

Update

ISPs

More good news for Google. Mr. Justice Eady declined to exercise jurisdiction against Google Inc. in *Tamiz v Google* [2012] EWHC 449.^[1] The case concerned Google's liability for UGC on Blogger.com after it received a Takedown Notice alleging defamation. Eady found in Google's favour: (1) it was held not to be a publisher at common law; (2) if it was a publisher (such that it needed a defence) then it could claim the benefit of §1 of the Defamation Act 1996; and (3) it could also claim the exemption under the Ecommerce Directive as a bare notification that statements were defamatory would not make it apparent that they were *unlawful*---where no details of falsity were provided or substantiation of bare assertions and it had no ability to consider the availability of defences to defamation. This affirmed last month's decision in *Davidson v. Habeeb* [2011] EWHC 3031.

The ECJ upheld the unsuitability of the imposition of blanket obligations on internet service providers and social networks to filter all communications which pass through them in order to identify and block any such communications which infringe copyright. See Case C 360/10 *Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v Netlog NV*.

Privacy

The ECHR revisited its earlier landmark ruling in another privacy case by Princess Caroline of Monaco. The original case established the parameters of the right to a private life under Art. 8. See *Von Hannover v. Germany* (2004). Princess Caroline lost this new attempt to restrain further publication of photographs of her skiing holidays. These had been published with articles about Prince Rainer's illness (thinly veiled allegations of neglect). The court upheld the German Courts' approach to balancing Princess Caroline's Art. 8 right to privacy and the media's Art. 10 rights to Freedom of Expression; noting the reigning prince's illness could be regarded as a matter of general interest and that the press was entitled to report how the prince's children reconciled their obligations of family solidarity with the legitimate needs of their private life where there was a sufficiently close link between the photo and the event described --so that the photographs were not merely for entertainment purposes and contributed, to a debate of general interest.

^[1] <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/QB/2012/449.html&query=Payam+and+Tamiz&method=boolean>

Social Media and Data Protection

The EU Commission said operators of social networking sites, such as Facebook, would not be obliged to delete every piece of information on individuals under the proposed new EU right to be forgotten laws, the European Commission has said. This seems somewhat premature given the proposal is still a draft and is likely to be the subject of protracted debate.

Copyright

In *Hoffman v Drug Abuse Resistance Education (UK) Ltd* [2012] EWPC 2, the Patents County Court ruled on the use of 19 photographs on a drug charity's web site taken from a government site in the mistaken belief that they were subject to crown copyright and so use was permitted. Birss QC rejected a defence of innocent infringement under s 97(1) of the Copyright, Designs and Patents Act 1988 noting its limited purpose was to protect a defendant *who did not know and had no reason to believe copyright subsisted in the work*.

The Copyright Tribunal in the Meltwater clippings case ruled that web end users should pay rates beginning at approximately 40% cheaper than the Newspaper Licensing Agency (NLA) had proposed.

Re-sellers

EMI sued Redigi in the US alleging that the business infringes its copyrights by its sales of second hand legally-downloaded digital music tracks. We await the outcome of this with interest. Similar issues will shortly be examined in the EU in relation to second hand software sales in *Oracle v usedSoft* referred by the First Senate of the German Bundesgerichtshof to the ECJ.

See the excellent discussion of these issues in “Exhaustion and Software Resale Rights”, Cri 2/2011, Thomas Schafft and Tjeerd Overdijk, Polo van der Putt, and Eva de Vries. See <http://www.vondst-law.com/files/Exhaustion%20and%20Software%20Resale%20Rights%20CRI%202011-02.pdf>

Image Rights

Channel Island of Guernsey has issued draft legislation for consultation—proposing a *registrable* image right -- a world first. This may prove less popular than anticipated given the scrutiny now

being brought to bear on Employee Benefit Trusts and other offshore tax minimization structures.

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