

Articles

ANDREW WILSON-BUSHELL AND  
SOPHIE NEAL

Impact of the EU AI Act on the Creative Industries 1

The EU’s Artificial Intelligence Act came into force on 1 August 2024. It will set the tone for providers and users of AI systems in the EU, and probably globally. Its stated purpose is “to promote the uptake of human-centric and trustworthy artificial intelligence” and to make sure that “AI systems in the EU are safe, transparent, traceable, non-discriminatory and environmentally friendly”. In this article, we take a look at the parts of the Act most likely to be relevant to the creative industries and when the various requirements are set to come into force.

HELENA FRANKLIN

Fashionably Dressed Down—CMA Targets Greenwashing in the Rag Trade 6

The Competition and Markets Authority has published a bespoke guide called *Green claims in fashion*—based on its Green Claims Code—targeted at fashion businesses. The CMA is concerned that customers should be able to make informed choices based on trustworthy environmental claims. Accordingly, the guidance is tailored to increase fashion brands’ compliance with consumer law and to protect shoppers from misleading claims about the green credentials of fashion brands and their products and services. It also reminds businesses of the CMA’s enforcement powers (soon to be enhanced) in the event of a breach of consumer law.

SOUMYA PRAKASH PATRA

Balancing Innovation and Privacy: Navigating Data Protection in India’s Evolving Gaming Regulation Landscape 10

This article explores the challenges that the gaming industry in India faces regarding legal issues on data protection and privacy in the rapidly growing sector. The article provides a critical analysis of the legal framework, the recent legislation and relevant case laws that prescribe personal data governance by gaming industry entities. The article also highlights the issues of Indian regulatory trends and compares them with action in the global arena and identifies regulatory gaps for future legislative activity emphasising user protection and innovation.

JAMES MURRAY

Comparing the Core Duty to Secure Free Speech in Higher Education Under the 1986 and 2023 Acts 14

The article will discuss the key case law which has interpreted the core s.43(1) duty on higher education providers under the Education (No.2) Act 1986 to take reasonably practicable steps to secure free speech within the law and will describe how this duty interact with universities’ obligation as public authorities to act compatibly with the European Convention on Human Rights, particularly the art.10 right to freedom of expression. It will consider the claim of the Conservative Government that the Higher Education (Freedom of Speech) Act 2023 strengthened the core s.43(1) duty under the 1986 Act and, if so, to what extent.

SIMON MILES

Anti-Counterfeiting and Your Intellectual Property Rights 19

This article provides guidance for businesses dealing with intellectual property crimes or looking to safeguard their intellectual property rights against future infringements.

STACEE SMITH

Deepfake Defences: Mitigating the Harms of Deceptive Deepfakes—Ofcom Releases Discussion Paper Concerning the Harmful Impact of AI-Generated Deepfakes 24

This article considers the issues raised in Ofcom’s discussion paper titled “Deepfake Defences: Mitigating the Harms of Deceptive Deepfakes”, published in July 2024. The paper highlights the proliferation and societal impact of deepfakes, indicates practical measures to control harms associated with deepfakes and identifies areas where the inadequacy of such measures may warrant regulatory interventions.

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Offside! CJEU Judgment that Finds FIFA Transfer Rules Anti-competitive Set to have Major Implications for the Football Transfer Market 28

This article reviews and considers the implications of the Court of Justice of the European Union’s ruling in *FIFA v BZ (Diarra)* that FIFA’s rules underpinning the current multi-billion euro football transfer market contravene EU rules on free movement and competition.



SARAH HUSSLEIN

## **Court of Appeal Considers Relevance of a Crowded Market and Earlier Coexistence Agreements in Determining Likelihood of Confusion Between “Polo Club” Brands 32**

This article examines the Court of Appeal’s ruling in *Lifestyle Equities CV v Royal County of Berkshire Polo Club*. The judgment considers how a crowded market with similar-themed brands as well as the presence of coexistence agreements, entered into by the claimant and defendant with third parties, influence the assessment of the likelihood of confusion in trade mark infringement cases.

STEVE FOSTER

## **National Youth Council of Moldova v Republic of Moldova: Advertising, Free Speech and the Protection of Minorities 34**

*National Youth Council of Moldova v Republic of Moldova* examines how the European Court balances the right of free, public interest, speech with the rights of others not to be subject to hate speech or ridicule, in a case concerning the banning of a poster with cartoon representations of minority groups.

ROHAN MASSEY

## **FOIA Commercial Interests Exemption—First-tier Tribunal Considers British Museum’s Entitlement to Withhold Information Relating to its Dealings with a Commercial Sponsor 37**

This article reviews the decision of the First-tier Tribunal in *Garrard v Information Commissioner* that the British Museum was entitled to rely on the commercial interest’s exemption in the Freedom of Information Act (FOIA) to withhold information requested of it in relation to BP’s sponsorship of the museum.

JOHN PATTEN, ALEX ZAPALOWSKI  
AND ALI FAZELI-NIA

## **Not Such an EASYLIFE—easyGroup Unsuccessful in its Latest Trade Mark Action Challenging the Use and Registration of EASY LIVE in the United Kingdom 39**

This article reviews and comments on the High Court ruling in *easyGroup Ltd v Easy Live (Services) Ltd*, one of the latest in a string of actions by easyGroup Ltd and its affiliates seeking to establish broad protection for any brand with the “easy” prefix in the UK.

HUGH TOMLINSON KC

## **Parish v Wikimedia Foundation Inc: Permission to Serve Out Set Aside, Forum and Merits Tests Failed, “Single Publication Rule” Applied 42**

This article reviews and comments on the judgment of Steyn J in *Parish v Wikimedia Foundation* setting aside an order granting the claimant in a libel action permission to serve the defendant out of the jurisdiction.

MATTHEW DANDO

## **Summary Judgment Granted Against Law Firm on the Basis that it had No Real Prospect of Proving Defamatory Reviews Caused it Serious Financial Loss 44**

This article reviews and comments on *BW Legal Services v Trustpilot* in which the High Court dismissed a libel claim, brought by a law firm specialising in debt recovery, against Trustpilot relating to 20 reviews posted on the platform, on the basis that the firm had no real prospect of success in proving on the balance of probabilities that each, or any, of the reviews caused, or was likely to cause, it serious financial loss for the purpose of the Defamation Act 2013 s.1.

JEMMA WEBSTER

## **Journalists Beware—High Court Rules Trade Unions Can Sue for Libel 45**

This article reviews and comments on the High Court ruling in *Prospect v Evans* that trade unions have the right to sue in defamation and earlier authority to the contrary was wrongly decided.