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## Editorial

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### Abstract

This editorial introduces the BILETA conference 2021 and the papers in the edition.

### Key words

BILETA, summary, editorial, critical, pandemic

The BILETA 2021 conference 'Taken by surprise: (Re-)constituting the critical in an age of digital and pandemic' was hosted by the Paul Maharg and the University of Newcastle. Reflecting the realities of Covid-19 this was a fully online conference. Given our interests in technology and education, the BILETA community was excited to have opportunities to explore online conferencing. We were able to welcome speakers from all over the world and to learn together about new forms of online conferences "coffee" time. As we write this editorial, we hope that some of the BILETA community will be able to gather in person in Exeter in April 22, under the stewardship of James Griffin. We are also pleased that this conference will be in hybrid form, enabling the BILETA community to continue to grow in a sustainable and inclusive manner.

We are honoured that EJLT and BILETA are continuing their collaboration and to share some excellent contributions based on papers given at BILETA 2021. All articles in this issue deal with the theme of the conference, namely how we are taken by surprise, and not just by Covid-19 but by digital technology innovation itself, and how complex the conjunction of the two became during the pandemic, in theory and practice. Digital technologies always surprise us; but that sense of being taken aback was exacerbated by the many effects of the pandemic, and the changed social, economic and cultural milieu in which we found ourselves. This is explored in this special edition with key themes of education, IP and information.

For Education, we begin Fernando Barrio analysis of how assessment of knowledge changed on account of the social restrictions introduced upon learning and teaching during Covid-19. The piece focuses upon the role played by online proctoring, including their intrusive oversight of student behaviour during an assessment, and the potential violations of data protection legislation (in particular the UK GDPR and the Data Protection Act 2018), as well as the contravention of basic principles of Human Rights legislation and the potential of such online proctoring environments to infringe anti-discrimination law. The piece notes that online proctoring contributed to exacerbation of existing trends. Sandra Schmitz-Berndt then describes the swift changes undertaken in schools in Germany to move from in-class to distance learning on the internet. In particular, the contribution analyses the data protection challenges implicit in such a move notably regarding the functioning and technical implementation of e-learning platforms, the implementation of cybersecurity on such platforms and evaluates the applicability of the 2016 Network and Information Systems Directive 2020 NIS 2.0 to e-learning platforms.

We turn now to IP. Our exploration begins with Ruth Flaherty's consideration of fair dealing in a pandemic with a focus on pastiche. Building on the importance of amateur writing and fan fiction to so many during the lockdowns, this contribution explores the scope of the UK fair dealing provisions in the light of some key decisions of the Court of Justice of the European Union. Flaherty argues for a new test for pastiche and for further research, particularly regarding online creativity, in this important area. The scope of copyright and limits on it is also seen in Liam Sumner's exploration of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind,

visually impaired, or otherwise Print Disabled. Sunner does so from perspective of the EU and considers this from a highly relevant angle - the impact on this on the complex relationship between the EU's trade agreements and human rights.

Our geographical focus then turns to Nigeria and to Nkem Itanyi's analysis, with an empirical focus, of the economically harmful impacts of piracy in the context of 'Nollywood': the highly informal and successful film industry. Itanyi demonstrates in particular how a local, cultural understanding – or lack thereof – of copyright law can significantly enhance the problem of piracy and advocates for aggressive educational campaigns in an attempt to alter attitudes towards piracy in Nigeria. Place, culture and IP are again combined by Hiroko Onishi. This work explores the extent to which passing off provides appropriate legal protection to celebrities who have achieved this status on non-traditional media platforms. Considering in particular UK cases over many years, Onishi concludes that the means by which celebrities have obtained fame and its duration should be relevant factors in relation to the establishing of goodwill.

Information and its use is at the heart of Marion Oswald's article, which was a well-deserved winner of the EJLT prize at BILETA 2021. This deals with policing and the ethics of democratic rights at the heart of technological development of policing projects, taking a sociolegal and contextual approach. The work advocates a three-pillar approach to achieve trustworthy and accountable use of emerging technologies. These include a human rights-based approach combined with scientific standards, the appropriate use of law and ethical standards, and finally users who are 'committed to accountability'. Electoral disinformation is the focus in Ethan Shattock's examination of the case law of the European Court of Human Rights and freedom of expression. This notes a movement from self-regulation towards more -co-regulation at EU level and suggestions are developed as to how legislators across Europe could develop binding legal rules to restrict electoral disinformation while also protecting the right to freedom of expression. In our final contribution, Gerard Jan Ritsema van Eck and Nynke Elske Vellinga draw together information, regulation and new technologies in their commentary piece exploring new car safety rules. They highlight a current and important problem in the interaction between the EU General Safety Regulation (GSR) and the General Data Protection Regulation (GDPR) and criticise the complex approach taken to this adopted under the GSR. The piece proposes a simplified approach which places a greater reliance on the GDPR in the context of the collection of vehicle data,

We hope that EJLT readers enjoy these papers and that they will provide a base for future scholarship and thought. We look forward to welcoming you all to a BILETA conference in the future to continue these conversations.