

Opinion

GIOVANNI A. PEDDE

The Art of Rights Juggling: Content Management in a Nonlinear Universe 273

As their territory is increasingly challenged by the growth of streaming services, and with viewing habits continuing to shift towards on demand access, traditional “linear” broadcasters struggle to stay relevant and explore new business models to hold on to their viewers. Expanding viewing flexibility by offering increased nonlinear access to the programming has become critical in their audience retention strategy, but it also makes managing the related rights so complex to often require the coordination skills and reaction time of a professional juggler. Acknowledging the needs of competing platforms and windows requires strategic thinking, continuing knowledge of consumer offers, and the close interaction of commercial, legal and technical expertise throughout all phases of deal making.

Articles

JONATHAN GREENWAY

Loot Boxes Should be Regulated as Gambling (Sometimes), Says Lords Report 276

A report by the House of Lords Select Committee on the Social and Economic Impact of the Gambling Industry, entitled *Gambling Harm—Time for Action*, was released on 2 July 2020. The report made several dozen recommendations on the gambling industry as a whole. This article concentrates on the report's findings in respect of loot boxes.

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Spotlight on Online Platforms and Digital Advertising as CMA Calls For a New Pro-Competition Regulation Regime 279

This article considers the case, made by the Competition and Markets Authority in the Final Report of the *Online Platforms and Digital Advertising* market study published in July 2020, for the introduction of a pro-competition regulatory regime for online platforms.

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Do Bookmakers Owe a Duty of Care Towards Problem Gamblers? 282

In light of investigations and regulatory amendments brought into effect by the Gambling Commission, and developments in the understanding of problem gambling as a medical disorder, Ricky Hepburn examines the High Court's decision in *Calvert v William Hill Credit* that bookmakers do not owe a broad duty of care to problem gamblers. If this decision ever was correct, it is argued that it likely cannot be reconciled with recent developments.

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Is Louis Vuitton's Damier Azur Pattern Trade Mark Back in the Bag Following EU General Court's Ruling on Acquired Distinctiveness? 286

In a successful appeal brought by Louis Vuitton Malletier in respect of an EUIPO Board of Appeal decision declaring its EU trade mark registration for its Damier Azur beige and blue chequerboard pattern invalid, the EU General Court found that the Board had failed to properly consider the evidence of acquired distinctiveness put forward by Louis Vuitton.

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This article reviews the decision of the English High Court, in *Spicer v The Commissioner of Police of the Metropolis*, that the defence of truth was not an abuse of process in defamation proceedings relating to an article the Metropolitan Police Service posted on its website about the claimant's involvement in a fatal car crash.

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No Luv Lost in Band-Name Dispute—Passing-Off Defence Partially Struck Out for Estoppel 291

The IPEC has partially struck out a defence to a passing-off claim over the name of a musical group, known as “Love Injection” or “Luv Injection”, on the basis of issue estoppel and abuse of process. Where an issue had already been determined in trade-mark invalidation proceedings, the parties were estopped from denying the findings of those proceedings in subsequent passing-off proceedings, and to do so would also be an abuse of process.

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This article reviews and comments on the ruling of the Court of Justice of the European Union in *Constantin Film Verleih GmbH v YouTube LLC, Google Inc* that the “right of information” expressed in Article 8 of the EU Enforcement Directive does not cover the provision of telephone numbers, email addresses or IP addresses to claimants in intellectual property infringement proceedings.

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This article reviews *Aven v Orbis* in which the High Court assessed the meaning of “personal data” as defined in the Data Protection Act 1998, the application of and exemptions to certain data protection principles and the remedies, including correction of the record and compensation, available to a data subject when a breach of certain principles has been established.

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This article reviews *XLD v KZL* in which the High Court granted a US businessman and “Sugar Daddy” an ex parte interim injunction against a woman whom he met on an online dating website to prevent the publication of sensitive private information in an alleged case of blackmail.

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Michael Vaughan Caught Out by High Court’s Refusal to Allow Rectification to Secure a Tax Benefit 303

This article reviews *MV Promotions Ltd v Telegraph Media Group Ltd* in which the High Court declined to exercise its discretion to allow rectification of a contract where a rectification deed had resolved all issues between the parties and the only effect of rectification would be to secure a tax benefit that the parties had not contemplated at the time of the contract.

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Nosecco’s Appeal Falls Flat 305

In *Les Grands Chais De France SAS v Consorzio Di Tutela Della Denominazione Di Origine Controllata* [2020] EWHC 1633 (Ch), the High Court dismissed the claimant’s appeal, finding that NOSECCO evoked the protected designation of origin (PDO) for PROSECCO, and that there was a sufficiently serious risk that the consumer would be deceived into believing that NOSECCO branded non-alcoholic sparkling wine was in some way compliant with the PDO, such as being derived from PROSECCO; i.e. de-alcoholised PROSECCO.

SUNNIVA HANSSON

“YouTube and Cyando—Advocate General Unpicks CJEU’s Case Law on Communication to the Public” 308

The Opinion of Advocate General Saugmandsgaard Øe in Joined Cases *YouTube* (C-682/18) and *Cyando* (C-683/18) is an ambitious attempt to re-think EU copyright law and platform regulation. This article reviews and challenges key aspects of the Advocate General’s recommendations to the Court of Justice of the European Union.

ELEANOR STEYN

NGN Ruling—Source Protection May Apply Even if Identity of Confidential Source Known 312

News Group Newspapers narrowly managed to resist an application to inspect certain documents relating to a known individual, for whom NGN had asserted a right to source protection. On balance, the documents were protected, yet NGN’s claim was weak as the source was a freelance journalist: only a confidentiality agreement between NGN and the source gave the claim to source protection any force. Unusually, the source’s identity was known to the claimants and was even recorded in a publicly available court order, but if the material would identify the individual as the source, the material was “prima facie protected”.

Book Review

URSULA SMARTT

The Regulation of Social Media Influencers, by Catalina Goanta and Sofia Ranchordás (eds) 316