

Available online at [www.sciencedirect.com](http://www.sciencedirect.com)

ScienceDirect

[www.compseconline.com/publications/prodclaw.htm](http://www.compseconline.com/publications/prodclaw.htm)


---



---

**Computer Law  
&  
Security Review**


---



---



## European national news

Nick Pantlin \*

Herbert Smith Freehills LLP, London, United Kingdom

### A B S T R A C T

#### Keywords:

Internet  
ISP/Internet Service provider  
Software  
Data protection  
IT/information technology  
Communications  
European law/Europe

This article tracks developments at the national level in key European countries in the area of IT and communications and provides a concise alerting service of important national developments. It is co-ordinated by Herbert Smith Freehills LLP and contributed to by firms across Europe. This column provides a concise alerting service of important national developments in key European countries. Part of its purpose is to complement the Journal's feature articles and briefing notes by keeping readers abreast of what is currently happening "on the ground" at a national level in implementing EU level legislation and international conventions and treaties. Where an item of European National News is of particular significance, CLSR may also cover it in more detail in the current or a subsequent edition.

© 2017 Herbert Smith Freehills LLP. Published by Elsevier Ltd. All rights reserved.

### 1. Belgium

Cédric Lindenmann, Associate, [cedric.lindenmann@stibbe.com](mailto:cedric.lindenmann@stibbe.com) and Carol Evrard, Associate, [carol.evrard@stibbe.com](mailto:carol.evrard@stibbe.com) from Stibbe, Brussels (Tel.: +32 2533 53 51).

No contribution for this issue

### 2. Denmark

Arly Carlquist, Partner, [ac@bechbruun.com](mailto:ac@bechbruun.com) from Bech-Bruun, Copenhagen office, Denmark (Tel.: +45 7227 0000).

#### 2.1. The Danish copyright blank levy model may be amended to comprise smartphones, TVs, laptops etc.

On 21 March 2017, the Danish Ministry of Culture announced that a new Committee has been established to consider a revision of the Danish copyright blank levy scheme.

The purpose of the copyright blank levy scheme is to compensate rights holders for the legal private copying of sound

and images allowed pursuant to the Danish Copyright Act. It follows from Article 5(2)(b) of the Infosoc Directive that Member States that decide to allow for legal private copying must ensure that a certain compensation scheme applies for the benefit of rights holders, taking into consideration various parameters e.g. to what extent rights holders have applied or decided not to apply technical protection measures.

Currently, certain separate storage devices (such as CDs, DVDs, USB sticks and tapes) are covered by the Danish copyright blank levy scheme. Hardware (such as laptops, smart phones, computer hard disks, TVs with integrated storage etc.) is not subject to copyright blank levies. Whether hardware should be subject to copyright blank levies or not has been subject to discussion on and off throughout the last 10–15 years.

The music and film industries which benefit from copyright blank levies have argued that any devices which may possibly be used for the purpose of legal private copying of sound and images should be subject to blank levies. The IT industry and consumer organisations have been opposed to such extension of copyright blank levies to comprise hardware throughout the years, arguing that it will result in higher prices

For further information see: [www.herbertsmithfreehills.com](http://www.herbertsmithfreehills.com).

\* Herbert Smith Freehills Exchange House, Primrose St, London EC2A 2HS, United Kingdom.

E-mail address: [Nick.Pantlin@hsf.com](mailto:Nick.Pantlin@hsf.com).

<http://dx.doi.org/10.1016/j.clsr.2017.04.001>

0267-3649/© 2017 Herbert Smith Freehills LLP. Published by Elsevier Ltd. All rights reserved.

and adversely affect the benefits of an increasingly digital society.

On 12 October 2016, the Danish High Court made a decision in a dispute involving Copydan (a collecting society representing rights holders) in which it found that if a mobile phone manufacturer sells a mobile phone with a separate additional memory card, an obligation to pay copyright blank levies applies with respect to that separate and additional memory card. The Danish High Court's decision was based on a preliminary ruling from the European Court of Justice (C 463/12) pursuant to which the European Court of Justice found amongst other things that storage media suitable for legal private copying should be treated equally in terms of the application of copyright blank levies.

On that basis, the Danish Ministry of Culture has made a preliminary assessment that the current Danish copyright blank levy scheme might not be compliant with EU legislation and a revision should be considered.

Accordingly, the Danish Ministry of Culture has established the abovementioned Committee which will consider and present its recommendations by 1 September 2017.

The proposal for a revised Danish copyright blank levy scheme is to be based on the actual scope and nature of current private legal copying. A survey will be undertaken by the Committee to establish by which means and to what extent private legal copying takes place. The survey must be completed in early June 2017. A proposal for a new bill is expected to be presented in 2017 following recommendations by the Committee.

The position of the Danish Ministry of Culture appears (based on the mandate of the Committee) to be that both separate and integrated storage media should be covered by copyright blank levies. This may, however, result in a significant increase in devices being subject to copyright blank levies.

---

### 3. France

Alexandra Neri, Partner, [alexandra.neri@hsf.com](mailto:alexandra.neri@hsf.com) and Jean-Baptiste Thomas-Sertillanges, Avocat, [Jean-Baptiste.Thomas-Sertillanges@hsf.com](mailto:Jean-Baptiste.Thomas-Sertillanges@hsf.com) from the Paris Office of Herbert Smith Freehills LLP (Tel.: +33 1 53 57 78 57).

No contribution for this issue

---

### 4. Germany

Dr. Alexander Molle, LL.M. (Cambridge), Counsel, [alexander.molle@gleisslutz.com](mailto:alexander.molle@gleisslutz.com), from the Berlin Office of Gleiss Lutz, Germany (Tel.: +49 30800979210).

No contribution for this issue

---

### 5. Italy

Salvatore Orlando, Partner [s.orlando@macchi-gangemi.com](mailto:s.orlando@macchi-gangemi.com) and Laura Liberati, Senior Associate [l.liberati@macchi-gangemi.com](mailto:l.liberati@macchi-gangemi.com), Rome office of Macchi di Cellere Gangemi (Rome Office tel. +39 06 362141).

### 5.1. Call centres located outside the EU territory

On 28 February 2017, the Italian Data Protection Authority (the "IDPA") provided clarification regarding: (i) the communication requirement applicable to operators that (plan to) transfer or outsource call centre activities (inbound and outbound) outside the EU (so-called "Third Countries") (under Article 24-bis of the Italian Law Decree No. 83/2012 (converted into Law No. 134/2012), as amended by Article 1(243) of Law No. 232/2016); and (ii) the communication forms to be used to notify the IDPA.

In particular, operators that decide to locate or outsource call centre activities in Third Countries shall notify the IDPA, the Ministry of Economic Development (the "MED"), the Ministry of Labour and Social Policy, and the national Labour Inspectorate at least 30 days prior to the transfer. The communication shall contain different information depending on the entity to which it shall be addressed.

The IDPA clarified that, in accordance with the simplification principle and in order to avoid duplication of compliance obligations, the phone numbers used for call centre activities located in Third Countries shall not be communicated to the IDPA, since they are already notified to the MED. In this respect, operators shall only acknowledge to the IDPA their compliance with the communication requirement vis-à-vis the MED.

The first communication form shall be used by those operators that plan to transfer the call centre activities to Third Countries following the entry into force of the new Article 24-bis on 17 January 2017. Failure to comply with the communication requirement is punishable by a 150,000 Euro fine for each failed/delayed communication.

The second communication form shall be used by those operators that were already carrying out call centre activities in Third Countries before 17 January 2017. Failure by these operators to comply with the communication requirement is punishable by a 10,000 Euro fine for each day of delay. In this case, the deadline for the communication to the IDPA expired on 2 March 2017.

Finally, the IDPA anticipated that the IDPA 2017 first semester inspection plan will focus on the data protection compliance of call centres.

---

### 6. The Netherlands

Barbra Bulsing, [barbra.bulsing@stibbe.com](mailto:barbra.bulsing@stibbe.com), Amsterdam office of Stibbe (Tel.: +31 20 546 0332).

No contribution for this issue

---

### 7. Norway

Dr. Rolf Riisnæs, Partner, [rri@wr.no](mailto:rri@wr.no), Dr. Emily M. Weitzenboeck, Senior Associate, [emw@wr.no](mailto:emw@wr.no), Wikborg Rein Advokatfirma AS, Norway (Tel. +47 22 82 75 00).

#### 7.1. Activity wristbands: Data protection and consumer law shortcomings

The Norwegian Consumer Council ("Consumer Council") analysed the terms and conditions, as well as the privacy poli-

Download English Version:

<https://daneshyari.com/en/article/4957872>

Download Persian Version:

<https://daneshyari.com/article/4957872>

[Daneshyari.com](https://daneshyari.com)