

Table of Contents

Opinion

ANDY PHIPPEN AND EMMA BOND

When Digital Ghost Stories Go Viral 103

This article provides an appraisal of the reaction of stakeholders in child online safeguarding to the Momo challenge which hit the headlines in late February 2019. It calls for a balanced response to such phenomena, in particular from the media, based on a deeper consideration of what unmeasured awareness raising of mythical phenomena might do to the children they claim to wish to protect.

Articles

CLAIRE SNG AND ELLA CASTLE

Gender Stereotypes in Advertising—Are Rules Catching Up with Public Opinion? 106

The ASA has introduced a new CAP and BCAP rule aimed at tackling the depiction of harmful and offensive gender stereotypes in advertising. Following a public consultation, the new rule and accompanying guidance will be in force from 14 June 2019 and will state as follows: "[Advertisements] must not include gender stereotypes that are likely to cause harm, or serious or widespread offence."

ALICIA MENDONCA-RICHARDS

Privacy and NDAs: The Use of Non-Disclosure Agreements in the Wake of the #MeToo Movement 109

This article considers what role, if any, NDAs have to play in settling disputes involving sexual harassment and misconduct, and whether they can help to safeguard the privacy and reputation of employers, the accused and victims alike. It also discusses some myths about enforceability and take a look at the risks involved.

NICOLA CAIN

Seeking the "Right Regulation" of Digital Services: Lords' Communications Committee Articulates its Vision 112

On 9 March 2019 the House of Lords Select Committee on Communications published its report "Regulating in a digital world". This article reviews the Committee's key recommendations for regulating the online space and questions the practicality of designing and implementing them.

Comments

ANDREW TERRY AND EILEEN WEINERT

An Allegation of Sexting at Work—Defamatory? 116

This article reviews the ruling of Nicklin J in *Carruthers v Associated Newspapers Ltd: Carruthers v News Group Newspapers Ltd*, a case which reinforces the principle that defamatory meaning must be determined on the basis that the reader will read the allegedly defamatory article "as a whole".

PETER SMITH

Saïd v L'Express: English Court Jurisdiction to Make Injunction in Respect of Online Publication Curtailed 118

This article reviews the decision of Nicklin J in *Saïd v Groupe L'Express* that the High Court did not have jurisdiction to grant an injunction to restrain publication on the internet of an article at the heart of a libel claim brought by a prominent businessman, on the grounds that the claimant's "centre of interests" were not in England.

ALEXANDER ROSS AND GREG MASON

Storing up Problems: How Storage Can Amount to Distribution Under the Copyright Directive 120

This article considers the decision of the Court of Justice of the European Union which has ruled in the case of Imran Syed, on a reference from the Swedish Supreme Court in criminal proceedings against an individual selling clothes and accessories bearing copyright infringing rock music motifs, that the storage of identical goods may also constitute infringement of the copyright holder's exclusive distribution right under the Copyright Directive (2001/29) art.4(1), provided those identical goods are actually intended for sale in the territory of the Member State in which the motifs are protected.

PERSEPHONE BRIDGMAN BAKER

Burgon v News Group—Shadow Secretary of State for Justice Successful in Libel Action Against "Nazi symbols" Allegation 122

This article reviews the High Court's ruling in *Burgon v News Group Newspapers*, a libel claim relating to an online article published by *The Sun*, which made allegations that that the MP for Leeds East and Shadow Justice Secretary had joined a band that delighted in Nazi symbols. Mr Burgon MP was successful in his claim for libel and awarded £30,000 damages.

CALUM BRYANT AND RACHAEL
HEELEY

The Kraftwerk Case—Does a Two-Second Sample Infringe Copyright? 125

The German Federal Court of Justice referred several questions to the Court of Justice of the European Union on unauthorised sampling. According to Advocate General Szpunar, sampling without permission infringes the exclusive right of a phonogram producer to authorise or prohibit the reproduction of their phonogram, even if the sample is as short as two seconds. If followed, that absolute view would cut across the realities of modern music production, and it could sit uneasily with previous CJEU decisions on the interpolation of authorial works.

LEONARD DUBOFF, CHRISTY KING
AND AMANDA BRYAN

Fourth Estate Public Benefit Corp v Wall-Street.com and Rimini Street Inc v Oracle USA Inc: US Supreme Court Rules on Two Copyright Issues 128

The Supreme Court of the United States recently issued two decisions with major implications for copyright litigation, holding that a copyright claimant cannot commence an infringement suit until the Copyright Office registers a copyright or refuses registration (*Fourth Estate Public Benefit Corporation v Wall-Street.com LLC*) and that a court's discretion to award "full costs" to a party in copyright litigation is limited to the six categories specified in the general costs statute (*Rimini Street Inc v Oracle USA Inc*).

ANITA BAPAT

Social Media Plug-Ins and Personal Data—Who is Responsible? AG Issues Opinion on Joint Controllership under the Data Protection Directive 95/46 130

This article considers the implications of the recent opinion of Advocate General Bobek in *Fashion ID GmbH & Co Kg v Verbraucherzentrale NRW eV* (C-40/17) that the operator of a website embedding a third party plugin such as the Facebook Like button, which causes the collection and transmission of users' personal data, is a joint data controller.

Book Review

PHILLIP JOHNSON

Copyright Class Struggle: Creative Economies in a Social Media Age by Hannibal Travis 133