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## EU update

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### ABSTRACT

#### Keywords:

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Information technology law

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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

No developments.

### 3. Patents

#### 3.1. Update on European Patent Court

##### 3.1.1. Proposed translation arrangements

The complicated translation arrangements were excluded from the proposals for the development of an EU patent agreed in December 2009, with a decision they should be dealt with by a separate regulation. On 1 July the European Commission issued their proposals for translation, seen by many as 'the final piece of the puzzle'. The proposals suggest a system whereby the official documentation of EU patents will be issued in one of the three official languages of the European Patent Office ("EPO"), English German or French, with translations of the claims included in the other two languages. The Commission has argued this will dramatically cut the costs of obtaining an EU-wide patent. Under the proposals the proprietor would only be required to pay translation costs if they wished to bring court proceedings or where they use an

automated translation to file the patent in their native language, although the latter costs may be refundable.

##### 3.1.2. Advocate General tell ECJ Unified Patents System incompatible with EC law

In July 2009 the ECJ was asked to opine on whether the creation of a European patents court would be consistent with the founding treaties of the EC. In July 2010 the Advocate General of the ECJ informed the court it felt the creation of such system was incompatible with EC law because the supremacy of EU law and the authority of the ECJ would be put at risk. Although the ECJ is not obliged to follow this opinion, indeed the Chartered Institute of Patent Attorneys ("CIPA") has called for its rejection, many see this as a fatal to the development of the proposals. Many industry practitioners have expressed dismay at the thought of handing the ECJ power in this area, feeling it would introduce unnecessary complications.

Press release: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/870&format=HTML&aged=0&language=EN&guiLanguage=en>.

### 4. Data protection/privacy

#### 4.1. SWIFT II agreement between EU and US enters into force

On 13 July 2010 the Council of the European Union adopted the Council Decision on the conclusion of the Agreement between

the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program. Ireland and Denmark did not take part in the adoption of the Decision. Pursuant to the Council Decision, the European Commission has to submit a legal and technical framework for the extraction of data on EU Territory within a year from the date of entry into force of the Agreement. Further, within three years from the date of entry, the Commission has to present a report on the progress of the development of an equivalent EU system dealing with financial messaging data. The Agreement entered into force on 1 August 2010. Council decision: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:195:0003:0004:EN:PDF>.

Date of entry into force: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:195:0015:0015:EN:PDF>.

#### 4.2. Article 29 Working Party issues opinion on industry proposed RFID privacy impact assessment framework

On 13 July 2010 the Article 29 Data Protection Working Party issued an Opinion on the Industry Proposal for a Privacy and Data Protection Impact Assessment Framework for RFID Applications (PIA Framework). The PIA Framework was drafted pursuant to a call by the European Commission in its May 2009 Recommendation on data protection and RFID for industry to develop a framework for privacy and data protection impact statements, which will be subject to the endorsement of the Article 29 Working Party. As a result of certain issues which it highlighted in its Opinion, the Working Party did not endorse the proposed PIA Framework. According to the Working Party, the Framework's lack of a risk assessment-based methodology was a major concern. Further, the Working Party noted that the Framework did not address the privacy concerns when RFID tags are carried by individuals, even though the tags themselves may not process or contain personal data. In addition, the Working Party commented that the issue of tag deactivation in the retail sector must be clarified. Opinion: [http://ec.europa.eu/justice\\_home/fsj/privacy/docs/wpdocs/2010/wp175\\_en.pdf](http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2010/wp175_en.pdf).

Annex: [http://ec.europa.eu/justice\\_home/fsj/privacy/docs/wpdocs/2010/wp175\\_annex\\_en.pdf](http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2010/wp175_annex_en.pdf).

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## 5. Competition

No developments.

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## 6. Telecoms

### 6.1. Public consultation opened on the revision of R&TTE Directive

A public consultation on the impact of options currently under consideration for the revision of the Radio and Telecommunications Terminal Equipment Directive (R&TTE Directive) has been launched. The aim of the public consultation is to "collect additional information on the impact of some of the measures currently under consideration and to reach out to stakeholders

who may not have been able to express their views, in particular SMEs". Two major issues with the current R&TTE Directive are the low level of compliance and the lack of traceability of defective products. Two options being considered are aligning the Directive with the new legislative framework for marketing of products (Decision 768/2008) or introducing an EU-wide system for product registration. It has also been proposed that the scope of the Directive be expanded to cover all radio receivers, but excluding radio equipment for air traffic management and radars for inland waterways. It is expected that the European Commission will adopt a proposal to revise the Directive by the end of the year.

Public consultation: [http://ec.europa.eu/enterprise/sectors/rte/public-consultation/files-public-consultation/public\\_consultation\\_on\\_impacts\\_rtte\\_revision\\_en.pdf](http://ec.europa.eu/enterprise/sectors/rte/public-consultation/files-public-consultation/public_consultation_on_impacts_rtte_revision_en.pdf).

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## 7. E-commerce

### 7.1. European Commission launches public consultation on e-commerce

The European Commission launched a public consultation on the future of electronic commerce in the internal market and the implementation of the Directive on Electronic Commerce (2001/31/EC). Ten years after the adoption of the Electronic Commerce Directive, the Commission wants to examine the relatively slow growth of retail electronic commerce which only accounts for "less than 2% of European retail trade". The Commission is particularly interested in looking into the following issue areas:

- Development of cross-border information society services;
- Administrative cooperation among Member States;
- Contractual restrictions on cross-border online sales;
- Online commercial communications;
- Online press services;
- Liability of online intermediaries;
- Online pharmacy services; and
- Online dispute resolution.

The deadline for responses to the consultation is on 15 October 2010. Consultation: [http://ec.europa.eu/internal\\_market/consultations/2010/e-commerce\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/e-commerce_en.htm).

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## 8. Internet

No developments.

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## 9. Media

No developments.

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## 10. Outsourcing

No developments.

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