

Articles

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The Criminalisation of Drill Music: Should Beats and Bars be Used as Evidence in Court? 199

As Drill music bursts into the mainstream and rides high in the UK music charts, it simultaneously rises in popularity in the criminal courts of England and Wales. With Drill lyrics and music videos being increasingly adduced by the prosecution as evidence of prior bad acts, it is incendiary evidence introduced to juries in cases involving murder and other serious violence. The criminal courts are grappling with this evidence. Is it admissible and, if so, how is it probative of the real issues in the case? This article questions whether it deliberately relies on conscious and unconscious bias to increase the prospects of conviction and considers if lyrics should have a place in our courtrooms.

ANDY PHIPPEN AND VICTORIA BAINES

The Rhetoric of Online Regulation: Failing Yet Again to Learn from History 202

Recent reports and speeches by politicians and children's charities might suggest that end-to-end encryption is a bad thing, and that service providers who implement it do not care about child safeguarding. However, if we unpick the rhetoric of these claims, they are often lacking in rigour and expose a failure to understand both how technology works and our commitments to fundamental human rights.

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The Scottish Court of Session recently held that copyright could be infringed by unauthorised links to material which was freely available elsewhere online, on the basis that such access was confined to users who subscribed to the owner's terms and the duration of its availability was under the control of the copyright owner. The article discusses the Scottish Court's interpretation of the inconsistent EU jurisprudence in this area, as well as the possibility for a similar interpretation to succeed in England and Wales and the lessons rights holders can take from the judgment.

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Infinite Case Ends: With Limited Award of Damages for Infringing Copies of Eminem's Album 212

In its April 2021 ruling in *FBT Productions v Let Them Eat Vinyl Distribution* the IPEC assessed damages for copyright infringement by making vinyl copies of Eminem's first album, *Infinite*. On the facts, the IPEC rejected damages claims based on: (a) loss of opportunity to license a third party to coincide with the 20th anniversary of *Infinite*; and/or (b) losses arising from the licence that the claimant would have offered the defendant. Instead, the IPEC assessed damages on the basis of a reasonable royalty for actual sales of the record, assuming a willing licensor and willing licensee. That resulted in a putative fee of £2.50 per unit, plus interest.

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AND JESSICA PEASE

MONOPOLY: Hasbro Fails to Pass Go in Long-Running Trade Mark Dispute 215

This article reviews Case T-663/19 *Hasbro Inc v EUIPO* in which the EU General Court found that the multinational play and entertainment conglomerate's repeat EU trade mark filings for the word sign MONOPOLY constituted bad faith.

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This article reviews the latest ruling in *Spicer v Commissioner of Police for the Metropolis* in which the High Court accepted the police service's defences of truth and privilege and found that the claim did not cross the serious harm threshold laid down by s.1 of the Defamation Act 2013.

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Directors Liable as Accessories, But Do Not Need to Account for the Principals' Profits 220

In *Lifestyle Equities v Ahmed*, the Court of Appeal holds that, even where a director is a joint tortfeasor—for example, for acts of trade mark infringement—he is only required to account for his own profits, and not also those earned by the principal. Claimants must therefore consider the likelihood of a corporate insolvency before pursuing an account of profits.

Laugh Now But One Day We'll Cancel Your Trade Mark: EUIPO Invalidates Another Banksy Trade Mark on Bad Faith Grounds 222

This comment reviews the recent decision of EUIPO's Cancellation Division to declare invalid a trade mark registered for Banksy's iconic "Laugh Now But One Day We'll Be In Charge" image on the basis that the trade mark had been registered in bad faith.

Jeremy Corbyn tells Andrew Marr a "Zionist" was "Disruptive" and "Abusive": Is that an Allegation of Fact or Comment? Is it Defamatory? 224

This case comment reviews the Court of Appeal judgment in the case of *Millett v Corbyn* on whether a statement made by Mr Corbyn to Andrew Marr was one of fact or opinion, and whether it was defamatory.

Facebook's "Live Broadcast" Feature Lives on Following Voxer's Unsuccessful Patent Infringement Claim 228

Facebook's "Live Broadcast" feature has been found not to be infringing Voxer patent in case under the Shorter Trials Scheme where the judge considers equivalence and the possibility of the Formstein defence under English Law.

High Court Rules Domain Name is Intangible Property and Orders Reversion of Blackjack.com Following Irremediable Material Breach of Transfer Agreement 230

This case comment reviews the High Court ruling in *Hanger Holdings v Perlake Corporation SA* granting a declaration that the claimant was entitled to the ownership of the domain name blackjack.com following termination for irremediable material breach of a 2003 agreement under which the claimant transferred the domain name and associated business to the defendant.

... and ONE MORE THING, an Intention to Parody is not (Necessarily) Bad Faith 231

In March 2021, the High Court was, for the first time, asked to consider whether an intention to parody another trader constitutes bad faith for the purposes of UK trade mark law. As the first reported case on this subject, the judgment in *Swatch v Apple* provides novel insights, which will no doubt be of particular interest to brands.

Tickets Sold Out for Ticketmaster's Data Breach Tour at the Tribunal and the High Court Next 234

This comment considers *Ticketmaster UK Ltd v The Information Commissioner*, where the First-tier Tribunal granted Ticketmaster stay of its appeal to await material assistance from High Court in parallel group action.

Strike-Out of Public-Interest Defence Reversed on Appeal in Rachel Riley Case 236

The Court of Appeal has considered defences raised in a libel case brought by Rachel Riley against Michael Sivier, who wrote an article on his blog, Vox Political. Its meaning had been held to be defamatory by Nicklin J in a preliminary hearing, and Mr Sivier had filed defences of truth, honest opinion, and public interest. Ms Riley initially succeeded in applying to strike out all defences, but the Court of Appeal upheld Mr Sivier's appeal to reinstate the defence of public interest, finding that, while it lacked detail about his reasoning, there were issues that could only be properly addressed at trial.

How Do You Credit a Non-Writing Screenplay Author? 238

What credit on IMDb do you give someone found by a court to be a joint author of a film screenplay, who may not actually have written any of it? That was considered by the IPEC in the latest chapter of the *Martin v Kogan* case. After considering IMDb rules and the respective guidelines of the Writers' Guild of Great Britain and the Writers Guild of America, Mr Justice Meade decided that "(written by) (originally uncredited)" was the fairest credit, reflecting as far as possible the relevant guidelines, his main judgment, and the test of "authorship" under UK copyright law.

Book Review

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