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***Lawrence Lessig v Liberation Music Pty Ltd*: YouTube's Hand (or Bots) in the Over-Zealous Enforcement of Copyright** 347

The renowned law professor Lawrence Lessig's filing of a complaint against Liberation Music in August 2013 has recently been resolved in his favour. The complaint provided a gem of an opportunity to clarify the rights of users to modify and disseminate content available on social media sites. In spite of the victory scored by Lessig and the Electronic Frontier Foundation, this Opinion reminds readers not to forget the role of sites such as YouTube in the over-zealous enforcement of copyright.

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Fashion is a money-generating, ever-changing subject. Luxury brands have dominated the market for decades, whereas fashion failures are taken off the shelves in no time. The dynamic nature of fashion and its potentially great value give rise to questions on how best to protect fashion against style pirates. This article explores the protectability of fashion under intellectual property law from a Dutch perspective. Considered are patent law, trade mark law, design law, copyright law and the law of so-called "slavish imitation". The article concludes that protecting fashion under intellectual property occasionally is as unpredictable as the trends of next year

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The *Apple v Samsung* patent war has kicked off in more than a dozen of countries around the world. Among the world's five largest intellectual property offices (IP5), only China was left out. That is a very interesting phenomenon. Based on materials available to the authors, this article attempts to analyse why the patent war between Apple and Samsung has not up to now broken out in China, from three perspectives: namely unfavourable factors for both parties, factors unfavourable for Apple, and factors unfavourable for Samsung if they start a patent war in China.

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The Power of One! The Failure of Criminal Copyright Laws (Piracy) to Blend into the Greater Cultural Consciousness! 363

In this article the author examines the effectiveness of the intended outcomes of copyright laws when benchmarked against subsets of deterrence theory. Overriding sociological theories indicate that egoism and instrumentalism are the pivotal weaknesses causing a lack of deterrence. The analysis in this article demonstrates that copyright piracy is not a priority in cultural consciousness as a result of the above; however, egoism in the music industry demonstrates normative behaviours that may lead to new norms of copyright acceptance.

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Contrary to the view of the Court of Appeal in *Meltwater*, the traditional test of originality in English law has been replaced with the new test of the author's own intellectual creation. The article explores the requirement of originality under prior English law and the CJEU's test of the author's own intellectual creation as originality. Then it reviews some English cases decided hitherto in light of the new test of originality, and argues that cases such as *Walter v Lane* can no longer be good authority.

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Taken at its word, a controversial decision of the Court of Justice of the European Union, concerning the patentability of inventions derived from fertilised human eggs, obliges EU Member States to breach European human rights law and international trade agreements. The dignity of a person under the Charter of Fundamental Rights cannot be trumped by the dignity of a non-person. Nor can the court ban patents on inventions which the EU not only encourages and funds, but which the World Trade Organization Agreement requires the Union and its Member States to make available

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Communication to the Public: The CJEU Finds that Linking to Material Already "Freely Available" Cannot be Restricted by Copyright Owners: *Nils Svensson v Retriever Sverige AB* (C-466/12) 399

The Court of Justice of the European Union has held that the owner of a website may, without the authorisation of the copyright holders, redirect internet users, via hyperlinks, to works protected by copyright which are freely available and accessible on another site. This is so even if the copyright material is "framed" on the site that contains the link, so as to give the impression that it is part of that site.

JOEL SMITH AND ALEXANDRA MORGAN

Amazon Infringes Lush's Community Trade Mark by Bidding on "Lush" as a Keyword and by Displaying it on its Own Website: *Cosmetic Warriors Ltd & Lush Ltd v Amazon.co.uk Ltd & Amazon EU Sàrl* 400

In *Cosmetic Warriors Ltd & Lush Ltd v Amazon.co.uk Ltd & Amazon EU Sàrl*, Lush's Community trade mark was held to be infringed by Amazon's purchase and use of "lush" as a keyword through Google AdWords, where the sponsored link showed the trade mark in its ad. However, Amazon's use of the same keyword was not held to infringe where the word "lush" was not displayed in its online ad. The display of the word "lush" in Amazon's predictive search facility was also held to infringe, as it suggested that Amazon sold Lush's products when no Lush products were actually on offer on Amazon.co.uk.

PAUL BICKNELL

"Without Due Cause": Use of the Defendant's Sign Before the Claimant's mark is Filed—*Leidseplein Beheer and de Vries v Red Bull GmbH and Red Bull Nederland BV* (C-65/12) 402

The Court of Justice of the European Union considered the meaning of "without due cause" under art.5(2) of Directive 2008/95. The CJEU provided that if the defendant's use of a sign in good faith predated the filing date of the claimant's mark, then the claimant may have to "tolerate" the defendant's use. Whether the claimant will have to tolerate that use is a question for national courts. The CJEU also set out three broad issues that national courts must take into account when assessing "without due cause". This article discusses the treatment of "without due cause" and comments on the CJEU's ruling.

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