

The Protection of TV Formats: Part 3—Other Means of Protection 103

In the third and final instalment of this series of articles considering various means of protecting the rights in television formats, this article considers the roles of passing off, trade marks and the impact of industry fall out in protecting such rights.

Regulation of OTT (Video Streaming) Platforms in India: A Case of Information Technology Rules 2021 107

This article considers the Information Technology Rules 2021 and their implementation by the Indian Government to regulate online content, in light of challenges to the rules brought by online streaming platforms. As the country comes to terms with a cumbersome law that hopes to be comprehensive but could very likely be outdated when it arrives, we question the efficacy of the law-making process that does not engage in dialogue with the necessary stakeholders.

Agreement Reached on Voluntary UK Code of Practice on Transparency in Music Streaming 112

This article reviews, and considers the value of, the new UK Voluntary Code of Good Practice on Transparency in Music Streaming. The Code, which takes effect from 31 July 2024, is intended to “build greater trust in music-maker contracts, streaming licensing deals, usage data, audit rights, royalty payments and communication to creators on the business of music streaming”.

Consultation on Extending Rights in Sound Recordings and Performances to Foreign Nationals 115

In the first quarter of 2024, the UK Government held a consultation on potential amendments to UK copyright law. Currently, most producers of foreign recordings are granted public performance rights, but for foreign performers, the right to equitable remuneration is granted on a much more limited basis. The IPO has set out three policy options to treat foreign producers and performers more consistently. Of those, the one most likely to be pursued would expand the grant of rights to foreign performers on a near-blanket basis. This article provides a brief summary of the rights under scrutiny and details of the proposed policies.

High Court Tunes in to Disclosure Issues in Copyright Infringement Damages Inquiry 118

The High Court has handed down another judgment in *Warner Music UK Ltd v Tuneln Inc*, this time on issues relating to disclosure on the damages inquiry following the Court of Appeal’s ruling that Tuneln infringed record labels’ copyright by indexing and linking to online radio stations unlicensed in the United Kingdom. This article summarises the main findings.

CJEU Health App Ruling Confirms That Data Controllers Can—In Some Cases—Be Liable For the Acts of their Processors 120

This article reviews and comments on *Nacionalinis visuomenės sveikatos centras* (C-683/21) in which the Court of Justice of the European Union clarified its position on the interpretation of the term “controller” under the General Data Protection Regulation, the conditions that must be satisfied for entities to be considered joint controllers and the basis upon which controllers can be liable for the unlawful processing of personal data by their processors, in the context of a mobile application that was originally designed to register and monitor the data of individuals exposed to COVID-19.

Mirror Uncracked by Dyson in Libel Claim 122

The High Court has ruled against Sir James Dyson in a defamation claim against the *Mirror* publisher, MGN Ltd. The defendant had published an article accusing him of having “screwed the country”. The court found that MGN could rely on its defence of honest opinion, and that Sir James had not discharged the burden of proving serious harm.

STEPHEN SMITH, SEAN-PAUL BRANKIN
AND MATTHEW HUNT

CJEU Judgment in European Superleague Case has Significant Implications That Go Beyond Football 124

The Court of Justice of the European Union’s *European Superleague* judgment finding the rules of FIFA and UEFA under which they took action to prevent the formation of the break-away European Super League infringe EU competition law will have important implications for football and more widely. As well as making the emergence of a rival to the Champion’s League competition more likely, it will call into question the legality of the statutes of many other sporting associations.

DIONNE CLARK

Skill and Labour Not Enough for Copyright—But Software-Generated Art Still Original 128

The Court of Appeal has upheld a finding that charts in graphic displays produced by software were sufficiently original to be protected by copyright, which the defendants had accordingly infringed. The judge at first instance had applied the older test for originality of “skill and labour”, which has been replaced by the EU-derived test of the “author’s own intellectual creation”. Although the correct test amounts to a higher standard, the Court of Appeal still found the works to be original.

DR JANET STRATH

High Court Finds Artificial Neural Network-Based System for Recommending Music Tracks Patentable 130

This article reviews and comments on *Emotional Perception AI Ltd v Comptroller-General of Patents, Designs and Trade Marks* in which the High Court allowed an appeal from a decision of an UKIPO hearing officer refusing the grant of patent relating to an Artificial Neural Network-based system for recommending music tracks. Taking a different view from the hearing officer and causing the Patent Office to announce a change of practice, the court held that the system was not excluded from patent protection as “a program for a computer ... as such”.

JOHN PATTEN AND ALEX
ZAPALOWSKI

AI is Persona Non Grata: Supreme Court Holds That AI is Not an Inventor 133

This article reviews and considers the broader significance of the Supreme Court’s ruling in *Thaler v Comptroller-General of Patents, Designs and Trade Marks* that an AI machine cannot be an inventor for patent purposes since only a natural person can be an “inventor” under the Patents Act 1977.

SARAH MOUNTAIN, EMMA DUNNILL
AND ZOE HARVEY

Online platforms Should Swatch out: Samsung Found Liable for Infringing Third-Party Content Available on the Samsung Galaxy App Store 136

This article reviews *Montres Breguet SA v Samsung Electronics* in which the Court of Appeal upheld a High Court decision finding Samsung liable for trade mark infringement in relation to third-party watch face apps which could be downloaded to Samsung smartwatches from the Samsung Galaxy App store. The judgment provides guidance on what constitutes “use” of a sign by an online app store and the applicability of the e-Commerce Directive hosting defence.

ALEXANDER ROSS

Copyright and Database Right Infringement Claims Relating to Training and Development of Deep-Learning AI Model Too Complex For Reverse Summary Judgment or Strike Out 139

This article reviews and considers the broader context of the High Court’s ruling in *Getty Images v Stability AI* rejecting an application for reverse summary judgment and/or strike out of Getty Images’ copyright and database right infringement claims relating to the unauthorised use of their images to train Stability AI’s deep-learning AI model Stable Diffusion.

DÉSIRÉE FIELDS

Yannick Noah Case Highlights Athlete Brand Longevity Challenge 142

This article reviews *Noah Clothing v European Union Intellectual Property Office (EUIPO)* (T-562/22) in which the EU General Court conducted an extensive analysis of the law surrounding genuine use, and upheld a EUIPO Board of Appeal decision confirming that an EU trade mark registration for the figurative sign NOAH, owned by former Grand Slam Champion and tennis legend Yannick Noah, remained registered in respect of “polo shirts” and “sweaters”.