Highlights

Extension of the term of protection of copyright and certain related rights

On 12 September 2011 the European Council approved a directive amending Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006, on the term of protection of copyright and certain related rights.

Many amendments have been made to the Community act.

Among these amendments, noteworthy is the extension of the term of protection in particular granted to the performances of artists and performers and musical recordings made by phonogram producers. The term of protection referred to above is extended from 50 to 70 years.

The new directive also provides for a set of measures aimed to benefit artists, giving them more effective control of their works. For example purposes only, we highlight the possibility granted to artists to, in certain situations and provided certain requirements are met, recover rights previously transferred to publishers, where the same are not interested in selling their recordings during the extension of the relevant term of protection.

Ratification of the agreement between Portugal and the USA on the sharing of biometric information

On 31 August 2011 the Parliament approved a proposal for a resolution ratifying the Agreement between Portugal and the USA, signed in Lisbon on 30 June 2009, to improve cooperation in the area of crime prevention and combat, in particular, as regards terrorism.

In accordance with the Agreement, the two countries will be able to share certain information, pursuant to the respective national laws, in particular, they may provide fingerprints information, created for criminal prevention and investigation purposes, as well as DNA profiles.

Comissão Nacional de Protecção de Dados (CNPD) (Portuguese Data Protection Authority) expressed its concerns with regard to the agreement, in particular, on account of the fact that it had not been heard on it, in accordance with the legal provisions established for that purpose.

The *CNPD* also claimed that the commitment does not protect against the risk of the personal data in question being used in proceedings leading to death penalty or life imprisonment (not admitted in the Portuguese legal system).

The supervisor also argued that the list of crimes provided for in the Agreement is excessive and the lack of a maximum term during which the information is retained, breaches fundamental principles of Portuguese law on data protection.

First application for a sound mark with embedded sound file in Portugal

An application for the registration of a sound mark, which includes a multimedia file with embedded sound, was submitted for the first time in Portugal.

The application for the registration of the trademark was submitted on 9 March 2011, and was published in *Boletim da Propriedade Industrial* (Industrial Property Bulletin) on 24 August.

Any interested party may view the application for registration for sound trademark through the online services of the *Instituto Nacional da Propriedade Industrial* (Portuguese Industrial Property Institute), at www.inpi.pt, through the options "Trademarks" - "Search" - "Direct consultation through process number" - "National Trademark"-"480308".

The multimedia file in audio format, of approximately 3 seconds, was also made available with the publication of the application in *Boletim da Propriedade Industrial*, which may also be viewed through the online service of *Instituto Nacional da Propriedade Industrial*, at www.inpi.pt.

With this new function, *Instituto Nacional de Propriedades Industrial* is now part of the restrict group of institutes to provide multimedia files for sound trademarks.

I. National Legislation

Law No. 51/2011. *DR* (Portuguese official gazette) No. 176, Series I of 13 September

Amending the Electronic Communications Act, which sets out the legal framework of networks and associated services and defines the competences of the National Regulatory Authority in this field, transposing Directives No. 2002/19/EC, 2002/20/EC,
2002/21/EC, 2002/22/EC and 2009/140/EC.

Regional Legislative Decree No. 21/2011/A. *D.R.* (Portuguese official gazette) No. 126, Series I of 4 July 2011

Setting out the legal framework of protection of the intangible cultural heritage of the Autonomous Region of Azores, including safeguard measures and inventory procedures.

Dispute settlement scheme for medicinal products

On 1 September, the Government approved a legislative proposal instituting a system of settlement of disputes arising from industrial property rights where reference medicinal products and generic medicinal products are concerned.

The new system determines a clear separation between the marketing authorisation for medicinal products and the possible need to settle disputes concerning patents.

Despite its having been already approved, this legislation has not yet been published in *Diário da República* and, consequently, it has not yet come into effect.

II. Community Legislation

A. Intellectual Property

Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011, OJEU Series L174 of 1 July 2011

Amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products.

B. Consumer Law

Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011, Series L174 of 1 July 2011

Approving provisions concerning the restriction of the use of certain hazardous substances in electrical and electronic equipment.

Commission Regulation (EU) No. 665/2011, OJEU Series L182 of 12 July 2011

Commission Regulation on the authorisation and refusal of authorisation of certain health claims made on food and referring to the reduction of disease risk.

Commission Regulation (UE) No. 666/2011, OJEU Series L182 of 12 July 2011

Commission Regulation refusing to authorise certain health claims made on food, other than those referring to the reduction of disease risk and to children's development and health.

Rectification of Directive 2008/48/EC

Rectification of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008, on credit agreements for consumers and repealing Council Directive 87/102/EEC

III. Case-law, resolutions and decisions

A. Intellectual Property

Commission Implementing Regulation (EU) No. 670/2011, OJEU Series L183 of 13 July 2011

Implementing Regulation amending Regulation (EC) No 607/2009 laying down certain rules for the implementation of Council Regulation (EC) No. 479/2008 as regards protected designations of original and geographical indications, traditional terms, labelling and presentation of certain wine sector products.

Judgment of the Court of Justice in Case No. C-263/09 P - Edwin Co. Ltd v OHIM (2011/C 252/04), OJEU C 252/4 of 27 August 2011

Refusal of the application for the registration of a Community trademark ("Elio Fiorucci") on the grounds that the right to use a name recognised under Italian law should prevail.
In accordance with the decision delivered by the Court of justice, a person is entitled to prevent the use of his own name as a Community trademark where he has not previously authorised the registration of the same, inasmuch as the national law applicable to that person so permits.

B. Information Technology

Council Decision of 19 July of 2011 (2011/472/EU), OJEU Series L 195 of 27 July 2011

Decision concerning the launch of automated data exchange with regard to DNA data in Portugal. As from this date, Portugal is entitled to receive and supply those data.

Opinion of the European Data Protection (2011/C 217/06), OJEU Series L 217 of 23 July 2011

Opinion on Commission Decision 2011/141/EU amending Commission Decision 2007/76/EC on the Consumer Protection Cooperation System ('CPCS') and on Commission Recommendation 2011/136/EU on guidelines for the implementation of data protection rules in the 'CPCS'.

Opinion of the European Data Protection Supervisor (2011/C 220/01), OJEU Series C220 of 26 July 2011

Opinion of the European Data Protection Supervisor on the Proposal for a Directive of the European Parliament and of the Council amending Directives 89/666/EEC, 2005/56/EC and 2009/101/EC as regards the interconnection of central, commercial and companies registers.

Opinion of the European Data Protection Supervisor (2011/C 279/01), OJEU Series C 279/01 of 23 September 2011

Opinion of the European Data Protection Supervisor on the Evaluation report from the Commission to the Council and the European Parliament on the Data Retention Directive (Directive 2006/24/EC).

The obligation to retain data in accordance with the Data Retention Directive allows competent national authorities to retrace telephone and internet behaviour of all persons in the EU whenever they use telephone or internet up to a period of two years.

This opinion analyses and discusses the content of the Commission's report from a privacy and data protection point of view.

The European Data Protection Supervisor is of the opinion that the information provided in the aforementioned report shows that the Directive has failed to meet its main purpose, namely to harmonise national legislation concerning data retention.

The European Commission itself has admitted that there are "considerable" differences between transposing legislation in the areas of purpose limitation, access to data, periods of retention, data protection and data security and statistics.

The European Data Protection Supervisor further concludes that the Data Retention Directive has failed to meet the requirements set out by the rights to privacy and data protection and, therefore, it cannot continue to exist in its present form.

It seems that the European Commission will, in the future, propose a revision of the current data protection framework within the EU.

Decision nº. 951/2011 of the Portuguese Data Protection Agency (*Comissão Nacional de Protecção de Dados*) of 26 September 2011, in the context monitoring security of traffic data by phone companies

Because the weekly newspaper 'Expresso' publicly claimed that traffic data related to phone communications made by a certain reporter would have been unlawfully breached, the Portuguese Data Protection Agency ('DPA') initiated an investigation about the level of security of traffic data processed by phone companies.

The mobile company TMN was the first operator to be investigated. The DPA concluded that there had been no infringement to the personal data of the concerned reporter.

This authority further concluded, in relation to this investigation, that the security measures (technical and organizational) adopted by TMN for safeguarding traffic data were adequate and enabled detection of unlawful use of personal data.

C. Consumer Law

Opinion of the European Economic and Social Committee (2011/C 218/12), OJEU Series C218 of 23 July 2011

Opinion of the European Economic and Social Committee on the on the «Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws ».

IV. Resolutions, positions and information

Position (EU no. 9/2011 adopted by the Council on 19 July 2011 with a view to the adoption of a Decision of the European Parliament and of the Council establishing a European Union action for the "European Heritage Label", (2011/C 285 E/01), OJEU Series C 285E/1 2011/C of 29 September 2011

A European Union action entitled "European Heritage Label" was established.

Its purposes are to strengthen European citizens' sense of belonging to the Union, in particular that of young people, based on shared values and elements of European history and cultural heritage, as well as an appreciation of national and regional diversity and, at the same time, to also strengthen intercultural dialogue.

Candidate sites for the label must have a symbolic European value and must have played a significant role in the history and culture of Europe and/or the building of the Union.

Each Member State may pre-select up to two sites every two years. A European panel of independent experts will be established to carry out the selection and monitoring at Union level but it is the Commission, who will be in charge of designating the sites to be awarded the label having, however, due regard to the recommendation of this European panel.

European Commission is interested in practical rules used to notify data protection breaches (Press Release of 14 July 2011)

The European Commission consults telecoms operators, Internet service providers, Member States, national data protection authorities, consumer organisations and other interested parties on whether additional practical rules are needed to make sure that personal data breaches are notified in a consistent way across the EU.

The Commission wants to gather input based on existing notification practices and the experience of the above mentioned entities and may then propose additional practical rules to make clear, in a consistent way for all European Union countries, when breaches should be reported, the procedures for doing so and the formats that should be used.

Annual Report on the breach of property rights in the EUR (Press Release of 14 July of the European Commissioner for Taxation and Customs Union)

It has been reported that 80,000 instances of counterfeiting of products protected by intellectual property, leading to the seizure of those products, have been detected at European customs in 2010, as opposed to 43,000 in 2009.

The majority of counterfeit products involved the breach of trademarks, although many instances also concerned counterfeiting of patents and designations of origin.

The category of products with the largest number of instances of counterfeiting was tobacco, followed by office material, children's toys and clothing.

China is still at the top of the list of countries of origin of counterfeited products. In certain category of products, Hong-Kong, India and Turkey catch up with the forerunners.

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