

UPC - references to the CJEU

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1. Not a blank canvas (cf TMs, RCD, copyright)

- Meaning of infringement - functions - Arsenal v Reed
- Test of copying - Infopaq

2. The function of referral to the CJEU - not an appeal

- National (referring court) control
- Points of law
- Statement of facts/can't change the facts

3. Specialist/non-specialist judges

- Pros and cons
- Will ask the "deadly question"
- Alone/with others

4. The number of judges

- CIPA v UKIPO case (IP Translator)
- SAS Institute
- Will ask the "deadly question"
- Alone/with others

5. Delay/cost

- Compared to UKSC?
- Compared to CA? (e.g Interflora v M&S)
- Kit Kat reference
- Will ask the "deadly question"
- Alone/with others

6. Opacity/consistency

- Has improved in TM cases and Copyright cases
- Judgments are short at least (cf Vos LJs remarks last night)
- referring court is in control and can ignore or say not answered or re-refer