



Pappas&Associates – Newsletter June (1) 2007 European Law & Policy

COMPETITION

- Conditional approval by the Commission of Universal's merger with BMG's music publishing business

The European Commission approved on 23 May 2007 the proposal made by Universal, the US-based media company owned by the French company Vivendi, to acquire the worldwide music publishing business of Bertelsmann Music Group (BMG), the subsidiary of the German media company Bertelsmann. At first, the Commission was concerned with the potential anti-competitive effects which the merger might have in the market for music publishing right for online application (i.e. online rights).

Music publishers exploit the copyright of authors by granting licenses to music users. The Commission's market investigation revealed that if copyright remained under the control of collecting societies, organisations that customarily carry out the licensing on behalf of song writers and their publishers and that usually charge uniform tariffs for the complete administered repertoire, competition would go unharmed. However, a new trend is driving publishers' away from the conventional collecting societies system. They prefer diverting their respective rights for Anglo-American song repertoires to collecting societies acting as agents for individual publishers and granting licenses that cover the entire European Economic Area.



Pappas
&
Associates

Attorneys at law

Pappas&Associates – Newsletter June (1) 2007 European Law & Policy

This practice has as its main effect to transfer the pricing power from the collecting societies to the publishers. In the case at hand, this would enable Universal to increase prices for online rights regarding its Anglo-American repertoires.

Therefore, the acquisition is subject to the compliance with commitments by the companies concerned: Universal has committed itself to divest a number of publishing catalogues. This so-called “remedy package” was held by the Commission to be enough to legitimise the merger under the EU Merger Regulation. These catalogues contain many bestselling songs and several successful authors. Considering the high quality of the catalogues to be divested, the Commission decided that the competition concerns would be removed.



Pappas&Associates – Newsletter June (1) 2007 European Law & Policy

HEALTH

- [“EU Mini-chefs” initiative launched: healthy cooking for children](#)

The European Commission, together with the European chefs' association, Euro-Toques International, launched an initiative called “EU Mini-chefs” during the third week of May 2007. It provides a website for children which contains simple recipes and cooking advice from top European chefs and aims to encourage healthy eating and cooking, fight child obesity and endorse the European Day for Healthy Food and Cooking to be celebrated on 8 November 2007.

Ultimately, it provides a European ‘internet forum’ on healthy food and cooking for children, parents and teachers. According to EU Health Commission Markos Kyprianou, "Obesity is on the rise in Europe, especially among children. Each year over 400,000 more children become overweight or obese in the EU. It is everybody's responsibility to counter this trend. Today we are joining forces with Euro-toques International to launch a website for children to help them understand the importance of eating and cooking in a healthy way. We want to encourage children, teachers and parents to develop good habits for healthy food."



Pappas&Associates – Newsletter June (1) 2007 European Law & Policy

INFORMATION & COMMUNICATION TECHNOLOGIES

○ Consensus on roaming charges reached in Parliament

Mobile roaming charges will be reduced before EU citizens go on their summer holidays since political agreement between the European Parliament, the Council and the Commission in favour of an EU Regulation to significantly limit the charges for using mobile phones abroad was recently reached. This puts an end to a 10-month long heated saga, which saw among other things the delay of the vote on the roaming regulation (see: Pappas & Associates Newsletter April 1/07 article *“The ‘watering down’ of the EU Roaming Regulation”, p.9*). The Council and the Parliament disagreed over (1) the level of cuts of roaming charges for international calls and (2) the speed of the new prices’ implementation (see: Pappas & Associates May 2/07 article *“The roaming charges saga continues”, p.3*).

Until now, consumers in Europe were reluctant to subscribe to roaming packages and to use their phones when abroad because of overpriced roaming charges: an average of 4 times more than domestic mobile phone calls. According to EU Telecom Commissioner Viviane Reding, the new EU Regulation on roaming charges is a good thing for consumers and business travelers in the EU because ‘(...) already from this summer, mobile phone customers will start benefiting from substantially reduced roaming charges when traveling from one EU country to another.’



Pappas&Associates – Newsletter June (1) 2007 European Law & Policy

She adds that this will also be an important step forward towards completion of the EU's internal market, which she thinks 'will finally become truly borderless, even for mobile phone bills.'

The price finally agreed upon, according to the compromise reached on international calls' costs,, is EUR 0.49 per minute for making and EUR 0.24 per minute for receiving a call. These 2007 price caps, also known as "Euro-tariffs", will be further reduced in 2008 and 2009. The Council of EU Telecom Ministers is expected to back the EU Roaming Regulation on 7 June 2007. Following this, the Regulation will become directly applicable in all 27 Member States after its publication in the EU's Official Journal expected mid-June.

- **Political agreement on modernised EU Audiovisual Media Services without frontiers Directive:**

Following an 18-month long legislative process, the European Parliament and Council have reached a political compromise on the new Audiovisual Directive 24 May 2007. Both EU institutions agree with the Commission's proposal to 'refresh' the rules which govern audiovisual services in Europe. The new Directive should (1) set out a far-reaching legal framework encompassing all audiovisual media services, regardless of the transmission technology used, (2) introduce a more general and flexible regulation and (3) up-to-date rules on TV advertising in order to boost the financing of audiovisual content.



Pappas
&
Associates

Attorneys at law

Pappas&Associates – Newsletter June (1) 2007 European Law & Policy

This political agreement was welcomed by the EU Commission for Information Society and Media Viviane Reding as a move that will adapt the EU's audiovisual policies to the modern technological and market requirements of the 21st century. She believes that this is 'a decisive step towards a true internal market for audiovisual media services and to a more competitive European audiovisual content industry'. The Directive is expected to enter into force by the end of 2007.

INTELLECTUAL PROPERTY

- Is it time for the term of copyright and sound recordings to be extended?

Whilst the new EU Directive to harmonise the term of protection of copyright and certain related rights is being drafted, Member States are expressing their positions on the subject. For example, a motion signed by a large number of Members of the UK Parliament, has recently been tabled in the House of Commons asking for the extension of the term of copyright for sound recordings. It denounces the so-called "inequities" of the current system and asks the European Commission to look into them. It also sets out concerns of musicians and their record companies.



Pappas&Associates – Newsletter June (1) 2007 European Law & Policy

The latter think they will lose out over the next few years because of the shorter copyright term for sound recordings in comparison with that granted to other creators, such as music and lyric writers who benefit from copyright protection for the whole duration of their life plus seventy years.

The motion was supported by the results of a survey carried out by the Musicians' Union, a UK organisation which represents musicians working in all sectors of the music business. The survey revealed that ninety percent of musicians earn less than 15,000 pounds a year. Therefore, it is believed that the extension of copyright terms would act as a "financial boost" for low paid musicians. It is worth noting that the issue at stake, which should have been put to rest by the late Gowers Review of intellectual property law published in the UK in December 2006 and according to which no extension of this area of copyright was needed, still causes unrest amongst members of the music industry. The much anticipated so-called "EU Term Directive" will render the view adopted by the EU on this matter.

- **No Community trade mark registration for washing tablets**

In the case Proctor & Gamble Company versus the Office of Harmonisation in the Internal Market (OHIM), the European Court of First Instance rejected P&G's applications to register as Community trade marks nine three-dimensional shapes, each being 'a thick rectangular white washing tablet with a coloured floral design in the center'.



Pappas&Associates – Newsletter June (1) 2007 European Law & Policy

The applications were dismissed as were P&G's appeals to the OHIM's Board of Appeal for a number of reasons: (1) The average consumer is not thought to pay enough attention to the shape and design of a washing tablet. (2) The combination of the shape, colours and design was considered to be a variation of a 'normal presentation', not indicating its commercial origin. (3) The marks were therefore devoid of any distinctive character. P&G then unsuccessfully appealed to the Court of First Instance which agreed with the reasoning held by the Board of Appeal.

INTERNAL MARKET

- Rome II Regulation: new harmonised rules on civil liability in the EU

After four years of negotiations, the European Parliament and the Council have managed to reach a compromise which led to the approval of the so-called "Rome II Regulation" which harmonises the rules relating to non-contractual obligations. This measure is seen as a further step towards a European area of freedom and justice and a fully functional Internal Market.



Pappas
&
Associates

Attorneys at law

Pappas&Associates – Newsletter June (1) 2007 European Law & Policy

The Rome II rules aim to strike a reasonable balance between the interests of the alleged person who caused the damage and the victim. The Regulation establishes a general rule that the law of the country in which the damage occurs (for example, the law of the place of a road accident) will apply, unless the parties both have their habitual residence in another country, in which case the law of that country will apply. There are also a number of specific rules for the specific torts such as product liability, environmental damage, anti-competitive practices, etc.

These provisions will ensure that courts in all Member States apply the same law in the event of cross-border disputes in matters of tort or delict. That way, the mutual recognition of court decisions in the EU will be facilitated and 'forum shopping' avoided (i.e. one will not be able to choose the court which will apply the law that is most favourable to the parties). If the Rome II Regulation is adopted, the harmonisation process of the Community rules of private international law of civil and commercial obligations will be complete. The regulation will be applicable in the courts of the Member States from the beginning of 2009.



Pappas
&
Associates

Attorneys at law

Pappas&Associates – Newsletter June (1) 2007 European Law & Policy

- Portuguese tax amnesty in breach of the EU's free movement of capital principle

The European Commission has condemned the law called "Tax amnesty for undeclared funds held abroad (RERT)", approved by the Portuguese Parliament in 2005, for breaching the free movement of capital guaranteed by Article 56 EC Treaty. The preferential regime in question allowed the regularisation at a reduced tax rate of 2.5% for investments in Portuguese government bonds, instead of 5% in any other assets. The above urged persons to make use of the amnesty by keeping their regularised assets in Portuguese government bonds.

For that reason, the Commission has started infringement procedures against Portugal. It has sent a reasoned opinion under Article 226 EC Treaty ordering Portugal to remedy the situation by submitting all regularisation made in 2005 to identical fiscal treatments. Indeed, according to EU Taxation and Customs Commission Laszlo Kovacs, "The rules of the Internal Market forbid any discrimination of investments made by individuals in other Member States". The Commission may refer Portugal to the European Court of Justice if it fails to comply with EU law.



Pappas&Associates – Newsletter June (1) 2007 European Law & Policy

TRADE & INDUSTRY

- **Special state aid rules for the coal industry until 2010**

Under the Coal Regulation, which was adopted at the expiry of the European Coal and Steel treaty in 2002, continued state aid to the coal industry is authorised as long as it follows a “downward trend”. This instrument was put in place in order to allow the restructuring of the coal industry. However, a Commission report published on 21 May 2007 on the provision of state aid for the coal industry until 2010 has been condemned by environmentalists for not putting climate change first by failing to end subsidies for what they view as a “dirty” source of energy. The report states that the Coal Regulation is functioning well and does not need to be adjusted.

This remains a controversial issue which continues to divide the European Commission over how to find equilibrium between environmental concerns and competitiveness. For now, the EU does not plan to eliminate coal from Europe’s energy mix (i.e. the share of coal in electricity production). Instead, it holds the view that investing in “clean coal” technologies is key for “continuing to benefit from the availability, proximity and flexibility of this abundant source of energy”.