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Towards a Virtuous Legal Framework for Content Moderation by Digital Platforms in the EU? The Commission's Guidance on Article 17 CDSM Directive in the Light of the YouTube/Cyando Judgment and the AG's Opinion in C-401/19 625

This article analyses the European Commission's Guidance on art.17 CDSM Directive, the CJEU's *YouTube/Cyando* judgment and the AG's Opinion in C-401/19. Together, these documents outline a legal framework for content moderation for digital platforms that tries respecting the copyright-inherent balances and minimising its negative impacts, without however eliminating all problematic issues relating to fundamental rights and other general principles of EU law. Article 17's compatibility with freedom of expression seems extremely fragile as it is entirely conditional on how it is implemented by Member States and what safeguards they will provide against overblocking of legitimate uses. Therefore, it is argued that in order to establish a virtuous content moderation system for digital platforms in the EU, it would have been essential to address more fundamental concerns around art.17, particularly the fact that privately operated algorithmic tools will mainly be deciding what content should be available online, instead of independent assessors making such decisions based on copyright law's equilibrium, and to take into account of the inherent limits and flaws of technology.

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The Teletubbies, Aesthetic Functionality and the Section 51 Paradox: On the Interplay of Copyright, Design and Trade Mark Principles in Character Merchandising 636

This article critically evaluates the interplay between trademark and copyright rules in regulating rights over pictorial or sculptural depictions of invented characters in the UK. Although trade mark law offers some protection to artistic depictions of fictional characters in merchandising, the extent to which copyright is available as an alternative cause of action remains weakly articulated in the jurisprudence. This article highlights, in particular, an internal paradox in s.51 of the CDPA, which generates considerable uncertainty in defining the applicability of copyright protection for manufactured articles bearing features of fictional characters. In reforming the approach to s.51, this article argues that intellectual property law in the UK is in need of a more internally consistent approach to the "functionality" doctrine, which is necessary to promote fair competition in the manufacturing and design sectors, particularly in the wake of emerging technologies such as 3D printing and artificial intelligence.

KHORSEED ZAMAN AND M. RAFIQUIL
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This article is based in the context of a patent waiver proposal for Covid-19 vaccines, medicines, diagnostics and medical technologies placed at the WTO TRIPS Council. Most developed countries oppose it, and it is highly unlikely that WTO Members will be able to reach a consensus on this issue. But finding a legal answer on the necessity of such a waiver is the main objective of this academic research. It examines the existing flexibilities under TRIPS, appraises the recent developments and national measures taken by both developed and developing countries to access Covid-19 pharmaceuticals. It concludes that the existing parameters of intellectual property rights flexibilities under TRIPS may be inadequate for equitable access to Covid-19 life-saving medicines. Even if WTO Members disapprove of a new patent waiver, further clarification of some TRIPS flexibilities is essential for quick, global and equal access to these Covid-19 pharmaceuticals.

RADIM CHARVÁT

Protection of Appellations of Origin Registered under the Lisbon Agreement in the Context of the Exhaustive Nature of the EU Protection of Geographical Indications and Designations of Origin 653

This article discusses the exhaustive nature of EU protection of geographical indications and designations of origin and the related impact on international registrations of appellations of origin under the Lisbon Agreement. Relevant case law of the Court of Justice is mentioned. The solution to this problem is the accession of the EU to the Geneva Act to the Lisbon Agreement. For this purpose, the EU has adopted Regulation 2019/1753. In the text of this article, this Regulation is analysed in terms of the solution of the protection of appellations of origin already registered under the Lisbon Agreement.

Searching for a Balance: Realisation of Farmers' Rights in Sri Lanka: A Case Study on Ownership and Stewardship 665

This article identifies the kind of legal approaches to plant variety protection conducive to the sustainability of small farms and local environments. Sri Lanka makes an intriguing case study because, coming out of civil war, it is still considering those approaches, even though it is already subject to WTO intellectual property agreements and other international treaties. Comparing ownership with stewardship approaches, the article critiques that the ownership approach based on IP rights preferred by developed countries like Australia is inadequate to Sri Lanka and a stewardship which is a non-IP system is more suited to Sri Lanka considering the subsistence agricultural economy. The findings provide insight for any country with significant agricultural resources and communities. Sri Lanka's success is also of interest to its neighbours in the region.

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JOHN A. TESSENSOHN

May 2021 Law Reforms Enhance Resilience of Japan's Intellectual Property System 682

On 2 March 2021, the Cabinet of the Government of Japan approved a Bill to amend the patent, utility model, design and trade mark laws. On 14 May 2021, Japan's national parliament, the Diet, passed the Bill, and the legislative amendments were subsequently promulgated into statute law on 21 May 2021. This article discusses several of the important provisions that will greatly impact on the users of Japan's patent and intellectual property legal system.

MATTEO MANCINELLA

In Chanel v EUIPO the General Court of the EU Holds that the Signs Must Be Compared as Registered and Applied For, without Changing their Orientation 684

The General Court of the EU dismissed the action brought by Chanel SAS against the registration of a mark by Huawei Technologies Co Ltd because the figurative signs at issue are not similar. More particularly, the General Court, in carrying out an assessment of their similarity, highlighted that they must be compared in the form in which they were applied for and registered, "irrespective of any possible rotation in their use on the market".

TERESE FOGED

Denmark—A New Reality for Tech Giants 688

On 3 June 2021, Denmark passed a Bill in Parliament, whereby the art.15 DSM Directive on press publications and art.17 on online content-sharing service providers plus the SatCabII Directive are implemented into the Danish Copyright Act. The key concept of the new legislation is rights clearance. Going further than the SatCabII Directive, the new legislation also introduces a possibility of clearing rights via extended collective licensing when TV distributors and other third parties redistribute independent streaming services such as Netflix, HBO Nordic, Disney+ and the like.

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