

NEWS FROM THE FIRM

**The Firm awarded best IP firm in 2016**

During the Toplegal Award gala dinner held on 21 November, the firm received the award for best IP firm in Italy for patent litigation.

**Orsingher Ortu advises Fabbria Italiana Sintetici on a partnership with Zambon**

A team led by partners [Mario Ortu](#) and [Pierfrancesco Giustiniani](#) (assisted by [Marta Minonne](#) and [Nicola Dolci](#)) advised Fabbria Italiana Sintetici (a leading manufacturer of active pharmaceutical ingredients) on the creation of a joint venture with the multinational Zambon group.

**Orsingher Ortu advises on the lease of the "La Sardegna" newspaper business as a going concern**

A team led by partners [Pierfrancesco Giustiniani](#) (assisted by [Simone Masotto](#) and [Elisa Cappellini](#)) advised DB information on the lease of the "La Sardegna" newspaper business as a going concern from L'Espresso.

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**CAPITAL MARKETS**

**CONSOB on additional periodic financial information**

On 26 October 2016, the National Commission for Companies and the Stock Exchange ("Consob") approved certain amendments to Consob Regulation no. 11971/1999 (the "Issuers' Regulation") concerning the publication of additional periodic financial information. In particular, following the consultation process ended on September 2016, Consob has introduced a new Article 82-ter of the Issuers' Regulation pursuant to which, inter alia, issuers are entitled to elect to publish additional periodic financial information: any decision to publish such information must be disclosed to the market. Amendments to Issuers' Regulation will enter into force from 2 January 2017. The report on the results of Consob's consultation and the Consob resolution introducing the relevant amendments is available [here](#).

**COPYRIGHT**

**Wi-Fi operators not liable for copyright infringement committed by users**

On 15 September 2016, the General Court (GC) of the EU issued its judgment in case C-484/14, (Tobias Mc Fadden v. Sony Music Entertainment Germany GmbH). The GC ruled that the operator of an open Wi-Fi network cannot be deemed liable for copyright infringements committed by its users. However, in certain cases, Wi-Fi operators may be required to secure their networks (e.g. by password protection) and to facilitate the prosecution of infringements. For further information please click [here](#).

**Reselling of backup copy of software unlawful**

On 12 October 2016, the General Court (GC) of the EU issued its judgment in case C-166/15, (Ranks and Vasiļevičs v. Finanšu un ekonomisko noziedzības prokuratūra and Microsoft Corp.) in which it ruled that although the initial acquirer of a copy of a computer program is entitled to resell that copy and his licence to a new acquirer, if the original physical copy has been damaged, destroyed or lost, he may not provide his backup copy of that program to the new acquirer without the authorisation of the rightholder. For further information please click [here](#).

**Limits of the information/quotation as a copyright exception under Italian law**

In its judgement of 5 October 2016 ruled in the case RTI S.p.A. v. Gruppo Editoriale L'Espresso S.p.A., the Court of Rome held that the upload of clips from TV entertainment programmes in the video section of a content website is in breach of the broadcaster's rights. The videos were of pure entertainment content and were originally broadcast a significant period of time before the upload to the news website. The Court held that the upload could not be justified on the basis of information/quotation/critique pursuant to Italian copyright law. The Court ordered the website owner to take down the relevant videos from its website and, in addition, ordered it to pay damages calculated on the basis of the sum that it would theoretically have paid for a license in respect of the relevant copyright materials (so called "price of consent" criterion).

**PATENTS**

**Possible location of local division of UPC identified**

The Italian Ministry of Justice has identified potential premises for the local division of the Unified Patent Court in Milan. The division will be based in a new building close to the main courthouse. The press release by the Ministry of Justice is available [here](#).

**FINANCE**

**Amendments to the ExtraMOT Market Rules adopted**

On 12 October 2016, Borsa Italiana published Notice no. 19018 amending the ExtraMOT Market Rules by (a) introducing a "distribution procedure" (i.e. a market phase during which the issuer may sell the financial instruments to be issued, either directly or through an intermediary, before the admission to listing of the instruments by Borsa Italiana); (b) amending the admission requirements of the relevant instruments; and (c) introducing the option to collect acceptances of market takeover bids and/or exchange offers by electronic collection. These amendments entered into force on 24 October 2016. With respect to the admission requirements, in particular the following is a list of the main amendments approved: (a) the previous maximum amount of EUR 50 million for instruments issued by banking entities has been removed; (b) the existing requirement for the description of risk factors to be included in the admission documents may be omitted for convertible bonds issued by entities whose shares are already traded on a regulated market; (c) in accordance with the recently approved EU regulation on market abuse, Borsa Italiana is now entitled to admit instruments which are admitted to trading on a multilateral trading facility, or which are issued by an issuer with other financial instruments admitted to trading on either a regulated market or a multilateral trading facility; (d) the financial instruments may not be entirely underwritten and/or purchased by the shareholders of the issuing entity; and (e) the requirement for an investment grade rating awarded by two leading rating agencies has been removed for securities issued by members of the Organisation for Economic Co-operation and Development (OECD).

**DATA PROTECTION**

**Privacy Shield challenged before the Court of Justice of the European Union**

On 16 September 2016 the organization "Digital Rights Ireland" filed proceedings against the EU-US Privacy Shield agreement (Privacy Shield – [see Our Eco](#)) with the Court of Justice of the European Union (CJEU) by Case T-670/16. The Privacy Shield was adopted to reinforce citizens' fundamental rights in relation to transatlantic data transfers, following the CJEU declaring the so-called Safe Harbour scheme invalid. According to the Digital Rights Ireland, the Privacy Shield does not provide adequate privacy protection. The CJEU is not expected to rule on the matter before September 2017. For further information please click [here](#).

**LABOUR**

**Key provision of Budget law 2017**

The Budget Law 2017, presented last month by the Italian Government, provides for a number of measures of interest from a labour law perspective. The most important news, related to the pension system, is the introduction of the so-called APE ("Anticipo Pensionistico") allowing certain employees - who meet the relevant requirements (age, personal income and contributions paid) - to take early retirement, on the basis of a small reduction in the pension entitlement of the employee. The legislative decree reintroduces the so-called "free cumulation" ("cumulo gratuito") of the contribution required for access to early retirement and the relevant pension. Employees may combine contributions paid to different social securities authorities. In addition, significant attention has been given to welfare and production bonuses. In particular, the threshold for the application of the favorable rate of 10% is increased from 2.000 euro to 3.000 euro. Moreover, the scheme now applies to employees who have a gross annual income of less than 80.000 euro (rather than the previous threshold of 50.000 euro).

INDUSTRIES

**E-COMMERCE**

**Italian consumer protection authority investigates WhatsApp.**

On 28 October 2016, the Italian Competition Authority (which is responsible for enforcement of consumer protection laws in Italy) initiated two investigations against WhatsApp Inc. for an alleged breach of the Italian Consumer Code. The first investigation aims to establish whether WhatsApp has forced consumers to accept its new terms and conditions (in particular the provisions related to the communication of personal data to Facebook Inc.) by making them believe that by not accepting such clauses would prevent further use of its services. For further information on this investigation click [here](#). The second investigation is to verify whether certain clauses of WhatsApp's terms of use are unfair. In particular, the investigation is focused on clauses granting WhatsApp the right to unilaterally modify its contractual terms, the exclusive right to withdraw from the contract, limitations of WhatsApp's liability and exclusive jurisdiction of Courts within the United States. For further information on this investigation click [here](#).

**MEDIA**

**Parliament green-lights landmark reform for the entertainment sector**

On 3 November 2016, the Italian Parliament approved Legislative Decree no. 2287 of 2016 (the "Decree"); a framework law on incentives for the cinema, audio-visual and entertainment sector (the so-called "legge cinema"). The Decree increases the internal tax credit for cinema and audio-visual work up to 30% of the relevant eligible costs, and the tax credit for distribution companies up to 40%. The tax credit for Italian companies engaged as executive producers for foreign productions is raised to 30% of production costs. The Decree allows the beneficiary to assign this tax credit to financial and insurance intermediaries. The Decree empowers the Government to enact further decrees in order to reform the benefits for promoting investment in the cinema, audio-visual and entertainment field. The Decree will enter into force on 1 January 2017, but an implementing regulation will need to be enacted by the Government for the reform to become effective. For the full text of the Decree click [here](#).

**TECHNOLOGY**

**AGCM fines Telepass S.p.A. for unfair commercial practices**

On 20 October 2016, the Italian Competition Authority (which is responsible for enforcement of consumer protection laws in Italy) fined Telepass S.p.A. for unfair commercial practices on the basis that, according to the Authority, Telepass applied a premium service (the so-called "Opzione Premium Extra") to consumers without their express consent. The Authority stated that any activation of a new service is subject to the express consent of the consumers (opt-in). Conversely, the use of an "opt-out" mechanism is prohibited, at least in relation to additional charge over and above the contractual base rate. For the full text of the decision click [here](#).

Authored by Ludovico Anselmi, Domenico Colella, Cesare De Falco, Manfredi Leanza, Anna Chiara Margottini, Valerio Natale, Francesco Nisi, Fabrizio Sanna, Gaia Sansone, Francesco Senesi, Sabino Sernia, Manuela Villa.

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