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UK Horserace Betting Right: At Odds with EU Law? 479

About 10 years after a previous initiative to replace the horserace betting levy was abandoned following the ECJ judgment in *British Horseracing Board v William Hill Organisation*, the UK Government announced that it will introduce a horserace betting right and repeal the levy that to date has cross-subsidised horseracing. In this comment, the authors warn that the implementation of a betting right could be problematic from an EU law perspective. The UK Government, and any other interested EU legislatures, should carefully reconsider the opportunity of a specifically devised betting right.

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Reed Executive v Reed Business Information created a tendency to view the tests for passing off and trade mark infringement as being identical in key respects. The recent cases of *Interflora v Marks & Spencer Flowers Direct*, *Cosmetic Warriors v Amazon* and *Moroccanoil Israel v Aldi Stores* have all questioned this approach, making a re-evaluation necessary.

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Let us suppose an intranet within which collaborators creatively recast a copyright work across diverse countries without consent. In unpacking this hypothetical, this article analyses approaches to conflicts of copyright laws relative to cross-border infringement. However, in the case in question, such laws enter into tensions with collaborators' fundamental rights of privacy and freedom of expression. To defuse such tensions while accommodating public policies, a court may decline to enjoin the more or less privately networked copying and communication of a claimant's work. But the court may award damages or profit shares by applying copyright laws country by country to markets on which the infringement has an impact.

CHAMILA TALAGALA AND LEANNE WISEMAN

Copyright, Open Access and Translation 498

Over the last decade or so, there has been a global push towards free and open access in many areas of publicly funded research. One of the important features shared by the open access schemes adopted by national and international research organisations is the need to place their research results in a readily accessible format for end-users. The key goal here is to ensure that the end-users are able to make full use of the relevant research material. In order to make sure that research material is available in a readable and intelligible form to end-users, it is important that they are translated into the local languages of countries that are the focus of the research. The purpose of this article is to examine how copyright law impacts on the translation of research material generated by research organisations in the process of implementing open access schemes, in order to ensure that these materials are available in a readily accessible and intelligible format to end-users.

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This article is concerned with the risks associated with the monopolisation of information that is available from a single source only. Although there is a longstanding consensus that sole-source databases should not receive protection under the EC Database Directive, and there are legislative provisions to ensure that lawful users have access to a database's contents, *Ryanair v PR Aviation* challenges this assumption by affirming that the use of non-protected databases can be restricted by contract. Owners of non-protected databases can contractually exclude lawful users from taking the benefit of statutorily permitted uses, because such databases are not covered from the legislation that declares this kind of contract null and void. We argue that this judgment is inconsistent with the legislative history and can have a profound impact on the functioning of the digital single market, where new information services, such as meta-search engines or price-comparison websites, base their operation on the systematic extraction and re-utilisation of materials available from online sources. This is an issue that the Commission should address in a forthcoming evaluation of the Database Directive.

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This article offers an analysis of the impact of the TRIPS Agreement on the pharmaceutical industry of India from 1995 to 2011–12. It emphasises the changing dynamics of patent laws, starting from 1970 to the TRIPS Agreement in the context of the Indian pharmaceutical industry (IPI). It explains the growth and future of IPI under the new IP regime. Finally, this research provides few recommendations for the future growth of the IPI.

Comments

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Scrabble Misses Out on Double Word Score in App Dispute 523

In the recent case of *J.W. Spear & Sons v Zynga Inc*, the Court of Appeal considered trade mark infringement and passing-off claims brought by Mattel, who control the rights in SCRABBLE in the EU, in relation to the social gaming company Zynga's SCRAMBLE and SCRAMBLE WITH FRIENDS apps. Although Mattel was successful on other grounds, the outcome is surprising in that Zynga's"look-alike" word game SCRAMBLE was found not to infringe the SCRABBLE trade marks, even though the visual appearance is one of near identity (given the strength of recognition of the SCRABBLE mark). As part of its decision the court thwarted an attempted extension of the principle in *Specsavers v Asda*, concluding that although the way the registered mark has been used can be relevant in assessing a likelihood of confusion in an infringement context, this is limited to elements which affect the registered mark itself, not associated branding features used in conjunction with the mark.

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What the Difference between Making versus Repair can Teach us on the Scope of Exclusive Rights 525

This comment will identify a major underlying theme extant in the case law on the difference between"making" versus "repair" in patent law infringement. In both the UK and German approaches, the courts' analysis has the effect of distinguishing between an upstream "technology" market and a separate downstream after-market. The comment proceeds first by setting out the factual context, then considering the German case law, then that of the UK, and finally concluding with some remarks about what this means for the scope of exclusive patent rights.

URSULA SMARTT

Prince Charles's "Black Spider Memos": How a Guardian Journalist Succeeded in his 10-Year Quest under the Freedom of Information Act 2000 529

The UK Supreme Court's ruling in *R. (on the application of Evans) v Attorney General* (the *Evans* case) signifies a victory for freedom of information. By coincidence the ruling of the highest court in the UK comes in the same year that celebrates Magna Carta's 800th anniversary, heralding freedom of speech. This article follows the history of this case.

JOEL SMITH, LAURA DEACON AND JACK RAYSON-GRANT

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In a decision of January 26, 2015 (*Fresh Trading Ltd v DeependFresh Recovery Ltd*), the High Court considered the issues of legal and equitable ownership of copyright in a logo which was designed by the defendant for the purposes of the claimant's business.The court found that, in these particular circumstances, the commissioner had an equitable title to the copyright in the logo and that there was an obligation on the designer to assign the copyright to the commissioner.

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