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ABSTRACT

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.

1. Intellectual property

No developments.

2. Copyright and trade marks

2.1. *General Court rules no likelihood of confusion between marks "PPT" and "PPTV"*

On 18 February 2011 the General Court rendered judgment in *P.P.TV v OHIM* (Case T-118/09) that the work mark "PPT" was not confusingly similar to the earlier figurative mark "PPTV". In this case, Rentrak applied for the word mark PPT under Class 41 of the Nice Agreement for video cassette distribution and rental services. The trade mark application was opposed by PPTV on the ground that it had an earlier figurative mark for services under Class 41 of the Nice Agreement covering education, training, entertainment and sporting and cultural activities. The General Court upheld the decision of the First Board of Appeal of OHIM and ruled that there was no likelihood of confusion in this case. The Court found that "the distribution services covered by the mark applied for differ by their nature and purpose from the services covered by the earlier mark". Furthermore, the Court held that "the fact that the word element of the earlier mark includes the letter 'V', unlike the mark applied for, will enable relevant consumers to distinguish visually and phonetically between the marks at issue". The Court also ruled that the mark applied for was targeted at business consumers who have a high level of attention, whereas the earlier mark was aimed at the general public.

Judgment: http://curia.europa.eu/jurisp/cgi-bin/gettext.pl?lang=en&num=79889781T19070118&doc=T&ouvert=T&seance=ARRET&where=%28%29

3. Patents

3.1. *European Parliament consents to creation of EU-wide patent*

The European Parliament has given its consent to the creation of a common EU-wide patent system through the use of the enhanced cooperation procedure. According to the European Parliament, a unitary patent system "would make it easier and cheaper for inventors to protect their patents throughout the EU, help tackle infringements and create a level playing field for Europe's innovative businesses". In order to create the EU patent system, the Commission will submit a legislative proposal for the creation of the single patent and another for the language regime. Save for Italy and Spain, all EU Member States have agreed to take part in the procedure.

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Press release: http://www.europarl.europa.eu/en/pressroom/content/20110215IPR13680/html/EU-patent-Parliament-gives-go-ahead-for-enhanced-cooperation

4. Data protection/privacy

4.1. *European Commission unveils proposed draft of PNR Directive*

On 2 February 2011 the European Commission unveiled its proposal for a Directive on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (PNR Directive). The aim of the proposed PNR Directive is to harmonise the rules on how air carriers transmit PNR data to the competent authorities of Member States while at the same time protecting the privacy and personal data of passengers. The PNR Directive will have a strict purpose limitation which means that PNR data can only be used to fight serious crimes and terrorism. With regard to retention periods, PNR data must be anonymised one month after the flight and deleted after five years. Following the "push method", only air carriers can transmit PNR data to Member States and in no case may Member States have access to the air carriers' databases. The transfer of any sensitive data to any Member State is prohibited. In addition to the requirement of establishing an independent supervisory data protection authority in each Member State, passengers are given "the right to access, rectify, and delete their data, and to compensation and judicial remedies".

Press release: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/120&format=HTML&aged=0&language=EN&guiLanguage=fr

Proposal: http://ec.europa.eu/home-affairs/news/intro/docs/com_2011_32_en.pdf

5. Competition

No developments.

6. Telecoms

6.1. *ECJ rules on directory enquiry services case*

On 17 February 2011 the European Court of Justice (ECJ) rendered judgment in the *The Number Ltd v Office of Communications* (Case C-16/10) which dealt with the universal service obligation to provide directory enquiry services and directories in the UK. This case involved the issue of whether the UK Government could impose on British Telecommunications (BT) the obligation to charge only wholesale prices for providing information from a database of all telephone subscribers in the UK that BT maintains as the universal service provider. The ECJ ruled that the UK Government could not impose such an obligation on BT because under Article 8(1) of the Universal Service Directive, Member States may "impose on such undertakings only the specific obligations, provided for in the directive, which are associated with the provision of the service, or elements thereof, to end-users by the designated undertakings themselves". The ECJ stated that "even if such undertakings could have access, at tariffs set by the national regulator, to a comprehensive database of all telephone subscribers, such as BT's OSIS database, as a result of a specific national obligation such as USC 7, they would not be required to provide at an affordable price … in making comprehensive directory enquiry services and directories available to all end-users".

Judgment: http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Submit&numaff=C-16/10

7. E-Commerce

7.1. *Commission launches public consultation on e-signatures and e-identification*

On 18 February 2011 the European Commission launched a public consultation on electronic signatures and electronic identification. The Commission believes that the lack of interoperability and mutual recognition of cross-border e-signatures has resulted in the relatively small uptake and low confidence in online transactions and activities in the EU. The public consultation deals with issues such as legal recognition of electronic consent, security requirements and standardisation. The Commission is also looking into creating a common set of principles for electronic identification and possible alternatives to Public Key Infrastructure (PKI) technology. The public consultation is part of the review of the e-Signature Directive as well as the broader Digital Agenda for Europe initiative. In addition to the review of the e-Signature Directive, the Digital Agenda for Europe also includes a plan to adopt a Council and Parliament Decision on the mutual recognition of e-identification and e-authentication.

Press release: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/198&format=HTML&aged=0&language=EN&guiLanguage=en

Questionnaire: http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=eid4&lang=en

Roadmap: http://ec.europa.eu/governance/impact/planned_ia/docs/2010_infso_021_electronic_signature_en.pdf

7.2. *European Parliament issues draft report on European Contract Law*

On 25 January 2011 the European Parliament issued a draft report on policy options for progress towards a European Contract Law for consumers and businesses. The draft report is mainly a response to the European Commission's Green Paper of 1 July 2010 on the same topic. The European Parliament "favours the option of the setting up of an optional instrument (OI) by means of a regulation" that will be "complemented by a 'toolbox' that should be endorsed by means of an interinstitutional agreement". The OI should focus exclusively on core contractual law issues, whereas the toolbox can have a wider scope. The European Parliament is of the view that "both business-to-business and business-to-consumer contracts should be covered" by the OI and it should be opt-in for both