

Articles

BERND JUSTIN JÜTTE

New Perspectives for Sampling—US and German Developments and What Comes Next 127

The use of samples from sound recordings is established practice, however its legality in absence of a license is still unclear. Two appeals in the US and in Germany might have shown the direction for future cases by permitting sampling in relatively narrowly described circumstances. This article discusses potential consequences from these recent judgments and their relevance for music sampling as a cultural technique.

AIDAN WILLS

The Facebook Ireland Cases: Intermediary liability and the Safe Harbour Defences under the E-Commerce Regulations 131

This article considers the scope of the hosting safe harbour defence under the e-Commerce Regulations 2002 in the light of two important judgments handed down by the courts in Northern Ireland on the civil liability of social media companies for content posted by users.

Comments

PADDY GARDINER AND TOM IVERSON

ITV v PRS for Music—High Court Upholds Tribunal Royalty Decision 137

The High Court has upheld a Copyright Tribunal decision on a royalty dispute between ITV and PRS for Music. The Tribunal had fixed the terms of a music licence granted to ITV by PRS for Music, adjusting the royalties agreed under a previous 2009 agreement. PRS for Music successfully argued, at both stages, that the parties could not rely on a later 2012 agreement, which was stated to be “non-precedential”. So the Tribunal had not erred in using the 2009 agreement, and ITV’s appeal was dismissed.

EILEEN WEINERT

A Prince, a Boxer and a King 140

Is it defamatory to accuse a prince of “sabotaging the image of a Moroccan King?” or, following *Modi v Clarke* are those words not capable of bearing a defamatory meaning because it isn’t necessarily a bad thing to work against the interests of a ruler? Can a DPA claim be added to a libel claim or would that be fashioning a remedy for damage to reputation where the law of defamation does not provide one? The Court of Appeal’s judgment in two interim applications in the case of *HH Prince Moulay v Elaph Publishing* gives the answers.

RACHEL ALEXANDER AND OLIVIA BROWN

Pirate Bay Communicates to the Public According to the Advocate General 142

On 8 February 2017, Advocate General Szpunar issued his Opinion in *Stichting Brein v Ziggo BV* C-610/15, concerning the notorious file-sharing website The Pirate Bay. The Advocate General advised the CJEU to find that the provision of a BitTorrent indexing website that enables users to locate copyright works via peer-to-peer file sharing networks can constitute communication to the public.

MATTHEW LINGARD

Click and Consent—Argos UK Loses Trade Mark Battle. Guidance Provided by the High Court on the Issue of Targeting and Consent with regard to Google AdSense Advertising 145

This case is highly unusual and sets a definitive mark for online advertisers. The decision and direction of the court have been eagerly awaited by digital marketers and advertisers not just in the UK, but also in Europe. The case provides new guidance on how to approach the questions of targeting and consent when considering a matter involving Google AdSense advertising.

HUGH TOMLINSON QC

Rubio Dosamantes v Spain—TV Discussions of Singer’s Sexuality and Relationship Breached art.8 147

Rubio Dosamantes v Spain Application no. 20996/10 (21 February 2017, in French only). The Court of Human Rights has held that the fact that a singer was well known to the public and been the subject of well publicised rumours about her sexuality did not justify the broadcast of interviews about her relationships and sexuality. In the case of the Third Section held that the dismissal of the applicant’s domestic claims was a breach of her art.8 rights.