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EU update

Sara Dethridge, Michael Dizon, Emily Sweetman, Lauren Hurtle

Baker & McKenzie LLP, United Kingdom

ABSTRACT

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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 websites are included where possible. No responsibility is assumed for the accuracy of information contained in these links.

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1. Intellectual property

1.1. European Commission publishes report on the comments to the IPR Enforcement Directive consultation

In July 2011 the European Commission released a synthesis of the comments on the public consultation on the enforcement of intellectual property rights. The Commission received 380 responses from citizens, rightholders, consumer organisations, internet service providers, telecommunications operators, academics, carriers, collecting societies and public authorities across 25 Member States. The issue of amending the IPR Enforcement Directive received the most comments from stakeholders (70%). As expected, rightholders and collecting societies were in favour of amending the IPR Enforcement Directive in order to define rules on the roles of intermediaries and impose stricter rules for copyright infringement. On the other hand, other stakeholders opposed any changes to the Directive on the grounds that: there was lack of sufficient evidence to evaluate the Directive effectively; they would result in increased legal uncertainty; and they might negatively impact the exercise of freedom of information and exchange. 60% of the stakeholders also provided comments to the issue of intermediaries and injunctions. The varying responses focused on the issues of definition of the term intermediary, scope of the injunctions,

liability, and the appropriateness of notice and takedown procedures.

Synthesis of comments: http://ec.europa.eu/internal_market/consultations/docs/2011/intellectual_property_rights/summary_report_replies_consultation_en.pdf

2. Copyright and trade marks

2.1. European Commission issues green paper on online distribution

The European Commission has issued its "Green Paper on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market". The aim of the Green Paper is to find ways to support the development of a digital single market within the EU. Some approaches that the Commission is looking into include:

- an improved licensing framework in the EU;
- extension of the "country of origin principle" to online audiovisual services;
- "development of identification systems for audiovisual works and rights ownership databases";

- prohibition against legally binding release windows for state-funded films;
- creation of a comprehensive Copyright Code or a unitary EU Copyright Title;
- creation of an unwaivable right to remuneration for authors and performers at the European level; and
- improve accessibility to persons with disabilities.

Green Paper: http://ec.europa.eu/internal_market/consultations/docs/2011/audiovisual/green_paper_COM2011_427_en.pdf

3. Patents

3.1. *Spain and Italy file actions before the ECJ to annul unitary EU patent*

On 30 May 2011 Spain and Italy filed actions for annulment of Council Decision of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection before the European Court of Justice. Spain sought to annul the Decision on the following grounds:

- the enhanced cooperation excludes a Member State from negotiations;
- the objectives of the enhanced cooperation could have been accomplished through a special agreement under Article 142 of the European Patent Convention; and
- the Decision failed to include a procedure for settling disputes concerning new patents rights.

For its part, Italy wanted the Decision annulled on the grounds that:

- the European Commission's adoption of the Decision lacked competence and was a violation of Article (20)(1) first paragraph TUE;
- the decision is an attempt to circumvent the unanimity requirement in Article 118(2); and
- the enhanced cooperation does not achieve its objective of providing uniform protection for intellectual property rights since it creates barriers to trade within the EU.

Information note: <http://register.consilium.europa.eu/pdf/en/11/st12/st12500.en11.pdf>

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4. Data protection/privacy

4.1. *European Commission launches public consultation on personal data breach notifications*

On 14 July 2011 the European Commission launched a public consultation on personal data breach notifications. Under the Telecoms Reform package, the Commission is required to adopt technical implementing measures on the circumstances, formats and procedures for the notification

requirements. Specifically, the Commission is seeking information from various stakeholders with respect to how the following matters are being or can be dealt within practice:

- procedures for notifying national authorities or individuals about personal data breaches;
- use of technological protection measures that render data unintelligible;
- the meaning of "undue delay" with regard to the notification deadline;
- the format and means of personal data breach notification;
- the format of personal data breach inventories; and
- the procedure for audits by national authorities.

The consultation ends on 9 September 2011.

Consultation document: http://ec.europa.eu/information_society/policy/ecommerce/doc/library/public_consult/data_breach/ePrivacy_databreach_consultation.pdf

5. Competition

No developments.

6. Telecoms

No developments.

7. E-Commerce

7.1. *European Parliament approves Consumer Rights Directive*

On 23 June 2011 the European Parliament approved the Consumer Rights Directive which provides new rights and duties concerning online shopping and distance selling within the EU. Under the new rules:

- goods must be delivered to the buyer within 30 days;
- for online purchases, consumers may change their minds within two weeks of receiving the goods; and
- online businesses must provide buyers detailed information about the goods sold, their total price, and the seller's contact information.

The new information requirements do not apply, however, to day-to-day transactions where goods are delivered immediately by small firms and tradesmen. If the amount involved is less than €200, the required information may be provided to the consumer orally instead of in writing. With regard to the right of withdrawal, this right does not apply to, among other things, the sale of digital goods, subscription contracts, airline tickets, and hotel bookings.

Press release: <http://www.europarl.europa.eu/en/press-room/content/20110622IPR22326/html/Consumer-Rights-Parliament-approves-new-EU-wide-rules-for-on-line-shopping>

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