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**NOTE**

From:	Swedish delegation
To:	Delegations
Subject:	AOB item raised by the Swedish delegation - The link between ePrivacy Regulation and IPRED

Delegations will find in the Annex the information provided by the Swedish delegation under AOB at the meeting of the Working party on Intellectual Property on 5 February 2018.

## **The link between ePrivacy Regulation and IPRED**

According to Article 8 (right of information) in the Directive 2004/48/EC on the enforcement of intellectual property rights (IPRED), Member States shall ensure that, under certain circumstance, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or certain other persons, for example providers of services used in infringing activities, which comprise the infringer's internet service provider.

In Case C-275/06 the CJEU has clarified that Member States may impose exemptions from the confidentiality of communications under the Directive 2002/58/EC on privacy and electronic communications (the ePrivacy Directive) for the protection of the fundamental rights and freedoms of others (in the case at hand to obtain information according to national law implementing Article 8 of IPRED). (Article 15 in the ePrivacy Directive refers to Article 13.1 in the Data Protection Directive 95/46/EG.)

In the negotiations of an ePrivacy Regulation (which will replace the ePrivacy Directive) it is discussed under which circumstances it should be allowed to impose exemptions from the confidentiality of communications (Article 11 in the ePrivacy Regulation). To be able to effectively implement Article 8 of IPRED, Member States must be allowed to impose exemptions from the confidentiality of communications for the protection of the fundamental rights and freedoms of others, also in the future. Therefore, Article 11 of the ePrivacy Regulation must refer to Article 23.1 i (and j) of the GDPR. Most of the information that may be provided according to national law implementing Article 8 of IPRED is not covered by the scope of the new ePrivacy Regulation, but it cannot be excluded that certain data may fall within the scope of the regulation. Thus, a reference to the above-mentioned provisions of the GDPR is necessary.