

Articles

JONATHAN BLAIR AND SOPHIE NEAL

Text-to-video AI Models—Mitigating Disruption in the Film and TV Industry 147

OpenAI's text-to-video tool, Sora, has heralded a new dawn for potential disruption by generative AI. This article considers how current UK legislation could assist in mitigating such impact, especially in the context of how copyright might subsist in AI output, and who might own such copyright. Given the widespread unauthorised use of training data, we also examine how copyright infringement could be curbed, in light of developing case law, rules on fair dealing, licensing, and policing datasets. Actors also have a role to play through reliance on image rights, union agreements and data protection.

ALEXANDER DITTEL AND SCARLET MITCHELL

ICO Releases Guidance on Content Moderation—Managing the Tensions Between Online Safety Act and Data Protection Compliance 151

Content moderation is becoming an essential user-safety feature and under the Online Safety Act 2023, it will become mandatory for some online platforms and service providers, pending statutory codes being drawn up by Ofcom. This article reviews new guidance from ICO which offers early views about data protection compliance in content moderation.

Comments

DR JANET STRATH

Dream Pairs Given Red Card for Infringement of Umbro Trade Mark 154

This article reviews and comments on *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc*, in which the Court of Appeal held that a judge had erred in finding no likelihood of confusion between Dream Pairs' tilted square sign and Umbro's trade mark for its famous "double diamond" logo. Highlighting the importance of considering post-sale confusion and how the potentially infringing sign might be seen by the average consumer in the real world, the court held that there was a likelihood of confusion on the part of a significant proportion of consumers and, therefore, Dream Pairs had infringed Umbro's trade mark.

JON OAKLEY AND NED GOMPERTZ

Laurence Fox "Paedophile" Tweets Ruled Libellous, But "Racist" Counterclaim Dismissed 156

The High Court has found that tweets by Laurence Fox labelling two gay men a "paedophile" were "seriously harmful, defamatory and baseless". His tweets were responses to being described a "racist" by them over his criticism of a tweet by Sainsbury's in celebration of Black History Month. Yet he could not rely on the defence of "reply to attack". His related counterclaim also failed, as he did not demonstrate actual or likely serious harm to his reputation. So the court had no need to determine whether the counter-defendants' pleaded defences of truth and honest opinion would have succeeded.

RACHEL ALEXANDER AND SANGEETA JHEINGA

The Breadth of the Courts' Power to Grant Injunctive Relief: Wolverhampton City Council v London Gypsies and Travellers 159

The Supreme Court has ruled that courts have the power to grant injunctions against persons who are not identifiable at the time of grant and who are yet to infringe any right or duty, necessarily without notice, as a form of enforcement of private or public rights which are not seriously in dispute, subject to relevant procedural safeguards.

EMMA FLETT, JOANNA THOMSON AND SAMANTHA BRADLEY

Balmain or Banal? EU General Court Considers the Distinctiveness of Luxury Fashion House's Lion's Head Logo 162

In the latest decision concerning Balmain's lion head sign, the EU General Court was again asked to consider seemingly weak common elements of trade marks in the context of the global assessment of likelihood of confusion within the meaning of the EU Trade Mark Regulation art.8(1)(b).

RORY GRAHAM AND GEORGIA DAVIS

Ginfringement: Success for M&S in the Court of Appeal in Registered Design Spat with Aldi 165

M&S and Aldi's gin bottle battle over design rights has reached a conclusion (for now) as the Court of Appeal has unanimously upheld the IPEC's decision that Aldi's bottle infringed M&S's design. This article reviews the decision which will provide comfort to product owners and may cause concern to discount retailers that sell lookalike products.

BEN GERSHINSON

A Crude Case of Qualified Privilege—Oil Minister Fails to Extract Libel Defence 168

In *Hawrami v Journalism Development Network*, an instructive case about an article accusing a former Kurdistan minister of corruption relating to an oil contract, the High Court has dismissed the claimant's application for summary judgment against a defence of qualified privilege. Master Dagnall considered various issues on qualified privilege in "fair and accurate" reporting, such as where privileged material becomes "intermingled" with extraneous material, as well as determination of meaning in the context of qualified privilege.

NICHOLAS TALL

Incorporation Lotteries—Camelot Come Up Trumps in Court of Appeal 170

In a case that raised issues regarding the incorporation of online terms before the Court of Appeal for the first time, in *Parker-Grennan v Camelot*, the Court of Appeal confirmed the original decision that Camelot's terms were incorporated, were not unfair and as a matter of construction precluded the claim brought, and pondered that an evidence-based review of the law may be timely.

NEALE CHRISTY AND LEIGH SMITH

Supreme Court Takes Aim at the Question of Targeting in Trade Mark Infringement Case 174

This article reviews *Lifestyle Equities CV v Amazon UK Services Ltd*, in which the Supreme Court provided further clarity on when a website can be said to be "targeting" consumers in the UK for the purpose of trade mark infringement. In doing so, it rejected Amazon's appeal from the Court of Appeal, which had held that Amazon had infringed Lifestyle Equities' marks by enabling consumers in the UK to import branded goods sold on Amazon's US website.