

European Intellectual Property Review

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Interrogating Copyright History 467

This article discusses recent developments in copyright history scholarship arising from the publication of "Copyright at Common Law in 1774" by Tomas Gómez-Arostegui. Drawing on the discussions at a Symposium hosted by CREATE, University of Glasgow, the article considers what these developments illustrate about the nature of academic research and the relevance of copyright history to lawyers and policy-makers today.

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Recent reforms saw the introduction of a parody exception into UK copyright law, and current debate calls for a similar parody exception in EU trade mark law. This article evaluates why there is a need for such specific exception, and why Recital 25 of the recast Trade Marks Directive might be insufficient. Despite the generally commercial nature of trade marks, a closer analysis reveals that trade mark owners' rights have expanded to cover expressive uses of signs, including parody. The introduction of an exception allowing registered trade marks to be parodied would re-balance the protection afforded to signs, in order to ensure that trade mark owners may still exercise their rights, but without causing disproportionate harm to the exercise of freedom of expression.

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Article 97 of the European Union Trade Mark Regulation (EUTMR) sets out a number of grounds to determine international jurisdiction in cases of alleged infringement of an EU trade mark (EUTM). Besides the possibility of bringing proceedings before the courts of the Member State of domicile/establishment of the defendant/claimant and where the EU Intellectual Property Office (formerly the Office for Harmonization in the Internal Market) has its seat, art.97(5) EUTMR also allows for proceedings to be brought "in the courts of the Member State in which the act of infringement has been committed or threatened". In the absence of specific guidance from the Court of Justice of the EU (CJEU), this contribution asks how art.97(5) EUTMR is to be interpreted in relation to proceedings for the alleged infringement of a EUTM over the internet. It concludes that, in light of preceding jurisprudence, the CJEU may hold that this is place where the activation of the process for the technical display of infringing content on a certain website takes place. While in the majority of instances this is likely to be the same place where the defendant is domiciled/established, this may not always be the case.

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Non-traditional trade marks have become part of commerce and advertising, but they continue to struggle to find a place in the current EU trade mark system. The reason for this, simply, is that the current EU trade mark system is based on traditional trade marks, such as words, names, letters and logos. However, the system has been challenged increasingly by traders wanting to register non-traditional trade marks. This article specifically focuses on colour and smell trade marks, and attempts to set out how these kinds of non-traditional trade marks can be registrable under the EU law. In this context, there are two main obstacles: the graphical representation requirement and the distinctiveness requirement. The registration problems of non-traditional trade marks impelled the European Commission to revise the current situation of the functioning of the EU trade mark system, and this has resulted in proposals for both a new trade mark Directive and a new Regulation. These proposals suggest the abolition of the graphical representation requirement and the inclusion of colours and sounds as examples of signs that may constitute a trade mark.

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