

## The EU's E-Commerce Agenda 2003-2004

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### Introduction

The European Commission has been hard at work this year, proposing new directives and scheduling workshops and conferences to revisit old directives in an ongoing effort to harmonize e-commerce laws and regulatory practices across the spectrum of member states. The Commission's activities encompass a wide range of issues, which include Internet fraud, the adjudication and out-of-court settlement of consumer disputes, security of online payments, regulation of new technology, privacy, and intellectual property rights. Below, we offer a useful guide to recent developments, and an indication of what is to come in the months ahead.

### Consumer Protection On The Internet

The Commission has proposed a directive to identify on-line commercial practices that should be prohibited. Basically, they are divided into “misleading” practices (e.g. falsely stating that the product is only available for a short period of time) and “aggressive” practices (e.g. persistent solicitations by email). First Reading in Parliament on this Proposal for a Directive concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market is expected to start in November of this year.

### Uniform Standards For Out-Of-Court Settlements

On June 10-11 of 2003 the Commission hosted a conference on the review of the Extra-Judicial Network (EEJ-NET), a European community network designed to implement the Council Resolution of April 13, 2000, which calls for a harmonized approach to the out-of-court settlements of consumer disputes. The conference made clear that member states have different approaches towards alternative dispute resolution which causes problems and that there is a need to raise public awareness about EEJ-NET. The Commission is now working on a report which is expected to be published in the form of a Working Document by the end of this year.

## **Determining Jurisdiction For Non-Contractual Disputes**

The draft Rome II Regulation on choice of law in cross-border non-contractual civil disputes states that non-contractual disputes concerning unfair competition shall be settled in accordance with the law of the country of the consumer. Disputes over IP rights are to be settled in accordance with the law of the country for which protection is sought. Article 23 of the draft Regulation (July 22, 2003) is interpreted by most as saying that cross-border disputes involving on-line activities are governed by the law of the country where the service provider is established, but there is still uncertainty surrounding that issue. First Reading in Parliament is expected to start in November of this year.

## **Regulation Of On-Line Payment Systems**

According to the Commission, a legal framework on retail payments in the Internal Market is needed to regulate on-line payment systems. A Working Document (May 7, 2002 ) covers issues such as: general rules for electronic payment instruments, payment providers' liability, security of payments, digital certification services, the provision of payment services by companies other than banks. The Commission is expected to issue a Communication on obstacles to cross-border payments in the Internal Market in the Fall of 2003. It is also expected to issue a legislative proposal on payment services this Fall.

## **“EU Blueprint” For Mobile Payments**

A Working Document (June 12, 2003) covers any payment that can be initiated on mobile devices, including pre-paid and post-paid payments, on-line payments and payments at the point-of-sale, but not for example payments over devices such as laptops that are operated via local wireless connections. The Working Document still needs to be finalized by the Commission; this is expected to happen in November of this year. The next step will then be to propose legislation.

## **Reassessing Television Regulation In The Internet Age**

The Television Without Frontiers (TWF) Directive (July 30, 1997) currently applies to television broadcasting services, including pay-per-view and near-video-on-demand. It contains specific rules on advertising and the protection of minors. The Directive will be reviewed in 2004. On 4 September, the European Parliament stressed, in a Resolution, that a thorough revision of the Directive is needed in light of technological developments, in particular of course the development of the Internet. The Parliament favors development of a “content framework package” to provide an overarching framework for the audiovisual sector, bringing together a revised version of the TWF Directive, the E-Commerce Directive and the Cable and Satellite Directive. The Commission is expected to adopt a Communication on the review of the TWF Directive in December of this year or January 2004.

## **Cookies, Spam, and Other Internet Privacy Issues**

The Directive on Privacy and Electronic Communications (July 12, 2002) deals with the processing of data and the protection of privacy in the electronic communications sector. It contains provisions on network security, data retention, cookies, and spam. On July 15, 2003 Commissioner Liikanen announced that the Commission will take a series of actions to fight spam. The Commission is expected to adopt a Communication on spam and data protection in December of this year. It will host a workshop on spam in the Spring of 2004 at the OECD.

### **Preserving Intellectual Property Rights**

A proposal for a Directive on Measures and Procedures to Ensure the Enforcement of Intellectual Property Rights (January 30, 2003) would require Member States to provide for fair and equitable IP enforcement. These would have to deprive counterfeiters of the economic benefits resulting from their illegal activities. Serious infringements would have to be treated as criminal offences. The Directive provides that courts would be entitled to serve preliminary injunctions “upon intermediaries whose services are being used by third parties to infringe a right”. First reading vote of Parliament expected during the November 17-20, 2003 plenary.

### **Access To Copyright Management Technology**

The Commission’s Working Paper on Electronic Copyright Management Systems (February 14, 2002) is the starting point of a process aimed at gathering information on what is needed to make electronic copyright management technology more widely accessible. It is a follow-up on the Copyright Directive which includes provisions supporting the deployment of technology used to protect IP rights in the on-line environment. The Commission is expected to adopt a Communication on collective rights management before the end of the year, followed by a workshop in January of February of 2004.