

Available online at www.sciencedirect.com**SciVerse ScienceDirect**www.compseconline.com/publications/prodclaw.htm**Computer Law
&
Security Review**

EU update

Helen Brown, Michael Dizon, Carinne Maisel, Jason Raeburn*Baker & McKenzie LLP, United Kingdom*

ABSTRACT

Keywords:

EU law
Intellectual property
Information technology law
Telecommunications law

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.

© 2012 Baker and McKenzie LLP. Published by Elsevier Ltd. All rights reserved.

1. Intellectual property

1.1. European Commission launches public consultation on interoperability information

On 22 March 2012 the European Commission announced a public consultation on the access to interoperability information of digital products and services. The consultation is seeking input from stakeholders and interested parties "on the needs, barriers and opportunities for measures leading significant market players to licence interoperability information not covered by standards". Questions posed by the consultation include: what kinds of interoperability issues were encountered when exchanging data between different products and services; whether publicly available licencing conditions and fees constituted barriers to interoperability; whether having model contracts for licencing interoperability information would be useful; and to what extent were interoperability information licenced using FRAND terms. The consultation closes on 20 June 2012. Questionnaire: <http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=Interoperability&lang=EN>.

2. Copyright and trade marks

2.1. Advocate general issues opinion on jurisdiction over trade mark infringement involving an advertising keyword

On 16 February 2012 Advocate General Cruz Villalon issued an opinion in the case *Wintersteiger AG v Products 4U* (Case C-523/10). Wintersteiger AG, an Austrian company, was the registered holder of the Austrian trade mark "Wintersteiger". Products 4U, a German company, had registered "Wintersteiger" as an advertising keyword on a search engine's German website. Wintersteiger AG brought an action in Austria seeking to enjoin Products 4U's use of the trade mark as an advertising keyword. After subsequent rulings and appeals, the Austrian Supreme Court requested the European Court of Justice for a preliminary ruling on the interpretation of Article 5(3) of Regulation (EC) NO 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Advocate General was of the view that Austrian courts had jurisdiction over the case pursuant to Article 5(3) of the Regulation since Austria is where the trade mark is protected and where the damage may actually occur. The Advocate General noted that even though Products 4U used a search engine that used a German top-level domain (.de), the search engine was accessible in Austria and used the same language.

Opinion: <http://curia.europa.eu/juris/document/document.jsf?docid=119515&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&cid=171813>

3. Patents

3.1. EPO publishes guidelines for patent examination

The Guidelines for Examination in the European Patent Office (EPO) have been released. The Guidelines include, among other things, the procedures for formalities and substantive examination, formalities for examination in grant and opposition proceedings, procedural matters at all stages at the EPO, the application requirements other than patentability, and requirements relating to amendments and corrections. The Guidelines are not legal provisions but they give general instructions to EPO staff, parties and patent practitioners on practices and procedures for the examination of European applications and patents. The Guidelines do not apply to PCT search and examination or the Community Patent Convention.

Guidelines: <http://www.epo.org/law-practice/legal-texts/guidelines-2012.html>

4. Data protection/privacy

4.1. EDPS supports the European Commission's proposal to reform the data protection regime in Europe

On 25 January 2012 the European Data Protection Supervisor (EDPS) lauded the European Commission's package for reforming Europe's data protection rules. In particular, the EDPS supported the proposed (i) use of a general regulation, (ii) introduction of compulsory mechanisms such as privacy impact assessments, (iii) greater independence of national data protection authorities, and (iv) reduction of administrative burdens. The EDPS however had issues with the Commission's proposed specific Directive for the area of police and justice. The EDPS noted that (i) the proposed Directive does not contain stricter rules on personal data transfers outside the EU, (ii) data protection authorities are not granted mandatory authority in this area, and (iii) the ability of police to access private data is not sufficiently controlled.

Press release: <http://europa.eu/rapid/pressReleasesAction.do?reference=EDPS/12/2&format=HTML&aged=0&la>

5. Competition

No developments.

6. Telecoms

6.1. Advocate general says mobile operators are not subject to a fee under the Authorisation Directive

On 22 March 2012 Advocate General Sharpston issued an opinion holding that Article 13 of the Authorisation Directive

does not permit a Member State to impose a fee on mobile operators that use facilities installed on public property and owned by other companies since such a fee is not in consideration of a right of way. The joined cases involved the imposition by a number of Spanish municipalities of a fee on mobile companies for their use of physical infrastructures and facilities owned by other undertakings. The Advocate General is of the view that, since the joined cases involve access to or interconnection with facilities, it is the Access Directive and not the Authorisation Directive that applies. The Advocate General pointed out that the Access Directive does not grant any such authority to levy a fee on the users of these facilities. The Advocate General further stated that the Article 13 of the Authorisation Directive has direct effect.

Opinion: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CC0055:EN:HTML>

7. E-Commerce

No developments.

8. Internet

No developments.

9. Media

9.1. ECJ clarifies temporary reproduction exemption

On 17 January 2012 the European Court of Justice (ECJ) issued an order clarifying the exemption from the reproduction right of temporary or transient acts of reproduction under Article 5(1) of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society. The main case involved the use of a data capture process whereby newspaper articles were scanned, digitised and indexed for the purposes of press monitoring activities and the creation of summaries of the articles. The ECJ ruled that exempted acts of temporary reproduction during a data capture process must: (i) constitute an integral and essential part of the technological process regardless of whether it involves human intervention; (ii) pursue the sole purpose of enabling the lawful use of the protected work; (iii) not have an independent economic significance; and (iv) not conflict with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the right holder.

Order: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62010CO0302:EN:HTML>

10. Outsourcing

10.1. European Commission's proposed Regulation to level access to global procurement markets

On 21 March 2012 the European Commission proposed a Regulation for greater openness and fairness in global

Download English Version:

<https://daneshyari.com/en/article/465537>

Download Persian Version:

<https://daneshyari.com/article/465537>

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