



International Distribution Institute



# **DISTRIBUTION AND INTERNET**

## **The Impact of Internet on Agency, Distributorship and Franchising Agreements**

**2008 Annual Meeting of the International Distribution Institute**

**FRIDAY 6 JUNE AND SATURDAY 7 JUNE 2008, TURIN (ITALY)**



The **International Distribution Institute (IDI)**, the leading organisation dealing with international distribution law, will hold its 2008 annual conference in Torino.

The conference is addressed to **lawyers and businessmen** involved in negotiating, drafting and managing international distribution contracts (agency, distributorship, franchising, etc.) and will deal with a number of topical issues which justify an in depth discussion between the participants and qualified experts in this field. The conference has been organized in collaboration with the

European Company Lawyers Association (ECLA), the Italian member association of ECLA (Associazione Italiana Giuristi di Impresa: AIGI), the Piedmont Arbitral Chamber and the Turin Commercial Chamber.

The conference is divided into a **main session** (on Friday 6 June) and three **parallel workshops** on specific issues chosen by IDI in collaboration with its members (on Saturday 7 June, morning).

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### **The main session: Distribution contracts and Internet**

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The main session (Friday, 6 June) is devoted to a number of **new issues which arise in connection with Internet**.

Internet offers new (and in some cases quite revolutionary) marketing tools both to principals/suppliers and agents/distributors/franchisees, which have a substantial impact on the existing sales networks. This new challenge may imply the need to **change the present distribution strategies** or to create appropriate defenses for maintaining the existing situation.

In this context several new problems arise.

- **Can the supplier/principal sell through Internet** without infringing the exclusive rights of its agents or distributors?
- **Should distributors be allowed to sell on Internet** or should such sales be prohibited or submitted to control by the supplier?
- And, if the supplier wishes to limit the right of the distributor (or franchisee) to promote business through Internet, does this imply an **infringement of the antitrust rules**?

A more general issue, which is of great practical interest, concerns the **use of Internet in the negotiation and conclusion of international contracts**. The main questions to be discussed in this context are the following:

- Can a contract agreed through Internet be considered to be as effective as a **written contract**?
- What is the practical experience on **digital signatures**?
- How to manage **contract modifications made through e-mails**?

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### **The three specialized workshops**

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The second session (Saturday June 7, morning) will deal with three parallel **workshops** on the following themes:

- **Calculation of goodwill indemnity for agents and distributors in various jurisdictions. How to foresee the amount and how to limit it.**

This workshop intends to provide more precise and practical information (based on the actual approach followed by the courts) about the way goodwill indemnity for agents and distributors (if any) is calculated in countries of major importance. At the same time, the possible means for excluding or reducing the amount of indemnity will be analyzed.

- **M&A and distribution networks. How to avoid pitfalls when acquiring a company with a distribution network?**

Acquiring a company with a distribution network may imply the risk that the contracts with the members of the network imply higher risks than expected (due to bad drafting or relations based on oral agreements). This requires particular attention in the context of the due diligence. A further, even more important problem, arises if it appears that the network of the acquired company needs to be merged with another one or dismantled.

- **Litigation strategies in international distribution agreements.**

Which are the most appropriate strategies to be implemented when litigation cannot be avoided?

The workshop will examine some of the possible options which must be analyzed in order to work out a contractual strategy, like for instance:

- Arbitration or ordinary courts? In which situations arbitration should be preferred and in which not? In which cases arbitration is not effective (e.g. Belgian distributors, Italian agents).
- What happens in the EU (under regulation 44/2001) or under the new Lugano Convention when no choice of court has been made? Agents will normally be able to claim before their courts, but for distributors the situation is different in various countries.
- How to make sure that a choice of forum is effective: the requirement of written form.

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On Friday evening a gala dinner will be held at “Il Cambio”, a prestigious example, since 1757, of the Torino culinary tradition and hospitality. Places are limited and must be reserved in time.

For more information see the practical information hereafter.



More details about these events can be found in the following pages as well as in the IDI website ([www.idiproject.com](http://www.idiproject.com))



FRIDAY, 6 JUNE 2008

## The Impact of Internet on Agency, Distributorship and Franchising Agreements

### Morning session: Marketing products and services through Internet

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<b>CHAIRMAN</b>	<b>Fabio Bortolotti</b> , Professor of Law, University of Torino; Buffa Bortolotti & Mathis, Torino; President IDI; Chair ICC Commission on Commercial Law and Practice (CLP)
09:15-09:35	<b>Welcome</b>
09:35-09:50	<b>Presentation of the IDI website.</b>
09:50-10:10	<b>Sales promotion through Internet by companies with a distribution network: how to avoid conflicts with the network.</b> <p>The principal/supplier may simply decide to advertise his activity through Internet: in this case there is no conflict but problems may arise if he gives inappropriate information (e.g. by naming exclusive distributors mere resellers). If the principal sells through Internet (directly or through portals of third parties) he must check whether this conflicts with possible exclusive rights granted to agents or distributors. How to avoid the risk of discrimination (e.g. direct sales in competition with franchisees).</p> <p><b>Marco Hero</b>, Tigges Rechtsanwälte, Düsseldorf</p>
10:10-10:30	<b>Practical considerations on the use of Internet by principals/suppliers. How to draft appropriate clauses in order to avoid conflicts with the members of the network.</b> <p>In which situation the principal/supplier can sell through Internet without damaging his network? The possibility of separating distribution channels. Cases where this choice is not appropriate. Clauses whereby the principal/supplier reserves the right to sell through Internet (as an exception to possible exclusive rights of his agents/distributors). Compromise solutions which take into account the interests of both parties.</p> <p><b>Guy Gras</b>, Director for legal affairs, Yves Rocher; Chair, Fédération française de la franchise</p>
10:30-10:50	<b>Use of Internet by members of the sales network: the risks and possible remedies.</b> <p>A promotion by members of the network may create considerable problems if the information given is not under the control of the principal/supplier: interference with the trademark and corporate image strategies of the principal/supplier. The supplier must be able to control the contents of the information given, while at the same time respecting the independence of distributors.</p> <p><b>Souichirou Kozuka</b>, Sophia University, Tokyo</p>
10:50-11:10	<b>Coffee break</b>
11:10-11:30	<b>Contractual strategies for keeping the action of distributors within acceptable boundaries, while respecting EU antitrust rules.</b> <p>Promotion through Internet by distributors may substantially interfere with the exclusive rights of other members of the network. At the same time, EU antitrust rules (and especially regulation 2790/1999) consider Internet sales as "passive sales", which cannot be prohibited. Which are the limitations that can be imposed upon distributors without infringing the rules on competition?</p> <p><b>Fabio Bortolotti</b>, Professor of Law, University of Torino; Buffa Bortolotti &amp; Mathis, Torino</p>
11:30-12:15	<b>PANEL on Internet sales by selective distributors and franchisees in the EU. Which limitations can be imposed without infringing the rules on competition?</b> <p>Under EU competition rules (and especially Regulation 2790/1999) selective distributors (i.e. who are bound not to sell the contractual products to traders who do not belong to the network) must remain free to make active sales to any end user in the EU. The only limitation that may be imposed on them is the obligation to sell from their outlet. There are very interesting developments in case law regarding selective distribution networks by the EU Commission and the French antitrust authority, which determine the conditions that may be imposed upon members of a selective distribution network. The panel will discuss if and to what extent such case law is applicable to franchising networks which can be considered "selective" (i.e., networks where the franchisees are not authorized to sell to traders not belonging to the network).</p>

**CHAIRMAN: Didier Ferrier**, Professor of Law, University of Montpellier; Vice-President IDI

**Fabio Bortolotti**, Professor of Law, University of Torino; Buffa Bortolotti & Mathis, Torino;  
President IDI

**John H Pratt**, Hamilton Pratt, Birmingham

**Carol Xueref**, Director for legal affairs and group development, Essilor International S.A., Paris

**Chantal Zimmer**, Secretary General of the French Franchise Federation, Paris

12:15-13:00

**Discussion**

13:00-14:00

**Lunch**

## **Afternoon session: Negotiating and concluding contracts through Internet**

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CHAIRMAN

**Francesco Benigni**, Vice-President and Secretary General ECLA

14:00-14:15

**International instruments for warranting functional equivalence between electronic records and paper-based documents.**

The UNCITRAL model law and the 2005 UNCITRAL Convention on electronic communications in international contracts. The amended text of Article 23(2) of Regulation No 44/2001 on choice of forum clauses. The UNCITRAL recommendation regarding the form of arbitration clauses under the New York convention of 1958. Article 3 of the Hague Convention on Choice of Court Agreements.

**José Angelo Estrella-Faria**, Senior Legal Officer with the International Trade Law Division (ITLD) of the United Nations Office of Legal Affairs (UNCITRAL)

14:15-14:30

**Practical problems arising in Internet negotiation. The view of a company lawyer.**

The experience made with contracts negotiated through e-mail. Possible risks and precautions to be taken.

**Giuseppe Catalano**, General Counsel & Company Secretary Indesit Company SpA

14:30-14:45

**Use of Internet for settling disputes: the on-line conciliation of the Piedmont Arbitration Chamber.**

The Piedmont Chamber of Commerce has developed a system of on-line conciliation. The presentation will deal with the practical experience made with this new approach to conciliation.

**Daniela Cena**, Director, Piedmont Chamber of Commerce

14:45-15:00

**The digital signature of Infocamere: a practical and effective means for business.**

Infocamere has set up a very effective system of certification of digital signatures. The speaker will describe in practical terms how this system makes it possible to warrant the origin and integrity of electronic messages.

**Gabriele Da Rin**, Infocamere SCpA

15:00-16:00

**PANEL on various issues arising when concluding contracts through Internet (evidence, written form, place and time of conclusion) in different jurisdictions.**

The panel will address the following questions: Is an exchange of e-mails valid evidence for the conclusion of a contract? Is an exchange of e-mails equivalent to a written contract? When and where is the contract concluded? How can the authenticity of the signature be warranted?

**CHAIRMAN: Edward Miller**, Reedsmitth, London

**Magnus Nedström**, Advokatbyrån Sigeman & Co AB, Malmö

**Leslie Thiele**, Whiteman, Osterman & Hanna LLP, Albany (NY)

**Jaap van Till**, Van Till Advocaten, Amsterdam

**Olga Szejnert**, Drzewiecki, Tomaszek & Partners

16:00-16:30

**Discussion**

### **Individual contacts with IDI Country Experts (16:30-17:00)**

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#### **AFTER THE AFTERNOON SESSION THE IDI COUNTRY EXPERTS WILL BE AVAILABLE FOR INDIVIDUAL CONTACTS WITH THE PARTICIPANTS.**

The updated list of the country experts present at the conference and available for individual contacts can be found at <http://www.idiproject.com/conference-contacts.html>

Request forms for meetings with the expert(s) will be enclosed in the informative sheets handed out at the conference.

### **General meeting of the members of the International Distribution Institute (17:00-18:30)**

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In this general meeting, to which also non members are invited, the officers of IDI will inform the members about the current situation of IDI: the results achieved in 2007 and the plans for the following years.

The participants will be kindly invited to share their opinions about the activity of IDI and make suggestions for the future.

### **Social event: Gala Dinner (20:00)**

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On Friday evening (June 6, 2008) a Gala Dinner will be held at "Il Cambio", a prestigious example, since 1757, of the Torino culinary tradition and hospitality.

Entry by ticket. Ticket price: € 95 for person (VAT included).

## SATURDAY, 7 JUNE 2008

### FIRST WORKSHOP

#### Calculation of Goodwill Indemnity for Agents and Distributors

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The workshop aims at providing a practical information on the actual criteria applied by the courts when calculating the goodwill indemnity for agents (and for distributors, where applicable) and about possible means for limiting the amount in question.

**CHAIRMAN:** **Klaus Meyer Swantee**, Retired Partner of Derks Star Busmann, Amsterdam. Member of the IDI Council

09:30-09:50 **Evaluating the possible amount of indemnity for agents and distributors and means to reduce it under German law.**

**Marco Hero**, Tigges Rechtsanwälte, Düsseldorf

09:50-10:10 **Criteria used by Belgian Courts to calculate the indemnities for distributors under the law of 1961.**

**Ingrid Meeussen**, Lafili, Van Crombrughe & Partners, Brussels

10:10-10:30 **French case law on the calculation of the goodwill indemnity for commercial agents and distributors.**

**Christoph Martin Radtke**, Lamy & Associés, Lyon

10:30-11:00 **Coffee break**

11:00-11:20 **Indemnity for agents and distributors in Spain: the calculation criteria used by the courts.**

**Ignacio Alonso**, Advocacia Abogados, Madrid

11:20-11:40 **Determining the amount of indemnity for agents in the United Kingdom: the latest developments in case law.**

**Edward Miller**, Reedsmith, London

11:40-12:00 **The calculation of the agent's indemnity in Italy after the Honyvem judgment of the Court of Justice.**

**Silvia Bortolotti**, Buffa Bortolotti & Mathis, Torino; Member of the IDI Council and Secretary General IDI

12:00-12:30 **Discussion**

### SECOND WORKSHOP

#### M&A Agreements and Distribution Networks

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**CHAIRMAN:** **Carol Xueref**, Director for legal affairs and group development, Essilor International S.A., Paris

09:30-09:50 **The due diligence regarding contracts with agents and distributors. How to avoid common pitfalls.**

When acquiring a company which has a distribution network, the legal status of the contracts with the members of the network (agents, distributors, franchisees) is a critical issue which is not always adequately considered.

**Cristina Martinetti**, Buffa Bortolotti & Mathis, Torino

09:50-10:10 **Criteria for evaluating the financial risks arising in connection with distribution networks of the target company.**

The valorisation of the target is generally submitted to the results of the due diligence process: the issues to be adequately taken into account to appreciate the actual financial impact of distribution networks within different jurisdictions.

**Carol Xueref**, Director for legal affairs and group development, Essilor International S.A.

10:00-10:30

**Problems arising when the sales network of the acquired company needs to be merged with the network of the acquiring company or dismantled.**

Preventing problems by requiring the seller to terminate agency and distributorship contract before closing. Obtaining all the information which may be needed for defending against claims by agents or distributors in case of termination by the principal/supplier.

**Erwin Gärtner**, Gärtner, Stübel, Baumann & Partners, Stuttgart; Member of the IDI Council

10:30-11:00

**Coffee break**

11:00-11:45

**PANEL on practical experience made in acquisitions of companies with distribution networks.**

Experts will share their experiences and discuss the remedies to critical key points. A general discussion with the participants will follow.

**CHAIRMAN: Carol Xueref**, Director for legal affairs and group development, Essilor International S.A., Paris

**Erwin Gärtner**, Gärtner, Stübel, Baumann & Partners, Stuttgart; Member of the IDI Council

**Cristina Martinetti**, Buffa Bortolotti & Mathis, Torino

**Geert A. Zonnekeyn**, Monard D'Hulst, Kortrijk

**Sönke Lund**, Monereo Meyer Marinel-lo Abogados, Barcellona

11:45-12:30

**Discussion**

## THIRD WORKSHOP

### Litigation Strategies in International Distribution Agreements

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**CHAIRMAN:**

**Fabio Bortolotti**, Professor of Law, University of Torino; Buffa Bortolotti & Mathis, Torino; President IDI

09:30-09:50

**The choice between arbitration and the jurisdiction of ordinary courts**

There are no general rules. Cases where arbitration is less appropriate (small disputes; non arbitrable matters; Belgian distributors). Situations where arbitration is advisable: large disputes; counterpart in countries where a party would prefer to avoid litigating (e.g. USA).

**Didier Ferrier**, Professor of Law, University of Montpellier; Vice-President IDI

09:50-10:10

**What happens when there is no choice of forum (or arbitration)**

In the European jurisdictional area (EU + Switzerland, Norway and Iceland) the rules of Regulation (EC) No 44/2001 and of the revised Lugano convention (2007) entitle the party which supplies the service to claim before the courts of its jurisdiction. How does this principle work with agents, distributors and franchisees? In other countries the outcome is less foreseeable.

**Gustav Breiter**, Viehböck, Breiter, Schenk & Nau, Vienna

10:10-10:30

**Strategy of choice of forum in the European area**

Choice of forum at his seat is important for the principal/supplier, in order to avoid the courts of the other party. In the framework of a defensive strategy the principal will have the advantage of defending at home. In case of an offensive strategy (e.g. distributorship contracts, where the supplier may need to recover payment of goods supplied), the same strategy is appropriate since judgments are easily recognized in other countries. The choice of court clause must be in writing.

**Fabio Bortolotti**, Professor of Law, University of Torino; Buffa Bortolotti & Mathis, Torino; President IDI

10:30-11:00

**Coffee break**

11:00-11:45

**PANEL on jurisdictional strategies in selected areas**



A number of experts will exchange views on possible litigation strategies in the areas they are familiar with. A general discussion with the participants will follow.

- **Latin America: Pedro Eichin Amaral**, Dannemann Siemsen Advogados, Rio de Janeiro
- **Arab countries: Florian Amereller**, Amereller Legal Consultants, Munich
- **Countries entered recently in the EU: The Polish experience: Olga Sztejnert**, Drzewiecki, Tomaszek & Partners, Varsavia
- **USA: Leslie Thiele**, Whiteman, Osterman & Hanna LLP, Albany (NY)
- **Ukraine and Russian Federation: Tatyana Slipachuk**, Vasil Kisil and Partners, Kiev

11:45-12:30

## **Discussion**

## PRACTICAL INFORMATION

<b>Venue:</b>	Centro Congressi Torino Incontra, via Nino Costa, 8, 10123 Torino
<b>Language:</b>	English
<b>Documentation:</b>	A CD-Rom containing all documents discussed at the conference.
<b>Fee:</b>	600 € first participant; 250 € for additional participants within the same premises of the same organization as the first participant (i.e. having the same address and VAT code); 200 € for IDI members having a valid subscription on the day of the conference. The fee includes the coffee break, lunch and documentation. ECLA Members: 20% of discount on the total amount. Please add 20% (VAT) to your payment.
<b>Gala dinner:</b>	95 € per person (VAT included). Please, remember that places are limited and must be reserved in time.

### Continuing Legal Education / Continuing Professional Development Credits

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CLE Credits are granted for this event by the following countries:  
Austria, Denmark, Germany, Norway, Sweden, The Netherlands, United Kingdom.

### Registration and cancellation

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<b>Registration on-line:</b>	Registration can be made through the IDI website, at the page: <a href="http://www.idiproject.com/conference-registration.ucw">http://www.idiproject.com/conference-registration.ucw</a> In that case, you can pay with credit card or by bank transfer. After complete payment, you will receive a confirmation of your registration by e-mail or fax.
<b>Registration by fax:</b>	Alternatively, you can fill in the registration form, and send it by fax to: IDI Project Srl, Via Alfieri 19, 10121 Torino (Italy) fax: + 39 011 574 11 41 In case of registration by fax, payment shall be made by bank transfer and confirmation of your registration will be sent after having received the registration form together with the evidence of the payment.
<b>Payment:</b>	Credit card (only for on-line registration) or bank transfer. <u>NO CHEQUE PAYMENTS WILL BE ACCEPTED.</u>
<b>Cancellation:</b>	Cancellation request received in writing by IDI Project on or before 27 May 2008 will be subject to a 20% administration charge of the total fees paid. After that date no refunds are possible.

### Hotel Accommodation and Tourist Information

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Participants may use the hotel reservation services of Ventana Group, at: [http://booking.ventanagroup.it/for/2008\\_IDI](http://booking.ventanagroup.it/for/2008_IDI)

Participants should book hotels before the end of April, in order to obtain the special conditions provided for in the linked web-page.

Also tourist information is available in the above mentioned web-page.

## REGISTRATION FORM

First Name ..... Last name .....  
Company ..... Address .....  
ZIP/ Postal code ..... City .....  
Country ..... Value Added Tax (VAT) Code .....  
E-mail ..... Phone ..... Fax.....

### WORKSHOPS: (Saturday, 7 June 2008):

Please specify to which workshop you would like to attend (only one per person):

- ☐ I will attend the FIRST WORKSHOP: Calculation of goodwill indemnity for agents and distributors.  
☐ I will attend the SECOND WORKSHOP: M&A Agreements and distribution networks.  
☐ I will attend the THIRD WORKSHOP: Litigation strategies in international distribution agreements.

### FEES: (in case of more participants, please fill in a separate form for each participant)

- IDI Conference  
(6-7 June 2008):
- ☐ € 600: First participant  
☐ € 250: Second participant  
☐ € 250: Third participant  
☐ € 200: IDI member (subscriber), having a valid subscription on the day of the conference.  
Please add 20% (VAT) to your payment.  
☐ € 95 (VAT included): Ticket for the gala dinner (please, specify the number of tickets: .....)  
€: .....

TOTAL AMOUNT:

### PAYMENT:

Please make a bank transfer marked «6-7 June 2008 Conference», including a clear reference to the name of the participant. The bank transfer details are the following:

Bank: Banca Sella, Piazza Castello, Torino (Italy)  
Account Name: IDI Project s.r.l.  
Account Number: 052879649600  
ABI: 03268 CAB: 01000  
IBAN: IT86X0326801000052879649600  
SWIFT: SELB IT 2B

### NO CHEQUES PAYMENTS ACCEPTED

Please complete this form and return it, with your payment made out to:

IDI Project Srl,  
Via Alfieri 19,  
10121 Torino (Italy)  
Fax: + 39 011 574 11 41

Date .....

Signature .....

PRIVACY: All personal information is processed by IDI confidentially and in compliance with the provisions contained in the Italian Legislative Decree 196 of 2003. All personal information stored on our system is secured against unauthorised access. All users may exercise their rights provided by Article 7 of the Italian Legislative Decree 196 of 2003, by sending an informal request to [privacy@idiproject.com](mailto:privacy@idiproject.com)