

## Articles

CLARE GILROY-SCOTT AND  
CHARLOTTE GITTINS

DEVA PRASAD M AND SOUMYA  
PRAKASH PATRA

JONATHAN GREENWAY AND JOSHUA  
CHARALAMBOUS

BEN STEVENS

ROBERT LISTER

**Comments**  
DR JANET STRATH

### **Invitation to an Outrage: Academic Freedom and Free Speech** 1

The inchoate rage of an increasingly authoritarian, populist government, aided and abetted by a hysterical right-wing press and its reactionary readership, has culminated in a confused and contradictory legislative framework that eviscerates the right of protest and curtails (as it professes to promote) both free speech and academic freedom.

### **Russell Brand and Workplace Sexual Harassment—What Obligation Does an Employer Have?** 7

The claims against Russell Brand in the Channel 4 *Dispatches* documentary and the allegations made since the programme aired on 16 September 2023 have rocked the mainstream media. This article considers the steps employers, in the media space and beyond, can take to protect employees against sexual harassment and the upcoming changes that will impose a positive obligation on employers to take reasonable steps to prevent all forms of harassment.

### **Analysis of the New Online Gaming Regulation in India** 10

The Online Gaming Regulation 2023 establishes a self-regulatory framework for regulating gaming intermediaries outside India. From a legal standpoint, this article provides the context for introducing the Online Gaming Regulation 2023, an overview of this new gaming regulation, examining the new rule's potential impact on the gaming industry, and suggestions for improving the regulatory landscape.

### **Video Game Industry Guidance on Loot Boxes Finds Favour with Government** 14

The Government is calling on the games industry to adopt and commit fully to new guidance on loot boxes in video games published by the industry's trade body UK Interactive Entertainment (Ukie). This article reviews Ukie's "New Principles and Guidance on Paid Loot Boxes" and considers its application in the context of wider obligations and standards that apply to games and online services.

### **The Protection of TV Formats: Part I—Copyright** 18

This is the first in a trilogy of articles considering various potential ways of protecting the rights in television formats. Part I considers the law of copyright as a means of protection.

### **It is Time to Get to Grips with the Digital Services Act—What This Means for Online Intermediary Service Providers: Part 2: Core Obligations** 21

The EU's Digital Services Act came into force on 16 November 2022. Since 25 August 2023, only a small number of organisations with a large EU user base have needed to comply in full with the DSA. However, a significant majority of other online service providers now only have until 17 February 2024 to put in place the required measures to ensure compliance. This article is the second in a series by Robert Lister of Ropes & Gray on what the DSA means in practice and provides an overview of the core obligations applicable to mere conduits, caching and hosting service providers.

### **Snakes Alive: UK Court Finds No Likelihood of Confusion Between AC Cobra and Cobra Trade Marks in Relation to Sports Cars** 27

This comment considers *Acedes Holdings LLC v Clive Sutton Ltd*, in which the IPEC dismissed a challenge to the UK trade mark AC COBRA on the basis that the defendants were not owners or licensees of Ford's prior trade mark rights in the Cobra mark. They were, therefore, not entitled to make an application for a declaration of invalidity and found that there could be no likelihood of confusion because Cobra was a generic description of a type of car, and AC Cars had sold an AC Cobra car in the UK in 1963, which was a few years before Ford's Cobra mark was registered.



HUGH TOMLINSON KC

## **Hurbain v Belgium: The Grand Chamber of the European Court of Human Rights Upholds Decision that Order Anonymising Newspaper Archive Did Not Violate Article 10 30**

This article reviews and comments on the ruling of the Grand Chamber of the European Court of Human Rights in *Hurbain v Belgium*, that an order to anonymise an article in a newspaper's electronic archive (which referred to a person's involvement in a fatal road traffic accident for which they were subsequently convicted) did not breach the applicant publisher's right to freedom of expression.

ALEXANDER DITTEL

## **Council Liable to Pay £6,000 for Aggravated Distress Caused by Data Privacy Failings 35**

A case of misuse of private information and GDPR breaches including withholding data following an access request in the context of a fraud complaint and property possession litigation against the claimant during which the claimant's financial details were accessed in an excessive and disproportionate manner without lawful authority. The council's silence and lack of evidence allowed the court to draw adverse inferences.

ANDREW WILSON-BUSHELL AND  
CHARLIE EDWARDS

## **Bitcoin Revisited—File Format Capable of Copyright Protection if Structure Recorded 37**

In *Wright v BTC Core*, Dr Craig Wright had claimed to own copyright in the electronic file format used in the Bitcoin digital currency system. As considered in our previous article on the decision at first instance, the High Court held that the claim had no real prospect of success and refused permission to appeal. Yet the Court of Appeal granted permission and allowed the appeal, finding that, although the content did not define the structure of the file format, the claimants still had a real prospect of success in showing fixation (and so copyright subsistence) if the structure was completely and unambiguously recorded.

NEALE CHRISTY

## **A Legal Minefield: Infringing Use of ADVANCETRACK Trade Mark as a Google Keyword 39**

This article reviews *E-Accounting Solutions v Global Infosys* in which the High Court found that intentional use of ADVANCETRACK as a Google keyword and accidentally within a sponsored advertisement infringed the ADVANCE TRACK trade mark owned by E-Accounting Solutions and amounted to passing-off. The case is notable not only for the judge's ruling on the merits but also his consideration of whether a different decision would have been reached if the Retained EU Law (Revocation and Reform) Act had already been in effect.

BEN GERSHINSON

## **Dyson Hoovers Up on Appeal Against C4 and ITN 41**

The Court of Appeal has allowed an appeal by two British-based Dyson companies from a High Court decision that an allegedly defamatory broadcast made by Channel 4 and ITN did not refer to the Dyson companies. The Court of Appeal found that a hypothetical reasonable viewer acquainted with the companies would, in fact, identify them as being referred to in the broadcast.

DIONNE CLARK

## **Davidoff No.1—Google Not Mixed Up in Fake Reviews 44**

The High Court has refused to grant a *Norwich Pharmacal* order against Google. The claimants, individual members of the Davidoff family and two associated real-estate companies, applied for an order to identify certain individuals with Gmail addresses used to register Trustpilot accounts, which were used to post what the claimants contended were "fake reviews". As a result, the claimants asserted claims in defamation and malicious falsehood. Yet only the corporate claimants could establish an arguable case of malicious falsehood for some of the reviews, and they failed to show that Google was mixed up in the wrongdoing.

DIONNE CLARK

## **Davidoff No.2—No Cigar for Mr Hargrave in Attempt to Strike out Reliance on Innuendos 46**

The High Court has refused to strike out parts of a claim relying on reference innuendos in relation to a tweet and a post on an online article. The claimants, members of the Davidoff family, had asserted that the tweet, which was hyperlinked to an article naming them, would naturally have been understood to refer to them. In the alternative, the claimants asserted a reference innuendo, which was also relied on for the post. The court held that certain defects in the innuendo pleading were remediable and could be amended, and that it was not permissible to adduce evidence on the defendant's followers to determine whether the hypothetical reader would click on the link.