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Improvement over the Rest or More of the Same? Australia's Proposed Extraterritorial Online Copyright Injunctive Reforms 409

Australia has been evaluating ISP injunctive reforms to fight online cross-border copyright piracy over the past year. Inspired by similar enforcement procedures from abroad, Australia's proposed ISP injunctive reforms attempt to overcome deficiencies in other jurisdictions' ISP injunctive procedures. Yet, the proposed reforms' evidentiary burden, cost and indemnification obligations may restrict its use, and ultimately its effectiveness, as cross-border online enforcement tool.

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When the *UsedSoft* judgment was rendered by the Court of Justice of the European Union the reaction of the public, professional and lay, was tremendous. However, soon enough the future impact of the judgment was being described as either a meteor or (more likely) a single one-shot comet. More than two years after the *UsedSoft* judgment, with a growing amount of case law on the matter, the aim of this article is to thoroughly examine post-*UsedSoft* case law regarding digital exhaustion, particularly in relation to digital content other than software, in Germany and before the CJEU.

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This article traces the origins of farmers' rights through their negotiation in the International Treaty on Plant Genetic Resources for Food and Agriculture (Plant Treaty) and their early practice. This analysis is an attempt to understand the legal objects of farmers' rights and the scope of the legal obligations attaching to farmers' rights. The article places the analysis in the context of the post-colonial attempts to bridge the divide between developing and developed countries set out in the United Nation's Declaration on the Establishment of a New International Economic Order. The article concludes that farmers' rights have so far failed to bridge this divide and suggests that there is some prospect of redress through the financial mechanisms in the Plant Treaty. As such, farmers' rights remain aspirational and a crucible for disquiet about the divide between developing and developed countries.

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Nowadays intellectual property rights, in particular patents, play a very important role in achieving commercial success. For this reason, even in the sector of food supplements, manufacturers have increased their attention to the rights of exclusivity. Understanding how to obtain a patent for a food supplement does not depend just on the provisions of European patent law, but also on the provisions of EU regulations regarding food supplements and on the patenting strategies adopted in the context of the relevant commercial sector.

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Accessibility (Not Targeting) Is the Key to Jurisdiction for Online Copyright Infringement 459

In *Pez Hejduk* the Court of Justice of the European Union (CJEU) addressed the question of where a copyright owner has jurisdiction to sue in a case of online copyright infringement. It confirmed that a copyright owner can sue in a Member State where the online copyright infringement was accessible. Further, establishing the jurisdiction was not dependent on whether there had been any sales in that jurisdiction. The CJEU therefore reiterated its interpretation of the special jurisdiction rules in art.5(3) of Regulation 44/2001 (the Regulation) (now art.7(2) under the recast Regulation) which permits a copyright owner to sue in the courts of a Member State in which the harmful event occurs, and which the CJEU had interpreted in its previous decisions in *Pinckney* and *Hotel*. The ability to sue was, however, subject to the caveat that the copyright owner could only recover for the damage suffered in that jurisdiction, not in other jurisdictions.

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In 2013 the Patents County Court found that a record company, All Around The World (AATW), had infringed the performer’s rights of the singer Jodie Aysha in the hit song “Heartbroken”. The Intellectual Property Enterprise Court has since conducted a damages inquiry. The court first assessed damages on the basis of a licence between a willing licensor and willing licensee. Significantly, however, it also clarified that when there has been a “knowing” infringement, under art.13 of the IP Enforcement Directive, a claimant is not entitled to both lost profits and any unfair profits accrued to the defendant. Further, the court found that additional damages under the Copyright, Designs and Patents Act 1988 (CDPA) and damages under art.13 of the Directive are not cumulative, and that additional damages under the CDPA have become redundant in light of the Directive.

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On October 17, 2014, the English High Court ordered the main domestic retail internet service providers (ISPs) to block subscribers’ access to certain websites that advertised and sold goods infringing registered trade marks owned by Richemont, a group of luxury brands. These website-blocking orders were substantially the same as previous orders that the High Court had granted in cases of online copyright infringement, and the legal bases were similar to the copyright context. This is in spite of the fact that the UK has no express legislation for granting injunctions when trade marks are infringed online. The case is significant in providing a remedy for trade mark holders by requiring ISPs to block websites infringing trade marks.

AGATA SOBOL

Italian Supreme Court Gives New Guidance on the Assessment of the Similarity of Products and Services in Trade Mark Infringement Cases: *Tidnings AB Metro v Metro Italia Cash & Carry SpA and Metro Cash & Carry Services Ltd* 471

Tidnings AB Metro v Metro Italia Cash & Carry SpA and Metro Cash & Carry Services Ltd is an interesting case concerning the use of the same trade mark for two types of products whose similarity was widely discussed (newspapers on one hand and advertising leaflets distributed by a supermarket on the other hand). The Italian Supreme Court took this opportunity to highlight important aspects of the analysis required when comparing goods and services in trade mark infringement cases and to criticise previous case law: when comparing goods and/or services the comparison one should enter into the details of those products and/or services and not merely refer to their generic functions.

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