

NEWS FROM THE FIRM

Labour practice awarded rising star prize

At the [Legal Community Awards gala dinner](#) on 26 September our labour practice received the rising star in Italy award.

Digital Single Market copyright panel at the Italian Parliament

On 10 October 2016, our partner [Fabrizio Sanna](#) spoke at a [panel session](#) organised by the Italian Parliament on The Digital Single Market copyright.

Advising ELEVENTY on a joint venture in North America

A team lead by partner [Paolo Canal](#) (with [Simone Masotto](#) and [Nicola Dolci](#)) assisted the fashion group Eleventy in establishing a joint venture with a US distribution partner.

Recent publications

[Marco Consonni](#), [Ludovico Anselmi](#) and [Edoardo Iannone](#), "Milan court denies blanket copyright injunction request", in Digital Business Lawyer 2016, 10.

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ANTITRUST

AGCM launches online hotel booking monitoring project

The Italian Competition Authority (AGCM), in partnership with the European Commission and nine other national competition authorities has launched [a project to monitor the online hotel booking sector](#). The aim is to assess the impact of certain of the measures undertaken in the online hotel reservations market as a result of the Authority's decisions adopted in April 2015 (decision no. 25422) and March 2016 (decision no. 25940). In particular, the analysis concerns the impact of the new "parity clauses" adopted by online travel agencies in their contracts with hotels. The joint monitoring work is expected to be completed by the end of 2016.

COPYRIGHT

ECJ judgment on private copying levy

On 22 September 2016, the European Court of Justice (ECJ) issued its judgment in [case C-110/15](#) (Microsoft Mobile Sales International Oy and others v. SIAE and others), the ECJ held that Article 5(2)(b) of [Directive \(EC\) No. 2001/29 of 22 May 2001](#) (the "InfoSoc Directive") must be interpreted as precluding national legislation (specifically Italian laws) establishing a system of fair compensation under which a private copying levy is charged even on devices and media acquired for purposes clearly unrelated to private copying and where a possible exemption from that levy is left to negotiation between SIAE and the persons obliged to pay compensation and/or under which reimbursement for an unduly paid private copying levy may be requested only by the end user.

ECJ judgment on linking

On 8 September 2016, the European Court of Justice (ECJ) issued its judgment in [case C-160/15](#) (Microsoft Mobile Sales International Oy and others v. SIAE and others) on whether the posting of hyperlinks to a third party website, on which unlicensed copyrighted content is freely accessible, is an "act of communication to the public" within the meaning of Article 3.1 of [Directive \(EC\) No. 2001/29 of 22 May 2001](#) (the "InfoSoc Directive"). Whilst the [Advocate General in his 7 April 2016 opinion](#) answered negatively, the Court made a distinction between links provided "not for of financial gain" and those provided for financial gain. Links to unauthorized copies of copyrighted works that are provided not for of financial gain will constitute a "communication to the public" only if the poster of the link knew (or should have known) that the publication of the work on the other site was illegal. On the other hand, in the case of links provided for financial gain, knowledge of infringement will be presumed unless proof is given that the poster of the link did not know (and should not have known) that the content was infringing.

LABOUR

Stock options

In its judgment (No. 15271/2016) of 22 July 2016, the Italian Supreme Court held that the purpose of a stock option plan is to stimulate productivity and retain employees. For this reason, according to the Supreme Court, a stock option plan is to be considered as income from employment, equivalent to sharing in the company's profits, as provided for article 2099 of the Italian Civil Code.

CAPITAL MARKETS

STAR segment: compliance with black-out periods

On 9 September 2016 (notice no. 17077), Borsa Italiana S.p.A. amended the Rules of the Market organized and managed by Borsa Italiana (the "Rules"), following the entry into force of [Regulation \(EC\) No. 596/2014 of 16 April 2014](#) on market abuse ("MAR"), which repealed, inter alia, [Directive \(EC\) No. 2003/6 of 28 January 2003](#). Article 19.11 of MAR provides for a "closed" (aka "black-out") period of 30 days before the announcement of an interim financial report or a year-end report during which persons with managerial responsibilities at the relevant issuer ("PDMRs") are prohibited from undertaking any transactions on their own account or for the account of a third party relating to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked thereto. With regard to issuers whose shares are admitted to trading on the STAR segment, the Rules have been amended by deleting references to the black-out period. In this respect, the MAR provisions will take precedence over the Rules and shall apply directly. The repealed provisions prohibited PDMRs from carrying out relevant the transactions referred to above during the 15 days period prior to the Board of Directors' meeting convened to approve the interim financial report (Article 2.2.3, paragraph 3, let. p.).

DATA PROTECTION

New Code of Conduct in force

On 1 October 2016, the Code of Conduct issued by the Italian Data Protection Authority on the processing of personal data for the purpose of commercial information (the "Code") entered into force, in accordance with Decision no. 479/2015. The Code is addressed to companies that collect and provide information concerning the reliability of commercial business owners and managers. In particular, the Code allows for data processing of information on relevant business owners and managers without consent in cases where the data (a) is available to the public, e.g. public registers or public court documents, and/or (b) are provided by public media sources, such as newspapers, websites, telephone directories. Nevertheless, certain obligations are binding for the operators, who may process only relevant and updated data. Finally, each operator must indicate the source of the data subject to processing. For the full text of the Code of Conduct, please [click here](#).

FINANCE

The CICR resolution on compound interest

On 10 September 2016, the [resolution of the Interministerial Committee for Credit and Savings \("CICR"\) dated 3 August 2016](#) (the "Resolution"), implementing Article 120 of the Legislative Decree No. 385/1993 (the "TUB"), was published in the Italian Official Journal. The Resolution sets forth procedures and criteria for the generation of interest in the context of transactions related to the exercise of banking activity. Intermediaries are required to apply the Resolution to interest accruing from 1 October 2016. The Resolution provides, inter alia, that: (a) principal and interest shall be accounted for separately by the intermediary; and (b) interest may not accrue on interest, except for default interest. Agreements currently in force are to be amended unilaterally by intermediaries or, with respect to agreements which may not be amended unilaterally, the intermediaries shall propose the relevant amendments to their clients by 30 September 2016.

INDUSTRIES

E-COMMERCE

German court refers selective distribution systems to the ECJ

In July 2016 the Frankfurt Court of Appeals submitted [a request for a preliminary ruling to the EU Court of Justice](#) (ECJ) on whether selective distribution systems which include a ban on sales via third-party internet platforms are compatible with Article 101 of the Treaty on the Functioning of the European Union ("TFEU"). The referral to the ECJ originates from a dispute between the luxury cosmetics manufacturer Coty and one of its retail distributors (Akzente), after Coty included the ban in its EU-wide selective distribution system, identifying the need to maintain the luxury image of the brand as the primary reason for the qualitative criteria imposed. The ECJ's decision on the referral – due next year – will provide clarity on selective distribution systems and their justification for luxury goods in the EU, thus setting a benchmark for future EU-wide relationships between manufacturers and distributors.

EU Commission publishes initial findings of e-commerce inquiry

On 15 September 2016, the European Commission published a [Preliminary Report on its e-commerce sector inquiry launched in May 2015](#) in the context of its Digital Single Market strategy. The report confirms the rapid growth of e-commerce in the EU and identifies business practices which may restrict competition and limit consumer choice. With regard to the online sale of consumer goods, the report finds that manufacturers have responded to the growth of e-commerce by adopting a number of practices in order to execute greater control on the distribution of their products and the positioning of their brands (such as selective distribution systems). The report also finds that complex and often exclusive copyright license agreements of digital contents limiting territories, technologies and release exploitation windows, may restrict competition. The Preliminary Report is now open to public consultation for a period of two months and the Commission expects to publish a final report in the first quarter of 2017.

MEDIA

Digital single market: the EU Commission proposes a new copyright regulation

On 14 September 2016, the European Commission put forward [a proposal for a directive on copyright in the digital single market](#), which is aimed at further harmonising EU copyright laws. The proposal deals with several aspects of copyright regulation, including copyright exceptions (Title II), exploitation of out-of-commerce works (Title III) and online use of protected contents (Title IV, Chapter 2). In relation to online use, the proposal aims at strengthening the level of protection and fostering dialogue between ISPs and right-holders. ISPs granting access to (large amounts of) copyrighted works should conclude licensing agreements with the right-holders for the use of their works or prevent the availability of works identified by right-holders. This does not apply to hosting providers eligible for liability exemptions under art. 14 of the 2000/31 directive. In order to assess the applicability of art. 14, the proposal states that "it is necessary to verify whether the service provider plays an active role, including by optimising the presentation of the uploaded works or subject matter or promoting them" (recital 38). All ISPs (even if eligible for liability exemptions) should implement suitable technical measures to protect hosted works.

TECHNOLOGY

EU project to simplify cloud computing agreements

A process for the standardisation of contract terms and conditions and service levels for cloud computing agreements has been financed in the context of the EU Commission Horizon 2020, under the so-called SLALOM Project (Service Level Agreement Legal and Open Model). In particular, SLALOM programme provides "ready-to-use" contractual templates that include a Master Service Agreement and a Service Level Agreement that can be used as a flexible starting point for the drafting of specific agreements. In addition, SLALOM drafts are aligned to ISO standards on cloud services. For further information on the SLALOM Project, please [click here](#).

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