

European Intellectual Property Review

2019 Volume 41 Issue 8
ISSN: 0142-0461

Table of Contents

Opinion

LAUREN SOMERS

Navigating the WHOIS Blackout 471

Following the implementation of GDPR in the EU last year, the majority of WHOIS data was redacted. The loss of this previously freely accessible data has had ramifications for IP owners seeking to enforce their rights against domain name squatters and online fraud. The domain name registrars, national EU domain name registries and the World Intellectual Property Office (“WIPO”) have each responded to the “WHOIS blackout”, providing mechanisms to obtain registrant data on request, although procedures and willingness to disclose registrant data vary. The ability of IP owners to satisfy the Uniform Dispute Resolution Policy (“UDRP”) has also been affected in the absence of the identity of the respondent to any complaint.

Articles

DR POORNA MYSOOR

Does UK Really Have a “Closed” List of Works Protected by Copyright? 474

It is often claimed that the UK has a “closed list” of works protected by copyright. While the Copyright Designs and Patents Act 1988 does categorise works to determine their eligibility for copyright protection, does the very existence of categories make the list closed? Does it not depend on how open-ended each category is, before a conclusion on its exhaustive nature can be drawn? This article examines these questions, taking a closer look at the textual aspects of the CDPA, and explores using interpretive techniques what it means to use the inherent flexibilities within the CDPA to their fullest extent.

MARTIN SENFTLEBEN

Bermuda Triangle: Licensing, Filtering and Privileging User-Generated Content under the New Directive on Copyright in the Digital Single Market 480

“The Bermuda Triangle, also known as the Devil’s Triangle or Hurricane Alley, is a loosely-defined region in the western part of the North Atlantic Ocean, where a number of aircraft and ships are said to have disappeared under mysterious circumstances ... Popular culture has attributed various disappearances to the paranormal or activity by extraterrestrial beings.” Admittedly, the new Directive on Copyright in the Digital Single Market (DSM Directive or DSMD) is unlikely to swallow aircrafts and ships. However, it creates a peculiar triangle of obligations to license, filter and privilege user-generated content that may lead to the disappearance of the open, participative internet which EU citizens currently enjoy. Even though some may find it hard to explain this final outcome, the new legislation is not the work of extra-terrestrial beings but the result of EU law and policy-making. To avoid the loss of open, democratic avenues for online content creation, national law-makers will have to find the right amalgam of licensing and filtering obligations on the one hand, and new use privileges that offer room for user-generated content without prior authorisation on the other. The following analysis sheds light on these regulatory options and their impact on freedom of expression and information in the digital environment.

CLAUDIA ZERI AND DAVID MULDER

Confidential Information in Dutch IP Proceedings: From “Don’t Ask, Don’t Tell” to “Show and Tell” 491

The article discusses the possibilities for protecting confidential information on the one hand and access to information on the other hand in civil proceedings in the Netherlands. The authors, having regard for IP proceedings in particular, elaborate on recent developments in civil proceedings, explain how the adjustments to the Dutch Code of Civil Procedure makes a Dutch version of a “confidentiality ring” possible and what the newly implemented act for the protection of trade secrets holds for the future.

LAILA BARQAWI

Sudan’s Access to Medicine: To TRIPS or Not To TRIPS 499

Sudan has re-opened negotiations into acceding to WTO and is also gearing up to be a part of the TRIPS family. This article recommends steps that Sudan can take to improve its access to medicines before acceding to WTO and TRIPS and signing free trade agreements. Sudan has the benefit of learning from developing countries as well as LDCs to develop its manufacturing capabilities and further assist the country’s healthcare needs. Sudan’s representatives should also ensure that the terms of accession into WTO are not onerous on access to medicine.

