

European Intellectual Property Review

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Opinion

VINCENT CAPATI

Reverse Engineering of Software: A Safe Harbour in Europe but not Safe in the US: *SAS Institute Incorporated v World Programming Ltd* 271

The EU's Council Directives 2001/29 and 2009/24 (EU Software Directive) created a sharp split between American and British jurisprudence when interpreting the scope of software licences. The EU Software Directive entitles a software user "without the authorization of the [software developer], to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program" and that "[a]ny contractual provisions contrary ... shall be null and void". The SAS Systems dispute tested the teeth of the EU Software Directive. This Opinion reviews recent inconsistent judgments between the British and American courts and sets forth business and contractual considerations for software developers operating in those jurisdictions.

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Territoriality of Trade Mark Infringement: The State of Affairs 275

This article addresses the territoriality of trade marks in infringement procedures. One of the questions that is answered is whether an infringement prohibition or injunction is valid for the entire territory of the European Union, or if it is possible to restrict it in terms of the territory. This article aims to provide an answer to these questions, in particular based on the case law developed by the Court of Justice (*DHL v Chronopost*, *Combit v Commit*, *Kerrygold v Kerrymaid*, *PAGO* and *Iron & Smith v Unilever*). The article also deals with some corresponding Benelux issues.

AYOYEMI LAWAL-AROWOLO

Influence from United States and Europe: Exploitation of Copyright Law and New Trends in Nollywood (Nigeria's Film-making Industry) 284

Film-makers in Nigeria adopt new technologies from the United States and Europe and exploit copyright law in the process to protect their rights. Conversely, pirates, counterfeiters or bootleggers use new technologies as well to exploit the film industry. In this article, copyright law in "Nollywood" and piracy are examined. Possible solutions are reviewed. Indeed, Nigeria can reap more economically from the film industry through appropriate enforcement mechanisms.

DR WENTING CHENG

Protection of Data in China: Seventeen Years after China's WTO Accession 292

China introduced dual data protection (both undisclosed information and six-year data exclusivity) for pharmaceutical products from its accession to the WTO. From 2017, a new series of policies proposed up to 12 years of data exclusivity for biologics. The drug negotiation mechanism in China should be considered in evaluating the impacts of these policies on enhanced data protection.

DR ROGIER DE VREY, DR EGON
ENGIN-DENIZ, DR FILIP DE CORTE
AND DR JOACHIM HOFMANN

Regulated Industries and Non-Exhaustion of IP Rights in the Course of Parallel Trade: A Case Study on Plant Protection Products in the EU 298

In a recent case on parallel-imported agrochemical products, the District Court of The Hague ruled that non-compliance with the requirements laid down by the European Court of Justice (CJEU) for the parallel import of re-labelled products displaying the original right holder's trade mark constitutes a trade mark infringement, particularly if the right holder is not properly notified of the parallel import and is not offered a sample of the re-labelled product on request. This decision shows that these requirements for parallel import are applied strictly by the courts and have a broad scope (not only relating to pharmaceutical products), allowing the mark holder to exercise control over the resale, re-labelling and re-packaging of its original products within the EU.