

**NEWS FROM THE FIRM**

**Advising on Sky Italia-Netflix deal**

A team led by [Fabrizio Sanna](#) assisted Sky Italia in the negotiation of agreements for the broadcast of Netflix content on Sky Q and other Sky devices.

**CIRSA issues Euro 400 million PIK bond**

A team led by [Pierfrancesco Giustiniani](#) (including [Elisa Cappellini](#)) advised the international group CIRSA on the issue by a Luxembourg subsidiary, Lhmc Finco 2, of senior Secure Pik toggle notes for an aggregate amount of Euro 400 million. The international panel assisting CIRSA included Simpson Thacher & Bartlett in the US and Garrigues in Spain.

**Acquisition of the entire capital of FT System**

A team led by [Pierfrancesco Giustiniani](#) (including [Pietro Masi](#), [Elisa Cappellini](#) and [Alessandro Negri](#)) advised Antares Vision on the acquisition of FT System, a leading company in the supply of inspection equipment for the food, beverage and household chemical industries.

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**DATA PROTECTION**

**ECJ on cookies and pre-selected checkboxes**

On 1 October 2019, the EU Court of Justice (ECJ) issued its judgment in case [C-673/17](#) (*Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband e.V. vs Planet49 GmbH*), ruling that the practice of requesting the consent of users to cookies by means of pre-selected checkboxes is prohibited. The ECJ clarified that pre-ticked checkboxes which need to be deselected in order to opt out are not appropriate for users' consent to cookies. In order to ensure that consent is well informed, users must be in a position to accept cookies actively. Otherwise, it would not be possible to ascertain whether they had read the information contained in the pre-ticked checkboxes or not. In addition, in order to enable users to fully understand the functioning of cookies before giving their consent, according to the CJEU, it is essential to include in the cookie information both the duration of the cookies and whether third parties may have access to the cookies collected.

**Italian DPA approves the new code of conduct for consumer credit risk analysis**

On 12 September 2019, the Italian Data Protection Authority approved the new [code of conduct for privately managed credit information systems](#) with regard to consumer credit, reliability and punctuality of payments (the "Code"). The Code covers the processing of personal data related to loans, mortgages, financial leasing agreements, long-term rentals and peer-to-peer lending platforms. Notably, the processing of personal data for the purposes of credit risk analysis must be based on the legitimate interest of credit operators, with no requirement to obtain consent from data subjects. The Code further clarifies that, in the case of automated credit scoring, the algorithms must be revised at least every two years and that data subjects have the right to request the information related to the criteria used for the automated decision. The Code also outlines the rights of data subjects, including the right of access, transparency obligations, security measures and prevention of unauthorised access in compliance with the GDPR. Finally, the Code defines different retention periods depending on the nature of the relevant consumer credit information.

**PATENTS**

**2019 edition of EPO Guidelines available**

The 2019 edition of the European Patent Office Guidelines for Examination (the "Guidelines") have been amended in line with the EPO's policy of updating the Guidelines on an annual basis. The amended Guidelines, effective as of 1 November 2019, are available [here](#). Major amendments include an update of the sub-section on artificial intelligence and machine learning (G-II, 3.3.1), a new section on inventive step assessment in the field of biotechnology (G-VII, 13) and a review of the chapter dealing with Euro-PCT applications (E-IX).

**Milan Court judgment on arbitration concerning inventor-employee's equitable remuneration**

On 16 July 2019, the Court of Milan issued its [judgment](#) in a case brought by an employee of Clariant Prodotti S.p.A. against the company, which held that an arbitral award which quantifies the equitable remuneration due to an inventor-employee under [Article 64](#) of the Italian Intellectual Property Code may be remitted to the Court if it is evidently unfair or wrong, in line with the principles set forth in [Article 1349](#) of the Italian Civil Code.

**DESIGN**

**General Court of the EU stated that Piaggio's intellectual property rights in the Vespa LX scooter have not been infringed**

On 24 September 2019, the General Court of the EU (GC) issued its judgement in case T-219/18 (*Piaggio & C. SpA v EUIPO and Zhejiang Zhongneng Industry Group Co. Ltd*), upholding the decision of the [European Union Intellectual Property Office \(EUIPO\)](#), which rejected Piaggio's claim of an infringement by the Chinese company Zhejiang Zhongneng Industry Group (Zhejiang) of Piaggio's design, unregistered three-dimensional mark and copyright related to the "Vespa LX" scooter. As to the design violation, the GC found that the Zhejiang scooter and the Vespa LX scooter produce a different overall impression in the informed user, the former having more angular lines compared to the latter's rounded features, and the two scooters had different characteristic shapes. As to the violation of Vespa's LX three-dimensional mark, the GC found that the average consumer is likely to perceive the style, lines and appearance that characterise the Vespa LX scooter as visually different from those of the Zhejiang scooter, thus excluding any likelihood of confusion. Finally, with reference to the copyright violation in Italy and France, the GC confirmed that Zhejiang did not make an unauthorized use of the Vespa scooter copyright, on the basis that it did not copy or used the core of the artistic and creative expression of the Vespa scooter constituted by its characteristic features and particularly by its specific overall appearance, endowed with a "rounded, feminine and 'vintage' character".

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**Advocate General on second-hand sales of e-books**

On 10 September 2019, Advocate General Szpunar ("AG") issued his opinion on the referral to the EU Court of Justice (ECJ) in the case [C-263/18](#) (*Nederlands U. et al. v. Tom Kabinet*), regarding the lawfulness of second-hand sales of e-books. The referral focussed on whether internet downloads of e-books are covered by the right of distribution (subject to the exhaustion rule), or the right of communication to the public (not subject to the exhaustion rule). According to the AG, arguments of both a legal and a teleological nature are in favour of recognising the rule of exhaustion of the distribution right with respect to works supplied by downloading for permanent use. Nonetheless, the AG took the view that, as EU law now stands, the arguments to the contrary should prevail. These are: (a) the EU legislature's clear intention that downloading should be covered by the right of communication to the public; (b) the limitation of the distribution right to acts of transfer of ownership of a copy; and (c) the fact that the right of reproduction that accompanies the resale of a work in digital form must either be authorised by the holder of the exclusive right of reproduction or fall under an exception to that exclusive right. In light of the latter, the AG advised the ECJ to rule that internet downloads of e-books are covered by the right of communication to the public; thus, the exhaustion rule should not apply.

**FINANCE**

**Italian accountants on crisis indexes**

The new Italian insolvency code, introduced in January 2019 (the "Code") includes rules on certain measures to be put in place by a company which is in a state of "crisis". The Italian association of chartered accountants (Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili, "CNDCEC") has prepared [a draft](#) proposal of specific indexes, on the basis of which a state of crisis of a company can be presumed. According to this proposal, the first relevant index is a negative net worth of the company, due to operating losses, which is cause for winding up the company, in the absence of other elements (e.g. remedy by means of capital contribution). If net worth is positive, the debt service coverage ratio (the "DSCR") should be verified on the basis of the ratio between the expected cash flows and the amount of debt to be reimbursed over a 6-month horizon.: A DSCR higher than 1 permits an assumption that the company may sustain its debt. Finally, the proposal considers five additional indexes and related thresholds, each specific to a different category of activity: (i) the ratio between interest and revenue, (ii) the ratio between net worth and total debts, (iii) the ratio between cash flow and assets, (iv) the ratio between short-term assets and short-term debts, and (v) the ratio between fiscal indebtedness and assets. If all the specific thresholds are exceeded, the state of crisis of a company can be reasonably presumed.

**INDUSTRIES**

**ISP**

**The ECJ on obligation to remove illegal contents**

On 3 October 2019, the EU Court of Justice (ECJ) issued its judgment in case [C-18/18](#) (*Eva Glawischnig-Piesczek v. Facebook Ireland Limited*), ruling that hosting services providers may be obliged to remove illegal contents worldwide by national courts in the European Union and that the courts of a Member State can order a host provider to remove, or to block access to, information, the content of which is "identical" and/or, to some extent, "equivalent" to the content of information which was previously declared to be unlawful. However, according to the Court this take-down obligation cannot require the host provider to carry out an assessment of the content.

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