

NEWS FROM THE FIRM

Domenico Colella wins Client Choice Award 2019

During the Client Choice Award gala dinner held on 7 February, [Domenico Colella](#) received the award as "IT & Internet" lawyer for Italy.

French and Italian AIPPI Group Joint Seminar

Fabrizio Sanna spoke on the new issues of unfair competition in the fashion field at the seminar "Italy meets France in IP - A story of food and fashion" organised by the French and Italian groups of AIPPI in Lyon on 31 January and 1 February 2019.

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DATA PROTECTION

Advocate General on geographical limit to the "right to be forgotten"

On 10 January 2019, Advocate General Szpunar provided his opinion to the EU Court of Justice in [case C-507/17](#) (*Google v. CNIL*), relating to a 2016 enforcement action between Google and the French data protection authority ("CNIL"), which previously ordered Google to de-reference links to webpages containing personal data, arguing that the de-referencing had to be effective worldwide. Contrary to the CNIL's position, the Advocate General sustained that the ECJ should rule in favour of limiting the geographical scope of the "right to be forgotten" for several reasons. Firstly, the operator of a search engine is not obliged to remove worldwide search results since searches made outside the EU fall outside the jurisdiction of EU law. Secondly, the right to be forgotten should be balanced with other rights, including the legitimate interest of the public in gaining access to information. This non-binding opinion will now be considered by the ECJ, which is called to render a decision in the next few months.

LABOUR

Law Decree No. 4/2019 comes into force

Law Decree No. 4/2019 of 29 January, which provides for certain social security and pension reforms, is now in force. The decree contains two measures: the so-called "Citizens' Income" ("*reddito di cittadinanza*") and the Quota 100 pension reform. The latter measure is an amendment of the 2011 reform (known as the "*Fornero Law*"), which increased the retirement age to 67. The Quota 100 pension reform introduces, on an experimental basis for the three-year period 2019-2021, the ability to take early retirement at 62 years of age, provided that the person taking early retirement has paid a minimum of 38 years of social security contributions (62+38=100). Female retirees will have a specific option to access early retirement, on the basis of: (a) a minimum of 35 years of social security contributions, and (b) a minimum age of 58 (if employees or of 59 if they are consultants/self-employed workers. The parliamentary procedure for the final conversion of Law Decree no. 4/2019 (to be completed by the end of March) began on 30 January.

PATENTS

Italian patent legislation amended in accordance with UPR and Agreement on UPC

On 14 February 2019, the Italian Council of Ministers approved a [legislative decree](#), amending the Italian Intellectual Property Code in order to achieve consistency with Regulation (EU) No. 1257/12 of 17 December 2012 implementing enhanced cooperation in the area of the creation of [unitary patent protection](#), and Agreement No. 2013/C175/01 on a [Unified Patent Court](#) (the "UPC Agreement") ratified by Law No. 214/2016 of 3 November 2016 (see [Our Echo no. 15](#) of December 2016). Amendments involve substantive law, exclusive jurisdiction and transitional provisions (also in light of the opt-out regime set forth by the UPC Agreement).

EPO launches public consultation on Strategic Plan 2023

On 23 January 2019, the European Patent Office (the "EPO") invited all stakeholders to participate in a public consultation aimed at providing input to the draft of the [EPO's Strategic Plan 2023](#), which will govern the EPO's activities in different areas in the period 2019 to 2023. More specifically, contributions are requested on the following topics: (i) evolution of the patent system and future challenges; (ii) delivering high-quality products and services; and (iii) social responsibility and transparency. The public consultation will remain open until 15 March 2019 and the Strategic Plan will be submitted to the Administrative Council of the EPO for adoption in June 2019.

COPYRIGHT

Agreement on Copyright Directive reached

On 13 February, the European Parliament, the EU Council and the EU Commission announced a [political agreement](#) to enact the digital copyright directive before the European Parliament is dissolved prior to elections for a new parliament.

Advocate General on limitations to the exclusive rights of reproduction and communication to the public

On 10 January 2019, the Advocate General Szpunar advised the EU Court of Justice in case C-516/17 (*Spiegel Online GmbH v. Volker Beck*) regarding the exclusive right of reproduction and communication to the public of a literary work, and the related exceptions and limitations to those rights set out in Directive (EC) No. 2001/29 of 22 May 2001 (on the harmonisation of certain aspects of copyright and related rights in the information society (the "[InfoSoc Directive](#)"). The Advocate General's opinion suggests that fundamental rights, such as freedom of expression (established by the Charter of Fundamental Rights of the European Union), do not allow EU Member States to go beyond the exceptions provided by the InfoSoc Directive. In the view of the AG, doing so would risk introducing into EU law a sort of "fair use exception" which is not provided for in the EU legal system, on the basis that any use of a work that infringes copyright could be justified as an exercise of freedom of expression. In that case, the protection available to the rights of authors would depend on the approach of judges in each Member State to freedom of expression, which would be detrimental for the harmonisation of the law at EU level.

Court of Rome on online copyright infringement

On 19 January 2019, the Court of Rome ruled in favour of the Italian broadcaster R.T.I. in the lawsuit against Vimeo LLC, a US-based online video platform, which was ordered to pay Euro 8.5 million in damages to R.T.I. for copyright infringement. In its decision, the Court of Rome stated that Vimeo LLC must be regarded as a hosting provider playing an "active role" since Vimeo, by cataloguing and indexing the video, was acting as an on-demand video service provider. As a result, Vimeo did not benefit from the exemption from liability (the so-called "safe harbour") provided for "passive hosting providers" by [Directive \(EC\) No. 2000/31](#) of 8 June.

FINANCE

The Reform of the Italian Insolvency System: the Council of Ministers approves the new Code on businesses in distress or insolvency

On 10 January 2019, [the Council of Ministers approved the new Code on businesses in distress or insolvency](#) (the [Code](#)), which revises the rules on pre-insolvency and insolvency procedures applicable to Italian companies. The regulations introduced by the Code are aimed principally at facilitating an early diagnosis of financial distress and protecting the entrepreneurial capacity of companies in case of insolvency proceedings in certain circumstances. In that context the Code, *inter alia*, (i) introduces an "alert" procedure to facilitate an early diagnosis of distress by increasing the duty of the internal and external auditors of the company, including by means of a formal request by the auditors to the directors to indicate specific actions to be undertaken in order to prevent the situation of distress, and (ii) strengthens the proposals aimed at overcoming such distress by ensuring business continuity. Moreover, the Code amends certain non-judicial procedures, including debt restructuring, with the aim of encouraging and facilitating access to such procedures. On 14 February 2019 the [Code was published in the Official Journal](#) and will enter into effect 18 months after such publication (i.e. 15 August 2020), with the exception of certain limited provisions that will apply as from 30 days after publication (i.e. 16 March 2019).

Court of Verona ruling on breach of financial intermediaries' obligations relating to mark to market value

On 9 November 2018, the Court of Verona issued its judgment ([No. 11202/20186](#)) on the obligation of financial intermediaries' to inform their clients of the mark to market value of derivative transactions and on the consequences of a breach of that obligation. The Court held that the intermediary is obliged to inform the client of the mark to market value of the relevant financial instrument the client is buying. Specifically, pursuant to [Article 31, paragraph 2, letter c\) of the intermediaries' regulation 16190 of 29 October 2007](#) (applicable at the time of the execution of the relevant derivative agreement), the Court ruled that the intermediary is obliged to inform the client of, *inter alia*, the "potential liabilities" relevant to the specific financial instrument, such as, in the opinion of the Court, a negative mark to market value. Moreover, the Court held that the breach of such obligation by the intermediary is deemed to be a serious breach of contract that gives rise to the client's right to terminate the derivative agreement and to recover from the intermediary any undue payments made.

INDUSTRIES

E-COMMERCE

ECJ on contracts concluded by distance communication

On 23 January 2019, the EU Court of Justice (the "ECJ") issued its judgment in [case C-430/17](#) (*Walbusch Walter Busch v. Centrale zur Bekämpfung unlauteren*) concerning the interpretation of the trader's obligation to provide consumers with mandatory pre-contractual information under the Consumer Rights Directive ("CRD"), including those related to the right of withdrawal, in the case of contracts concluded by distance communication which provides limited space or time to display such information. The ECJ stated that the assessment of whether the means of communication provides limited space or time to display relevant information should be carried out by the competent national court which, having regard to the space and time occupied by the communication and the minimum size of the typeface which is appropriate for the average consumer to whom that communication is directed, is to ascertain whether all mandatory information may objectively be displayed. With specific reference to the right of withdrawal, the ECJ further clarified that, where such right is available under the CRD, the trader is required to provide the consumer, by the same means of communication and before the conclusion of the contract, with information regarding the conditions, time limit and procedures for exercising that right.

Sony fined 2 million euros for misleading omission of relevant information about PlayStation Plus

On 29 November 2018, the Italian Consumer Protection Authority (the "ICA") imposed a fine of Euro 2 million on Sony for unfair commercial practices under Sections 21, paragraph 1, letters b) and d) and 22 of the Italian Consumer Code ([Proceedings PS11068](#)). According to the ICA, the packaging of the PlayStation 4 console did not clearly provide information concerning the necessity for the consumers to pay a PlayStation Plus subscription in order to use the video games in online multiplayer mode. Notably, due to the limited dimension, the specific layout and placement of this information on the back of the console packaging, consumers were likely to be deceived both in relation to the main characteristics of the product and on the actual price incurred in order to be able to take full advantage of its functionality. According to the ICA, the lack of information was relevant also in relation to the online process for the purchasing of games through the PlayStation Store, where this information was not provided to the potential buyer clearly and on first contact on the online store.

MEDIA

AGCOM Regulation on programming and investment obligations in favour of European works and works by independent producers

On 22 January 2019, following a public consultation, the Italian Media regulator ("AGCOM") approved [Resolution No. 29/19 CONS](#) amending the AGCOM Regulation on programming and investment obligations in favour of European works and works by independent producers. The new provisions confirmed, *inter alia*, that on-demand audiovisual media services providers targeting Italian consumers, regardless of their place of establishment, are subject to the following investment obligations: (a) to invest in European works produced by independent producers (with particular reference to recent works produced within the last 5 years) at a rate of at least 20% of net income in Italy; and (b) to reserve/allocate 50% of this investment (i.e. 10% of the net income in Italy) to works which are an "expression of Italian creativity". The Resolution also postponed to 1 July 2019 the financing obligations for 2019, which must therefore be calculated for the period starting from 1 January 2019 and ending on 31 December 2019.

TECHNOLOGY

Blockchain and smart contracts officially recognized by Italian Law

On 12 February 2019, it has been published in the Italian Official Gazette the Law No. 12 of 11 February 2019 ("[Law No. 12/2019](#)") which introduced, among others, a definition of blockchain or rather distributed ledger technologies ("DLTs") and their application in smart contracts ("SCs"), thus recognizing their full legal validity and enforceability in Italy. Firstly, DLTs are defined as IT technologies and protocols using a ledger which is shared, distributed, replicable, simultaneously accessible and structurally decentralised on cryptographic basis, so to allow the record, validation, updating and storage of both not encrypted and encrypted data which may be verified by each participant and which may not be altered and modified. Secondly, SCs are defined as software based on DLTs whose execution automatically gives effect to the relevant terms agreed between the parties. SCs are deemed by law to be equivalent to traditional written contracts to the extent that the digital authentication of the parties is performed in accordance with the procedure to be established by the Agency for the Digital Italy ("AgID"). Finally, Law No. 12/2019 provided that the storage of an IT document through the use of DLTs produces the legal effects of the electronic time stamp pursuant to Art. 41 of Regulation (EU) No. 910/2014 (on electronic identification and trust services for electronic transactions in the internal market). In that respect, AgID will set its specific guidelines to define the necessary DLTs technical standards required to produce the mentioned legal effects by May 2019.

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