To Be and Not to Be an IPR: The Protection of Trade Secrets in the EU

The classification of the protection of trade secrets as either subject-matter of intellectual property rights (IPR) or of unfair competition law differs between regions of the world. One should not seek to deduce any legal consequences from the classification in itself, but it does have implications for the applicability of other rules, such as choice of law and enforcement measures. In respect of enforcement, the picture is obscured by trade secret protection being classified as IPR for the purpose of the TRIPS Agreement and not an IPR for the purpose of the EU Enforcement Directive.

Caterina SGanga

The DSM Copyright Directive: EU Copyright Will Indeed Never Be the Same

Viewed as a whole, the DSM Copyright Directive represents a setback for copyright protection in the EU. To most observers, the debate looks like a classic struggle between those who wish to strengthen copyright and those who wish to roll it back. The reality is, of course, far more nuanced, but in the legislative process nuance was a casualty. Most rightholder groups were supportive of adoption, but there were significant exceptions. Anti-copyright stakeholders sought its rejection. National implementation of this instrument, which has forever altered the face of EU copyright, is set to be the next battleground.

Michael Blakeney

The Notion of “Work” in EU Copyright Law after Levola Hengelo: One Answer Given, Three Question Marks Ahead

The notion of protected works in EU copyright law has been subject to controversial decisions since Infopaq in 2009. Levola promised to bring clarity, but its overly concise ruling instead triggered further questions. This article comments on the current state of the art, highlights its problematic aspects, and proposes solutions to achieve legal certainty and avoid future interpretative misunderstandings.

Jesus-ivan Mora Gonzalez

Fine Art and Patents

This article investigates the hostility of patent law to the protection of paintings. The investigation commences with a brief examination of the history of innovation in fine art and then moves on to a consideration of the history and philosophy of patenting to explore the exclusion of fine art from patenting. The requirements of novelty, inventiveness and industrial application are applied to fine art. Finally, the article looks at examples of the patenting of artists’ requisites and attempts to patent artistic techniques.

DR Manuchehr Tavassoli-Naini, Rasoul Mazaheri and Naser Alahyakil

Criminal Enforcement of Copyright and Distinctive Authorship

Distinctive authorship is a trade mark analysis of social creativity with the objective of identifying when the criminalisation of copyright infringements should not be appropriate. According to that model, the substantial similarity test should not be taken into consideration as a hermeneutic criterion to justify a criminal sanction when it aims to restrain the transformative uses of any copyrighted work increasing the scope of derivative uses.

Designing the Special Regime for Protection of Traditional Sciences in Iranian Law with Regard to WIPO and TRIPS Rules

With the growing expansion of commercial communications, the need to protect traditional knowledge is felt increasingly. After the WIPO, and following the establishment of the WTO and the authorisation of the TRIPS Agreement, certain countries, including developing ones, paid due attention to the matter of traditional knowledge. Since 2000, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), as one of the sub-components of WIPO, has not been successful in enacting an obligatory agreement considering traditional knowledge. In this regard, some countries have enacted laws and regulations on the protection of traditional knowledge in their laws. In Iran, along with the establishment of Intellectual Property Policy Council, some steps have been taken to promote intellectual property rights. Iran’s traditional knowledge based on its ancient civilisation, as well as its vast territory, necessitate considerable attention. It seems inevitable to develop a particular system of protection of traditional knowledge within the needs of the Iranian legal system.
Liability of Internet Service Providers: A Review Study from the European Perspective 451

The internet has revolutionised people’s lives by offering a medium to share and receive abundant information. However, this resource hub has become a harbour for the infringement of IP material. Although the sole responsibility lies on the internet user, some degree of liability on the shoulders of the internet service providers cannot be ruled out. Expounding on this issue, and considering the relevant judicial decisions and academic commentaries, the following article evaluates the changing trends in the liability of internet service providers for the infringement of intellectual property rights, more specifically focused towards trade mark and copyright infringements in UK and Europe.

Comments
BERND JUSTIN JÜTTE

A Careful Construction of the Distribution Right: Syed (C-572/17) 459

The CJEU finds in Syed (C-572/17) that the storage of goods falls within the scope of application of the distribution right under art.4 Directive 2001/29 if the goods concerned are stored for the purpose of offering them for sale in the EU. This is not a radical departure but a logical development in the case law of the court. As a result, a right holder can already bring action against a trader who stocks goods that infringe copyright if it can be demonstrated that the goods are intended for sale.

Actavis v ICOS: Obvious-to-Try a Dose of Clarity 461

The Supreme Court of England and Wales on 27 March 2019 handed down judgment in the case of Actavis Group PTC EHF v ICOS Corp on appeal from the Court of Appeal. Finding in favour of the respondents, Actavis, TEVA and Mylan, the court upheld the Court of Appeal’s decision that a dosage patent for tadalafil in the treatment of male erectile dysfunction was invalid for lack of inventive step. This comment considers the judgment and its implications.

The Doctrine of Targeting in the context of International Trademark Disputes 464

This comment discusses the case of easyGroup v EasyFly Express. This case illustrates the various tests required for trade mark holders to apply to the court to serve a claim form outside the jurisdiction where the defendant is using a foreign website with similar or identical marks or get-up to the claimant. It examines the important doctrine of targeting and the various criteria used to determine whether a foreign website is targeting UK or EU consumers and the evidence required to persuade the court. It also analyses what impact this may have on trade mark holders seeking to defend those marks online.