

Domain Names

.uk

Nominet is consulting on the introduction of a .uk domain, see

<http://www.nominet.org.uk/how-participate/policy-development/current-policy-discussions-and-consultations/consultation-new-uk>

New gTLDs

ICANN plans to have the Clearing House system go live in the first quarter of 2013. The Trademark Clearinghouse will serve as a central repository of rights information and will qualify the rights owner to register domain names that correspond to their marks in the Sunrise Registration Period for new gTLDs. Recordal in the Clearinghouse will also qualify the marks for the Trademark Claims Service, which will notify the owner if someone has registered an exact match of the mark. Deloitte and IBM are now testing the Clearinghouse. Meanwhile the merits of introducing the related Uniform Rapid Suspension System (URS), intended as a faster and cheaper UDRP for cases of clear-cut infringement, are in doubt, as the costs of providing it are projected to be equal or greater than UDRP costs.

Trade Marks

Fair Use

We recently published an article on Keywords, Resales and Fair Use, see

http://www.mcevedys.com/downloads/IPQ12_3_149.pdf

Later Registered Marks

The Advocate-General gave his opinion in Case C 561/11 *Fédération Cynologique Internationale v Federación Canina Internacional de Perros de Pura Raza*, on an important, if obvious, question, namely whether the exclusive rights of the owner of a Community Trade Mark (CTM) under Art. 9(1) of the CTM Regulation include the right to prevent the use of a confusingly similar mark where the later mark is also registered (and not the subject of any declaration of invalidity). He opined that the mark owner can prevent use of the later mark. Notably §11(1) of the 1994 UK Act provides otherwise and the Directive is silent, as is the Regulation. The decision of the CJEU will be interesting. See

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=129822&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=213634>

Privacy

Julian Assange's complaint to Ofcom about 'True Stories: WikiLeaks: Secrets and Lies,' broadcast by More 4, was rejected. He complained that it breached his privacy by including footage of him dancing in a nightclub. He also complained under Ofcom Code grounds as to fairness and informed consent. In essence, he had participated and then tried to withdraw consent to use his interview.

See p.80, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb213/obb213.pdf>

Copyright

Black Box

The United States has made new exemptions to the 'black box' provisions in the Digital Millennium Copyright Act (DMCA) --these prohibit the circumvention of technological measures in order to gain access to protected digital works. The new exemptions now allow “jail-breaking” of phones:

“Computer programs that enable wireless telephone handsets to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the telephone handset.” This exception was proposed by the Electronic Frontier Foundation (EFF) and supported by Mozilla and the Free Software Foundation. The ruling excluded tablet computers at the last draft. Also significant was a new exemption for movie excerpts for commentary, criticism and educational purposes--also proposed by the EFF.

Panorama Right

The UK's Copyright, Designs and Patents Act, §62, allows the photography and publication of "certain artistic works on public display" (sculptures, buildings, models for buildings and works of artistic craftsmanship) without this being a copyright infringement. The US does not have a comparable right and Wikipedia was recently forced to comply with a DMCA take-down notice in relation to the works of artist Claes Oldenburg requiring it to take down 59 images of large-scale Oldenburg sculptures in public places. These included images of sculptures in Germany, the Netherlands and Spain –although those countries also have freedom of panorama.

Email ownership

The High Court recently declined to find that a company had a proprietary or ownership interest in the content of emails to a former CEO. See *Fairstar v Adkins* [2012] EWHC 2952 (TCC). The court held the company could however protect the information in the emails as confidential information under the law of confidence. Copyright was not directly in issue.

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/TCC/2012/2952.html&query=Fairstar+and+v+and+Adkins&method=boolean>

Moral Rights

The Ngāti Toa tribe and the New Zealand government recently agreed that broadcasters and publishers of the famous *Haka* must prominently identify the long dead Maori Chief, Te Rauparaha, as its composer.