



European Intellectual Property Review

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The Recommendation on Measures to Safeguard Freedom of Expression and Undistorted Competition: Guiding Principles for the Further Development of EU Trade Mark Law 337

Whatever the protection afforded to trade marks, it must always be balanced against general interests, in particular the fundamental freedom of expression and the guarantee of undistorted competition. Taking this insight as a starting point, members of the academic community have summarised main findings of research concerning the reconciliation of trade mark protection with general interests in the Recommendation on Measures to Safeguard Freedom of Expression and Undistorted Competition in EU Trade Mark Law. The following article explains the background to the Recommendation and highlights central considerations underlying the proposed guiding principles

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To Whom Would the Courts Give a Whole Lotta Love? English Copyright Law and the Blues: A Case Study of the "Whole Lotta Love" Authorship Dispute 344

As part of an out-of-court settlement, the blues songwriter Willie Dixon received credit as co-writer of the Led Zeppelin song "Whole Lotta Love". We do not have the benefit of a court decision on the matter, as is the norm with music authorship cases. The law of copyright is founded on principles that reward "originality" and punish copying. An attempt to fit an art form like the blues, which focusses heavily on re-interpretation, into this framework would provide insights into the relevance and value of copyright law.

DR ANDREAS RAHMATIAN

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The creation and exploitation of copyright that protects the works of university academics has become increasingly relevant to the managements of universities. Copyright covers all academic output, whether in the arts, social sciences or the sciences. This article discusses the question of ownership of copyright in works created by academics as employees of their universities. The issue is not as straightforward as one may think. Furthermore, university IP policies often seem to take a too undifferentiated and legally problematic view in this matter.

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The article examines the legal framework for exhaustion of rights in international law and how it relates to parallel importation (otherwise known as parallel trade). The significance of parallel trade in pharmaceutical products is considered with particular focus on the importance of parallel trade to free trade and access to medicines in Africa.

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The article discusses the history of George Garrard procuring copyright for sculpture. It evaluates the impact of the copyright acts on Garrard. It argues that detachment from industry never puts an artist in a favoured position to plead for a copyright act. It further argues that lack of wide acceptance of sculptures by the consumers and hence their limited scale of industrialisation and economic value makes it difficult for the market to produce and sustain, through copyright, equivalent sculptors to authors like Shakespeare or Milton or engravers like Hogarth. Indeed, it is apparently such a misfit that Garrard undertook the task of procuring copyright for sculptures without reaping much benefit from it.

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In the highly anticipated *Allposters* decision, the CJEU tied the principle of copyright exhaustion to a physical medium, not allowing for the possibility of exhaustion for digital content falling under the Copyright Directive. Furthermore, the practical implications of the *Allposters* judgment go beyond the seemingly premature end of digital copyright exhaustion (at least for works regulated by the Copyright Directive) and might impede national attempts of copyright law modernisation, leaving scarce room for national copyright limitations and exceptions.

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On November 17, 2014, Birss J decided on the case of *Omnibill v Egpsxxx*. He found that on the facts, the right of communication to the public was infringed, as the operators of the website targeted the UK public. This decision also shows how website traffic can be used to infer the operator's intention to target the specific public.

SYLVIE NERISSON

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This article aims to sketch the input of the *OSA* preliminary ruling (C-351/12) of February 27, 2014 of the European Court of Justice (ECJ), surrounded as it is by multiple ECJ decisions concerning the scope of exclusive rights and limitations and by the appearances of collective management in the EU legal landscape.

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This article contains an analysis of the first instance and appeal decisions of the "Rihanna" case. In particular, the authors consider the substantive law of passing off in the context of the unauthorised use of a celebrity's image on a Topshop tank vest top. This is followed by a discussion of the consequences of the case for celebrities, consumers and stakeholders in the entertainment and fashion industries.

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