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EUROPEAN COPYRIGHT SOCIETY

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In this Opinion, the European Copyright Society (ECS) puts on record its views on the issues raised by the judgment of the Court of Justice of the European Union (CJEU) in Deckmyn (C-201/13), which departs from the doctrine of strict interpretation of exceptions and limitations in cases in which fundamental rights such as freedom of expression are involved. The Opinion welcomes this development for the following reasons: first, because of the importance of exceptions and limitations in facilitating creativity and securing a fair balance between the protection of and access to copyright works; secondly, because of the Court’s determination to secure a harmonised interpretation of the meaning of exceptions and limitations; thirdly, because of the Court’s adoption of an approach to the interpretation of exceptions and limitations which promotes their effectiveness and purpose; and, finally, because of the CJEU’s recognition of the role of fundamental rights in the copyright system: in particular, its recognition that the parodic use of works is justified by the right to freedom of expression. At the same time, the ECS recommends caution in constraining the scope of exceptions and limitations in a manner that may go beyond what might be considered necessary in a democratic society.

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For clean technology enterprises, obtaining patent rights is not only a way to protect innovation, but also the first step in deploying a patent strategy. Much of today's clean technology is derived from and built upon technical advancements from other industries. New uses of known processes, called "invention by diversion" in the China Patent Law, will face big challenges when we seek patent protection for them in China. This article discusses how patent law in China attempts to determine invention by diversion, and suggests strategies to overcome non-novelty rejections and non-inventive step rejections in clean technology patenting.

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On November 5, 2014, the Court of Appeal handed down its judgment in the long-running case between Interflora Inc and Marks & Spencer Pk. This judgment represents the third judgment from the Court of Appeal in this case, with the previous two judgments relating to the admissibility of survey evidence. In this instance, the Court of Appeal has allowed Marks & Spencer’s appeal in part and remitted the case to the High Court for a retrial of the infringement claims under art.81(1)(a) of the Community Trade Mark Regulation 2007/2009. The court made a strong statement in relation to initial interest confusion, finding that it was unhelpful to import this concept into EU trade mark law. In a further judgment on November 12, 2014, the Court of Appeal gave its judgment on the form of Order, directing that the retrial in the High Court take place before a different judge of the Chancery Division, so the retrial will not take place in front of Arnold J.

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