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**Computer Law  
&  
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## EU update

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### A B S T R A C T

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This is the latest edition of Baker & McKenzie's column on developments in EU law relating to IP, IT and telecommunications. This article summarises recent developments that are considered important for practitioners, students and academics in a wide range of information technology, e-commerce, telecommunications and intellectual property areas. It cannot be exhaustive but intends to address the important points. This is a hard copy reference guide, but links to outside web sites are included where possible. No responsibility is assumed for the accuracy of information contained in these links.

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### 1. Intellectual property

No developments.

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### 2. Copyright and trade marks

#### 2.1. Update on Directive on orphan works

The proposed Directive on orphan works was endorsed by the European Parliament on 13 September 2012. Under the Directive a work will be deemed 'orphan' where a 'diligent search' made in good faith, and conforming to guidelines in legislation, failed to find the author. Works granted such status in one Member State will have identical status across the EU. Should the copyright holder become aware of their work being deemed 'orphan', they may put an end to this at any time and claim appropriate compensation.

Press Release: <http://www.europarl.europa.eu/news/en/pressroom/content/20120907IPR50827/html/Orphan-works-to-go-public>.

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### 3. Patents

No developments.

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### 4. Data protection & privacy

#### 4.1. Article 29 Working Party adopts opinion on cloud computing

An opinion was adopted by the Article 29 Working Party on 1 July 2012 on the rise in cloud computing. The associated risks with this rise include lack of transparency of where and by whom the data is processed and the loss of exclusive control over personal data. The opinion stated that organisations wishing to use cloud computing services should conduct a thorough risk analysis. Providers of the cloud computing services should equip clients with the information required to diligently undertake this task. 'Security, transparency and legal certainty for the clients should be the key drivers behind offering cloud computing services'.

Opinion: [http://ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29\\_press\\_material/20120701\\_wp\\_196\\_cloud\\_computing\\_en.pdf](http://ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29_press_material/20120701_wp_196_cloud_computing_en.pdf).

#### 4.2. Article 29 Working Party adopts working document on binding corporate rules for processors

On 7 June 2012, the Article 29 Data Protection Working Party adopted a working document on Binding Corporate Rules ("BCR") for data processors. BCR are internal rules for all entities of multinational companies, dealing with the legal

transfer of personal data from the EU to outside the EU. They ‘will guarantee to clients of data processors that transfers made in relation with the performance of services’ are protected through a checklist of requirements.

Press Release: [http://ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29\\_press\\_material/20120619\\_pr\\_bcrwp\\_en.pdf](http://ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29_press_material/20120619_pr_bcrwp_en.pdf).

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## 5. Competition

### 5.1. Commission consultation on e-books

On 19 September 2012, the Commission invited comments on the proposed commitments of several international book publishers that were made in response to concerns that the companies had engaged in anti-competitive practices relating to the sale of e-books in the EEA. It had been considered that the companies may have been in breach of EU antitrust rules. The main area of concern was the joint-switch (on the sale of e-books) from a wholesale model to agency contracts containing the same ‘key terms’, allowing publishers more control over retail pricing. The companies have offered to terminate the existing agency agreements and, for five years, to refrain from adopting a “Most Favoured Nation” retail pricing clause that had caused concern.

Commission Press Release: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/986&format=HTML&aged=0&language=EN&guiLanguage=en>.

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## 6. Telecoms

### 6.1. Radio spectrum update

On 3 September 2012 the European Commission published a Communication to promote the shared use of radio spectrum resources within the internal market to allow for the increasing wireless network capacity requirements of the EU. Technological advancements enable a more economical use of frequency bands, allowing for greater capacity and cost savings whilst ensuring a licence-exempt spectrum that it is hoped will be a ‘breeding ground for wireless innovation’.

Communication: [http://ec.europa.eu/information\\_society/policy/ecomms/radio\\_spectrum/\\_document\\_storage/com/com-ssa.pdf](http://ec.europa.eu/information_society/policy/ecomms/radio_spectrum/_document_storage/com/com-ssa.pdf).

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## 7. E-commerce

No developments.

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## 8. Internet

### 8.1. Nominet – application to transfer domain name fails

On 3 August 2012 a Nominet expert refused to transfer the [opticalexpressruinedmylife.com](http://opticalexpressruinedmylife.com) domain name to DCM Ltd,

who owns the trade mark in the ‘Optical Express’ name. It was contended that this was an abusive registration. The expert found that the domain name reflects critical opinion and one would not consider the website is ‘associated with or endorsed by [those] whose trade marks are mentioned’. Contrary to the ‘ihatoryanair.co.uk’ case, the expert considered some de minimis form of advertising revenue to maintain a website may not automatically amount to unfair advantage of the trade mark.

Nominet: <http://www.scl.org/site.aspx?i=xb1092>.

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## 9. Media

### 9.1. Online distribution of audiovisual works

On 11 September 2012 the European Parliament adopted a resolution on the online distribution of audiovisual works in the EU. The resolution acknowledges the “fragmentation of the online market” characterised by, amongst other things, technological barriers, complex licensing procedures, differences in methods of payment and variations in applicable taxes including VAT. The resolution sets out a number of issues that need to be addressed in order to achieve a digital single market and a transparent flexible and harmonised approach at a European level. These include: (i) the promotion of digital skills and access to digital services to all EU citizens; (ii) an improvement in online payment systems; (iii) the need for pan-European regulations on collective management of authors’ rights and IP licensing generally; and (iv) an improvement in multi-territorial licensing arrangements.

Resolution: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0324+0+DOC+XML+V0//EN&language=EN>.

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## 10. Outsourcing

No developments.

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## 11. Main article – European Economic and Social Committee’s opinion on the proposed EU data protection regulation

### 11.1. Introduction

On 23 May 2012 the European Economic and Social Committee (the “EESC”) published an opinion on the draft General Data Protection Regulation (the “Regulation”). The Regulation is intended to replace the current Data Protection Directive (Directive 95/46/EC) (the “Current Directive”).

### 11.2. Background – data protection legislation

The Current Directive, introduced in 1995, attempted to harmonise data protection laws across the European Union (“EU”) and specified a minimum standard of data protection legislation to be implemented by each Member State. However, as there are now considerable inconsistencies in the levels of data protection laws between various Member States,

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