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"Local Communities" and Traditional Knowledge at WIPO: A Very Broad Application? 485

The World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) is negotiating a text in anticipation of a Diplomatic Conference to agree on binding obligations for traditional knowledge (TK). The holders of this TK are Indigenous Peoples and "local communities". This article addresses the identity of local communities in the context of TK. The analysis shows that "local communities" are likely to be very broadly conceived as groupings of people linked by social ties and shared common perspectives across generations in some form of geographical location or setting. If this is intended, then TK as a new form of intellectual property will have a very broad application and a very exciting future for practitioners that extends TK well into the economies of developed countries.

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In *Art & Allposters International BV v Stichting Pictoright* the CJEU found itself having to wrestle with the difficult issue of the extent of control a copyright holder is entitled to exert over objects that have been put on the market in the EU by or with their consent, but which have subsequently been altered. This article analyses the CJEU's decision, considers how altered objects have been treated in the context of other intellectual property rights, and draws some conclusions on how the issue could be approached in the future.

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This article will analyse the claim of trade mark infringement under s.10(2) of the Trade Marks Act 1994, where the requisite confusion is the "wrong-way-round". The Court of Appeal has, relatively recently, confirmed that this unorthodox type of confusion is sufficient for the claimant to succeed in proceedings for trade mark infringement. However, an appeal to the Supreme Court has been withdrawn following confidential settlement. This article will argue that interpreting s.10(2), so as to encompass instances of wrong-way-round confusion, is not simply a matter of addressing the chronological order in which a consumer interacts with the trade mark and the infringing sign. On the contrary, it expands s.10(2) so as to protect against (1) an adverse effect on the trade mark's function, a type of harm which should be confined to s.10(1), and/or (2) blurring, a type of harm which should be confined to s.10(3), and/or (3) initial "disinterest" confusion, a sub-category of tarnishing which should be confined to s.10(3). As such, wrong-way-round confusion should not be permitted.

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What Does Trade Secrecy Have to Do with the Interconnection-based Paradigm of the Internet of Things? 518

The Internet of Things (IoT) raises the question of the suitability of trade secrets to the emerging algorithmic society. Trade secrets concern information that derive economic value from not being generally known or readily ascertainable by proper means, and are the subject of "reasonable efforts" to maintain their secrecy. IoT is a network of interconnected physical objects, each embedded with sensors that collect and upload data to the internet for analysis or monitoring and control. Examples include IoT-enabled smart homes, smart-city traffic systems, and smart waste-management systems. At a first glance, the architecture of these smart and interconnected objects seems to suggest that trade secrets law—which was designed before the advent of this technology—does not suit these scenarios and therefore will hardly apply to the IoT. However, a more in-depth analysis explains why trade secret protection is increasingly requested and how it fits in with the IoT eco-system and more broadly speaking with the algorithmic society.

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The Chinese intellectual property system is advancing with serious speed. April 2018 saw the appeal judgment handed down in *IWNCOMM v Sony China* (2017), a landmark judgment that demonstrates how the Chinese courts approach FRAND and patent infringement issues—and gives valuable lessons on how to conduct FRAND negotiations.

GORDON HUMPHREYS

A Selective Review of Some Recent Cases of the EUIPO Boards of Appeal: Practical Application of the Jurisprudential Criteria of the CJEU 530
Two thousand eight hundred decisions were decided last year by the EUIPO's Boards of Appeal but only 10 per cent of them will end up before the General Court in Luxembourg. And even then, 90 per cent are upheld by the GCEU and only a tiny fraction ever find their way to the Court of Justice. As the de facto final arbiter of most appealed EUTMs, the challenge for the Boards is to apply the law—particularly, the general principles developed by the CJEU— in a coherent and consistent manner. This article attempts not only to see whether this is being done by analysing some important decisions of the Boards that have not been further appealed to Luxembourg, but also looks at some that have been recently confirmed by the GCEU.

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Germany's Network Enforcement Act: Closing the Net on Fake News? 539
Germany's Network Enforcement Act (NetzDG), which aims to combat "hate speech" and "fake news", took full effect as of 1 January 2018. It embodies a new legislative concept which transfers the responsibility of enforcing criminal offences in the digital sphere to social media providers while at the same time making them subject to significant fines in the case of failures in performing this task. This article provides an overview of the provisions under the NetzDG, outlines some of the main points of criticism raised against it, and explores some of the other initiatives aimed at tackling fake news in the EU.

Comment

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The Intellectual Property High Court of Japan (IPHC) ruled in favour of Ryohin Keikaku Co Ltd, the operator of the famous MUJI retail chain, against Cainz Co Ltd, one of Japan's largest DIY chain stores, of violating the Unfair Competition Prevention Law (UCPL) in *Cainz Co Ltd v Ryohin Keikaku Co Ltd.* This commentary will examine the decision, the use of survey evidence in unfair competition litigation, and other unfair competition litigation developments in Japan.

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