WIPO Regional Workshop Building Respect for IPRs

Michael Edenborough QC Kyiv, Ukraine 19 October 2016

Topic 5 recent jurisprudence on the protection of trade marks and copyright

Infringement of video clips

- England and Wales Cricket Board v Tixaq Ltd [2016] EWHC 575 (Ch), Arnold J
- use of 8 second video clips of TV broadcasts
- reporting defences did not avail Dfs

Copyright in compilations

- usually involve much work, but often with little or no literary contribution
- often very valuable and misappropriated
- Global Yellow Pages v Promedia Directories Pte Ltd (Singapore, [2016] SGHC 9, 28 Jan 16)
 - rejects mere sweat-of-the-brow effort
 - requires some creativity or intellectual effort

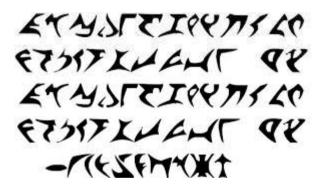
Hyperlinking

- *GS Media* C-160/15
- hyperlinking to unauthorised content not a communication to the public, if
 - no financial gain
 - did not know illegal nature of the publication

Klingon: copyright in a fictional language

Star Trek: Axanar





multi-jurisdictional TM injunctions

- for EU TMs, possible to get a pan-EU injunction
- Case C-223/15 *Combit Software*
- combit / commit: LoC for non-English speakers
 - for the Df to establish no infringement in certain places
 - for the court to define very precisely the affected territory
 - exclusion of "English speaking areas" unclear

confiscation of trade marks

- Philip Morris v Uruguay (ICSID ARB/10/7)
- no compensation for the loss of equity in the TMs

three dimensional marks

- Donut Paco Palace "Longhorn donuts"
- University of Texas word mark "Longhorns"

