



## TABS™ Update Technology And Brands

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### **Beware of New Advertising Regulations!**

Companies should review their marketing practices following the implementation in Ireland of Directive 2006/114/EC concerning misleading and comparative advertisements ("the Directive") by European Communities (Misleading and Comparative Marketing Communications) Regulations 2007 ("the Regulations").

The purpose of the Regulations is to (a) protect traders against misleading marketing communications and their unfair consequences and (b) specify the circumstances in which comparative marketing communications are prohibited. Marketing communication is defined as any form of representation made by a trader in connection with trade, business or profession in order to promote the supply of a product. Such communication will be misleading if it deceives (or is likely to deceive) the trader to whom it is addressed or it reaches and if by its nature, it is likely to affect the trader's economic behaviour or injure (or is likely to injure) a competitor.

Comparative marketing communication is defined as any form of representation by a trader that explicitly or by implication identifies a competitor or a product offered by that competitor. Such communication is prohibited if, for example, it is misleading; does not objectively compare material and representative features of products (which may include price); it discredits or denigrates a competitor's trade mark; it causes confusion among traders; or it takes unfair advantage of the reputation of a competitor's trade mark.

Representation is broadly defined as including any oral, written, visual, descriptive or other representation by a trader including any commercial communication, marketing or advertising as well as any term or form of a contract, notice or other document used or relied on by a trader in order to promote the supply of a product.

A trader or any person may apply to the Circuit Court or High Court for an order prohibiting a trader from engaging in a misleading or a prohibited comparative marketing communication. In determining the matter, all interests will be considered by the Court including the public interest. The Court may make an order without proof of any actual loss or damage on the part of the person making the application or any intention or negligence on the trader's part against whom the order is sought.

Companies should be proactive and review their marketing practices to ensure that they do not fall foul of the law. The time to act is now – discuss this matter further with your legal advisors!

### **Copyright levies under review**

Companies in the electronic industry and rights holders should take note that the European Commission has launched a public consultation on private copying levies ("Levies").

Levies are equivalent to a tax imposed upon producers of electronic devices such as blank discs, computers, video recorders or CD players. The Levies are imposed on the presumption that the items might be used to create personal copies of copyright protected works.

The purpose of the public consultation is to deepen the Commission's understanding of the functioning of private copying levy schemes set up at a national level with the view to simplifying the way Levies are imposed across the 27 European Member States. Interested parties should submit their comments by **18<sup>th</sup> April 2008** (see [http://ec.europa.eu/internal\\_market/copyright/levy\\_reform/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/levy_reform/index_en.htm)). Following this, the Commission will hold an open hearing in June to see if a common approach can be adopted. In order to find a solution which is not only workable but also adequately compensates the rights holders, members of the ICT industry and rights holders must speak now or forever hold their peace!



## What do Neil Jordan and Irish Distillers have in common?

The answer is ..... intellectual property rights!

Legal proceedings have been issued against Neil Jordan and Warner Brothers Entertainment, USA and UK ("Warner Brothers") by Séamus O'Mulgreavy for copyright infringement. Mr O'Mulgreavy contends that, between 1992 and 1997, he supplied a copy of the manuscript for his book, "*The Immaculate Misconception*" to Mr Jordan's agent. He claims that the movie "The Butcher Boy" directed by Mr Jordan and distributed by Warner Brothers, which was released in 1997, contains many scenes which are similar to those contained in his book. The matter was recently before the High Court as Mr Jordan and Warner Brothers sought an order from the Court requiring Mr O'Mulgreavy to give further particulars of his claim of infringement so that they could properly defend the action. The Court consented to this request.

In a separate matter, Irish Distillers (the producers of Jameson) have issued injunctive proceedings against Cooley Distillery ("Cooley") claiming that the labelling used on bottles of St Patrick Irish Whiskey which were being distributed in Russia by Cooley infringed their intellectual property rights. Following discussions between the parties, it was agreed that the case would be adjourned on the basis of undertakings given by Cooley not to supply or distribute the product until the matter next comes before the Court (which will be shortly).

The lesson for other rights holders is that intellectual property rights are valuable intangible assets which should (and must) be defended.

## McCreevy to change copyright law

Musicians could see a boost to their earnings under new proposals outlined by the Commissioner for the Internal Market, Charlie McCreevy.

While copyright in a song or a piece of music is extended to 70 years after the death of the composer, for sound recordings and performer's rights, the copyright period is only 50 years after the sounding recording is made or the performance takes place. Commissioner McCreevy does not believe that there is a convincing reason for this discrepancy. He said that "*It is the performer who gives light to the composition and while most of us have no idea who wrote our favourite song, we can usually name the performer*".

The Commissioner has therefore indicated that he will bring forward a proposal by the summer to extend the term of protection to 95 years which would benefit all artists, whether featured artists or session musicians.

According to a Commission survey, many European performers or singers start their career in their early 20s. With session musicians starting to perform when they are 17, this means that they could be in their 70s when the 50 year protection ends. The effect of this is that their royalty income ceases at a point in their life when they are most vulnerable (namely, when they are at retirement).

The Commission believes that most of the additional revenue collected in the extended term will stay in Europe, thereby benefiting and promoting European performers and the cultural vibrancy of European sound recordings.

Watch this space for further updates.

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