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In 2019, the EU adopted a new Directive on Copyright in the Digital Single Market (the DSM Directive), which introduces the new publishers’ right under art. 15 (a so-called “link tax”). This Opinion considers the implications of this provision, referred to as the most controversial one, and its impact upon the digital publishing world.

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In trademark law, famous brands are given an additional layer of protection, often referred to as “anti-dilution protection”, which goes beyond the standard of “confusion-based harm” for ordinary marks. However, there is no clear international standard for the fame criteria that trigger this protection. Domestic statutes often provide a list of non-exhaustive “fame factors”, with no pre-determined hierarchy. This article critically evaluates the distinction between perception-based factors and geographical/temporal factors for fame—and investigates whether there is a co-relation between these categories. It argues that “trademark fame” is a dynamic, socio-cultural construct that should not be primarily defined using static criteria based on geography or space. In developing this argument, this article seeks to illuminate the central role that consumer perceptions should play in evaluating “fame”, as geographical boundaries become blurred by changing business models and emerging technology platforms as conduits for commerce in an age of social distancing.

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