

IP&T HOT TOPICS

UK

Spring 2014



Welcome to the Spring edition of Hot Topics in Intellectual Property and Technology.

This is the second of our quarterly bulletins highlighting some topical developments in the UK in the areas of intellectual property and technology, contract, data privacy, trade secrets, and advertising and media. Succinct and relevant, this briefing will help you stay ahead of the game and ensure you are well positioned to take advantage of new opportunities.

Our intention is to alert you to upcoming legal developments, so we have kept detail to a minimum. We are happy to discuss any of the developments, and the implications for your business, in more detail. Feel free to call your usual Squire Sanders contact or any of the individuals listed in this publication. You can also visit our [Global Business IP and Technology Blog](#), which is a source of more comprehensive news and insight into legal issues of interest to the global intellectual property and technology community.

Some topical issues for Spring 2014 are:

Consumer Law Reform

New rules will apply to businesses selling to consumers in the UK from 13 June 2014. On that date, the Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013 come into force, implementing the EU Consumer Rights Directive in the UK. Traders selling to UK consumers will have to provide specified pre-contractual information, including about the right to cancel the transaction. Special rules will apply to online sales, including the need to make it clear to consumers (via an appropriately labelled click box) that they are entering into a payment obligation. Traders will need to review and update their website processes and terms and conditions of sale to reflect the new rules. This should be done prior to 13 June to ensure they are compliant when the changes take effect.

New Rights to Reproduce Copyright Works

The UK copyright system is set for a shake-up. On 1 June, reforms to the copyright exceptions will come into force. The exceptions specify what third parties may do in relation to copyright works without infringing copyright. The reforms will widen some of the existing exceptions, and introduce new exceptions allowing quotes and extracts to be freely used, and copies of works made for the purposes of caricature, parody and pastiche. Consumers will be able to make copies of films, books and music they have purchased or downloaded for their own private use. Consumers will also be given the right to ask the Secretary of State to order the removal of copy protection measures. These reforms are intended to benefit consumers and content creators. Rights-holders, however, are likely to be concerned about the potential for abuse and the difficulties in practical enforcement.

They should familiarise themselves with the exceptions as reformed and take prompt action to enforce their rights where they believe that anything being done with their work falls outside what is permitted by an exception. Read more on our [Blog](#).

New .london Domain Name Launched

The new .london Internet domain name has gone on sale for the first time. Any individual or business with a presence or interest in London should consider registering a .london domain name. Over the next three months, applications will be accepted from anyone with an interest in London although a priority system will operate, meaning that applications from individuals or businesses with a physical address in London and rights in a business or trading name will take priority over non-Londoners. From September, anyone may apply for a .london domain and names will be allocated on a first come, first served basis. Registrations will be renewable annually at a cost of around £50. There have been a large number of applications, with more than 50,000 expressions of interest registered before the sale began. Some [iconic London based businesses](#) have already successfully obtained registrations and their websites have gone live under the new domain. Other city-specific domains are expected to follow, including .nyc. Read more about the .london domain on our [Blog](#).

Good News for Designers

Designers may be able to enforce their rights against competitors more easily from now on, following an opinion from the Advocate General of Europe's highest court (which must be followed in the UK). The opinion concerns the scope of a relatively new form of IP protection available to designers in the EU, known as an unregistered Community Design. This automatically protects the appearance of a new product, such as an item of clothing, shoe or a piece of furniture, as soon as it is created, provided it is "new" and has "individual character". The Advocate General's opinion is helpful for designers as he lowered the bar for what constitutes individual character. It had previously been thought that a design would not have the necessary individual character if any aspect of it appeared in earlier designs. However, the Advocate General rejected that and confirmed that a new design as a whole must be compared with existing designs taken as a whole. If the new design creates an overall different impression from the existing ones, then it will have the necessary individual character to be protected by Community Design, meaning that others can be stopped from copying it. Confirmation is awaited from the European court but designers can benefit now. They should monitor the actions of competitors and take immediate action in respect of lookalikes. Read more on our [Blog](#).

Harmonised Cross-border Contract Law

We are a step closer to the introduction of a Common European Sales Law (CESL). The CESL is a set of contract law rules which would be available in each EU member state and sit alongside national contract laws, including those in the UK. Businesses could choose to apply the CESL to their cross-border contracts. For example, a UK-based business selling online to consumers in Germany could apply the CESL to the sale contract, rather than UK contract law. The thinking is that the CESL would lead to more legal certainty and improve cross-border trade in the EU by giving consumers confidence to transact with businesses in other EU member states under laws which are not alien to them. The European Parliament has voted in favour of the introduction of a CESL (by a large majority). Approval is now needed from the Council of the European Union for the proposals to become law although the detail of the rules has yet to be worked out. There is likely to be a lead-in time for this when businesses will have to assess whether the CESL is favourable to them and the potential benefits of opting to use the CESL in their cross-border dealing. If they decide to opt-in, their website and terms and conditions would need to be updated.

Threats Law Reform

The Law Commission has published its report following a review of the threats provisions in UK IP law. These provisions prohibit the owner of a patent, trade mark or design from threatening a competitor with infringement proceedings. Currently, any letter must be carefully worded to avoid making threats of proceedings otherwise the recipient can sue the sender and be awarded damages and an injunction.

The threats provisions have been criticised as difficult to navigate and as preventing a rights-holder from obtaining an early resolution to an infringement situation. The Law Commission has recommended that the threats provisions overall be maintained but that the law should be reformed to allow threats to be made to certain "primary actors" without risk of threats proceedings being launched. The Commission has also recommended that communications made for a "legitimate commercial purpose and which give the information necessary for that purpose" should fall outside the threats provisions. This would include, for example, a letter aimed solely at discovering whether a patent has been infringed and alerting an infringer to rights where a remedy depends on the infringer being aware of the rights. Right-holders will welcome a relaxing of the threats regime. These recommendations, however, have yet to be accepted. In the meantime right-holders must continue to take legal advice on the content of any communications sent to a suspected infringer to avoid the severe consequences of falling foul of the current threats rules.

We have extensive experience advising clients on commercial, IP and technology issues, such as those mentioned in this bulletin. Please feel free to call your usual Squire Sanders contact, or any of the individuals listed in this publication, for an informal chat on how we can help your business.

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