

Copyright

# European Intellectual Property Review

2014 Volume 36 Issue 2

ISSN: 0142-0461

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On 1 November 2013 the provisions of Directive 2011/77/EU came into force, extending the term of copyright in sound recordings and the duration of performers' rights where a sound recording of the performance is released from 50 to 70 years. Additional measures, including a 20 per cent session fund and "use it or lose it" and "clean slate" provisions have also been implemented. This article considers a number of arguments in favour and against the controversial changes and whether these can be justified.

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## Biopiracy by Law: European Union Draft Law Threatens Indigenous Peoples' Rights over their Traditional Knowledge and Genetic Resources 124

The Nagaya Protocol is the first binding international instrument to formally recognise Indigenous peoples' rights over their traditional knowledge and genetic resources. Draft European legislation to implement the Protocol fails to adequately secure these rights. Unless amended, the draft European law will serve to legitimise historic expropriation of genetic resources and traditional knowledge and may accelerate rather than prevent biopiracy. This article critiques the draft European law and explores how customary law and intellectual property may work in a complementary fashion to secure the rights of Indigenous peoples and local communities and to bring legal certainty to the trade in traditional knowledge and genetic resources.

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In *Pinckney v KDG Mediatech AG* the Court of Justice of the European Union (CJEU) ruled on October 3, 2013 on the question of online cross-border copyright infringement. It considered that courts of Member States in which copyright works were protected and in which the "harmful event" had occurred, or might occur, were competent to determine liability and damage caused in that territory. The court ruled that there was a likelihood of the harmful event arising in a territory where it was possible to obtain infringing copies of works from websites accessible in that territory. The CJEU considered that the relevant question for determining where the harmful event took place was to ask whether copies of copyright works were made accessible online in the Member State of the court seised rather than ask whether the activity of a website was "directed to" the Member State of the court seised.

HANNAH YEE FEN LIM

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The recent case of *Phonographic Performance Co of Australia Ltd v Commercial Radio Australia Ltd* in the Full Federal Court of Australia highlights some of the difficulties faced when definitions in contracts are based on definitions found in legislation and the legislation is subsequently amended, with rights and definitions also re-defined. Unfortunately, in August 2013, the High Court of Australia rejected a leave application by Commercial Radio Australia to appeal the Full Federal Court's decision, so this decision is the final word on the matter.

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