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EDITORIAL 105

ARTICLES

Explosive drama: Exploring the boundaries of copyright subsistence in dramatic works – *Sarah Bellingham*

This article analyses the constitutive aspects of the dramatic work, one of the four categories of Pt III subject matter in the Copyright Act 1968 (Cth). Its properties of form and the history of its production are examined. This article argues that form requirements must be interpreted broadly by the courts to account for evolving practices of expression, and maintains the relevance of the history of the individual production of a subject matter. Fireworks displays are examined as a subject against the formalist and historical aspects of the definition of a dramatic work. 106

The rule in Pub Squash: Determining “relevant date” for claims of misleading or deceptive conduct – *Andrew McRobert*

Claims of misleading or deceptive conduct that depend on reputation subsisting in a name or some other indicia (claims analogous to passing off), are currently subject to a rule that fixes the applicant’s reputation at a particular point in time: being the date at which the respondent commenced its conduct and not, for example, at the date at which legal action is commenced. This article traces the development of this rule in passing off and its later application to allegations of misleading or deceptive conduct. The author argues that the rule inherently tends to permit the continuing deception of consumers and should no longer be applied in misleading or deceptive conduct cases. 119

Musicological and legal perspectives on music borrowing: Past, present and future – *Wellett Potter and Heather A Forrest*

Music borrowing is a practice commonly employed by music composers whereby fragments of previously composed music are incorporated into new compositions. It is a practice that has been in use for hundreds of years, spanning musical genres and styles from medieval liturgical chants to rap, and yet the law relating to rights in musical works has yet to accommodate its ubiquity. The practice of music borrowing and the problems that it presents copyright law are highlighted by the recent case of Larrikin Music Publishing Pty Ltd v EMI Songs Australia Pty Ltd (2010) 83 IPR 582; [2010] FCA 29. This case offers a timely opportunity to examine the practice of music borrowing from the differing perspectives of musicology and law in order to understand the treatment – past, present and likely future – of music borrowing in Australian copyright law. 137

