

IP & IT NEWSTICKER IN CEE/SEE OCTOBER 2015

EUROPEAN UNION

Safe Harbor invalid!

On 6 October 2015, the CJEU has issued highly awaited ruling on the Safe Harbor framework declaring the Safe Harbor decision invalid. The CJEU reasoned that the Safe Harbor restricts national supervisory authorities' power to ensure compliance with the Data Protection Directive 95/46/EC when reviewing requests for clearance of data transfers to Safe Harbor certified companies in the USA.

The CJEU highlighted that a local data protection authority (DPA) may suspend the data transfer to the USA if it believes that personal data are not adequately protected.

The EU Commission and representatives of local DPAs are discussing issuing guidelines for DPAs to ensure a coherent approach within Europe. In a press conference, the EU Commission also emphasized that it plans to elaborate a renewed and safe framework for transatlantic data flows. The decision of the CJEU will put further pressure on the negotiations between the USA and the EU.

ALBANIA

Newly Established Collaboration

In July 2015 the Albanian General Directorate of Patent and Trademarks entered into a cooperation agreement with OHIM. The agreement supports collaboration between the two entities and seeks to guarantee better protection of trademarks and industrial designs in the European market. The new agreement also improves the registration procedures for trademarks and industrial designs by bringing these in line with EU registration procedures.

In August 2015 the Albanian General Directorate of Patent and Trademarks also entered into a cooperation agreement with EPO. The intention of the agreement is to reinforce the protection of European Patents in the territory of Albania and to improve the administrative functioning of the Albanian Patent Office.

AUSTRIA

Amendment of Copyright Law: Storage Media Levy on Second Generation Storage Devices

Modern technology copyright protected works may be reproduced easily for private use. The copyright levy ("levy on blank recording-tapes") was introduced in 1980 by Sec 42b para 1 of the Austrian Copyright Act for the purpose of compensating the originator for losses sustained due to the reproduction of copyright protected works for private use through audio and video cassettes. The rapid technological developments of the past decades, however, called for an amendment of the outdated copyright levy.

The amendment to Sec. 42b of the Austrian Copyright Act entered into force on 1 October 2015, and replaced the "levy on blank recording-tapes" with the "storage media levy." It provides for a remuneration obligation for second generation storage devices suitable for reproductions for private use, such as USB flash drives, hard drives and smartphones. Yet, this amendment will not create substantive changes but rather transform the recent case law of the Austrian Supreme Court and the European Court of Justice.

The storage media levy pursuant to Sec. 42b para 3 of the Austrian Copyright Act shall be paid by the persons who, acting on a commercial basis and for remuneration, either inside or outside of Austria, are the first to place on the domestic market storage media capable of reproducing copyright protected works. Larger domestic companies who offer or sell storage media in Austria for remuneration, but are not the first to place it on the market, are liable as jointly and severally liable debtors. Persons convincingly not using media storage for the reproduction of copyright protected works for private use are not covered by the provisions of the Austrian Copyright Act on storage media levy.

The collection societies are entitled to collect the aforesaid copyright levy and are further responsible for negotiating the amount of the storage media levy, whereby the maximum amount may not exceed six percent of the price of the storage media.

Despite the efforts of legislators to adapt the copyright levy to modern conditions, some claim that the amendment to Sec. 42b of the Austrian Copyright Act is already out-of-date, since other online storage such as cloud-services (where possible private copies are not filed as data storage but on the servers of the cloud-providers) or streaming-services are not reflected in the amended Austrian Copyright Act.

BOSNIA & HERZEGOVINA

Employer owns employees' IP rights

Recently the Federation of Bosnia and Herzegovina (one of the two separate entities of Bosnia and Herzegovina) (FBiH) has adopted a new labor law, which regulates that employers are the owners of employees' innovations, patents and industrial designs which are created during their work relationship or in connection with the work relationship. The previous labor regulation in FBiH stipulated that the above mentioned IP rights were owned by the employees, and employees were only obliged to inform the employers of such IP rights and to offer to sell the IP rights to the employers.

On the other hand, in the Republic of Srpska (RS) (the second entity within Bosnia and Herzegovina) the above mentioned amendments in relation to ownership over the IP rights between employers and employees has not been adopted, and the employee remains the owner of the IP which he/she created (even if such IP rights are the result of the employee's work relationship with the employer).

Such opposite approaches in the regulation of the employer – employee right in connection with inventions, patents and designs, will cause many issues and ambiguities in determining who is actually the owner of the IP rights. E.g. in a situation where employees of the same employer but resident in different entities, i.e. some resident in FBiH and some in RS, contribute to the same patent, employees whose residence is in FBiH will not be considered as the IP right holders, while the employees residing in RS will hold such rights.

BULGARIA

Lawyers are not controllers (administrators) of personal data

The Bulgarian Supreme Administrative Court ruled that lawyers are not controllers of personal data. The decision is contrary to the hitherto practice of the local regulatory body (the Commission for Personal Data Protection).

The Commission argued that because lawyers collect and store personal data of their clients in their day-to-day practice, lawyers should be considered controllers of personal data. The Commission maintained that lawyers should be registered with the Commission and should provide information on the types of client data stored and processed.

Notwithstanding the Commission's practice, on the grounds of the special statutory provisions regulating the legal profession in Bulgaria, both lower instance courts ruled that lawyers are not controllers of personal data. In short, because provisions of the Bulgarian Bar Act do not require lawyers to keep register(s) of their clients and because

lawyers' papers, files and other means of storing information are inviolable and cannot be subject to inspection, copying, verification or seizure, the legal profession does not fall under the scope of the Personal Data Protection Act and, therefore, lawyers should not be obliged to register as controllers of personal data. Further, the Supreme Administrative Court emphasized that lawyers' client data is protected by lawyers' statutory obligation to keep the secrets of their clients and, thus, the main purpose of the Personal Data Protection Act (i.e. to guarantee the inviolability of personality and privacy) is achieved.

The Supreme Administrative Court's decision ends the discussion on the issue and it can be expected that the local regulatory body will change its practice in this regard.

CZECH REPUBLIC

Launching ePCT system

Czech IPO in cooperation with the World Intellectual Property Organization (WIPO) has launched a system for electronic filing of PCT applications. The system is running since 1 July 2015 and allows users to file PCT applications to the IPO as receiving Office in fully electronic form.

Czech Republic participates in the Federated European Patent Register

As of 24 September 2015, the Czech Republic is involved in the Federated European Patent Register (<http://www.epo.org/searching/free/register/archive/20150629.html>). The Federated Register is contained in the European Patent Register which provides data on the legal status of European patents in the national phase. Apart from the Czech data, also Finnish, Luxembourg, Romanian and Slovenian data are available from the registry.

Operator of the national security team selected

The National Security Authority has chosen an operator of the National Security Team CSIRT.CZ. Cyber security remains in the hands of CZ.NIC, which has been operating the security system since 2011. CSIRT.CZ is a stable part of the international security community and a member of international organizations with associate security teams from around the world.

StartupYard looks for new startups

Prague startup accelerator StartupYard expanded its group of investors and offers more than thirty thousand Euros to new teams. The offer is focused on security, data analytics, mobile phones and particularly on the Internet of Things. Startups are allowed to sign up their projects till the end of October.

Data boxes for everyone?

Members of the Economic and Social Committee of the Parliament entrusted the Ministry of Interior with the examination of the possibility of involving all citizens in the data box system of the Czech Republic. The aim of the proposal is to unify the forms of communication between the state and citizens. Members of the opposition point out that not all citizens would be able to operate the data boxes. Furthermore, they emphasize that the availability and reliability of Internet access could be a significant difficulty regarding the potential obligatory system.

The Internet of things

By the end of 2016, the entire Czech Republic shall be covered by Sigfox network which is designed for the automatic exchange of short messages between two machines. The Internet of Things will be activated by T-Mobile in cooperation with SimpleCell Networks, which is planning to build a network on the base of existing T-Mobile devices.

Cyber Arena

Early in 2016, cyber arena shall be established near Prague as the first commercial arena implemented in Europe. Customers will be able to experience what is like to be confronted by a professional hacker and trained to recognize and resist such attacks.

HUNGARY

Utility tax relief – good news for telecommunication companies in Hungary

According to Hungary's 2016 tax package, new utilities (that is, cable and other similar infrastructure that is subject to the Hungarian utility tax) built by local companies will only be subject to the Hungarian utility infrastructure tax six years after they commence operations. The new regulation also applies to Internet service providers when they replace old cables with new ones. The tax relief comes as a particularly good piece of news to Magyar Telekom (Deutsche Telekom's Hungarian subsidiary), which intends to engage in a significant network development project. By the end of this year, Magyar Telekom wants to boost fixed-line broadband Internet coverage to over 2.2 million households from the current 1.8 million.

Internet tenders – good news for IT companies

A new infrastructure development tender was published pursuant to which IT companies may tender for an amount up to HUF 3 billion (approx. EUR 9,520,000) for broadband infrastructure development project investments. The purpose of the tender is to expand the 30 Mbit/s bandwidth Internet coverage to the entire territory of Hungary by 2018.

In accordance with the timetable of the published tender, the government will decide on

each application within 47 days from submission. Applicants must cover 10% of the total project costs from their own funds; however, payment of advances (up to 25% of the costs, with a maximum amount of HUF 300 million ca. EUR 952,000) in case of SMEs and HUF 150 million (ca. EUR 476,000) in case of large enterprises) is also possible. After the completion of each project, the winning applicant will be required to operate the established infrastructure for a period of at least seven years or it must repay the received amount. According to the current plans, bids can be submitted in two phases, first in mid-September, then during November.

To facilitate the development of the project, a proposed piece of regulation would enable the establishment of electronic telecommunication infrastructures mainly on state-owned public territories and every owner and operator of utility infrastructure will be obliged to grant access – at fair price and under fair conditions – to its own infrastructure.

National Media and Infocommunications Authority approves the acquisition of Viasat Hungária by Columbia Pictures

MTG Broadcasting AB (intends to sell 100% of the shares of its wholly-owned subsidiary Viasat Hungária Műsorszolgáltató Zrt. to Columbia Pictures Corporation Limited. The subsidiary operates several TV channels in Hungary. Before the merger control approval of the Hungarian Competition Authority, the National Media and Infocommunications Authority's consent was also necessary. The media authority found that the acquisition would not result in an increase of concentration and would not threaten the diversity of content, and therefore did not prevent completion of the contemplated deal. The final decision will be adopted by the Hungarian Competition Authority during the merger control proceedings.

POLAND

Amendment of the Industrial Property Act

On 5 August the Polish President signed an amendment to the Industrial Property Act which becomes effective on 30 November at the latest. The amendment introduces several important changes, including a grace period according to which it will be possible to obtain a patent despite the disclosure of an invention by third parties, if the application is filed no later than six months after a disclosure which was an obvious abuse in relation to the applicant or its legal predecessor. Under the current law the invention needed to be novel, meaning it could not have been disclosed in any way, anywhere in the world.

The Constitutional Court stated that strict rules of calculation of compensation for intentional and unlawful usage of an author's economic rights is unconstitutional

On 23 June 2015, the Polish Constitutional Court ruled that art. 79 of the Law on Copyright and Derivative Rights is unconstitutional as to the part which states that the right holder may request the infringer to pay triple the amount of the royalty that would have been due to the right holder authorizing the use of the work. The Court stated that the rule could lead to a situation in which the compensation might be higher than the actual damage of the right holder. In the view of the Court this article does not meet the principle of proportionality.

Changes in Polish Law on Copyright and Related Rights

On 1 August 2015, changes in the Law on Copyright and Derivative Rights, which implement Directive 2011/77/EU, came into force. The amendments introduced included longer protection of performances fixed in phonograms from 50 to 70 years. Another amendment which will significantly extend the fair use regulation is currently being processed in the Polish Parliament.

ROMANIA

Additional information obligations for providers of electronic communication public networks with respect to premium rate SMS and MMS

The Romanian National Authority for Management and Regulation in Communications ("ANCOM") has imposed new obligations with respect to the information of end users on the tariffs for short messages (SMS) and multimedia messages (MMS) to numbers enabling the delivery of value-added content services, such as games, contests, technical support, horoscopes or applications for mobile telephones.

Under the ANCOM code of conduct in force as of 27 August 2015, users must receive clear information on the applicable tariff and on the charging method for their SMS/MMS: (i) each time they are informed of an internal network or national number or the short code corresponding to a value-added service (prior to the delivery thereof), (ii) upon the initiation of a value-added service, and (iii) during the delivery of the value-added service.

If the information messages sent to the users are charged, the respective fee cannot exceed the tariffs for national SMS/MMS in each user's tariff plan. The details regarding the consumption of value-added services offered through internal networks or national numbers, as well as through short codes, must be specified in the detailed invoice issued by the provider.

SERBIA

Telekom Srbija up for sale

Earlier this year, Serbia hired French consultancy firm Lazard Freres as advisor for the pending sale, as well as to determine Telekom Srbija's value and to prepare an economic, legal and market analysis of the company.

The Serbian government owns a 58.11% stake in the company. Smaller shareholders own 14.95%, while company employees own 6.94%. The remaining 20% is held by the company itself. The Serbian Prime Minister said that the sale could bring in around EUR 3 billion, according to local media reports, of which around 78% would be the state's share. Telekom Srbija owns Montenegrin mobile operator m:tel and is the majority owner of Telekom Srpske, Bosnia's second-largest telecommunications company.

The sale of Telekom Srbija is rather controversial as there was an attempt to sell it in 2011 followed by months of speculation on the nature and size of the sale. Moreover, representatives of Telekom Srbija's unions have previously been against the sale, pointing out that the company accounts for 12% of Serbia's budget revenues and that they are concerned about possible redundancies following the privatization. Moreover, the Anti-Corruption Council has recommended to the Serbian government that it should not sell Telekom Srbija at the moment, but rather, should restructure it in order to improve its business performance.

Sale of state-owned media launched

A sale of 38 state-owned media was launched in June 2015 by the Privatization Agency of the Republic of Serbia, including the 72 year-old Belgrade-based Tanjug news agency. The estimated starting prices for all 38 media on sale amounts to some EUR 10 million.

Decree on Subsidies for Investors to produce audiovisual works in Serbia

In August 2015 the Serbian government adopted a Decree on Subsidies for Investors to Produce Audiovisual Works (Official Gazette of the Republic of Serbia No.72/2015). Pursuant to this Decree, investors may apply for subsidies to produce audiovisual works such as motion pictures, documentary films, animated films, television films and television series.

Subsidies are granted as non-refundable funds, by return of part of the qualified expenses generated in Serbia for the production of audio-visual work. An eligible investor must meet the following requirements in order to apply for the subsidy: to earmark in the production budget funds in an amount greater than (i) EUR 300,000 for motion pictures, TV films or TV series, (ii) EUR 150,000 for animated films, audio and/or visual postproduction of audio-visual work, (iii) EUR 100,000 for special purpose films, or (iv) EUR 50,000 for documentary films.

An investor who is granted a subsidy is obliged to include information that the Republic of Serbia financially supported the production of the respective audio-visual work in a visible place, and in all versions and copies of it and everywhere where the audio-visual works is shown.

Industrial Design Protection Act amendment

In May 2015, the Serbian Parliament adopted amendments to the Industrial Design Protection Act. Most of the amendments were made for the purpose of further alignment with EU regulations, namely EU Directive 2004/48/EC on the Enforcement of Intellectual Property Rights and EU Directive 98/71/EC on the Legal Protection of Designs, as well as the TRIPS agreement. The amendments were also made for the purpose of having a more precise terminology used therein as well as to provide for a more efficient industrial design protection system.

SLOVAK REPUBLIC

Act on European Protection Order in Criminal Cases

The government approved a new Act on European Protection Order in Criminal Cases on 1 July 2015. It transposes the EU directive 2011/99/EU on European Protection Order and 2013/40/EU on Attacks on Information Systems. It facilitates the acknowledgment of protection orders levied in other EU countries and gives the police more powers in dealing with cybercrimes. The government proposed an effective date of 1 January 2016.

Government signs agreement on Microsoft products

The Finance Ministry had previously called a tender for 4-year licenses and support for Microsoft software for all public institutions, worth EUR 47 million.

The Finance Ministry signed a 3-year EUR 55.8 million license agreement for Microsoft products with BSP on 15 July 2015. The software supports the work of 86,000 clerks, judges, and policemen.

The state did not audit its needs prior to signing the contract. It will pay for full licenses for the MS Office suite for all clerks, although most of them only use some portion of older versions of the software. If the license agreement was not signed at all, the officials would still be able to use the older versions legally.

DT agrees Slovak Telekom buy-out for EUR 900 million

Deutsche Telekom announced an agreement to acquire the remaining 49 percent in Slovak Telekom it does yet own from the Slovakia government for EUR 900 million. The Slovak government earlier planned an IPO for its stake, until it received a better offer

from the German operator.

The acquisition of the remaining shares allows for simplification of the capital and governance structure of Slovak Telekom and will keep a greater share of cash at the operator, as no future dividends to minority shareholders will take place.

Slovak Telekom is already fully consolidated by Deutsche Telekom, so the transaction has no impact on group revenue and EBITDA.

National Security Authority NBÚ calls a tender for IT services

The security authority NBÚ called a EUR 16.2 million tender to select the provider of eGovernment services and hardware with a deadline for bids of 25 August 2015.

Embraco to build a service center

Brazilian compressor maker Embraco plans to build a EUR 5 million shared service center in Košice, in which 120 experts will provide services in the area of finance and HR.

The Spišská Nová Ves-based plant of Embraco employs 2,400 people.

Government approves the new Copyright Act

The Slovak government has passed new legislation, the Copyright Act 185/2015 Coll. (the "Act") on 5 August 2015 and it is to take effect on 1 January 2016.

The Act is a reflection of the latest European intellectual property trends and aims to improve the enforceability of intellectual property rights, especially through the control of collective management organizations such as the Slovak Performing and Mechanical Rights Society by publishing required information to intellectual property rights holders and the wider public.

The Act further defines and pays special attention to specific forms of work arrangements, including employees' work, school work, work on order and joint work. The Act further removes work for commissioned artwork and introduces changes to license agreements including the author's option to terminate the license agreement in the event of non-use.

The Act addresses in particular audiovisual works and computer programs.

SLOVENIA

Amendment of the Copyright and Related Rights Act

On 30 July 2015 amendments to the Copyright and Related Rights Act came into force. Most of the amendments concern alignment with the European Directive 2012/28/EU on certain permitted uses of orphan works. The amendments also introduce two new limitations on copyright, namely in favor of disabled persons and public libraries, museums, archives and educational institutions. Both limitations are aligned with the European Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society.

Draft Act on Collective Management of Copyright and Related Rights

In August 2015, the Slovenian Ministry of Economic Development and Technology presented a draft Act on Collective Management of Copyright and Related Rights. The proposed law transposes into Slovenian legislation the European Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. The aim of the new legislation is to ensure more transparent and efficient performance of collecting societies and better protection of right holders. The proposed act is open to public debate and interested public were able to submit comments until 30 September 2015.

Proposed amendments to the Electronic Communications Act

In June 2015, the Slovenian Ministry of Education, Science and Sport presented a draft of the Act Amending the Electronic Communications Act. The proposed amendments aim to transpose the Directive 2013/11/EU on alternative dispute resolution for consumer disputes into Slovenian legislation. Until now disputes between consumers and operators (undertakings providing networks or services) in the area of electronic communications could be settled with the assistance of the Agency for communication networks and services of the Republic of Slovenia. The proposed amendments of the Electronic Communications Act introduce the possibility to engage other alternative dispute resolution entities, provided they fulfill the necessary criteria as defined by the Act on Out-of-Court Consumer Dispute Resolution. The draft is still in the process of inter-ministerial coordination. The exact date of adoption of the new law is not yet known.

National Strategy on Open Access to Scientific Journals and Research Data in Slovenia 2015 – 2020

In August 2015, the Slovenian Government published a draft document called National Strategy on Open Access to Scientific Publications and Research Data in Slovenia 2015 – 2020. The aim of the government is to establish open access to scientific books, magazines, information (in the form of peer-reviewed scientific journals) and research data, which are the result of publicly financed research projects and activities. Through this and contrary to the current legal regime on open access and re-use of public sector

information, the government wants to achieve full internet-based access to publicly financed scientific research projects (as well as their safe storage), for which no cost would be charged to the users.

Slovenian Information Commissioner issued a report about the use of drones

In June 2015, the Slovenian Information Commissioner, responsible for supervision over the implementation of the Slovenian Personal Data Protection Act, issued a report about the legal challenges and potential risks associated with the use of drones. The report addresses specific questions relevant for understanding the effects that drone technology can have on protection of personal data and the right to privacy. The aim of the report is to encourage public debate about these issues and to contribute to potential legislative changes.

UKRAINE

3G launch by mobile operators

Following the 3G frequencies auction action held in February 2015, the Ukrainian mobile operators (Kyivstar, MTC and life:) are actively deploying the 3G network using WCDMA 2100 technology. Currently, three companies provide 3G in Kyiv, Odesa, Lviv, Dnipropetrovsk and Vinnitsa.

Strong competition from rivals and the features of the technology require prompt actions. For example, MTC cooperates with 3Mob telecom operator to provide 3G to the users and in parallel deploys its own network. However, Kyivstar is now leading and covers 274 municipalities (its network is developed based on HSPA+ standard). The market share potential is eight million users having devices supporting 3G out of 24.7 million users of the mobile Internet. The growth of the Ukrainian economy triggered by access to the high speed Internet is expected upon completion of the 3G network deployment.

To initiate further development of technology, the Order "On Provision of Terms for Implementation of Mobile Communication of the Fourth Generation" No.445/2015 dated 21 July 2015 has been signed by the President of Ukraine. The order instructs the Cabinet of Ministers of Ukraine and other state authorities to create an action plan for 4G development in 2017. It is anticipated that the next generation communication capabilities will allow Ukraine to bridge the currently existing technological gap with neighboring countries.

Creation of IT infrastructure clusters in progress

Summer turned out to be busy for IT companies. On 23 July 2015, the formation of an IT cluster was announced in Kharkiv. It unites the biggest IT companies operating in the region, including AltexSoft, INSART, Promodo, Sloboda Studio, Telesens and Videal. The

Kharkiv IT Cluster aims to develop a favorable IT environment, cooperate with local and state authorities, create infrastructure for the local development of the IT industry and promote Kharkiv-based companies abroad. As of 2015 around 22 thousand individuals are engaged in the IT industry in the region.

On 18 August 2015, the Odesa IT cluster was established. Its goals are identical to those of the Kharkiv cluster, with a focus on educational programs. Among the members of the cluster are various product and outsourcing IT companies, including Augmented Pixels, Clickky, Looksery, Luxoft, Intersog, NetCracker, Provectus, DataArt, Lohika, Ciklum and Sigma.

As a result, IT clusters are now established in three (including Lviv) out of five key IT cities in Ukraine. In Lviv and Kyiv smart city projects were developed to promote and implement the innovative economy. Moreover, in Lviv foreign companies involved in infrastructure and technologies started negotiations on their participation in the project.

Access to TM applications register permitted

Experts and state authorities have been discussing the lifting of restrictions on access to a register for trademark applications for about a decade. The main purpose of this is to permit access to information regarding trademark right holders and to enable the challenge of bad faith trademark applications.

Finally, the Ukrainian Patent Office has started partial implementation of this reform. On 21 August 2015, it granted public access to the applications already examined (the formal examination stage) by authorized state bodies up until 20 August 2015. The database allows searching by key word as well as by the applicant's name. It is not possible to search through classes of goods and services. The relevant fees apply for review of materials of the application. The database is available at:

<http://base.uipv.org/searchBUL/search.php?dbname=apptmc>

Rules for access to the trademark applications database are not yet provided for by the legislation, thus the Patent Office has full freedom of action in this respect. No liability is established by law for inaccuracy of information contained in the database. The information on applications will cease to exist in the register once the trademark certificate is issued, thus the right holders should monitor both the applications register and the issued trademark certificates register.

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