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EU update

Sara Dethridge, Michael Dizon, Jaimini Chauhan, Harriet Robinson*Baker & McKenzie LLP, United Kingdom*

ABSTRACT

Keywords:

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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.

2. Copyright and trade marks

2.1. European Council adopts Directive extending protection to performers to 70 years

On 12 September 2011 the European Council adopted a Directive amending Directive 2006/116/EC on the term of protection of copyright and related rights that extended the term of copyright protection for fixations of performances and for phonograms from 50 to 70 years. With regard to “co-written musical compositions”, the term of protection now ends “70 years after the death of the last surviving author, be it the author of the lyrics or the composer of the music”. In order to ensure that all performers benefit from the term extension, the Directive sets out three accompanying measures. First, the Directive creates a 20% fund for performers or session musicians who have assigned their rights to a phonogram producer for a one-off payment. The 20% fund will be drawn from “revenues from the exclusive rights of distribution, reproduction and making available of phonograms. Second, the Directive creates a “use it or lose it” clause whereby the rights revert back to the performer if the producer does not offer the

recording for sale in sufficient quantity within a reasonable time. Lastly, the Directive contains a “clean slate” provision which provides that any royalty or remuneration paid to performers during the extension period cannot be encumbered by advance payments or contractually defined deductions.

Directive: http://ec.europa.eu/internal_market/copyright/docs/term/2011_directive_en.pdf.

FAQs: <http://europa.eu/rapid/pressReleasesAction.do%3freference=MEMO/11/595%26format=HTML%26aged=0%26language=EN%26guiLanguage=en>.

3. Patents

No developments.

4. Data protection/privacy

4.1. European Commission issues report on the protection of minors online

The European Commission conducted tests as part of its review of the social networking sites which had voluntarily signed on to the “Safer Social Networking Principles for the EU”, a self-regulatory agreement to protect minors online. The

Commission found that out of the 14 sites tested, only two ensured “that minors’ profiles are accessible only to their approved list of contacts by default” and only four sites had in place systems whereby minors could only be contacted by their friends by default. Despite these shortcomings, a majority of the sites tested: do not permit external search engines to index the profiles of minors; provide safety information and educational materials specifically targeted to minors; and had reporting systems for minors in place.

Press release: <http://europa.eu/rapid/pressReleasesAction.do%3freference=IP/11/762%26format=HTML%26aged=0%26language=EN%26guiLanguage=en>.

5. Competition

No developments.

6. Telecoms

6.1. European Commission adopts Recommendation on eCall service for cars

On 8 September 2011 the European Commission adopted a Recommendation urging Member States to establish automatic emergency dial services for cars and light vehicles (eCall) throughout the European Union (as well as Croatia, Iceland, Norway and Switzerland) by 2015. eCall is a system that “automatically dials Europe’s single emergency number 112 in the event of a serious accident and communicates the vehicle’s location to emergency services”. In order to implement eCall, mobile operators would need to treat an eCall like any other emergency call, give it priority, not impose charges on it, and route it to the appropriate emergency service call centre. To protect users’ privacy, eCall devices are set by default to “sleep” mode and only begin sending signals when activated by a crash. The Commission plans to adopt two additional instruments to implement eCall – a Recommendation on the specifications for the upgrade of emergency call response centres under the Intelligent Transport Systems Directive and a Regulation requiring eCall devices to be built into all new cars by 2015.

Recommendation: http://ec.europa.eu/information_society/activities/esafety/doc/ecall/recomm/recomm.pdf.

Press release: <http://europa.eu/rapid/pressReleasesAction.do%3freference=IP/11/1010%26format=HTML%26aged=0%26language=EN%26guiLanguage=en>.

7. E-Commerce

No developments.

8. Internet

No developments.

9. Media

No developments.

10. Outsourcing

No developments.

11. Main article: Article 29 Data Protection Working Party adopt opinion on the interpretation of “consent”

11.1. Introduction

On the 13 July 2011, the Article 29 Data Protection Working Party (the “Working Party”) issued an opinion on the requirements for valid consent under the directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data 95/46/EC (the “Data Protection Directive”) and the directive on the processing of personal data and the protection of privacy in the electronics communications 2002/58/EC (the “E-Privacy Directive”).

11.2. Background

Under the Data Protection Directive personal data relating to individuals can only be processed where the processing can be justified by one of the legitimate purposes set out in the Directive. One of the ways data processing can be justified is via a data subject’s unambiguous consent, which is often seen as the simplest way to comply with national data protection laws. Despite its widespread and frequent use, varying interpretations of “consent” exist across the Member States. Therefore, the Working Party has developed an opinion which provides clarity in relation to some aspects of “consent” (including as to the timing of obtaining consent and how the right to object differs from consent) which, while not strictly binding, is intended to provide an EU consensus as to its interpretation. This is in the context of an overall review by the European Commission (“Commission”) of the Data Protection Directive, due later in the year.

11.3. The definition of consent

Article 2(f) of the Data Protection Directive defines consent of a data subject as “any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed”.

The Working Party opinion looks closely at key elements of valid “consent” including the concepts of “informed”, “freely given”, “specific” and “unambiguous”.

It also provides the following guidance:

- As a general rule, consent should be obtained prior to processing of personal data;
- Obtaining consent does not eliminate the need for a data controller to comply with the requirements of fairness,

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