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A Tectonic Shift in the European System of Collective Management of Copyright? Possible Effects of the *Soulier* Decision 261

Collective management increasingly operates on the basis of the non-voluntary inclusion of right holders. After the first such licensing scheme has been questioned before the CJEU, the requirements of the operation of non-voluntary schemes are clearer. This article analyses the decision and discusses the possible effects on collective management in Member States, predicting a largely negative impact on national copyright policies.

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Several high profile copyright law decisions by the European Court of Justice (CJEU) concerning the concept of “communication to the public” have provided opaque guidance. Regrettably, the CJEU’s latest two decisions in this field, *Reha Training* (C-117/15) and *GS Media* (C-160/15) appear to have further increased the uncertainty surrounding this legal concept. Expanding on an earlier opinion, the authors walk the reader through the reasoning in these decisions, explore the evolution of the concept, and assess the apparent and potentially intentional divergence between the hyperlinking and retransmission case groups in the CJEU’s jurisprudence.

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Sri Lanka’s signing up to the TRIPS Agreement requires the implementation of plant variety protection. Accordingly, Sri Lanka has sought to protect plant varieties by an effective sui generis system. In order to fulfil the TRIPS obligations, the Intellectual Property Office of Sri Lanka introduced the Protection of Plant Varieties (Breeder’s Rights) 2001 Draft. Yet 15 years later it remains as a draft. The effects of the non-enactment of plant breeders’ rights protection and the advantages Sri Lanka would gain from plant breeder’s rights protection will be discussed in this article.

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The first part of this article, published in the previous issue of E.I.P.R., discussed the reverse burden of proof in patent law and trade secret protection from an international perspective. This second part will focus on recent regional development (EU). Despite the Brexit vote, it still appears that Europe would not be too far away from creating a patent with unitary effect and a Unified Patent Court. The UPC Agreement includes a provision (art. 55) very similar to art.34 of TRIPS, which was discussed in the first part of this article. Since the UPC Agreement is not yet applicable, there is no case law on the interpretation of this provision. Nevertheless, owing to the clear similarities with TRIPS, a natural assumption would be to interpret the provision similarly to art.34 of TRIPS. But this is not crystal-clear, inter alia since the UPC Agreement is a separate, regional, treaty with its own rules on applicable law. In addition to art.55 of the UPC Agreement, the new Trade Secret Directive and its possible implications for this particular topic will be discussed.

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The CJEU Attempts to Solve the Puzzle: The Rubik's Cube Saga Comes to an Unexpected End 311

On 10 November 2016, the CJEU determined that the Rubik's Cube trade mark was invalid in the case of *Simba Toys GmbH & Co KG v European Union Intellectual Property Office (EUIPO) and Seven Towns Ltd* (C-30/15 P). In doing so, the CJEU decision reverses 10 years of decisions related to the Rubik's Cube trade mark. The applicant for invalidation, Simba Toys, sought to have the Rubik's Cube trade mark declared invalid, arguing that the trade mark consisted exclusively of the shape of goods necessary to obtain a technical result under art.7(1)(e)(ii) of Regulation 40/94. The CJEU agreed and concluded that the Rubik's Cube trade mark relating to the three-dimensional cube signs was necessary to obtain a technical result and therefore the trade mark was invalid.

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AND DR. BIRGIT CLARK

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The Court of Justice of the EU (CJEU) has held that art.13 of the IP Enforcement Directive 2004/48 (the Directive) does not preclude an EU Member State from enacting national legislation which offers a method of establishing damages as a "lump sum" equivalent to double the hypothetical royalty rate. The decision confirms that the Directive merely aims to introduce "minimum" standard of protection, but does not prevent the Member States from introducing a higher level of protection: *Stowarzyszenie Oławska Telewizja Kablowa v Stowarzyszenie Filmowców Polskich* (C-367/15).

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On 10 November 2016, the Spanish Supreme Court declared Royal Decree 1657/2012 (Royal Decree) which provided that the payment of compensation for private copying from the General State Budget from 2012 to 2016 null and void. As a result, the Spanish Government is proposing to reintroduce a private copying levy on certain devices and equipment used for reproducing copyright works (private copying levy). In fact, a similar scheme was in place prior to the Royal Decree and is consistent with the schemes in place in a majority of EU Member States. This case note examines the applicable legal framework for the "private copying exception" in Spain after a series of national and EU rulings that have addressed the compliance of the Spanish legal regime that governs the private copying exception with the EU law obligations.

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