requires. Legal costs.

14. The Court may, at the request of the applicant and at the expense of the infringer, order appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part. The Court may also provide for other additional publicity measures which it considers appropriate to the particular circumstances, including prominent advertising. Publication of judicial decisions.

15. The Minister may make regulations for the better implementation of the provisions of this Act and, without prejudice to the generality of the foregoing, may by such regulations: Power to make regulations

- (a) Prescribe anything that may be prescribed under this Act;
- (b) Extend the categories of persons entitled to avail themselves of the measures, procedures and remedies provided by this Act;
- (c) Prescribe time limits for the exercise of any action under this Act;
- (d) Determine methods for the evaluation of damages due under this Act;
- (e) Establish specific rules of procedure or of evidence in respect of actions under this Act;
- (f) Determine the Court or Courts which are to take cognizance of actions under this Act;
- (g) Prescribe measures for the purpose of complying with any international obligations of Malta or with any obligations of Malta as a Member State of the European Union on matters related to this Act.

OBJECTS AND REASONS

The object of this Bill is the transposition into Maltese law of the provisions of Directive 2004/48/EC of the European Parliament and of the Council of the 29th April, 2004 on the enforcement of intellectual property rights.

