

NEWS FROM THE FIRM

The firm wins for Yahoo! before the Italian Supreme Court

A team led by [Marco Consonni](#) and [Ludovico Anselmi](#) successfully defended Yahoo! in proceedings before the Italian Supreme Court regarding the liability of Yahoo! (as an Internet service provider) for infringement of copyright in videos viewed via links resulting from its search engine. The Supreme Court held that Yahoo! was not liable for those links, with the exception cases in which a court (or regulator) had ordered their removal.

The firm advises Fondazione Carispezia in Carispezia/Crédite Agricole Italia banking deal

A team led by [Mario Ortu](#) and [Paolo Canal](#) (and including [Pietro Masi](#)) assisted Fondazione Carispezia on the sale of its holding in Carispezia and the purchase of a stake in Crédito Agricole Italia.

The firm with Antares for its first day of trading on AIM Italia

A team led by [Pierfancesco Giustiniani](#) (including [Elisa Cappellini](#) and [Enrica Di Cagno](#)) assisted the company Antares (a leader in the field of the manufacture of control systems for the pharmaceutical industry) in the enrolment with the AIM Italia through the business combination with ALPI.

The firm with Unicredit in IRE-EVAF (Italy) SICAF financing

A team led by [Manfredi Leanza](#) (with [Federica Paniz](#), [Mariachiara Crea](#) and [Riccardo Valgoi](#)) advised Unicredit Bank the SICA financing of IRE-EVAF (Italy).

The firm wins for SGM Geologia e Ambiente in a patent case before the Court of Turin

A team led by [Marco Consonni](#) and including [Ludovico Anselmi](#) successfully defended SGM Geologia e Ambiente in proceedings for the invalidity of a competitor's patent before the Court of Turin. The Court held the patent invalid and found the client's competitor liable for unfair competition.

The firm with Impact Lab in the purchase of Toma Advanced Biomedical Assays

A team led by [Nicola Barra Caracciolo](#) and [Paolo Canal](#) advised the company Impact Lab on the purchase of Toma Advanced Biomedical Assays.

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COPYRIGHT

European Parliament approves the Directive on Copyright in the Digital Single Market

On 26 March 2019, the European Parliament adopted the [latest version of the proposal for a Directive on Copyright in the Digital Single Market](#), with 348 votes in favour, 274 against and 36 abstentions. Following publication of the text of the directive in the Official Gazette, Member States will have two years to transpose it into their national laws. Among the main changes, the copyright directive clarifies that online content-sharing service providers (such as YouTube and Facebook) perform an act of communication to the public, or an act of making items available to the public for the purposes of this directive, when they give the public access to copyright-protected works or other protected subject matter uploaded by their users, and therefore they may be found liable for copyright infringement in relation to such content uploaded on their platform by users. In addition, the directive clarifies that journalists must receive a share of any copyright-related revenue earned by publishers. The directive also establishes that (a) hyperlinks to news articles, accompanied by "individual words or very short extracts" (i.e., snippets), may be shared freely by users, (b) uploading work to online encyclopaedias (such as Wikipedia) or open-source software platforms (such as GitHub) in a non-commercial way is excluded from the scope of the directive and (c) start-up platforms are subject to less stringent obligations than those provided by the directive for other Internet operators.

LABOUR

Italian Supreme Court on employment termination letters

On 1 February 2019, the Italian Supreme Court issued a judgment (No. 3147/2019) in a case regarding the dismissal on economic grounds of an executive whose employment relationship was governed by the National Collective Bargaining Agreement for executives in the industrial sector. The Supreme Court confirmed the prior decision of the Court of Appeal of Milan which held that dismissal to be fair and lawful, even though the economic grounds provided by the employer in the termination letter were very brief and limited. In its judgment, the Supreme Court stated that the grounds for dismissal provided by the employer in the termination letter, albeit somewhat generic and insufficient, may lawfully can be supplemented and clarified at a later stage before the labour courts, provided the termination letter is not so generic as to prevent the executive from understanding the overall basis of the employer's decision to dismiss.

PATENT

Computer implemented simulations referred to the Enlarged Board of Appeal

On 28 February 2019, the EPO Technical Board of Appeal in [case T-0489/14](#) referred the case to the EPO Enlarged Board of Appeal with regard to a number of questions relating to the assessment of inventive steps as far as computer implemented simulations are concerned.

Supreme Court on revocation of licensed patent

On 5 March 2019, the Italian Supreme Court issued a [judgment \(No. 6373/19\)](#) which overturned the decision issued by the Court of Appeal of Rome which held that, as a consequence of revocation of a licensed patent, the relevant license agreement is terminated and the licensor is obliged to return to the licensee all the royalties paid. The Supreme Court determined that this decision is not compliant with Article 77(b) of the Italian Intellectual Property Code, according to which patent revocation does affect previously paid royalties (the Court may only order that an equitable amount be returned to the licensee).

ISP

Supreme Court: No "Take Down" obligation on search engines in absence of a court order

Search engine service providers (included in the category of caching providers) are obliged to deindex websites containing unlawful contents only when ordered to do so by a judicial or administrative authority. This decision of the Italian Supreme Court ([judgment of 21 February 2019, No. 7709](#)), puts an end to the long dispute between Refi Televisive Italiane S.p.A. (a member of the Mediaset group active on the Italian TV market) and Yahoo! (the provider, *inter alia*, of the Yahoo! Search service). In summary, RTI claimed that Yahoo! was liable on the basis of not having complied with a written request of RTI seeking the deindexing of pirate websites showing excerpts of its copyrighted transmissions. The position taken by Yahoo! in its response was that the relevant letter was not capable of triggering any ["take down"] duties, also on the basis it did not give any indication of the URLs (Uniform Research Locator) of the sites to be [de-indexed]. The Supreme Court rejected RTI's claims and gave the following ratio for its decision: "in relation to information society services, liability for "caching", provided for by art. 15 of Legislative Decree no. 70 of 2003, is the responsibility of the service provider where it has not immediately removed the unlawful contents, despite having been ordered to do so by an administrative or judicial authority". Consequently, a mere warning letter will not trigger any take down duties on the provider's part.

Supreme Court: liability of the provider of hosting services

Further to the previous news item, the Italian Supreme Court (again, on 21 February 2019) issued a second [judgment \(No.7708-19\)](#) in the context of the RTI/Yahoo! dispute dealing, in this case, with the liability of providers of hosting services.. RTI claimed that Yahoo! had failed to remove fragments of RTI's copyright material from Yahoo's video sharing platform (which was suspended a number of years ago). The judgment of the Court in this case is not conclusive. On one hand the Court, partially allowing RTI's claims, ruled that a provider of hosting services, under section 16 of the Legislative Decree 70/2003 is liable when it "has not promptly removed the illegal content [...] even if the following conditions are jointly met: a) it is legally aware of the offense made by the recipient of the service for having received information of it from the holder of the injured right or otherwise; b) the unlawfulness of the conduct of others is reasonably ascertainable [...]; c) has the possibility to usefully take action, as made aware in a sufficiently specific way of the unlawfully uploaded contents to be removed". The judgment, however, leaves the issue of clarifying, on a case by case basis, where the infringement in relation to the uploaded content is "reasonably ascertainable". In addition, while the judgment recognises that a warning letter may theoretically trigger a take-down obligation of the relevant ISP, it leaves the question of how detailed any such warning letter should be (e.g. whether it should indicate the URLs of the relevant contents) to the judge of merit, before whom the procedure is resumed).

INDUSTRIES

E-COMMERCE

ECJ on consumers' right of withdrawal

On 27 March 2019, the EU Court of Justice (ECJ) issued its judgment in [Case C-681/17 \(Slewo / Schlafen leben wohnen GmbH v. Sascha Ledowski\)](#) and offered its interpretation of Section 16(e) of the Consumer Rights Directive ([Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights](#), the "CRD") which excludes reliance on the right of withdrawal for "sealed goods which are not suitable for return due to health protection or hygiene reasons and which have been unsealed by the consumer after delivery". The case involved a consumer who attempted to exercise his right of withdrawal after having removed the protective film from a mattress purchased online and, consequently, asked to be reimbursed for the retail price of the mattress and its transport costs. The ECJ pointed out that the right of withdrawal is designed to protect the consumer specifically with regard to remote and off-site sales, the consumer has no opportunity to view the goods before concluding the purchase. Therefore, the exception set forth in Section 16(e) of the CRD should be interpreted strictly as regarding the specific nature of an item that is justifiably packaged by being sealed for health protection or hygiene reasons. Accordingly, the ECJ affirmed that the removal of the protective film from a mattress (or a garment) after delivery does not prevent the consumer from exercising the right of withdrawal, since the online retailer would be able to make the goods suitable for use by a new third party after they had been returned by cleaning or disinfecting them and then reselling them, without prejudice to health protection or hygiene requirements.

Italian Administrative Court suspends the fines imposed on Ryanair and Wizzair for their new hand luggage policies

On 28 March 2019, the Regional Administrative Court (TAR) of Lazio issued precautionary orders [no. 01908/2019](#) and [no. 01888/2019](#) suspending fines of 3 million and 1 million Euros, respectively, imposed on Ryanair and Wizzair on 20 February 2019 by the Italian Competition Authority on the basis of their new hand luggage policies (see [Our Echo No. 39 of March 2019](#)). The TAR stated that extra charges for carrying on "larger cabin baggage" during the new booking processes of the two airlines appear to have been highlighted sufficiently to consumers. Furthermore, according to the TAR, a return to the "old" luggage policies, pending a possible decision on the merits in favour of those filing complaints against the airlines that may result in reintroduction of the "new" luggage policies, would further confuse the relevant consumers.

MEDIA

AGCOM opens public consultation on the adoption of guidelines to avoid conflicts of interest between producers and agents in the audio-visual media sector

On 19 March 2019, with Resolution [No. 73/19/CONS](#), the Italian Communications Regulatory Authority (AGCOM) opened a 30-day public consultation on the adoption of guidelines to avoid conflicts of interest between producers and agents representing artists in the audio-visual media sector, pursuant to article [44-quinquies\(1\)\(d\)](#) of Legislative Decree No. 177 of 31 July 2005 (the Italian Audio-Visual Media Service Decree). The purpose of the guidelines is to define general rules of conduct for producers and agents in order to ensure impartiality, transparency, efficiency and effectiveness in the production chain (especially with respect to public-service broadcasting).

The ICA fines DAZN for unfair commercial practice

A [press release](#) dated 25 March 2019 announced that the Italian Competition Authority (ICA) had closed its investigation relating to companies providing DAZN services, identifying two unfair commercial practices and applying pecuniary sanctions. Firstly, the ICA held that promotional activity offering the DAZN football streaming service violated Article 21 of the Italian Consumer Code (ICC), on the basis that the companies used advertising messages that promised the opportunity to use the service "when you want, where you want", without any reference to technical limitations which could make such use difficult or impossible. Secondly, the companies further violated Article 21 of the ICC by adopting a misleading procedure for signing up for the service on the DAZN website. Consumers were offered the opportunity to receive a one-month free trial by registering on the website, specifically stating that they would not have to enter into a subscription contract in order to register. In fact, by registering they entered into a DAZN service contract which, unless terminated, triggered automatic debiting of monthly fees after the first month.

PHARMACEUTICAL

CJEU ruling on SPCs

On 21 March 2019, the Court of Justice of the European Union (ECJ) issued its decision in [case C-443/17 \(Abraxis Bioscience LLC v. Comptroller General of Patents\)](#) regarding the issuance of a supplementary protection certificate [see [Our Echo No. 32 of June 2018](#)] (SPC) for the Abraxis cancer drug. The CJEU ruled that the marketing authorisation referred to in Article 3(b) of [Regulation \(EC\) No. 469/2009](#) of 6 May 2009 relied on in support of an application for a supplementary protection certificate concerning a new formulation of an old active ingredient, cannot be regarded as the first marketing authorisation for the product concerned as a medicinal product in a case where the active ingredient has already been the subject of a marketing authorisation as an active ingredient.

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