

Media Law Update

Libel

The controversial new Libel Bill is open for consultation. All agree the current law is not striking the right balance between speech and reputation --and is arcane and complex. But this Bill just codifies (turns into statute) existing common/case law.

<http://www.justice.gov.uk/consultations/draft-defamation-bill.htm>

Two real changes are:

1. the single publication rule –this gives online publishers a one year statute of limitations --instead of the current continuous rolling period; and
2. non EU claimants can only sue in the UK—in ‘appropriate cases’—reducing Libel Tourism.

We will be submitting a response to the consultation and would be happy to assist any clients who would also like to make a submission.

Also on Libel, see our recent Libel Guide for Documentary Filmmakers at <http://www.mcevedy.eu/downloads/GuideforDocumentaryFilmmakers.pdf>

Domain Names

After 10 years and lots of blood and tears ICANN finally approved the gTLD .xxx in a victory for commerce and speech over the public morals/governmental lobby –the rationale is here <http://www.icann.org/en/minutes/draft-icm-rationale-18mar11-en.pdf>.

ICANN’s GNSO Council is to review the UDRP –the Uniform Domain Name Dispute Resolution Policyⁱ – which has governed all domain name disputes for 11 years. The UDRP was a hard fought compromise between the speech lobby and rights holders and the re-match looks set to be interesting given positions have since polarised.

Nominet’s consultation on Domain seizures in cases of criminal activity closes tomorrow. A report summarising the submissions is at the link below.

http://www.nominet.org.uk/digitalAssets/48466_Report_on_Abuse_Policy_M_O_Floinn_Final_Web.pdf

ISPs

The Libel consultation asks for views on some interesting issues related to ISP liability – including the possibility of a put-back/leave up regime where Takedown is disputed (see p.44 at Libel consultation link above). See our recent roundup of the current law on ISP liability <http://www.mcevedy.eu/downloads/InternetIntermediaries.pdf> .

Keywords

The battle continues...

This week, the European Court of Justice’s (ECJ) Attorney General (AG) gave a decision in *Interflora v M&S* Case C323/09ⁱⁱ on well-known brands (these can theoretically be infringed by *dilution* –or tarnishing or blurring --the paradigm being use of a food brand on rat poison). The AG thought there was a danger when M&S’s sponsored ad appeared against the search for ‘Interflora’ that consumers might think M&S part of the Interflora network –and be confused –prohibited under the *Google* rule.ⁱⁱⁱ On dilution, the AG was not convinced –but accepted it was possible if another’s brand is used in a sponsored ad in a generic sense.

This follows the AG’s December opinion in *L’Oreal v eBay* Case C 324/09^{iv} a case almost identical to the US *Tiffany* case^v where the AG thought eBay so well known—it was very unlikely that any consumer would confuse it for L’Oreal if they saw the word eBay in the sponsored ad.^{vi}

Once the ECJ gives a decision in *L’Oreal* and *Interflora* –we will have more certainty.

Twitter cases

An apology in open court resolved one of the earliest cases arising from a 140 character Tweet. Both parties are Welsh local politicians and the defendant Tweeted that the claimant had been removed from a polling station by police during a by-election. The defendant agreed to pay £3,000 damages and legal costs and to publish an apology via Twitter.

This does not provide legal advice but general information. It is neither a complete discussion nor a substitute for legal advice. This is general information provided on an as-is basis and no warranties are given and no relationship created.

ⁱ <http://www.icann.org/en/dndr/udrp/policy.htm>

ⁱⁱ <http://curia.europa.eu/jurisp/cgi-bin/gettext.pl?where=&lang=en&num=79889675C19090323&doc=T&ouvert=T&seance=CONCL>

ⁱⁱⁱ *Google France SARL v Louis Vuitton Malletier SA*. C-236/08 to C-238/08 (use of others’ brands as keywords is permissible and non-infringing *provided* there’s no confusion as to whether the goods or services originate

from you or the brand owner)—*the Google rule*. In practice this will often mean not using the other brand in the sponsored ad itself and clearly identifying yourself in it.

^{iv} <http://curia.europa.eu/jcms/upload/docs/application/pdf/2010-12/cp100119en.pdf>

^v *Tiffany (NJ) Inc. v. 26 eBay, Inc.*, 576 F. Supp. 2d 463 (S.D.N.Y. 2008) affirmed 600 F.3d 93 (2d Cir. April 1, 2010)

^{vi} The AG opined on sales of counterfeits by eBay users— that eBay was like a shopping centre whose tenant was selling rotten apples---eBay could assume its users were complying with the law until it got a Takedown notice.