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Table of Contents

Opinion

GIULIA PRIORA

The Principle of Appropriate and Proportionate Remuneration in the CDSM Directive: A Reason for Hope? 1

The Opinion sheds light on art.18 of the Copyright in the Digital Single Market Directive recently enacted by the EU legislator. Deeming it to be important to trace the origin and evolution of the notion of fair remuneration within the EU copyright legal framework, the provision is first contextualised and subsequently analysed in its merits. The author argues that, given its strengths and weaknesses, the principle of appropriate and proportionate remuneration is likely to result in a successful consolidation of the protection of authors and performers, national implementations permitting. In this light, art.18 promises to represent an effective and function-based development in the modernization of EU copyright rules.

Articles

SYLVIA POLYDOR

The Interplay Between Technology and Trade Mark Protection: A Study of Infringement, Intermediary Responsibility and Protection Measures in the Digital Age 4

Technology, and in particular the advent of the internet, have disrupted the way consumers shop and have facilitated trade mark infringement. Trade mark law needed to adapt to new technologies, which came with a series of new legal challenges. One of the key questions in the last decade was how to address liability of online intermediaries. This article outlines the established liability laws around the world, mainly providing safe harbours as long as the online intermediaries did not know or should have known about unlawful content and did not react. In addition to such hard law, partial private orderings such as the European Memorandum of Understanding on the Sale of Counterfeit Goods via the Internet have seen the light of day. It is argued that such a soft law initiative where all stakeholders can participate in the shaping of rules for online intermediaries, combined with the enhanced use of new technologies (such as AI and distributed ledger technology) and focus on decision-making process (through effective and transparent tools) rather than decision outcome to establish liability, is the way trade mark protection should be tackled in the future.

TOMRUK ÜSTÜNKAYA

Artificial Intelligence: Friend or Foe to Fashion in Consideration of the Functionality Doctrine? 13

With fashion being subject to technological changes in manufacturing practices, this article examines whether AI technology is a friend or foe to fashion in consideration of intellectual property rights as they relate to the limitations of the doctrine of functionality. The article examines how AI technology is used within the fashion industry, and explores the relationship between programming and functionality. The limitations of the doctrine of functionality are explored through copyright, trade marks and design rights, specifically in application to the fashion industry.

ÁNGELA MARTÍNEZ LÓPEZ

Decision T1063/18 of the EPO Technical Board Re-Sows the Seed of Uncertainty for the Patentability of Plant Products Derived from Essentially Biological Processes 19

By Decision T1063/18 of the Technical Board of Appeal of the European Patent Office, r.28(2) of the European Patent Convention (EPC) has been revoked, meaning that products derived from essentially biological processes can escape the exception enshrined in art.53(b) EPC and thus be patentable. This study will embark on a historical journey throughout the back-and-forth relevant case law saga and legal milestones, and a detailed analysis of Decision T1063/18 and the subsequent Referral G3/19 of the EPO President will follow. By way of conclusion, a futuristic insight including several hypothetical scenarios will be offered.

JOÃO PEDRO QUINTAIS

The New Copyright in the Digital Single Market Directive: A Critical Look 28

This article provides an overview and critical examination of the new Directive on copyright and related rights in the Digital Single Market. Despite some positive aspects, the Directive includes multiple problematic provisions, including the controversial new right for press publishers and the new liability regime for content-sharing platforms. On balance, the Directive denotes a normative preference for private ordering over public choice in EU copyright law, and lacks adequate safeguards for users. It is also a complex text with multiple ambiguities, which will likely fail promote the desired harmonisation and legal certainty in this area.

FAITH O. ABOYEJI

Copyright, Access to Knowledge, and the United Nations' Sustainable Development Goals 42

Knowledge and knowledge embedded goods are crucial to meeting the basic needs of humanity such as food, education, and health care—all of which are reflected in the Sustainable Development Goals (SDGs). It is not enough to create knowledge: its accessibility on fair terms should also be facilitated for the overall benefit of the society. While copyright protection incentivises the creation of certain knowledge goods, an overly protectionist copyright system may, however, inhibit access to the created knowledge. This can become a barrier to achieving the SDGs. This article examines the impact of the international copyright system on access to knowledge. The article argues that copyright can be reconstructed to facilitate meaningful access to knowledge for all peoples and suggests areas for reconstruction.

JYH-AN LEE AND YANGZI LI

The Obscure Consumer in the Chinese Intellectual Property Law 55

Conventional wisdom suggests that an ideal intellectual property (IP) regime should consider various interests, such as incentives for creators and inventors, social access to creative works, market competition, and economic development. Nevertheless, the interest of consumers has long been neglected in IP policy-making. This article systematically reviews recent Chinese court decisions on IP and explores their implicit consumer policy implications. The article reveals that the Chinese courts have occasionally embedded consumer policy considerations when applying the Copyright Law, Patent Law, Trademark Law, and the Anti-Unfair Competition Law. Moreover, this article illustrates how policy goals underlying the IP regime and consumer protection law are consistent or supplementary with each other in the implementation of different categories of IP laws.

Comments

FABIO ANGELINI AND SARA PARRELLO

A Paler Shade of Orange: A Distinction Without a Difference? 66

Colour trade marks are among the most controversial kind of trade marks. The Court of Venice recently adjudicated a case concerning use of the colour orange used, respectively, on Champagne and Prosecco. The court acknowledged that a colour mark is inherently non-distinctive and it may only acquire distinctiveness through intensive use. As the evidence showed acquired distinctiveness, and since champagnes and prosecco target a public with an average level of attention, which is not particularly high, the Court held for infringement. However, the court denied that acquired distinctiveness is equal to reputation.

NICHOLAS FISCHER AND ANDREW HUTCHINSON

Supreme Court's Approach to Obviousness Applied: *Allergan v Aspire* 69

Mr Justice Arnold, in the UK Patents Court, has held Allergan's European (UK) patent concerning the formulation of a glaucoma treatment to be invalid. This case follows and applies the Supreme Court's latest patent decision in Actavis v ICOS, taking the stance that the existing approach to obviousness is endorsed and unchanged. The judgment illustrates how the UK Patents Court is likely to take a pragmatic approach by applying some, but not necessarily all, of the factors listed in the Supreme Court's judgment. While every case on obviousness will turn on its own facts, this case also has some interesting issues arising in respect of the importance of expert witness performance, as well as the potential perils of secondary evidence.