

# CUATRECASAS, GONÇALVES PEREIRA



## NEWSLETTER | INTELLECTUAL PROPERTY, MEDIA AND IT

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## INTELLECTUAL PROPERTY, MEDIA AND IT NEWSLETTER

### I HIGHLIGHT

#### **Data transfers from the EU to the US. Now what?**

The European Commission and the United States have reached an agreement on a new framework for the transatlantic transfer of personal data: it is the EU-US Privacy Shield and replaces the Principles of Safe Harbour.

The European Commission issued its decision on adequacy for personal data transfers from the EU to the US, as well as the texts that make up the EU-US Privacy Shield. EU citizens now have several possibilities of appeal and reaction under the new system and all claims received by the companies must be resolved within 45 days. The text is being evaluated by the various European agencies for the protection of personal data, before being formally approved by the European Commissioners.

This new regulatory framework will protect the fundamental rights of European citizens when the data is transferred to the US and ensure legal certainty for businesses.

The EU-US Privacy Shield reflects the requirements set by the Court of Justice of the European Communities in its judgment of 6 October 2015, which declared invalid the structure of the Safe Harbour.

The new agreement will establish stronger obligations for US companies to protect personal data of Europeans and will impose a control and tighter supervision by the Department of Commerce and the Federal Trade Commission (FTC), including increased cooperation with the European authorities for data protection.

The new agreement also includes written commitments and ensures that any access by the public authorities in the US to personal data transferred under the new agreement for national security reasons will be subject to clear conditions, limitations and supervision, which prevent widespread and indiscriminate access. The newly created mechanism known as Ombudsperson will handle and resolve complaints or requests of EU citizens in this respect.

### II LEGISLATION

#### **Corrigendum to Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015. OJEU L 71/322, of 16-03-2016**

Amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95

on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs).

### III CASE LAW

#### **Judgment of the Court of Justice (Fourth Chamber) of 12-11-2015. OJEU C 16/03 of 18-01-2016**

**Case C-572/13 (Reference for a preliminary ruling – Approximation of laws – Intellectual property – Copyright and related rights – Directive 2001/29/EC – Exclusive reproduction right – Exceptions and limitations – Article 5(2)(a) and (b) – Reprography exception – Private copying exception – Requirement for consistent application of exceptions – Concept of ‘fair compensation’ – Recovery of remuneration as fair compensation for multifunction printers – Proportional remunerative payment – Lump-sum remunerative payment – Accumulation of lump-sum and proportional remunerative payments – Method of calculation – Recipients of fair compensation – Authors and publishers – Sheet music).**

Article 5(2)(a) and Article 5(2)(b) of Directive 2001/29 preclude national legislation, such as that at issue in the main proceedings, which introduces a system that combines, in order to finance the fair compensation payable to rightholders, two forms of remuneration, namely, first, lump-sum remuneration paid prior to the reproduction operation by the manufacturer, importer or intra-Community acquirer of devices enabling protected works to be copied, at the time when such devices are put into circulation on national territory, and, second, proportional remuneration paid after that reproduction operation and determined solely by means of a unit price multiplied by the number of copies produced, which is payable by the natural or legal persons who make those copies, in so far as:

- (i) the lump-sum remuneration paid in advance is calculated solely by reference to the speed at which the device concerned is capable of producing copies;
- (ii) the proportional remuneration recovered after the fact varies according to whether or not the person liable for payment has cooperated in the recovery of that remuneration;
- (iii) the combined system, taken as a whole, does not include mechanisms, in particular for reimbursement, which allow the complementary application of the criterion of actual harm suffered and the criterion of harm established as a lump sum in respect of different categories of users.

#### **Order of the Court (Third Chamber) of 6-10-2015. OJEU C 38/14 of 1-02-2016**

**Case C-500/14 (Reference for a preliminary ruling - Designs - Directive 98/71/EC - Article 14 - Regulation (EC) No 6/2002 - Article 110 - So-called**

**'repair' clause - Use by a third party of a mark, in the absence of the proprietor's consent, for spare parts or accessories for motor vehicles identical to the goods in relation to which the trade mark is registered)**

Article 14 of Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs and Article 110 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs must be interpreted as precluding, by way of derogation to the provisions of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks and Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark, a manufacturer of spare parts and accessories for motor vehicles, such as hub caps, from affixing to its goods a sign which is identical to a registered trade mark, inter alia for such goods, by a manufacturer of motor vehicles, without the consent of the latter, on the ground that the use which would thus be made of that trade mark constitutes the only means of repairing the vehicle at issue by restoring its original appearance as a complex product.

**Judgment of the Guimarães Court of Appeal of 03-03-2016, [www.dgsi.pt](http://www.dgsi.pt). Case No. 20 / 14.7T8VRL.G1**

Guimarães Court of Appeal decides that if the employer makes use of a GPS device in a vehicle whose purpose is (proven) to monitor worker performance, such use is not permitted because it is a form of remote surveillance.

However, if the employer uses the device in question to obtain other types of data, including confirming the miles covered in confrontation with the data transmitted by the worker himself, the employer is not evaluating the professional performance and in that case the data obtained is lawful.

**Constitutional Court ruling No. 102/2016. D.R No 61/2016, Series II, of 29-03-2016**

Holds unconstitutional the provision of paragraph 3 of Article 7 of Decree-Law No. 333/97 of 27 November, on the copyright and related rights applicable to satellite broadcasting and cable retransmission.

#### IV RESOLUTIONS, RECOMMENDATIONS, OPINIONS AND OTHER

**Executive Summary of the Opinion of the European Data Protection Supervisor. OJEU C 67/13 of 20.02.2016**

On 'Meeting the challenges of big data: a call for transparency, user control, data protection by design and accountability'.

**Executive Summary of the Opinion of the European Data Protection Supervisor.  
OJEU C 79/9 of 1-03-2016**

On the dissemination and use of intrusive surveillance technologies

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