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## International Intellectual Property Law

Caroline Berube

Susan Brushaber

Amanda Covington

Manish Dhingra

Robin S. Fahlberg

*See next page for additional authors*

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## International Intellectual Property Law

### Authors

Caroline Berube, Susan Brushaber, Amanda Covington, Manish Dhingra, Robin S. Fahlberg, Carolina Keller Jupitz, Jennifer Kwon, Mrityunjay Kumar, Daniel Marugg, Bruce A. McDonald, David Taylor, Sameep Vijayvergiya, Uche Ewelukwa Ofodile, Ralph Cathcart, and Michelle Wynne

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## International Intellectual Property Law

CAROLINE BERUBE, SUSAN BRUSHABER, AMANDA COVINGTON, MANISH DHINGRA,  
ROBIN S. FAHLBERG, CAROLINA KELLER JUPITZ, JENNIFER KWON,  
MRITYUNJAY KUMAR, DANIEL MARUGG, BRUCE A. McDONALD, DAVID TAYLOR,  
SAMEEP VIJAYVERGIYA, UCHE EWELUKWA OFODILE, RALPH CATHCART, AND  
MICHELLE WYNNE\*

This Article summarizes patent, trademark, domain name, and copyright international law developments in 2015.<sup>1</sup>

### I. Patents\*\*

#### A. UNITED STATES

In *Alice Corp. v. CLS Bank International*, the United States Supreme Court provided support for the test to determine the eligibility of computer software claims under 35 U.S.C. § 101; however, how the test should be applied remains unclear.<sup>2</sup> The Court left the lower courts with the task of defining the boundaries of the abstract idea category.<sup>3</sup>

In *DDR Holdings v. Hotels.com*, the Federal Circuit grappled with how to differentiate between claims that involve a computer and claims that are patent-eligible because they add something more to the claim.<sup>4</sup> The claims in *DDR Holdings* were found to go farther than simply employing the use of a computer because they were “rooted in computer technology to overcome a problem specifically arising in the realm of computer

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\* Susan Brushaber, Reinhardt LLP, Denver, Colorado served as the editor for this 2015 review. Amanda Covington, Denver, Colorado, was assistant editor. Section editors are identified in each section.

1. For developments during 2015, see Susan J. Brushaber et al., *International Intellectual Property Law*, 49 ABA/SILYIR195 (2015).

\*\* Patents section editor: Robin Fahlberg, Caterpillar, Inc., Dunlap, Illinois. Authors: Amanda Covington, Denver, Colorado (on the United States); Daniel Marugg, Carolina Keller Jupitz, Altenburger Ltd., Zurich, Switzerland (on Switzerland); Manish Dhingra, Mrityunjay Kumar, Sameep Vijayvergiya, Dhingra & Singh, Attorneys at Law, Delhi, India (on India); and Uche Ewelukwa Ofodile, University of Arkansas School of Law, Fayetteville, Arkansas (on Africa).

2. *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014).

3. *Id.* at 2357.

4. *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1255 (Fed. Cir. 2014).

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networks.”<sup>5</sup> Focusing on the nature of the problem and solution, allowed the court to decide which claims were more than abstract ideas.

In *OpenTV v. Apple*, the court recognized that the solution in *DDR Holdings* was “directly tied to a specific technological challenge.”<sup>6</sup> Following this logic, the court in *OpenTV* found there was no solution to the problem that “arose uniquely in the context of interactive television networks.”<sup>7</sup> The court found that a claim must go “beyond the routine or conventional use of the existing electronic components.”<sup>8</sup> The existence or nonexistence of a specific computer-related problem and solution seems to be one of the boundaries that will determine if the claim will be patent eligible. Without further guidance from the Supreme Court, the lower courts will continue attempting to fill in the holes, with this analysis potentially being the standard.

B. EUROPE

The EU is moving closer to the implementation of a unified patent system. At its meeting on 19 October 2015, the Unified Patent Court Preparatory Committee (the “Committee”) adopted the Rules of Procedure of the Unified Patent Court (the “Rules”). While the Rules are subject to revision once the Committee agrees on court fees, their adoption is a major milestone towards the establishment of the Unified Patent Court, which is expected to be operational in 2017.<sup>9</sup> The Unified Patent Court has its origins in the Uniform Patent Court Agreement signed by all Member States, except Spain and Poland on 19 February 2013, following the adoption of the unitary patent regulations in December 2012 (the “Patent Regulations”).<sup>10</sup> The Patent Regulations will become effective on the date the Unified Patent Court Agreement is ratified by thirteen member states, including France, Germany and the United Kingdom. As of the date of this writing, ratification by Germany, and the United Kingdom was still pending.<sup>11</sup>

C. SWITZERLAND

In a dispute regarding a so-called action by stages, which allows plaintiff first to request disclosure of information and financial accounting and then proceed with the claim for actual damages, the Swiss Federal Patent Court (“FPC”) held that in the first stage, only the infringement of the patent has to be established.<sup>12</sup> According to the FPC, it is not necessary to prove the other requirements of the financial liability of the infringing party such as the causal connection between the infringing actions and the monetary claim as

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5. *Id.* at 1257.

6. *OpenTV, Inc. v. Apple, Inc.*, No. 14-CV-01622-HSG, 2015 WL 1535328, at \*10 (N.D. Cal. Apr. 6, 2015).

7. *Id.*

8. *Id.*

9. See UNIFIED PATENT COURT, <http://www.unified-patent-court.org/news>. (last visited Nov. 27, 2015).

10. See *Unified Patent Court*, EUROPEAN PATENT OFFICE, <http://www.epo.org/law-practice/unitary/patent-court.html>. (last visited Nov. 27, 2015).

11. See *Unitary Patent*, EUROPEAN PATENT OFFICE, <http://www.epo.org/law-practice/unitary/unitary-patent.html>. (last visited Nov. 27, 2015).

12. Teilurteil des Bundespatentgerichts, *Nordson Corporation vs. Gema Switzerland GmbH*, Aug. 25, 2015, Case: O2013\_008, available at [https://www.bundespatentgericht.ch/fileadmin/entscheide/O2013\\_008\\_Teilurteil\\_150825.pdf](https://www.bundespatentgericht.ch/fileadmin/entscheide/O2013_008_Teilurteil_150825.pdf).

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well as the infringer's fault or bad faith. The FPC noted that the duty of disclosure of information and financial accounting resulted from the Swiss Federal Patent Act directly. The only condition for the disclosure of information is that the infringement of the patent is established.

D. INDIA

The Delhi High Court held that an international application (PCT Application) filed by an Indian resident with the Indian Patent Office is not an application made in India unless appropriate permission under the Patents Act is granted to the Indian resident by the Indian Patent Office.<sup>13</sup> The Court stated that “the legal consequences flowing from a PCT application filed in the Indian Patent Office are that of an application filed outside India. The Receiving Office is only empowered to assure that a PCT application is in conformity with all the prescribed documents under the treaty. All further processing is done by the International Bureau and the International Searching Authority.”<sup>14</sup>

The Delhi High Court restrained Glenmark Pharmaceuticals from producing and marketing a generic version of Merck's drug “Januvia” used for treating diabetes.<sup>15</sup> The Court held that Merck has a prima facie case because Glenmark uses Sitagliptin free base as the active component in its chemical formulation, for which Merck has a patent in India.<sup>16</sup>

The Government of India foiled an attempt by Colgate-Palmolive to patent a mouthwash formula containing a herb extract by citing ancient texts that show the herb extract was traditionally used in ancient medicinal practices.<sup>17</sup> Traditional Knowledge Digital Library of Council of Scientific & Industrial Research (CSIR-TKDL) had submitted references from ancient books, stating that the herb and its extracts of *Myristica Fragrans* were used for oral diseases in Indian systems of medicine.<sup>18</sup>

The Delhi High Court recently ruled that the parent lines of the extant hybrid varieties cannot be considered as “novel” plant varieties for registration under the Protection of Plant Varieties and Farmers' Rights Act.<sup>19</sup> The Court stated that the plain language of section 15(3)(a)<sup>20</sup> of the Act indicates that variety would be “novel” if harvested material of variety has not been sold, or otherwise disposed of before the specified period. “It would, obviously, follow that the plant would cease to conform to the novelty criteria as required for being registered as a new variety if the propagating material/harvested material of the variety was sold or otherwise disposed of for exploitation of such variety prior to the

13. See *Puneet Kaushik & Anr. vs. Union of India & Ors*, Manu/DE/3445/2014, delivered by Delhi High Court and available at <http://lobis.nic.in/ddir/dhc/SID/judgement/19-12-2014/SID19122014LPA8842013.pdf>.

14. *Id.*

15. See *Merck Sharp and Dohme Corporation and Anr. vs. Glenmark Pharmaceuticals*, 2015 (63) PTC 257 (Del.) (India).

16. *Id.*

17. Press Release, Gov't. of India (Ministry of Science & Technology), India Foils Colgate-Palmolive Bid to Patent Nutmeg Mouthwash (July 16, 2015), available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=123331>.

18. *Id.*

19. See *Maharashtra Hybrid Seed Co. vs. Union of India and Anr*, 2015 DLT 217 (Del.) 175 (India).

20. See *The Protection of Plant Varieties and Farmers' Rights Act, 2001*, No. 53, Acts of Parliament, 2001 (India).

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specified period.”<sup>21</sup> The Court observed that the hybrid seeds from the parent line fell within the definition of “propagating material” as they are capable of or suitable for regeneration into a plant. The hybrid seeds (as propagating material/harvested material) were, in fact, sold or otherwise disposed of prior to one year from the date of filing of the application for registration for protection.

The Indian Patent Office has launched a new search facility “Indian Patent Advanced Search System (InPASS)” that allows a full-text search to be conducted in all the Indian Patents as well as Patent Applications.<sup>22</sup>

## G. AFRICA

On October 22, 2015, Tanzania deposited its instrument of accession to the 1961 International Convention for the Protection of New Varieties of Plants as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991 (the “UPOV Convention”).<sup>23</sup> The UPOV Convention came into force on August 10, 1968,<sup>24</sup> and will enter into force in Tanzania on November 22, 2015.<sup>25</sup> Under the UPOV Convention, Contracting Parties are obliged to “grant and protect breeders’ rights.”<sup>26</sup> A few months earlier, on 6 July 2015, at a Diplomatic Conference held in Arusha, Tanzania, Member States of the African Regional Intellectual Property Organization (ARIPO), adopted the *Arusha Protocol for the Protection of New Varieties of Plants* (“Protocol”).<sup>27</sup> The Protocol “seeks to provide Member States with a regional plant variety protection system that recognizes the need to provide growers and farmers with improved varieties of plants in order to ensure sustainable agricultural production.”<sup>28</sup> The Protocol, which is modelled on the UPOV Convention, is generating controversy in Africa. Groups such as the Alliance for Food Sovereignty in Africa (AFSA) are highly critical of the Protocol. According to a Statement released by AFSA,

AFSA is vehemently opposed to the Arusha PVP Protocol. This Protocol’s underlying imperatives are to increase corporate seed imports, reduce breeding activity at the national level, and facilitate the monopoly by foreign companies of

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21. *Id.*

22. Public Notice, Gov’t. of India (Office of the Controller General Patents, Designs and Trade Marks), Notification No. CG/Public Notice/2015/263 (Feb. 27, 2015), available at [http://ipindia.nic.in/iponew/public\\_notice\\_inpass\\_27February2015.pdf](http://ipindia.nic.in/iponew/public_notice_inpass_27February2015.pdf).

23. UPOV Notification No. 119: Accession by the United Republic of Tanzania to the 1991 Act, WORLD INTELLECTUAL PROP. ORG. (Oct. 22, 2015), [http://www.wipo.int/treaties/en/notifications/upov/treaty\\_upov\\_119.html](http://www.wipo.int/treaties/en/notifications/upov/treaty_upov_119.html).

24. *The International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991*, INT’L UNION FOR THE PROT. OF NEW VARIETIES OF PLANTS, [http://www.upov.int/upovlex/en/conventions/1991/w\\_up910\\_html#\\_2](http://www.upov.int/upovlex/en/conventions/1991/w_up910_html#_2).

25. The International Convention for the Protection of New Varieties of Plants was adopted on December 2, 1961, by a Diplomatic Conference held in Paris. For the text of the UPOV Convention, see INT’L UNION FOR THE PROT. OF NEW VARIETIES OF PLANTS, (Mar. 19, 1991) <http://www.upov.int/upovlex/en/conventions/1991/content.html>.

26. *Id.*, Article 2.

27. *ARIPO Protocol for the Protection of New Varieties of Plants Adopted*, THE AFR. REG’L INTELLECTUAL PROP. ORG., <http://www.aripo.org/news-events-publications/news/item/69-aripo-protocol-for-the-protection-of-new-varieties-of-plants-adopted>.

28. *Id.*

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local seed systems and the disruption of traditional farming systems. AFSA remains committed to ensuring that farmers, as breeders and users, remain at the centre of localised seed production systems and continue to exercise their rights freely to save, use, exchange, replant, improve, distribute and sell all the seed in their seed systems.<sup>29</sup>

The Protocol will remain open for signature by Member States of the Organization and other States and members of the African Union until December 31, 2015.<sup>30</sup>

## II. Trademarks\*

### A. UNITED STATES

In *Pro-Football Inc. v. Blackhorse*,<sup>31</sup> the United States District Court for the Eastern District of Virginia affirmed the Trademark Trial and Appeals Board's (TTAB) cancellation of six Redskins' trademark registrations (the "Marks") on grounds that the Marks were disparaging to Native Americans.<sup>32</sup> On motion for summary judgment, Pro-Football, Inc. ("PFI") challenged the constitutionality of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a) as (1) violative of the First Amendment insofar as it restricts protected speech by imposing burdens on trademark holders and consequently conditioning access to federal benefits; and (2) unconstitutionally vague in violation of the Fifth Amendment because it authorizes arbitrary and discriminatory enforcement.<sup>33</sup> PFI also characterized the cancellation order as an unconstitutional taking under the Fifth Amendment. In holding that Section 2(a) of the Lanham Act is not unconstitutional, the court noted that Section 2(a) of the Lanham Act does not implicate the First Amendment because the trademark owner is not prohibited from using the mark in commerce, and that the federal registration program is government speech and as such is exempt from First Amendment Scrutiny.<sup>34</sup> The court went on to say that a trademark registration is not considered property under the Fifth Amendment.<sup>35</sup> PFI has appealed to the Fourth Circuit.

In *Radiance Foundation v. National Association for the Advancement of Colored People*,<sup>36</sup> the Fourth Circuit cautioned against the use of trademark law to impinge on protected speech and "obstruct the conveyance of ideas, criticism, comparison and social commentary."<sup>37</sup>

29. Press Release, The Alliance for Food Sovereignty in Africa, ARIPO Sells Out African Farmers, Seals Secret Deal on Plant Variety Protection (July 8, 2015), available at <http://afsafira.org/aripo-sells-out-african-farmers-seals-secret-deal-on-plant-variety-protection/>.

30. *Id.*

\* Trademarks section editor: Susan J. Brushaber, Reinhardt LLP, Denver, CO. Authors: Susan Brushaber, Reinhardt LLP, Denver, CO (on the United States and Europe); Daniel Marugg and Caroline Keller Jupitz, Altenburger Ltd., Zurich, Switzerland (on Switzerland); Caroline Berube, HJM Asia Law, Guangzhou, China (on China); Manish Dhingra, Mrityunjay Kumar, Sameep Vijayvergiya, Dhingra & Singh, Attorneys at Law, Delhi, India (on India); Uche Ewelukwa Ofodile, University of Arkansas School of Law, Fayetteville, Arkansas (on Africa); and David Taylor, Hogan Lovells, Paris (on Domain Names).

31. 112 F. Supp. 3d 439 (E.D. Va. 2015).

32. See *Blackhorse v. Pro-Football, Inc.*, 111 U.S.P.Q.2d 1080 (T.T.A.B. 2014).

33. *Blackhorse*, 112 F. Supp. 3d. at 447.

34. *Id.* at 448.

35. *Id.*

36. 786 F. 3d 316 (4th Cir. 2015).

37. *Id.* at 322.

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Citing trademark infringement and dilution by tarnishment, the NAACP objected to the use by Radiance of the title, “NAACP: National Association for the Abortion of Colored People” in an online article criticizing the NAACP’s ties to Planned Parenthood and position on abortion. The Fourth Circuit rejected the NAACP’s claims, noting that Radiance’s use of NAACP qualified as fair use, non-commercial speech because the article was not an advertisement, but was instead meant to criticize the NAACP. While the NAACP based its infringement claim on consumer confusion as to what the mark “NAACP” stood for, the court noted that trademark infringement focuses on consumer confusion of the mark as a source identifier and not on the substance of the trademark itself.<sup>38</sup>

**B. EUROPE**

After eight years of study, consultation, analysis, and negotiation between the European Council, Commission, and Parliament, the reform of European trademark law is in its final phases. The reform package (“Reform Package”) is (1) a new Regulation on European Union Trademarks to amend the existing Community Trademark, and (2) a recast Directive to further the harmonization of national trademark systems, was published in the Official Journal on 28 October 2015.<sup>39</sup> At the time of this writing, the European Council had adopted the Reform Package on 10 November 2015 with adoption by the Parliament expected by the end of the year.<sup>40</sup> Key aspects of the Reform Package include (1) the elimination of the requirement that a trademark is represented graphically, thus allowing for registration of non-traditional marks; (2) a revised fee structure for European Trademarks under the new Regulation; (3) stronger anti-counterfeiting provisions particularly for goods-in-transit; 4. the revision of the classification system; (4) greater harmonization of substantive and procedural laws among the national trademark offices; and (5) the renaming of the community trademark and the OHIM as the European Union Trademark and the European Union Intellectual Property Office.<sup>41</sup> While most provisions of the Regulation will take effect during the first half of 2016, it may take up to seven years for the provisions of the Directive to be fully transposed into national law by the Member States of the European Union.<sup>42</sup>

**C. SWITZERLAND**

The strength of the OSCAR trademark in Switzerland was confirmed in a recent ruling by the Commercial Court of the Canton of Zurich (“CCZ”) in a case brought by the Academy of Motion Picture Arts and Sciences (the “Academy”) against an Italian television company that had been broadcasting awards shows in Switzerland entitled

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38. See *Radiance Foundation*, 786 F. 3d 316.

39. See 2015 O.J. (L 282) 58.

40. See Press Release, Council of the European Union, Trade Marks Reform: Council Adopts Position at First Reading (Nov. 10, 2015, 17:45 CET), available at <http://www.consilium.europa.eu/en/press/press-releases/2015/11/10-trade-marks-reform-council-adopts-position-first-reading/>.

41. See Press Release, European Commission, Package to Modernise the European Trade Mark System (April 21, 2015), available at [http://europa.eu/rapid/press-release\\_MEMO-15-4824\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-4824_en.htm).

42. See Michael Hawkins, *EU Trademark Reform: Where We Are, How We Got Here And What It Means For Users*, INTA BULLETIN, Vol. 20 No. 70 (November 15, 2015).

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“Oscar TV,” “Oscar del Vino,” and “La Kore Oscar della Moda.”<sup>43</sup> The trademark “OSCAR” as well as the “Oscar-Silhouette” are registered trademarks in Switzerland. In response to the Academy’s infringement claims, the Italian defendant argued (1) that the Academy had forfeited its exclusive rights to OSCAR in Switzerland on the grounds of non-use given that the Academy Awards are only broadcast once a year, and therefore, had not achieved a strong market position in Switzerland; and (2) that the word “Oscar” had become synonymous with “award” or “prize” and as such had become generic.<sup>44</sup> In granting the Academy’s request for an injunction and monetary damages, the court held that the use of the trademark “OSCAR” in Switzerland is a proven fact, as the Academy Awards are broadcast and well-known in Switzerland. Noting that the average Swiss television viewer links OSCAR directly with the Academy Awards, the CCZ affirmed that “OSCAR” is a strong trademark, and that there was a clear risk of confusion between the trademark “OSCAR” and the titles of the Defendant’s television shows.<sup>45</sup> This legally binding judgment is the first decision declaring “OSCAR” a famous mark in Switzerland.

#### D. CHINA

By the end of August 2015, 19, 590 Madrid international trademark registrations had been extended to China. There were 10,040,000 registered trademarks in China as of October 2015.<sup>46</sup>

Between November 2014 and August 20, 2015, 4,157 trademark dispute cases in the first instance with the Beijing Intellectual Property Court, 1,289 of which were settled. IPR cases involving foreign parties, including parties from Hong Kong, Macao, and Taiwan accounted for 39.4 percent of the total cases in the first instance.<sup>47</sup> The Shanghai Intellectual Property Court accepted 71 trademark disputes cases.<sup>48</sup>

Pursuant to the Announcement on Adjusting the Matters Subject to Examination and Approval released by the State Administration for Industry and Commerce (“SAIC”), in May 2015 the following trademark-related items are only subject to non-administrative examination and approval: (1) trademark registration; (2) well-known trademark recognition; (3) design registration; and (4) special sign licensing contract recordation.<sup>49</sup>

43. Handelsgericht [Commercial Court of Zurich], Academy of Motion Picture Arts and Sciences vs. X., Dec. 5, 2014, Case: HG 060392, available at <http://www.gerichte-zh.ch/entscheide/entscheide-suchen.html> (Daniel Marugg litigated this case for Plaintiff).

44. *Id.*

45. *Id.*

46. *Valid Registered Trademarks in China Breaking through 10 Million for the First Time*, LINDA LIU GROUP (Oct. 14, 2015), [http://www.lindaliugroup.com/web/info\\_news\\_detail?lang=en&id=2439](http://www.lindaliugroup.com/web/info_news_detail?lang=en&id=2439).

47. Steve Song, *Report by the Supreme People’s Court of China Regarding the Latest Updates of IP Courts*, MONDAQ (last updated Feb. 18, 2016), <http://www.mondaq.com/x/467604/Trademark/Report+By+The+Supreme+Peoples+Court+Of+China+Regarding+The>.

48. *Intellectual Property Protection by Chinese Courts in 2012*, CHINA PATENT AGENT (H.K.) LTD., <http://www.cpahktd.com/EN/info.aspx?n=20130427105951810216>.

49. State Administration for Industry and Commerce released the Announcement on Adjusting the Matters Subject to Examination and Approval, May 25, 2015, (工商总局关于调整有关审批事项的公告) [http://gkml.saic.gov.cn/auto3743/auto3744/201505/t20150528\\_156807.htm](http://gkml.saic.gov.cn/auto3743/auto3744/201505/t20150528_156807.htm).

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E. INDIA

In *World Wrestling Entertainment, Inc. vs. M/S Reshma Collection & Ors*,<sup>50</sup> the Delhi High Court expanded the scope of the expression “carries on business” to hold that the shipment of goods to customers based in Delhi constitutes “carrying on business” in Delhi within the meaning of the expression under section 134(2)<sup>51</sup> of the Trademarks Act, 1999 and section 62(2)<sup>52</sup> of the Copyright Act, 1957.

In a clear case of willful infringement, the Delhi High Court restrained Lupin Pharma from using the trademark LUCYNTA or any other trademark deceptively similar to United States major pharmaceutical company Johnson & Johnson’s trademark NUCYNTA in respect of pharmaceutical and medicinal preparations.<sup>53</sup> The Court held Lupin failed to explain how it came to adopt the mark LUCYNTA, which is nothing but a blatant imitation of the plaintiff’s arbitrary and coined mark NUCYNTA in relation to an identical pharmaceutical preparation.<sup>54</sup>

The Delhi High Court also restrained a domestic hotel and hospitality service provider from using the word “ZARA” or any other word deceptively similar to Spanish fashion and lifestyle products manufacturer trademark ZARA in relation to the restaurant services provided by them.<sup>55</sup> With an eye to the trans-border reputation of the Spanish manufacturer, the Court noted that “there is no manner of doubt that there is a deceptive similarity between the mark ZARA of the Plaintiff and the mark ZARA TAPAS BAR, the way it is being used by the Defendants.”<sup>56</sup>

G. AFRICA

Several African nations have acceded to the Madrid Protocol (the “Protocol”). Most notably, the Organisation Africaine de la Propriété Intellectuelle or the African Intellectual Property Organization (OAPI) became the 93rd Member of the Madrid System when it acceded to the Protocol on December 15, 2014.<sup>57</sup> The Protocol entered into force with respect to the OAPI, on March 5, 2015. The OAPI Member States are Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d’Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, and Togo. Zimbabwe had deposited its instrument of accession a few days earlier on December 11, 2014.<sup>58</sup> The protocol entered into force in Zimbabwe, on March 11, 2015.

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50. See *World Wrestling Entertainment, Inc. vs. M/S Reshma Collection & Ors*, 2014 (58) PTC (Del.) (India).

51. See Trade Marks Act, 1999, No. 47, Acts of Parliament, 1999 (India).

52. See Indian Copyright (Amendment) Act, 2012, No. 47, Acts of Parliament, 2012 (India).

53. See *Johnson & Johnson vs. Lupin Limited and Anr*, 2015 (62) PTC 309 (Del.) (India).

54. *Id.*

55. See *Industria De Diseno Textile SA vs. Oriental Cuisines Pvt. Ltd. And Ors.*, 220 (2015) DLT 679 (Del.) (India).

56. *Id.*

57. *OAPI Joins the Madrid System* WORLD INTELLECTUAL PROP. ORG. (Dec. 4, 2014), [http://www.wipo.int/madrid/en/news/2014/news\\_0009.html](http://www.wipo.int/madrid/en/news/2014/news_0009.html).

58. *Madrid (Marks) Notification No. 204 Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks: Accession by the Republic of Zimbabwe*, WORLD INTELLECTUAL PROP. ORG. (Dec. 11, 2014), [http://www.wipo.int/treaties/en/notifications/madridp-gp/treaty\\_madridp\\_gp\\_204.html](http://www.wipo.int/treaties/en/notifications/madridp-gp/treaty_madridp_gp_204.html).

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On July 31, 2015, the People's Democratic Republic of Algeria (Algeria) deposited its instrument of accession to the Madrid Protocol and the Protocol entered into force on October 31, 2015.<sup>59</sup> Finally, Gambia deposited its instrument of accession on September 18, 2015.<sup>60</sup> The Madrid Protocol will enter into force, with respect to the Gambia, on December 18, 2015.

In February 2015, Scotch Whisky became the first product to gain geographical indication (GI) status in Botswana.<sup>61</sup> The registration in Botswana is the first time that Scotch Whisky has been successfully registered as a GI in Africa.<sup>62</sup> Following Botswana's lead, the seventeen member countries of the Organisation Africaine de la Propriete Intellectuelle (OAPI) registered Scotch whisky as a GI.<sup>63</sup>

#### H. DOMAIN NAMES

The year 2015 saw the delegation of over 800 new generic Top Level Domains (gTLDs),<sup>64</sup> in two years since the first new gTLDs were delegated into the root on October 23, 2013, and in more than six years after the inception of the new gTLD program by ICANN in June 2008.<sup>65</sup> This is having major implications for brand owners across the globe, not least about defining a suitable strategy to protect brands at the second level under each new gTLD.

The ICANN community has been heavily focused on the Internet Assigned Names Authority (IANA) stewardship transition and the accountability of ICANN itself<sup>66</sup> as well as numerous reviews and assessments of the new gTLD Program, in particular concerning Right Protection Mechanisms (RPMs).<sup>67</sup>

The number of domain name registrations continues to increase, with nearly 300 million domain names registrations across all gTLDs.<sup>68</sup> Of the registered domain names, 133.5 million are registered under .com and .net. One hundred, thirty-eight million are

59. *Madrid (Marks) Notification No. 206: Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks: Accession by the People's Democratic Republic of Algeria*, WORLD INTELLECTUAL PROP. ORG. (July 31, 2015), [http://www.wipo.int/treaties/en/notifications/madridp-gp/treaty\\_madridp\\_gp\\_206.html](http://www.wipo.int/treaties/en/notifications/madridp-gp/treaty_madridp_gp_206.html).

60. *Madrid (Marks) Notification No. 207: Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks: Accession by the Republic of the Gambia*, WORLD INTELLECTUAL PROP. ORG. (Sept. 18, 2015), [http://www.wipo.int/treaties/en/notifications/madridp-gp/treaty\\_madridp\\_gp\\_207.html](http://www.wipo.int/treaties/en/notifications/madridp-gp/treaty_madridp_gp_207.html).

61. BBC News, *Scotch 'given protected status' in Botswana* (July 2, 2015) <http://www.bbc.com/news/uk-scotland-scotland-business-33366215>.

62. *Id.*

63. Amy Hopkins, *Further 17 African Countries Recognise Scotch GI*, THE BUS. SPIRIT (Sept. 15, 2015), <http://www.thespiritsbusiness.com/2015/09/further-17-african-countries-recognise-scotch-gi/>.

64. *Delegated Strings*, INTERNET CORP. FOR ASSIGNED NAMES AND NUMBERS, <http://newgtlds.icann.org/en/program-status/delegated-strings>.

65. *About the Program*, INTERNET CORP. FOR ASSIGNED NAMES AND NUMBERS, <http://newgtlds.icann.org/en/about/program>.

66. *See Plan to Transition Stewardship of Key Internet Functions Sent to the U.S. Government*, INTERNET CORP. FOR ASSIGNED NAMES AND NUMBERS, <https://www.icann.org/stewardship-accountability>.

67. *See Right Protection Mechanisms Review*, INTERNET CORP. FOR ASSIGNED NAMES AND NUMBERS, <https://newgtlds.icann.org/en/reviews/rpm>.

68. *See Domain Name Industry Brief*, VERISIGN (2015), [https://www.verisign.com/en\\_US/innovation/dnib/index.xhtml](https://www.verisign.com/en_US/innovation/dnib/index.xhtml).

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under country code Top Level Domains (ccTLDs); and domain name registrations across all new gTLDs have reached 10 million.

Cybersquatting remains a significant problem for right holders, particularly now that over 800 new gTLDs have been delegated into the root, and many have gone live. The number of domain name disputes has risen again in 2015.<sup>69</sup>

Many trademark owners have opted to file Uniform Rapid Suspension (URS) complaints.<sup>70</sup> While the URS was originally designed for new gTLDs, 2015 saw a handful of legacy TLDs, namely .TRAVEL, .PRO, and .CAT, adopt it. It will be interesting to see whether other legacy TLDs will follow. It will also be interesting to see whether the UDRP, one of ICANN's oldest consensus policies, will be reviewed in the upcoming years.

### III. Copyright\*

#### A. UNITED STATES

The Second Circuit affirmed a lower court's ruling that Google's unauthorized use of copyrighted works in connection with its Google Books project constitutes fair use,<sup>71</sup> an affirmative defense to copyright infringement that permits unauthorized copying in certain limited circumstances. Since the launch of the Google Library Project and Google Books Project in 2004, Google has scanned digital copies of more than twenty million books, extracting and indexing the books' machine-readable text.<sup>72</sup> Internet users can search the Google platform to conduct "text mining" research using the indexed text on its digitized publicly available book search feature.<sup>73</sup> While entire books are searchable, only snippets containing the text searched are viewable by the public.<sup>74</sup> Notably, Google does not charge a fee or feature any advertising in connection with the Books Library Project.

Acknowledging that this dispute "tests the boundaries of fair use,"<sup>75</sup> the Second Circuit found, *inter alia*, that Google's use is transformative in that it augments public knowledge by identifying and providing valuable information about books of interest to a user,<sup>76</sup> and

69. See *Total Number of Cases per Month for Year 2015*, WORLD INTELLECTUAL PROP. ORG., [http://www.wipo.int/amc/en/domains/statistics/cases\\_yr.jsp?year=2015](http://www.wipo.int/amc/en/domains/statistics/cases_yr.jsp?year=2015).

70. See *Uniform Rapid Suspension*, WORLD INTELLECTUAL PROP. ORG., <https://www.icann.org/resources/pages/urs-2014-01-09-en>.

\* Copyright section editor: Michelle Wynne, Zillow Group, San Francisco, CA. Authors: United States: Ralph H. Cathcart and Jennifer Kwon, Ladas & Parry LLP, New York, NY; European Union: Susan J. Brushaber, Reinhardt LLP, Denver, CO; Switzerland: Daniel Marugg and Carolina Keller Jupitz, ALTENBURGER LTD, Kusnacht-Zurich, Switzerland; China: Caroline Berube, HJM Asia Law & Co., LLC, Guangzhou Guangdong, China; Africa: Uche Ewelukwa Ofodile, University of Arkansas School of Law, Fayetteville, AR; Russia: Bruce A. McDonald, Smith Gambrell & Russell LLP, Washington, D.C.; India: Manish Dhingra, Mrityunjay Kuma, and Sameep Vijayvergiya, Dhingra & Singh, Delhi, India.

71. *The Authors Guild v. Google, Inc.*, \_\_\_ F.3d \_\_\_, No. 13-4829-cv, slip op. at 46 (2d Cir. 2015).

72. *Id.* at 6.

73. *Id.* at 7-8.

74. *Id.* at 8-9, 30-33.

75. *Id.* at 2.

76. *Id.* at 21-23.

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neither creates access to protected expressive content in any substantial way<sup>77</sup> nor provides a meaningful substitute for an original work.<sup>78</sup> Applying the factors enumerated in the Fair Use section of the U.S. Copyright Act,<sup>79</sup> the Court essentially determined that Google was shielded from liability because (1) its unauthorized use promoted the arts and sciences; (2) Google did not financially benefit from such unauthorized use; (3) the “snippets” were not substantial in terms of copying expressive content; and (4) such use did not adversely affect the market for the authors’ books or provide a substitute therefor.<sup>80</sup> On June 9, 2015, the United States Supreme Court summarily denied Google’s Petition for Writ of Certiorari.<sup>81</sup>

Separately, Google sought to appeal the Federal Circuit Court’s decision holding that the district court erred when it dismissed Oracle’s copyright infringement claims against Google relating to its popular Java computer program and Google’s Android software for smart phones.<sup>82</sup> Specifically, Google’s “Question Presented” stated, “Whether copyright protection extends to all elements of an original work of computer software, including a system or method of operation, that an author could have written in more than one way.”<sup>83</sup> The Federal Circuit had held, *inter alia*, that Google could have chosen any number of different ways to write the declaration lines of the source code,<sup>84</sup> but chose to simply copy them<sup>85</sup> and that application programming interfaces or “API’s” could embody copyrightable expression.<sup>86</sup> The issue case was remanded by the Federal Circuit to the lower court for a determination of Google’s Fair Use defense.<sup>87</sup>

#### B. EUROPE

On reference for a preliminary ruling from the Bundesverwaltungsgericht (Supreme Administrative Court) of Germany, the Court of Justice of the European Union (“CJEU”) expanded the distribution right under the Copyright Directive (the “Directive”), holding that Article 4(1) of the Directive allowed a copyright holder to prevent an offer for sale or targeted advertisement of the original or a copy of the protected work, even if the advertisement or offer did not result in a purchase.<sup>88</sup> In expanding the distribution right, the court reasoned that (1) distribution was characterized by a series of acts including an advertisement of the protected work, and (2) whether the advertisement was followed by the transfer of ownership was irrelevant to a finding of infringement.<sup>89</sup>

77. *Id.* at 31-33, 38, 40-41.

78. *Id.* at 28, 30-33, 34-36.

79. *See*, 17 U.S.C. § 107.

80. *Id.* at 46.

81. *Google, Inc. v. Oracle America, Inc.*, 135 S. Ct. 2887, 192 L. Ed. 2d 948 (2015).

82. *Oracle Am., Inc. v. Google, Inc.*, 750 F. 3d 1339, 1361 (Fed. Cir. 2014).

83. Petition for Writ of Certiorari, *Google, Inc. v. Oracle America, Inc.*, 2014 WL 5319724 (U.S.) (No. 14-410).

84. *Oracle Am.*, 750 F. 3d at 1361.

85. *Id.* at 1353.

86. *Id.* at 1366.

87. *Id.* at 1381.

88. Case C-516/13, *Dimensione Direct Sales Srl Michele Labianca v Knoll International SpA* (May 13, 2015), <http://curia.europa.eu/juris/document/document.jsf?text=&docid=164262&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=424462>.

89. *Id.*

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In *C More Entertainment AB v. Linus Sandberg*, the CJEU expanded the scope of its previous decision regarding linking, the *Svensson* decision,<sup>90</sup> holding that Member States can expand the right of communication under Article 3(2) of the Copyright Directive to acts including linking to live broadcasts via the Internet.<sup>91</sup>

C. SWITZERLAND

The Swiss Federal Supreme Court (“FSC”) overturned a decision of the Commercial Court of the Canton Zurich (“CCZ”) in which the CCZ held that the complete or substantial copying, scanning and sending of a single article from a compilation (e.g. a scientific magazine or educational book) constitutes copyright infringement.<sup>92</sup> The FSC held that libraries (in this case, the Library of the ETH Zurich, one of the leading international universities for technology and the natural sciences) did not infringe copyright by delivering copies and scans of scientific publications. According to Article 19 of the Swiss Federal Act on Copyright and Related Rights (“FAC”), published works may be used for private use. “Private use” means any personal use of a work or use within a circle of persons closely connected to each other, such as relatives or friends, or a working group. The complete or substantial copying of a work obtainable commercially is not permitted. The FSC held that only the full compilation (e.g., a magazine, but not a single article from the magazine) was a complete work within the meaning of Article 19 of the FAC. The FSC further held that simply copying, without sending, an article is a relevant action under copyright law.

D. INDIA

In an important ruling, the Supreme Court of India clarified when a suit can be instituted by the plaintiff under the Copyright Act, 1957 and the Trademarks Act, 1999.<sup>93</sup> The Court agreed that the language of section 62 of the Copyright Act<sup>94</sup> and section 134 of the Trademarks Act<sup>95</sup> provides an additional forum by including a district court within whose limits the plaintiff actually and voluntarily resides, carries on business, or personally works for gain. According to the Supreme Court of India,

[o]n a due and anxious consideration of the provisions contained in section 20 of the Civil Procedure Code, section 62 of the Copyright Act<sup>96</sup> and section 134 of the Trademarks Act,<sup>97</sup> and the object with which the latter provisions have been enacted,

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90. Case C-466-12 *Svensson et al. v. Retriever Sverige AB* (February 13, 2014), <http://curia.europa.eu/juris/document/document.jsf?text=&docid=147847&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=322255>.

91. Case C-279/13, *C More Entertainment AB v. Linus Sandburg* (March 26, 2015), <http://curia.europa.eu/juris/document/document.jsf?docid=163250&doclang=EN>.

92. Bundesgericht [BGer] [Federal Supreme Court], Nov. 28, 2014, Case: 140 III 616, *available at* <http://www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-leitentscheide1954.htm>.

93. *See* *Indian Performing Rights Society Ltd. Vs. Sanjay Dalia & Anr.*, 2015 (63) PTC (SC) (India).

94. *See* Indian Copyright (Amendment) Act, 2012, No. 47, Acts of Parliament, 2012 (India).

95. *See* Trade Marks Act, 1999, No. 47, Acts of Parliament, 1999 (India).

96. *See* Indian Copyright (Amendment) Act, 2012, No. 47, Acts of Parliament, 2012 (India).

97. *See* Trade Marks Act, 1999, No. 47, Acts of Parliament, 1999 (India).

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it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place/s. However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case plaintiff is residing or carrying on business at a particular place having its head office and at such place cause of action has also arisen wholly or in part, plaintiff cannot ignore such a place under the guise that he is carrying on business at other far-flung places also.<sup>98</sup>

E. RUSSIA

On May 1, 2015, amendments to the Russian copyright law went into effect, extending to music copyright protection that was previously available only to video content, making it easier and faster to block websites hosting pirated music.<sup>99</sup> Owners of such websites retain the right to defend themselves in court, but if they lose two cases to rights holders, their websites may be permanently shut down.<sup>100</sup> The increased enforcement environment evinced by these amendments has encouraged Vkontakte, a Russian Facebook equivalent known for institutionalized copyright piracy, to take “baby steps” toward compliance with the law, according to local reports.<sup>101</sup> Meanwhile, access to 282 pirate websites has been restricted in Russia after 189 claims were filed by copyright owners, including 143 since May 1, 2015.<sup>102</sup>

Independently, amendments to the Russian Civil Code in 2014 extended the limitations and exceptions for libraries and archives to new uses and technologies.<sup>103</sup> Although not explicitly regarding libraries, these amendments include original language permitting “open licensing” of copyrighted works for public use.<sup>104</sup>

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98. *Id.*

99. Amendments to Certain Legislative Acts of the Russian Federation Concerning the Protection of Intellectual Rights in Information and Telecommunication Networks, SOBRANIE ZAKONODATEL'STVA ROSSIYSKOI FEDERATSII [SZ RF] [Federation Council] 2013, No. 187-FZ; see *Russian Federation: 2015 Special 301 Report on Copyright Protection and Enforcement*, IN'L INTELLECTUAL PROP. ALL., [www.iipa.com/rbc/2015/2015SPEC301RUSSIA.pdf](http://www.iipa.com/rbc/2015/2015SPEC301RUSSIA.pdf); Marina I. Drel, *Major Amendments to Russia's Anti-Piracy Law Now in Effect*, MONDAQ (May 14, 2015), [www.mondaq.com/x/397360/Copyright/Major+Amendments+To+Russias+AntiPiracy+Law+Now+In+Effect](http://www.mondaq.com/x/397360/Copyright/Major+Amendments+To+Russias+AntiPiracy+Law+Now+In+Effect); Ryan Book, *Russia Changes Copyright Laws to Protect Music Online, as Well as Videos*, MUSIC TIMES (Apr. 30, 2015, 8:45 EDT), [www.musictimes.com/articles/37208/20150430/russia-changes-copyright-laws-protect-music-online-well-videos.htm](http://www.musictimes.com/articles/37208/20150430/russia-changes-copyright-laws-protect-music-online-well-videos.htm); Vladimir Kozlov, *Russia Enters Brave New World of Tightened Copyright Laws for Music*, BILLBOARD (Apr. 30, 2015), [www.billboard.com/articles/business/6546343/russia-copyright-law-music](http://www.billboard.com/articles/business/6546343/russia-copyright-law-music).

100. *Id.*

101. Vladimir Kozlov, *Russia's Vkontakte Takes Baby Steps Toward Copyright Respect*, BILLBOARD (Feb. 16, 2015), [www.billboard.com/articles/news/6472992/russias-vkontakte-takes-baby-steps-toward-copyright-respect](http://www.billboard.com/articles/news/6472992/russias-vkontakte-takes-baby-steps-toward-copyright-respect).

102. *280 Pirate Websites Blocked Under Copyright Law*, RUSSIAN LEGAL INFO. AGENCY (Sept. 24, 2015), [www.rapsinews.com/judicial\\_news/20150924/274616960.html](http://www.rapsinews.com/judicial_news/20150924/274616960.html).

103. On Amendments to the Second, Third, and Fourth Parts of the Civil Code and Certain Legislative Acts of the Russian Federation, SOBRANIE ZAKONODATEL'STVA ROSSIYSKOI FEDERATSII [SZ RF] [Federation Council] 2014, No. 35-FZ. .

104. See *Study on Copyright Limitations and Exceptions for Libraries and Archives*, WORLD INTELLECTUAL PROP. ORG. 5 (Nov. 5, 2014), [http://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_29/sccr\\_29\\_3.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/sccr_29/sccr_29_3.pdf).

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## F. CHINA

As of October 2015, the National Copyright Administration had received 689,781 work registration applications; 191,952 computer software copyright registration applications; and 328 copyright pledge registration applications, demonstrating an increasing number of such applications.<sup>105</sup> In November 2014, China established intellectual property courts in Beijing, Shanghai, and Guangzhou. As of August 20, 2015, the Beijing Intellectual Property Court had received 124 copyright dispute cases in the first instance, 35 of which were settled, and 763 copyright dispute cases in the second instance, 613 of which were settled.<sup>106</sup> The Shanghai Intellectual Property Court accepted 571 copyright dispute cases<sup>107</sup>, and the Guangzhou Intellectual Property Court accepted 3,148 intellectual property dispute cases, 1,403 of which were settled.<sup>108</sup> Ninety-one of these cases included a foreign element.

The National Copyright Administration enacted Implementing Measures for the Copyright Administrative Penalties (the “Draft for Comment”) seeking public comments.<sup>109</sup> The Draft for Comment updates, among other things, the procedures for administrative penalties, the administrative liability of Internet service providers, and copyright law enforcement in the internet environment. Provisions on materials that can serve as evidence were added to include “certification documents issued by the copyright certification organization as designated by the copyright owner or his or her authorized agents, the organization for collective administration of copyright or the national copyright administration.”<sup>110</sup> In addition, the following details were added to the definition of “serious circumstances of illegal acts”: “in case of disseminating other people’s works, the actual clicks reach 25,000 times,” and “in case of disseminating other people’s works in the form of membership, the registered members reach 500 people.”<sup>111</sup>

The National Copyright Administration issued the Circular on Regulating the Internet Reproduction of Copyrighted Works (the “Circular”) in April 2015, stating that Internet media reproducing copyrighted works is subject to copyright laws and regulations. Internet media must (1) obtain permission from, and pay fees to, copyright owners to use

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105. National Copyright Administration of PRC Copyright Registration Record reach another high in the same period Nov. 2, 2015 (我国著作权登记量再创历史新高) <http://www.ncac.gov.cn/chinacopyright/contents/518/267624.html>.

106. The Supreme People’s Court of PRC, President of the Beijing Intellectual Property Court Su Chi release the operation of Beijing Intellectual Property Court’s work, Sep. 9, 2015 (北京知识产权法院院长宿迟发布北京知识产权法院工作运行情况) <http://www.court.gov.cn/zixun-xiangqing-15367.html>.

107. The Supreme People’s Court of PRC, President of the Shanghai Intellectual Property Court Wu Xielin release the operation of Shanghai Intellectual Property Court’s work, Sep. 9, 2015 (上海知识产权法院院长吴偕林发布上海知识产权法院工作运行情况) <http://www.court.gov.cn/zixun-xiangqing-15368.html>.

108. Steve Song, *Report by the Supreme People’s Court of China Regarding the Latest Updates of IP Courts*, MONDAQ (last updated Feb. 18, 2016), <http://www.mondaq.com/x/467604/Trademark/Report+By+The+Supreme+Peoples+Court+Of+China+Regarding+The>.

109. *Comments Sought for Revising Implementing Measures for Copyright Administrative Penalties*, LEXISNEXIS, [https://hk.lexiscn.com/latest\\_message.php?access=show\\_detail&id=182724](https://hk.lexiscn.com/latest_message.php?access=show_detail&id=182724).

110. *Id.*

111. *Id.*

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their works, and (2) specify the names of copyright owners, titles of works, and sources.<sup>112</sup> The Circular provides that Internet media shall not amend the content of work it reproduces and any modification and/or deletion of words in the title and content of a work may not change the original meaning of such title and content. The Circular requires that newspaper entities and internet media be entitled to post articles on the internet and through copyright licensing agreements, but must carefully review all works they use and have a reasonable licensing fee system.<sup>113</sup>

G. AFRICA

On August 28, 2015, the Department of Justice and Constitutional Development of the Republic of South Africa published and invited public comments on the draft of the *Cybercrimes and Cybersecurity Bill, 2015*.<sup>114</sup> Members of the public had until November 30, 2015, to submit their comments. The draft bill “aims to put in place a coherent and integrated cybersecurity legislative framework to address various shortcomings which exist in dealing with cybercrime and cybersecurity in the country.”<sup>115</sup> The draft bill focuses on, among other things: (1) creating offences and prescribing penalties related to cybercrime; (2) regulating evidence and jurisdiction, as well as the powers to investigate search and gain access to or seize items in relation to cybercrimes; (3) regulating international cooperation relating to investigations of cybercrimes; (4) the establishment of structures to deal with cybersecurity; (5) the identification, declaration and protection of National Critical Information Infrastructures; and (6) creating obligations relating to cybersecurity for electronic communications service providers.<sup>116</sup> A Discussion Document explaining the proposed amendment has been circulated.<sup>117</sup>

On July 27, 2015, South Africa’s Department of Trade and Industry published the Copyright Amendment Bill, 2015 (the “2015 Bill”) for public comment.<sup>118</sup> The 2015 Bill introduces significant changes to the country’s Copyright Act 98 of 1978, including the following: (1) a ‘resale royalty right’ entitling the owners of prescribed artistic works to a resale royalty each time a work is resold;<sup>119</sup> (2) regulation and control of copyright collecting societies;<sup>120</sup> (3) addressing copyright in craft work;<sup>121</sup> (4) access for visually impaired persons and persons with disabilities;<sup>122</sup> (5) a new Section 12A General

112. NATIONAL COPYRIGHT ADMINISTRATION OF THE PEOPLE’S REPUBLIC OF CHINA, CIRCULAR ON REGULATING THE INTERNET REPRODUCTION OF COPYRIGHTED WORKS (Apr. 17, 2015), available at [http://open.oriprobe.com/laws\\_info.aspx?id=169502](http://open.oriprobe.com/laws_info.aspx?id=169502).

113. *Id.*

114. Mthunzi Mhaga, *Justice publishes draft Cybercrimes and Cybersecurity Bill for public comments*, SOUTH AFR. GOV’T. (Aug. 28, 2015), <http://www.gov.za/speeches/justice-publishes-cybercrimes-and-cybersecurity-bill-public-comments-28-aug-2015-0000>.

115. *Id.*

116. See REPUBLIC OF SOUTH AFR., CYBERCRIMES AND CYBERSECURITY BILL, DRAFT FOR PUBLIC COMMENT 2 (2015), available at <http://www.justice.gov.za/legislation/invitations/CyberCrimesBill2015.pdf>.

117. See REPUBLIC OF SOUTH AFR., DISCUSSION OF THE CYBERCRIMES AND CYBERSECURITY BILL, available at <http://www.justice.gov.za/legislation/invitations/CyberCrimesDiscussionDocument2015.pdf>.

118. Copyright Amendment Bill, GN 646 of GG 39028 (27 July 2015) (South Afr.).

119. *Id.* § 6 (Inserting §§ 7A, 7B, 7C, and 7D in Act 98 of 1978).

120. *Id.* § 10 (inserting §§ 9B, 9C, 9D, 9E, and 9F in Act 98 of 1978).

121. *Id.* § 12 (inserting § 11C in Act 98 of 1978).

122. *Id.* § 22 (inserting §§ 19D in Act 98 of 1978).

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Exceptions from Protection of Copyright for Fair Use to the 1978 Act;<sup>123</sup> and (6) extensive provisions on performers' protection rights.<sup>124</sup> The 2015 Bill is proving very controversial, particularly Section 25, which states that "[o]wnership of any copyright whose owner cannot be located, is unknown, or is deceased shall vest in the state: Provided that if the owner of such copyright is located at any time, ownership of such copyright shall be conferred back to such owner."<sup>125</sup> Another controversial provision relates to a new Intellectual Property Tribunal created under section 33, which is vested with powers to adjudicate and settle specified disputes.<sup>126</sup>

After garnering six ratifications (beginning with Zimbabwe), the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the framework of the African Regional Intellectual Property Organization (the "Swakopmund Protocol") entered into force on May 11, 2015.<sup>127</sup> The Republic of Zambia became the seventh country to ratify the Swakopmund Protocol on August 28, 2015.<sup>128</sup> The Swakopmund Protocol was adopted on August 9, 2010, by the Member States of the African Regional Intellectual Property Organization (ARIPO)<sup>129</sup> "to protect traditional knowledge holders against any infringement of their rights"<sup>130</sup> and "to protect expressions of folklore against misappropriation, misuse and unlawful exploitation beyond their traditional context."<sup>131</sup>

On August 21, 2015, the Kenya Copyright Board published and opened for public comment, a proposed amendment, "To Provide Web Blocking Measures in Cases of Copyright Infringements Online."<sup>132</sup> The proposed amendment will (1) amend Section 2 of the Copyright Act Cap 130 of the Laws of Kenya to provide definitions for "Internet Service Provider (ISP)" and "electronic copy"; (2) amend Section 35A of Kenya's Copyright Act to set out that an Internet Service Provider is not liable when acting as a mere conduit, for caching copies, and for "material storage"; and (3) amend Section 35A of the Copyright Act to provide the process and obligations relating to a "Take Down Notice."<sup>133</sup> On September 15, 2015, the Kenya Copyright Board published, for advisory purposes only, a Copyright Contract Manual "intended to explain the basic essential elements of contracts to non-lawyers (artists and creatives) working in the Copyright

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123. *Id.* § 14.

124. *Id.* § 24 (inserting §§ 20A, 20B, 20C, 20D, 20E and 20F in Act 98 of 1978).

125. *Id.* § 25.

126. *Id.* §§ 33, 34 (introducing significant changes to Section 29 of Act 98 of 1978).

127. *Entry Into Force of the ARIPO Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore*, THE AFRICAN REG'L INTELLECTUAL PROP. ORG., <http://www.aripo.org/news-events-publications/news/item/54-entry-into-force-of-the-aripo-swakopmund-protocol-on-the-protection-of-traditional-knowledge-and-expressions-of-folklore#sthash.wfyrVo7P.dpuf>.

128. *Zambia Ratifies the Swakopmund Protocol*, THE AFRICAN REG'L INTELLECTUAL PROP. ORG., <http://www.aripo.org/news-events-publications/news/item/79-zambia-ratifies-the-swakopmund-protocol>.

129. THE AFRICAN REG'L INTELLECTUAL PROP. ORG., *THE SWAKOPMUND PROTOCOL ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF FOLKLORE WITHIN THE FRAMEWORK OF THE AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION* (2010).

130. *Id.* at Article 1.1(a).

131. *Id.* at Article 1.1(b).

132. *News and Updates*, KENYA COPYRIGHT BD. (Sept. 23, 2015, 12:16 EAT), <http://www.copyright.go.ke/media-gallery/news-and-updates/257-proposed-amendments-to-the-copyright-act.html>.

133. *Id.*

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sector.”<sup>134</sup> The manual focuses on some of the most important clauses and their effect in a contract.”<sup>135</sup>

The Nigerian Copyright Commission has published for public comments a draft Revised Copyright Bill.<sup>136</sup> The draft Copyright Bill is a result of the Formal Launch of the Reform of the Nigerian Copyright System by the Nigerian Copyright Commission in November 2012. If passed, the draft Copyright Bill will introduce changes to the Copyright Act, Cap C28, Laws of the Federation of Nigeria, 2004.

The preparation of the draft Copyright Bill was guided by four reform objectives: (1) “To strengthen the copyright regime in Nigeria to enhance the competitiveness of its creative industries in a digital and knowledge-based global economy”; (2) “To effectively protect the rights of authors to ensure just rewards and recognition for their intellectual efforts while also providing appropriate limitations and exceptions to guarantee access to creative works, encourage cultural interchange and advance public welfare”; (3) “To facilitate Nigeria’s compliance with obligations arising from relevant international copyright treaties”; and (4) “To enhance the capacity of the Nigerian Copyright Commission for effective administration and enforcement of the provisions of the Copyright Act.”<sup>137</sup>

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134. *News and Updates*, KENYA COPYRIGHT BD. (Sept. 15, 2015, 15:59 EAT), <http://www.copyright.go.ke/media-gallery/news-and-updates/255-copyright-contract-manual.html>.

135. *Id.*

136. *Review of the Copyright Act, Cap C28, Laws of the Federation of Nigeria 2004*, NIGERIAN LAW INTELLECTUAL PROP. WATCH (Nov. 10, 2015), <http://www.copyright.gov.ng/index.php/83-featured-articles/374-public-notice-nigerian-copyright-reform>.

137. *Id.*

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