

IP&T HOT TOPICS

UK & Europe

Winter 2013/14



The legal challenges faced by businesses are constantly evolving. The law often changes at a rapid pace to keep up with the evolution of global markets and new technologies.

Introducing our publication – Hot Topics in Intellectual Property and Technology. Quarterly, our Hot Topics briefing will highlight the most significant legal developments in the UK and Europe in the areas of intellectual property and technology, contract, data protection and privacy, trade secrets and advertising and media. Succinct and relevant, this briefing will help you stay ahead of the game and ensure you are well positioned to take advantage of new opportunities.

Our intention is to alert you to upcoming legal developments, so we have kept detail to a minimum. We are happy to discuss any of the developments, and the implications for your business, in more detail. Feel free to call your usual Squire Sanders contact or any of the individuals listed at the end of this publication. You can also log onto our [blog](#), which is a source of more comprehensive news and insight into legal issues of interest to the global intellectual property and technology community.

Significant legal developments for Winter 2013/14 are:

New EU Law to Make Protection of Trade Secrets Easier

Progress will be made this year towards implementation of the Trade Secrets Directive. The Directive will radically reform trade secrets law across Europe, making it easier for trade secrets holders to protect their trade secrets and enforce their rights. The Directive will facilitate cross-border operations and encourage innovation and investment in European businesses. The Directive will go before the European Parliament and Council for final approval later this year. This is a welcome development but, for now, nothing changes and businesses should ensure that their current contractual protection measures are properly drafted and remain in place. Read more on our [blog](#).

Launch of the Long-Awaited Unitary Patent

The first Unitary Patents are expected to be granted in 2015. However, some key issues around the new Unitary Patent and Unitary Patent Court (UPC) will be finalised this year. In particular, announcements are expected on procedural rules and applicable fees (including those for filing and renewal of unitary patents, opting-out of the UPC regime and bringing UPC proceedings). Once there is greater clarity on these issues, businesses with a European patent portfolio need to begin thinking strategically about whether the new Unitary Patent or existing European patents will offer them the most cost-effective patent coverage in Europe.

Overhaul of Safe Harbour Expected by Summer

The European Commission plans to engage as a matter of urgency with US authorities to discuss shortcomings in the Safe Harbour regime, which allows organisations in the EU to legally transfer personal data to the US. The Commission wants to improve both the enforcement and transparency of the regime. Any changes to the Safe Harbour scheme will impact on EU and US organisations that rely on it as part of their data privacy strategy. The outcome of the Commission's discussions with US authorities is expected by summer 2014. Businesses that rely on Safe Harbour may continue to do so for now but they should keep a close eye on announcements from the European Commission. If there is a shake-up of the Safe Harbour regime, businesses may need to adopt other measures when transferring personal data to the US in order to comply with their data protection obligations. Read more on our [blog](#).

Progress on Reform of EU Data Laws

The Regulation which will reform data protection law across Europe continues to be deliberated at European level. Progress is slow, with a number of sticking points on the text of the proposed Regulation. Agreement is unlikely to be reached before the European Parliamentary elections in May 2014 with the end of the year being a more realistic timeframe for agreement. However, businesses can take steps now to prepare for the new Regulation. In particular, they can audit and streamline their privacy procedures in order to minimise the risk of being subject to the increased fines for non-compliance which the new Regulation is likely to introduce.

Restrictions on Marketing by Telephone Likely This Year

The Unsolicited Telecommunications Bill looks set to become law in the UK this year. The Bill will impact on UK and non-UK businesses that rely on marketing to consumers by telephone. They will only be permitted to contact those individuals who have chosen to be included on an opt-in register maintained by Ofcom. This could severely restrict the number of potential recipients of direct marketing calls and may result in some businesses having to rethink their advertising model to move away from reliance on telephone marketing. However, most marketing communications (for example, emails) rely on prior consent and businesses may need to look at how they can lawfully obtain consents in order to build up substantial contact lists. Read more on our [blog](#).

Sweeping Changes to Consumer Law in Force this Year

The UK government continues to push forward its programme of consumer law reforms. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 will come into force in June 2014. The Regulations implement the EU Consumer Rights Directive and set out what pre-contractual information must be given to consumers and when consumers can cancel contracts. Separately, the Consumer Rights Bill (reforming the law on unfair terms and consumers' rights for defective goods, services and digital content) is being finalised, as is a third piece of legislation giving consumers a new civil right of redress against businesses that engage in misleading and aggressive commercial practices.

The latter two pieces of legislation are likely to become law later this year. It is fair to say that this new legislation largely consolidates, and not radically reforms, consumer law. However, there will be increased (and easier) enforcement of consumer rights. Consumer facing businesses must audit their practices and procedures now to ensure that they comply with the new consumer rights regime.

New Defence for Website Operators to Libel Claims

The Defamation Act 2013 came into force on 1 January 2014, reforming the UK law of defamation. A key section of the Act is section 5 which gives operators of websites hosting user-generated content a defence if they comply with a new procedure enabling a complainant to resolve a dispute directly with the author of the defamatory posting. The procedure is set out in supporting Regulations. It will be interesting to see how this defence and the Regulations are interpreted as claims begin to come before the courts during 2014. Website operators need to familiarise themselves with the Regulations and ensure that their notice and take down systems are compliant. If not, they risk losing the benefit of the section 5 defence. In particular, they should note the fairly tight timescales for acting set out in the Regulations.

Criminal Penalties for Businesses Copying Designs

The Intellectual Property Bill is still being scrutinised by Parliament but is likely to become law later this year. The Bill reforms both UK design and patent law. Controversially, it introduces criminal penalties for the infringement of registered designs. These penalties have proved a sticking point in Parliament, with businesses lobbying for criminal penalties to apply only where infringement is intentional. The Bill is unlikely to define in a useful way exactly what is an intentional infringement and what is innocent. This will need to be clarified by the courts once the Bill becomes law. Product manufacturers and retailers should keep a close eye on developments with the Bill but, for the moment, need not make changes to their business model.

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