



A I P P I

**ASSOCIATION INTERNATIONALE
POUR LA PROTECTION DE LA PROPRIETE INTELLECTUELLE**

**INTERNATIONAL ASSOCIATION
FOR THE PROTECTION OF INTELLECTUAL PROPERTY**

**INTERNATIONALE VEREINIGUNG
FÜR DEN SCHUTZ DES GEISTIGEN EIGENTUMS**

Congress

Seoul

October 20 to 23, 2012

**Report
Special Committee Q132**

IT and Internet



Report Q132

IP and Internet

Names and Functions of Committee Members

Chair	Peter Finnie	(United Kingdom)
Co-Chair	Alfred Macchione	(Canada)
Secretary	Thomas Kretschmer	(Switzerland)
Members	Erwin J. Basinski Jonas Heitto Trevor Hill Michihiro Miyasaka Yoshikazu Tani Fernand de Visscher	(United States) (Germany) (United States) (Japan) (Japan) (Belgium)
Responsible Reporter	John Osha	(United States)

2012 Annual Report of Special Committee Q.132

Intellectual property case law and practice continues to develop in this important area of technology. Members of Special Committee Q.132 maintain an active watch for new developments which warrant further analysis on behalf of the wider membership of AIPPI.

Examples:

The Apple patent battle

Apple fights various patent, design and copyright lawsuits around the world including US, Australia, Japan, Germany, France, Netherlands, Italy, UK and Korea. The outcomes vary. While a Court in the US lately ruled in favour of Apple, the Seoul District Court ruled that Samsung had not copied Apple's designs, but had violated one functional feature, while Apple had infringed two of Samsung's mobile telecommunication patents. Apple was ordered to halt sales of four products in Korea, including its iPhone4 and iPad2.

EU Court ruled on copyright protection of software functionality

The Court of Justice of the European Union ruled in Case C-406/10 (SAS Institute Inc. v. World Programming Ltd.) that the functionality of a computer program and the programming language and format of data files used in that program cannot be protected by copyright. This confirms the long standing doctrine and statutory provision that copyright only protects the "expression" not the underlying ideas and principles. It clarifies the scope of the statutory exemptions included in the EC Directive 91/250 (restated in 2009/24/EC).

EU opinion on resale of software licenses

A judgment of the Court of Justice of the European Union in Case C-128/11 (UsedSoft GmbH v. Oracle International Corp.) ruled on the exhaustion of the exclusive right of distribution of a copy of a computer program. The Court of Justice of the European Union (“CJ”) handed down a landmark decision concerning the resale of software licenses that will open the market for used software licenses. The CJ held that the sale of “used” software is permissible. The reseller must, however, make his own copy downloaded onto his computer unusable at the time of the resale.

Monitoring of the implementation of the Leahy-Smith America Invents Act (AIA) by the United States Patent and Trademark Office USPTO:

The provision of the Leahy-Smith America Invents Act became effective on September 16, 2012, one year after the date of enactment. The USPTO released various Rules and Regulations and included a Transitional Program for Covered Business Method Patents — Definitions of Covered Business Method Patent and Technological Invention. According to the latter, a Covered business method patent means a patent that claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions. In determining whether a patent is for a technological invention solely for purposes of the transitional Program for Covered Business Methods the following will be considered on a case-by-case basis: whether the claimed subject matter as a whole recites a technological feature that is novel and unobvious over the prior art; and solves a technical problem using a technical solution.

Copyright Pentology in Canada

On July 12, 2012, the Supreme Court of Canada released the so-called “copyright pentology”, a series of five long-awaited decisions from appeals of decisions before the Copyright Board of Canada. Three of these decisions directly relate to copyright in the digital environment. In *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 34, the Court ruled that the right to communicate a work to the public by telecommunication does not extend to the downloading of musical works via the Internet, such activity only impacting the reproduction right under Canadian copyright law. In so holding, the Court was swayed by the historical interpretation of the communication right in Canada as stemming from the public performance of a work. In *Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 35, the Court decided that the on-demand streaming of musical works over the Internet constituted to a communication of the work to the public, even though, in the particular circumstances of the case, the transmission of the works in question amounted to point-to-point communications. The Court found that the works were intended to be made available to anyone who wished to access them, rendering it immaterial whether the transmissions were received at different places or at different times, or whether made at the initiative of the sender or receiver. In *Society of Composers, Authors and Music Publishers of Canada v. Bell Canada*, 2012 SCC 36, the Court held that 30-second to 90 -second streamed music samples of the type provided by online music stores amounted to an exercise of fair dealing under the Canadian copyright statute on the basis that the prospective purchasers of the musical works were engaged in private research in support of their purchasing decisions.

Developments in Cloud Computing

Guidance provided by various organisations on the risks in cloud computing differ in many respects. The use of cloud computing should undertake a thorough risk analysis as there are various issues. Members of Q.132 are supporting a Workshop at the 43rd World Intellectual Property Congress, in Seoul, Korea.

Future Work

Members of Q132 are meeting in Seoul in October to discuss our next major project. One possible subject is an in depth analysis of the CJ decision on the resale of software licences in Europe mentioned above.