

Kluwer Patent Blog

Top 3 Posts of the Autumn from our IP Law Blogs

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To ensure you don't miss out on interesting IP law developments reported on our other IP blogs, we will, on a regular basis, provide you with an overview of the top 3 most-read posts from each of our IP law blogs. Here are the top posts from September, October and November.

Top 3 Kluwer Copyright Blog posts of September/October/November



1) **AG Szpunar on VCAST: Copyright and the Cloud** by Joao Pedro Quintais and Tito Rendas

“On 7 September 2017, AG Szpunar delivered his opinion on Case C-265/16, VCAST. The case concerns the question of whether the private copying exception covers the services of an online platform that allows users to store copies of free-to-air TV programmes in private cloud storage spaces. AG Szpunar’s proposed answer was a mixed one: while cloud copying, in general, should be considered covered by the exception, the specific service offered by VCAST should not.”

2) **Compromising (on) the Digital Single Market? A Quick Look at the Estonian Presidency Proposal(s) on Art 13** by Martin Husovec

“Over the course of the last couple of months, we witnessed an outburst of creativity concerning the wording of Art 13 of the Digital Single Market Directive (‘the Directive’). Last week, the Estonian Presidency tabled a compromise proposal ([here](#) – thanks to Statewatch) for the meeting of the Working Party on Intellectual Property that takes place next week (on 11/12 September). A recently leaked text includes not one, but two proposals on how to solve what right holders call the ‘value-gap’ problem.”

3) **The Ruling of the Court of Justice in Soulier Revisited** by Florence-Marie Pirou

“Following an interlocutory question from the French Council of State, in a dispute concerning the legality of the decree of 27 February 2013 on the application of the law of 1 March 2012 on the digitisation of out-of-print books of the 20th century, the Court of Justice of the European Union (Case C-301-15) rightfully stated that this regulation did not comply with the law of the European Union.”

1) **Germany: The Black Friday Trademark Battle** by Oliver Löffel

“The Black Friday shopping storm 2017 will kick off soon. However, the Black Friday battle has already begun in Germany. The dispute circles around a German trade mark Black Friday, the owner of the trademark being based in Hong Kong, and its German licensee. In fact, all traces “lead to Vienna”, as media summarized the results of their investigations in this “thriller” (tn3, December 8, 2016).”

2) **Personality rights of a politician – new ruling by Austrian Supreme Court** by Rainer Schultes

*“Can the use of “KHG” infringe the name rights of “**Karl-Heinz Grasser**”?*

Former Austrian Minister of Finance Karl-Heinz Grasser is widely known as KHG. After his term, which ended in 2007, he was accused of bribery in various cases. The accusations and investigations gained great public attention.

In 2015, the defendants, a journalist who publishes books and articles about bribery, and a game producer, published a party game – similar to the iconic “Monopoly”-game – under the name “KHG” as an abbreviation of “KORRUPTTE HABEN GELD” (i.e. “corrupt people have the money”). In quite a satirical way, the game dealt with 35 corruption cases and claimed to have the goal of creating awareness for the problems associated with bribery. In one of the cases, Karl Heinz Grasser was explicitly named.

KHG sued both the journalist and the producer of the game for the cessation of further use of ‘KHG’ in connection with the game, basing this on his personal and name rights.”

3) **Stung by the CACTUS – the CJEU strikes twice** by Verena von Bomhard

“The CJEU judgment of 11 October 2017 in the CACTUS matter (C-501/15 P) surprised twofold: first, the CJ held that EUTMs from before July 2005 that covered all class headings in class 35 automatically covered “retail services for any goods”, and then, it considered the use of the cactus device alone as genuine use of the registered trademark containing both the device and the word ‘Cactus’”

1) **EPO – All Problems Solved?** by Thorsten Bausch

“The European Patent Organisation consists of two organs: the European Patent Office and the Administrative Council. Pursuant to Art. 4 EPC, the task of the Organisation is to grant European patents. This shall be carried out by the European Patent Office supervised by the Administrative

Council. Thus, the Administrative Council is supposed to supervise the European Patent Office.

With this background in mind, I went with great interest to a speech given by Dr. Christoph Ernst, the recently elected chairman of the EPO's Administrative Council, at the Max Planck Institute in Munich. I was curious what he would have to say about the Unified Patent Court (UPC), the German constitutional complaints and the two most pressing problems that the EPO currently has, at least in my humble opinion, namely the quality of its products and the serious understaffing of the Technical Boards of Appeal, as regards which I started writing (and complaining) over a year ago."

2) 'EPC, EPO and UPCA lack guarantees for democracy, rule of law and human rights' by Kluwer UPC News blogger

"European states lack awareness of their obligations under the European Convention on Human Rights (ECHR) and the EU Charter of Fundamental Rights and have established associations such as the EPO and the UPC, without anyone accounting for guarantees with regard to democracy, the rule of law and human rights. Professor Siegfried Broß said this in an interview with Kluwer IP Law about the constitutional complaint that has been filed against German ratification of the Unified Patent Court Agreement. Broß is a former judge of the Xth Civil Panel of the Federal Court of Justice (1986-1998), responsible among others for patent cases, and of the German Federal Constitutional Court (FCC, 1998-2010)."

3) 'Opposition against Unitary Patent comes from fearful lawyers and critics who only have a theoretical interest' by Kluwer UPC News blogger

"All Union law arguments against the Unitary Patent system, that are now on the table again because of the German constitutional complaint, have already been rejected in the recent past. Wouter Pors, partner of Bird & Bird, has said this in an interview with Kluwer IP Law. Pors hopes the Federal Constitutional Court (FCC) will reject the complaint and the UP system will start as soon as possible. 'It's like having a brand new car in the garage, but not being allowed to drive it.'"

Read further posts on the Kluwer Copyright Blog [here](#), the Kluwer Trademark Blog [here](#) and the Kluwer Patent blog [here](#).

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