

## Table of Contents

### Articles

IOANNA LAPATOURA

#### **Creative Digital Assets as NFTs: A New Means for Giving Artists Their Power Back? 169**

NFTs representing creative digital works have recently seen a significant increase in popularity, arguably due to making the ownership of digital scarce assets possible, being securely stored and authenticated on blockchains. Given that scarcity and verifiability were previously almost unattainable in the digital world, NFTs and their programmable nature are viewed as a unique opportunity to copyright owners, for safeguarding their exclusive rights as well as for exerting greater control over use of their works.

ELEANOR STEYN

#### **Ofcom's New Measures to Protect Programme Participants 173**

Ofcom has updated its guidance on Section Seven of the Broadcasting Code to help broadcasters comply with new measures to protect people who take part in TV and radio programmes. The measures, which came into effect on 5 April 2021, are aimed at ensuring that broadcasters take "due care" of people at risk of significant harm as a result of taking part, especially contributors not used to being in the public eye and vulnerable people. The updated guidance includes a "risk matrix" to help with assessing and managing the level of care required in different types of programmes.

### Comments

DÉSIRÉE FIELDS

#### **Almost a Perfect 10 in the Court of Appeal for British Amateur Gymnastics 176**

The Court of Appeal has confirmed that the word and logo signs "UK Gymnastics" infringe British Gymnastics' registered UK trade marks. The court also upheld two of three passing off claims but allowed UK Gymnastics' appeal in relation to the first instance finding that UK Gymnastics had engaged in passing off by misrepresenting that it was a national governing body for gymnastics in the UK.

EILEEN WEINERT

#### **Court of Appeal Rules on Journalist's Bid to Access Court File in Care Proceedings 180**

This article reviews the decision of the Court of Appeal in *Newman v Southampton City Council*. The Court of Appeal upheld the judgment at first instance and in doing so, confirmed that children have privacy rights distinct from that of their parents. In addition, the Court of Appeal applied the judgment in a breach of confidence case as authority for the proposition that mere viewing of information may constitute "misuse of private information".

EILEEN WEINERT AND REBECCA PUZEY

#### **Brake v Guy: Public Interest "Iniquity Defence" is Available in Breach of Confidence and Privacy Claims 183**

This article reviews and discusses the implications of the first of two High Court judgments in *Brake v Guy*, specifically the ruling of HH Judge Paul Matthews on a preliminary issue that the public interest defence of "iniquity" is available as a matter of law in relation to claims for misuse of private information and claims for breach of confidence, including where the defendant has not only disclosed, but accessed the information.

RACHEL ALEXANDER AND WAQAR QURESHI

#### **Tuneln: Court of Appeal Favours Harmony in Post-Brexit Music Hyperlinking Case 186**

This article reviews the Court of Appeal judgment in *Tuneln Inc v Warner Music UK Ltd*, concerning whether an online radio aggregation service which links to the broadcast streams of thousands of music radio stations is liable for copyright infringement. In upholding the first instance decision, the Court of Appeal declined the opportunity to diverge from EU law on communication to the public, favouring "harmonious interpretation" above "individualistic disharmony".

DR CHRISTOPHER ASHCROFT AND DR JANET STRATH

#### **A Likelihood of Confusion Between Huawei and Chanel's Interlocking Figurative Trade Marks? The EU General Court Should Coco! 189**

In *Chanel SAS v EUIPO*, the EU General Court ruled that the logo used by Chinese technology firm Huawei for computer hardware bears no similarity to the famous double "C" logo used by the luxury French fashion brand Chanel to sell make-up, perfumes, clothing and accessories. According to Chanel, "when [Huawei's] mark is rotated by 90 degrees" it is "at the very least, visually similar to an average degree" to Chanel's earlier trade mark. The court disagreed, finding that the respective parties' marks "must be compared as applied for and register, without altering their orientation". This article considers the judgment and its implications.

NICHOLAS TALL

**Green v Betfred—A Bad Bet 192**

In her interesting and far-ranging judgment in *Green v Betfred* Foster J had to adjudicate on issues as to scope, incorporation and transparency in a consumer context of exclusion clauses.

**Book Review**

CHET ORLOFF

**Art Law in a Nutshell, 6th edn, by Leonard DuBoff, Christy King, and Michael Murray 197**