

Articles

ANDY PHIPPEN

A Personal, and Sympathetic, Reflection on a Facebook Ban 229

There has been much in the media recently about the duty of care for social media platforms for offensive content that might be posted. Twitter's battle with Donald Trump has further raised interest in social media platform's responsibilities for content. In this article Prof Phippen takes a somewhat personal exploration of social media takedowns and considers whether poorly thought out technology policy is having a detrimental impact on freedom of expression.

MARTA DUNPHY-MORIEL AND
ALEXANDER DITTEL

A Real-Time Bid to Restore Trust in Online Advertising: DMA's Seven-Step Ad Tech and Other Industry Initiatives 233

This article reviews the Data & Marketing Association's Seven-Step Ad Tech Guide in the context of other industry initiatives aimed at addressing data protection concerns raised by the Information Commissioner's Office about real time bidding.

DÉSIRÉE FIELDS AND ALASDAIR MULLER

Running Rings around Ambush Marketing: How the Tokyo Games propose to prevent misuse of the Olympic and Paralympic Brands 237

The Tokyo 2020 Games may have been postponed, but sponsors will doubtless be continuing to prepare their advertising campaigns to be run in the lead up to, and during the rescheduled tournaments. This article considers: (i) the elements of the Olympic and Paralympic brands that are protected by intellectual property rights; (ii) the specific protections that will be afforded to those elements for the Tokyo 2020 Games and (iii) how brands who are not sponsors of the Olympics and/or Paralympics can ensure that their marketing campaigns do not "ambush" the Games.

Comments

DÉSIRÉE FIELDS AND NIKKI SHAH

Superman's Reputation for Comics Overpowers Application for Similar EU trade Mark For Toys 242

In an EU trade mark opposition based on DC Comics' EU trade mark registration for SUPERMAN, EUIPO's Opposition Division refused registration of the figurative mark SUPERZINGS – RIVALS OF KABOOM finding that the mark applied for took unfair advantage of the significant degree of reputation of the earlier SUPERMAN trade mark and the investments undertaken by DC Comics to achieve that reputation.

GABRIELE ENGELS

Kraftwerk's "METALL auf METALL": A 20-Year Journey Over Two Sampled Seconds 245

This article assesses the significance of the latest decision of the German Federal Court of Justice, following the judgment of the Court of Justice of the European Union, in the protracted litigation between members of the legendary electro-pop group Kraftwerk and the music label Pelham which produced an unauthorised sampling of the 1977 Kraftwerk song *Metall auf Metall*.

MATHILDE GROPPPO

Duchess of Sussex v Associated Newspapers—Allegations of Wrongdoing Struck Out as Irrelevant, Complex and Costly 247

This comment reviews the High Court's ruling in *HRH The Duchess of Sussex v Associated Newspapers Ltd* [2020] EWHC 1058 (Ch), a claim in misuse of private information, breach of duty under the General Data Protection Regulation (2016/679/EU), and infringement of copyright, based on five articles published by the Mail on Sunday and/or MailOnline on 10 February 2019, and which reproduced excerpts of a letter sent by the claimant to her father. The Defendant was successful in striking out part of the Claimant's pleadings, with the judge reminding the parties about the need to keep the pleaded case within the bounds of the principles of "due particularity and proportionality".

JESSICA WELCH AND HENRY
DIMASCIO

Oh, Jeremy Corbyn!—Meaning of Tweet about Labour Leader Held to be Defamatory 250

Laura Murray, the stakeholder manager in Jeremy Corbyn's office at the time, complained on Twitter about a retweet by TV presenter Rachel Riley. The preliminary hearing on meaning was decided on the papers. On the court's reading, the meaning of Ms Murray's tweet was that Ms Riley (a) publicly stated that the then Labour leader deserved to be violently attacked and (b) in doing so, Ms Riley had shown herself to be a dangerous and stupid person who risked inciting unlawful violence. Mr Justice Nicklin found that the first assertion was meant as a statement of fact and the second as an expression of opinion, and that both were defamatory.

PETER SMITH

English Court of Appeal Clarifies Jurisdiction to Hear Defamation Claims 252

This article reviews the decision of the Court of Appeal in *Wright v Ver*, rejecting an appeal from the High Court ruling that England and Wales was not clearly the most appropriate place for a libel claim for the purposes of s.9 Defamation Act 2013.

EILEEN WEINERT

Supreme Court Orders Retrial in *Serafin v Malkiewicz* 254

In the latest ruling in the libel case, *Serafin v Malkiewicz*, the Supreme Court upheld the Court of Appeal's finding that the first instance trial was unfair but ordered a full retrial. This article reviews the Supreme Court's reasoning and its guidance on the public interest defence under s.4 of the Defamation Act 2013.

THOMAS MOORE

BrewDog Libel Case—Frank PR Plays Trump card 256

Nicol J has struck out claims brought by two entities within the BrewDog brewing group against Frank Public Relations in libel and negligent misstatement. A Frank PR employee had issued a press release that offered free beer to UK supporters of US President Donald Trump. Nicol J disagreed with the natural and ordinary meaning pleaded by BrewDog, dismissed their innuendo claims and deemed their claim in negligent misstatement to be materially deficient.

RUTH HOY

JQL v NTP—Damages for Facebook Post Referring to Claimant's Mental Health 258

This article reviews the High Court ruling in *JQL v NTP* in which a woman who sued her uncle for a Facebook post revealing confidential personal information about her, namely that she had received treatment for her mental health and self-harming, was awarded £15,000 in damages despite the post's limited duration and readership.

ANDREW TERRY AND EILEEN WEINERT

You Have the Right to Remain Silent—and You Won't Tell Either Will You Governor? Court of Appeal Rules that Suspects of a Crime have a Reasonable Expectation of Privacy 261

This article reviews the Court of Appeal ruling in *ZXC v Bloomberg* which confirmed that, as a general rule, a person has a reasonable expectation of privacy in the fact and detail that they are the subject of a police investigation, up to the point of charge.

GEMMA TODD

A Case That Has Everything—Reporting Restrictions, Anonymity, Human Rights, Privacy and Freedom of Expression 264

This article reviews the recent High Court ruling in *CWD v Nevitt*, a case which offers insight into how the court applies some of the fundamental legal principles in relation to anonymity for alleged victims of sexual offences, privacy for alleged perpetrators and the countervailing importance of freedom of expression and open justice.

Book Reviews

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Media & Entertainment Law (4th edn) by Ursula Smartt 268

ALTHAF MARSOOF

Performers' Rights in Sri Lanka: Singers' Melancholia by Gowri Nanayakkara 269