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The Delicate Scope of Economic Rights in EU Copyright Law: Opinion of the European Copyright Society in light of Case C-161/17, *Land Nordrhein-Westfalen v Renckhoff* (Córdoba Case) 335

This opinion from the European Copyright Society (ECS) discusses the implications of the recent decision of the CJEU in Case 161/17 (*Renckhoff v Córdoba*). In that case, the CJEU has confirmed that the uploading of a photograph that was already made available on a different website with the consent of the photographer constitutes an act of communication to the public. The ECS is concerned with the further consequences of the ruling, as this finding should not lead to the result that a student's inclusion of a photograph in a school assignment made available on the school's website constitutes a copyright infringement. The ECS points in this respect to the availability of exceptions and limitations, notably for the purposes of education and quotation, and also suggests that the CJEU should consider developing a *de minimis* rule for dealing with uses that have minimal impact on the interests of right holders.

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Bouncing Back from Oblivion: Can Reversionary Copyright Help Unlock Orphan Works? 339

The importance and potential of mass digitisation of cultural heritage institutions in Europe is well known, as also is the stalemate created by the difficulty of clearing the rights of these works that are mostly out of commerce and whose right holder is not known or locatable. The European legislator tried to address this stalemate by introducing a copyright exception for these so-called orphan works, which can be digitised and published after carrying out a diligent search. However, as the rules to implement this diligent search are quite demanding, and the sources to be consulted are largely inaccessible, cultural institutions struggle to get their collections out in the digital world, so that they can have a second life. Presumption of copyright ownership makes this picture even more blurry. After a work is created, it is delivered to a complex web of potential copyright transfers and attributions, which makes the quest for right holders potentially endless. The reversion of copyright, which returns the rights to the author under certain conditions (time lapse, or inactivity of the publisher) adds complexity to this picture, as it very much differs from country to country. The analysis of data from a follow-on of the EnDOW project in conjunction with ongoing and recent research shows that reversionary copyright, far from being an outdated and scarcely useful tool (Bently and Ginsburg 2010), has great potential to relieve the problem of orphan works, if correctly recognised and developed.

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“In Fashion, One Day You are In, the Next You are Out”: Comparative Perspectives on the Exclusion of Fashion Models from Performers' Rights 347

This article explores the exclusion of models from performers' rights. Taking the example of France, which has expressly excluded models from intellectual property rights, the author demonstrates that this interpretation of performers' rights breaches international intellectual property treaties.

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This article looks briefly at the common law development in the UK of breach of confidence and the nature of a “trade secret”, before going on to consider some practical measures that could be taken in order to demonstrate pursuant to the Trade Secrets Directive (2016/943) (which was required to be implemented in EU Member States by 9 June 2018) that reasonable steps have been taken to keep such trade secrets or information secret.

**Barring Registration of Offensive Trade Marks: A Comparative Analysis of
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One of the barriers in trade marks registration in different countries is the mark being considered as immoral or scandalous marks by trade mark offices. Although scandalous words or logos are mostly known by the public, sometimes it would be challenging to find their confronting meaning in different countries or cultures. There are various definitions and criteria for “scandalous” trade marks in different jurisdictions; however, those meanings cannot precisely indicate offensive or vulgar words in many situations. Case law investigation could be beneficial, yet not enough to identify a general rule in this issue, and even can be useful in transforming decisions to law. This article determines some circumstances in which a trade mark registration could be rejected by the authorities owing to being “scandalous” in Australia and the US. It also indicates that, in the case of trade mark registration, more flexible and active rules should be followed in order to meet the interest of both public morals and trade mark owners.

CATHERINE BOND

Symbols, Trade Marks and Remembrance: “Anzac” and the Poppy 373

This article examines the legal regulation of two symbols of the First World War, the word “Anzac” and the red poppy—which in recent years have both been subject to controversies concerning inappropriate usage. While “Anzac” is subject to government restriction in Australia, New Zealand and the UK, the poppy is registered as multiple trade marks in the UK, raising questions about how law should regulate symbols of wartime remembrance.

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**IP and PI Takedowns: Comparing and Contrasting the Right to be
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This article refers to some of the comparison and contrasting issues between the takedown of infringing intellectual property content online, and the RTBF erasure, forgetting and takedown of personal data and content online. The article will then outline some of the many differences that should be considered. The significant differences also highlight how PI takedowns can be more complex and more nuanced than IP takedowns, and may therefore have important policy consequences.

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Court of Appeal Furthers the UK’s Bid to be the SEPs Capital of Europe 385

On 30 January 2019, the English Court of Appeal handed down judgment in *Conversant Wireless Licensing Sàrl v Huawei Technologies*, essentially reiterating its 2018 judgment in *Unwired Planet v Huawei*, that standard-essential patent (SEP) holders may, under certain circumstances, use the English courts to obtain a licence against would-be infringers on fair, reasonable and non-discriminatory (FRAND) terms which covers the SEP-holders’ global SEP portfolio (although which only has binding applicability and enforceability in relation to UK SEPs). This latest decision develops the English courts’ position with regard to the issue of *forum conveniens* in UK patent infringement, invalidity and essentiality litigation, emphasising their willingness to accept jurisdiction to determine global FRAND rates and licence terms regardless of the magnitude of the nexus to the UK market.

LAURA ZOBOLI

**Aware Thus Accountable: The Court of Rome on ISP Liability and Copyright
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In February 2019, the Court of Rome issued an important decision in a controversy between RTI (Mediaset) and Facebook—due to the publication of links to contents under RTI copyright, within a Facebook group. In particular, the Court condemned copyright infringement via mere hyperlinking through a social network, for the first time in Italy. Starting from the case at hand, and against the backdrop of the upcoming EU Copyright Directive, the author critically discusses the trends on copyright infringement via hyperlinking and on the related hosting provider liability within the EU.

MATTEO MANCINELLA

**Evidencing Genuine Use: The EUIPO’s Decision to Revoke McDonald’s “BIG
MAC” European Union Trade Mark** 391

The Irish fast food restaurant chain Supermac’s filed a request for revocation of the McDonald’s “BIG MAC” EU trade mark. Supermac’s claimed that the contested trade mark was not put to genuine use during the relevant time period and within the relevant territory for any of the goods and services for which it is registered, other than for sandwiches. The EUIPO Cancellation Division, having assessed the evidence provided by McDonald’s in the form of affidavits, brochures and printouts of advertising posters, packaging and printouts from its websites, deemed it insufficient to establish the time, place, nature and extent of use. In particular, the EUIPO Cancellation Division found that the evidence provided did not establish that the products carrying the “BIG MAC” name were offered for actual sale, and therefore McDonald’s failed to demonstrate commercial exploitation of its trade mark as required. The subsequent revocation of the trade mark highlights the need to document all four elements of “genuine use”.

Book Reviews