

This is our summary of some of the key legal developments across a range of sectors for the week of 9 March 2009. It is intended for reference purposes only and does not constitute definitive advice. Links to the original source materials are included where there are no restrictions in terms of access. References may also be made to sources that require separate registration or subscription. A link to a source does not necessarily imply endorsement of the source or the material provided through the link.

For further information on any of the matters discussed in the summary please contact our Professional Support Lawyer, [Sarah Kirkness](#). If you have any comments, queries or suggestions please contact us at [comments](#). All suggestions and comments are most welcome. If you do not wish to receive this summary you can contact us at [unsubscribe](#).

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General

OFT Publishes Discussion Paper on Merger Regime for Local and Regional Media

The Office of Fair Trading (OFT) has published a discussion paper on the merger regime for local and regional media. This follows the publication of the Digital Britain Interim Report, in which the Government stated that before any changes would be made to the merger regime, it would invite the OFT to review the local and regional media sector and make "appropriate recommendations". The OFT acknowledged that "structural and cyclical factors are contributing to significant declines in both the circulation levels and advertising revenues obtained by the local and regional press". This discussion paper sets out how the media merger regime operates, and focuses on areas where the Government and/or stakeholders have identified potential issues of relevance to the review, particularly how the merger regime applies to local and regional print media. The paper quotes some reports which suggest that total regional newspaper advertising revenues fell by around 15% in 2008, and could fall by over 25% in 2009. Views are invited, and the OFT has said it intends to submit key findings and any recommendations to the Government in mid-April. A more detailed report will then be published. See http://www.offt.gov.uk/shared_offt/business_leaflets/general/offt1069.pdf for the paper.

SABIP Paper Identifies Priorities for Copyright Policy Development

The Strategic Advisory Board for Intellectual Property Policy (SABIP) (established in June 2008 as a follow-up to the Gowers Review) has published a paper on the areas it has identified as being priorities for developing policy on copyright. Those priorities are the role of the copyright system in fostering creativity and innovation; issues concerning the ownership and coverage of copyright; rights management techniques and technology; the relationship between copyright and contract law; simplification of the copyright framework; and implications of changing attitudes and practices among consumers. SABIP said in each of these subject areas, it "plans to initiate the development of a programme of research and/or evidence gathering, supported by surveys of the existing literature and complemented by discussions with, among others, copyright creators, creative industry businesses, other practitioners, professional users and end users/consumers". It said it envisages delivering its first evidence based policy recommendations from this work programme within the next 12 months. See <http://www.sabip.org.uk/copyright-100309.pdf> for the paper (and while it is not a formal consultation paper SABIP have said that they welcome comment).

IPO Consults on Changes to Fees for Services

The Intellectual Property Office (IPO) is consulting on changes to its fees and charges as part of the ongoing review of its services. The proposals include an overall reduction in the fees for trademark registration and more flexibility over when businesses have to pay for their services - under consideration are proposals to introduce a new "early assistance" service for new trade mark applicants; provide an e-filing discount for trade mark and patent applications; and reduce the fee that businesses pay to oppose the registration of a new mark by another firm. The proposals are "aimed at introducing clearer relationships between the fees ... and the business process tasks required to deal with them". See <http://www.ipso.gov.uk/consult-feeservices.pdf> for details.

WIPO - International Trade Mark Registrations in 2008

The World Intellectual Property Organisation (WIPO) has published details about the numbers of international trade mark registrations in 2008. It said activity remained "robust" in 2008, with a record 42,075 applications being made under the 84-member Madrid system for the international registration of trade marks, representing a 5.3% increase. Applicants from Germany filed the largest number of applications for the 16th consecutive year, followed by users in France, the United States, the European Community, Switzerland, Italy, Benelux, China, Japan and Austria. See http://www.wipo.int/pressroom/en/articles/2009/article_0004.html for details.

Lords Select Committee Calls for Evidence on Proposed Consumer Rights Directive

The House of Lords Select Committee on the European Union have published their call for evidence as part of their investigation into the issues raised by the European Commission's proposal for a Directive on consumer rights. The

Committee is inviting comment on a range of issues including the rationale for replacing four Directives with a single Directive, the need for full harmonisation, the scope of the proposed Directive and consumer-specific issues such as information, the right to withdraw, unfair contract terms, enforcement and penalties. See http://www.parliament.uk/documents/upload/Consumer_Rights_CfE.doc for details.

Broadcasting

Minister's Statement on Implementing the AVMS Directive in the UK - No Product Placement

The Secretary of State for Culture, Media and Sport has published a written statement setting out how the Government intends to implement the AVMS Directive in the UK. The statement makes the position on product placement very clear (which, given previous ministerial statements, should have come as no surprise) - after consultation, the Government has "concluded that it should not be permitted in programmes made for this country". The Secretary of State said "There is a lack of evidence of economic benefits, along with very serious concerns about blurring the boundaries between advertising and editorial". The need to maintain levels of trust between audiences and broadcasters, and protect the standards of broadcasting for which Britain is known worldwide was given as the reason for the decision. The Secretary of State said that the Government was "well aware that a number of commercial broadcasters are facing difficult economic times" and that it would "continue to work with the industry to explore ways we can support them", but his preference was to consider all other avenues before allowing product placement. As a result of the decision, product placement will be prohibited in television programmes made by and for UK television broadcasters, but will continue to be allowed in video-on-demand programmes and in films and television programmes acquired from outside the UK, subject to the limitations and safeguards imposed by the Directive. The Government has said it will review the position on television product placement in 2011/12, taking into account the conclusions reached by Ofcom on the quantity and the distribution of television advertising, changes in viewing habits and any new evidence about the impact and potential benefits of product placement (which are due to be published after Easter). The Directive's definition of the on-demand services to be regulated will be transposed into UK legislation and the Government has said that it expects that Ofcom will designate, and delegate powers to, the Advertising Standards Authority (ASA) to regulate advertising in video-on-demand services. Other announcements included granting Ofcom powers to regulate UK video-on-demand services so that it can then designate, and delegate powers to, an industry-led, co-regulatory body to regulate programme content in these services; new regulatory arrangements are also being implemented to allow Ofcom to issue broadcasting licences to non-EU satellite television channels which are uplinked from within the UK and which are not already within the jurisdiction of another Member State of the EU or European Economic Area. The Directive has to be implemented by 19 December 2009. See http://www.culture.gov.uk/reference_library/minister_speeches/5932.aspx for the Statement.

Broadcast Bulletin - Latest Issue

The latest edition of Ofcom's Broadcast Bulletin has been published with details of adjudications on breaches of Rules 1.14 (the most offensive language must not be broadcast before the watershed); a complaint of unwarranted infringement of privacy in breach of Rule 8.1 was also found and a separate complaint of unfair treatment was partially upheld. A further three separate complaints were not upheld. See http://www.ofcom.org.uk/tv/obb/prog_cb/obb129/issue129.pdf for details.

DCMS Announces Television Licence Fee Increase

The DCMS have announced that with effect from 1 April 2009, the cost of a television licence will be increased to £142.50 for a colour television (an increase of £3) and £48 for a black and white television (an increase of £1). The increase, which will be brought into effect by statute, follows the six-year BBC funding settlement, which began in April 2007 - the licence fee increase is set at 3% for the first two years of the settlement and 2% in years three, four and five. This is the third year for the purposes of the settlement. Any increase (of up to 2%) in the final year will be set nearer the time. (DCMS Press Release 029/09, 9 March 2009).

Corporate

APB Consults on Revised Ethical Standards for Auditors

The Auditing Practices Board (APB) Ethical Standards Committee has published a consultation paper on its revised draft ethical standards for auditors. The APB is consulting on a number of issues - the rotation period for audit engagement partners on listed company audits; remuneration and evaluation policies for key partners involved in the audits; the provision of non-audit services relating to securitisation and restructuring service; the provision of direct assistance to the audit team by internal auditors; and the definition of an audited entity's "affiliate". Comments are invited. See http://www.frc.org.uk/images/uploaded/documents/Ethics_Consultation_paper_final.pdf for details.

European Parliament Calls for Amendment of European Private Company Statute

The European Parliament has passed a resolution to call for amendment of the European Commission's proposal for a Council Regulation on a Statute for a European Private Company. It suggested a number of amendments, "essentially aimed at responding to the debates that are anticipated within the Council and to counteract blockages within the Council". See <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+20090310+ITEMS+DOC+XML+V0//EN&language=EN - sdocta13> for details, including details of the proposed amendments.

Film & TV

BBC & BFI Agree MoU to Develop Public Access to Archives

The BBC and the British Film Industry (BFI) have announced that they have agreed a Memorandum of Understanding which sets out how the parties will collaborate to develop plans for increasing public access to their respective audio, film and TV archives. According to the Press Release, "The BBC and BFI's intention is to explore new ways of making archive content and material available to all UK audiences, across the widest possible range of distribution platforms, while developing an industry standard approach to the management, storage and distribution of archive content and related assets". The MoU outlines key areas for joint strategic thinking, including public access, rights management and digitisation, although no further details have been made available at this stage. (*BBC Press Release, 9 March 2009*).

Music

PRS for Music and YouTube Continue Negotiations for Access to Music Videos

PRS for Music have issued two statements following the breakdown of their negotiations with YouTube to agree a royalty fee for allowing users to access music videos on YouTube in the UK. PRS for Music said they were "outraged on behalf of consumers and songwriters" that Google had chosen to close down access to music videos on YouTube in the UK. PRS for Music said that Google had taken this step because they "wished to pay significantly less than at present to the writers of the music on which their service relies, despite the massive increase in YouTube viewing". PRS for Music said that they hoped that further negotiations between them could resolve the issue.

IPO's Summary of Responses to Consultation on Changes to Exemptions for Public Performances of Recorded Music

The Intellectual Property Office (IPO) has published a summary of the responses to its consultation on changes to exemptions from public performance rights in sound recordings and performers' rights. The consultation looked at copyright in recorded music and the exemptions that apply to not-for-profit bodies when they play this music in public. It suggested three options for dealing with the exemptions - repealing them; narrowing them so that they only apply to small charities; and removing them but allowing right holders to only charge royalties at a rate which is considered to be fair to both them and the users. Most collecting societies and organisations representing right holders were in favour of Option 1 (the repeal option); the Incorporated Society of Musicians, representing thousands of musicians, favoured Option 2 (the narrowing them option). Clubs and charities were also concerned about the impact on their costs from Option 1. The IPO has said that a full Government response will be published with the final proposal and a full impact assessment of the chosen option, before the parliamentary summer recess - without giving any further indication as to the final proposal it said it "may be possible to progress Options 1 and 3 relatively quickly after the summer recess. Option 2 and any major variations would require further consultation". See <http://www.ipso.gov.uk/response-musiclicensing.pdf> for details.

Publishing

ECHR Rule on Internet Publication Rule and Freedom of Expression Right

The European Court of Human Rights (ECHR) has ruled on an application by The Times newspaper against the United Kingdom relating to the applications Article 10 rights. The applicant alleged that the rule under United Kingdom law whereby each time material was downloaded from the Internet a new cause of action in libel proceedings accrued (the Internet publication rule), constituted an unjustifiable and disproportionate restriction on its right to freedom of expression (its Article 10 right). The Times had published two articles in their paper and on their website, which resulted in libel proceedings being brought against them by the subject of the articles. The paper relied on the defence of qualified privilege in respect of the articles. While proceedings were underway, the articles were available as part of the paper's archive; the subject of the articles then brought a second libel action in respect of the continuing Internet publication of the articles. The High Court found for the subject claimant in the second action (saying that in the context of the Internet a new cause of action arose every time the defamatory material was accessed - the Internet publication rule) and ordered damages to be assessed (the articles had at that time been removed from the website). The paper appealed to the Court of Appeal, arguing, "the Internet publication rule breached Article 10, pointing out that as a result of the rule newspapers which maintained Internet archives were exposed to ceaseless liability for re-publication of the

defamatory material". The paper said this "would inevitably have a chilling effect on the willingness of newspapers to provide Internet archives and would thus limit their freedom of expression". The Court of Appeal said "We accept that the maintenance of archives, whether in hard copy or on the Internet, has a social utility, but consider that the maintenance of archives is a comparatively insignificant aspect of freedom of expression. Archive material is stale news and its publication cannot rank in importance with the dissemination of contemporary material. Nor do we believe that the law of defamation need inhibit the responsible maintenance of archives. Where it is known that archive material is or may be defamatory, the attachment of an appropriate notice warning against treating it as the truth will normally remove any sting from the material". The paper settled the action with the subject however complained that the Internet publication rule constituted an unjustifiable and disproportionate restriction of its right to freedom of expression as provided in Article 10. The ECHR ruled that the finding by the domestic courts in the second action that the applicant had libelled the claimant by the continued publication on the Internet of the two articles was a "justified and proportionate restriction on the applicant's right to freedom of expression" and that it was not necessary for it to consider in detail the "broader chilling effect allegedly caused by the application of the Internet publication rule in the present case". The ECHR considered it "significant" that the paper had not added any qualification to the relevant articles in its archive until one year after the proceedings had been instigated (and referred to the Court of Appeal comment about removing the "sting" from any such material with a warning notice). It also mentioned the fact that the Court of Appeal had not suggested that potentially defamatory material should be removed from archives altogether - a qualification notice attached to an article in an Internet archive, which is maintained by the party in question does not constitute a disproportionate interference with the right to freedom of expression. (*In the Case of The Times Newspapers Ltd (Nos 1 & 2) v The United Kingdom, Applications 3002/03 and 23676/03* - see <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=Times%20%7C%20%22THE%20UNITED%20KINGDOM%22&sessionid=20557558&skin=hudoc-en> for the judgment; according to reports, the Secretary of State for Justice is to review libel laws following the judgment although no further details are available at this stage).

Editors Code of Practice Committee Publish Revised Codebook

The Editors Code of Practice Committee has published a revised Second Edition of the Editors' Codebook, which accompanies the Code of Practice. In the Introduction to the Codebook, the Chairman of the PCC highlights some of the recent key issues, which have resulted in changes being made to the Codebook - strengthening the rules to explicitly ban hacking into digitally-held private information unless there is a demonstrable public interest and expressly barring the use of agents or intermediaries, such as private detectives, to circumvent the rules and the issuing of guidance on reporting suicide in a manner which can cause distress. Further, the Introduction also highlighted the fact that at the heart of the Code is a commitment to freedom of expression and publication of articles that are "in the public interest". The Codebook includes references to relevant rulings to illustrate how the Code is to be applied in practice - see <http://www.editorcode.org.uk/downloads/codebook/codebook.pdf> for access.

Statement in Open Court - Utterly False Allegations Widely Reported

The claimant issued libel proceedings against the publishers of a number of newspapers (Daily Mail, Daily Telegraph, Daily Mirror, The Sun, The London Paper, The Daily Express, The Times Online, Metro Online and Sky News), following their publication of articles and broadcasts about their daughter's birthday party at their home, which resulted in significant damage and destruction. The allegations in the articles and broadcasts were completely untrue and the implications of a lack of effective supervision of the party were utterly false. Settlements were agreed with all the defendants, who agreed to publish prominent apologies and pay substantial damages as well as the claimant's legal costs. (*Amanda Hudson v Associated Newspapers Ltd & Ors, Unreported, QBD, 4 March 2009*).

Defamation Action - Striking Out Plea of Justification in Defence

The claimant made an application to strike out substantial parts of the respondent publishers defence relating to justification of an article about his marriage into Romania's royal family and his use of a title. The court described the libel litigation as having "an unhappy and drawn out history". The claimant contended that amended defence contained a good deal of irrelevant, embarrassing and prejudicial material that needed to be excised (especially so if there was to be trial by jury) and, secondly, that in important respects, the pleading lacked crucial particulars identifying how it was said that he was dishonest. The court noted that the allegations were very serious indeed and there was a clear duty upon any litigant who chooses to allege fraud and forgery to let the "accused" know with complete frankness the case he has to meet. The court held that it was appropriate to strike out the plea of justification as a whole - the court noted justification should only be pleaded if one has reasonable evidence to support the defence or reasonable grounds for supposing that sufficient evidence will be available at trial and that where dishonesty is pleaded, it is necessary to give particulars of the dishonest state(s) of mind alleged. (*Prince Radu of Hohenzollern v Marco Houston & Anor [2009] EWHC 398 (QB)*; see <http://www.bailii.org/ew/cases/EWHC/QB/2009/398.html> for the judgment).

PCC Rule on Breach of Code for "Sloppy Journalism"

The Press Complaints Commission (PCC) have upheld a complaint about a Daily Star article, which breached Clause 1 of the Code (Accuracy). The complainant alleged that the article was written in such a way that only certain meanings could be attributed to the statements - these meanings were entirely false. The newspaper accepted that the front-page article was not supported by the text of the page 5 article and published an apology but while the complainants accepted the wording she was not happy with its prominence. The Commission agreed with the complainant that Clause 1 had been breached. While the newspaper may have intended the article to be tongue-in-cheek, the Commission considered that the deliberately suggestive headline was likely to mislead some readers, even if the text on the front page stopped short of making any direct claims about how she specifically earned money. It said this was "sloppy journalism", which had fallen well short of the high standards of the Code; "On that basis, it was clearly necessary for the newspaper to apologise to the complainant. Both parties had agreed on a wording that corrected the central factual inaccuracy and addressed the implication of the front page. The only question for the Commission related to prominence: was it necessary for the agreed text to appear on the front page". In this context, the Commission ruled that the apology had been proportionate in its placement and that sufficient remedial action had been offered. (*Peaches Geldof v Daily Star, Report* 78 - see <http://www.pcc.org.uk/cases/adjudicated.html?article=NTU5NA==&oxid=0ee3cbe2214862eecb9a2c25460a2fc4> for the adjudication).

Sport

Sport and Money - Concerns Raised about Relationship

The Secretary of State for Culture, Media and Sport has outlined his concerns about the impact of the growing commercialisation of sport at the recent Sport England Conference. The relationship between sport and sponsorship money was considered and the impact that it is having was questioned in the context of not only the current economic situation but also the longer-term development of sport across all groups in society, including those which have traditionally been under-represented (girls', women's and disabled sports). Maintaining competition at all levels was seen as crucial and the way to do that was through "good governance and regulation with vigour". See http://www.culture.gov.uk/reference_library/minister_speeches/5929.aspx for details.

Technology

Commission Questions YouTube Over Privacy Concerns

The European Commission has announced that it is investigating the privacy policy applied by YouTube to the channel dedicated to European Union activities, EU Tube. According to the Commission, the main issue with YouTube stems from the divergent policies of Google and the EU institutions regarding the use of Web cookies, pieces of data stored on the computers of users when they access a website or an Internet service. The EU's official website uses session cookies, which only remember users' choices for the period that they are connected to the website and are deleted as soon as a user leaves the site. The Commission has said that they will be "checking with Google what they do with the information they obtain from users accessing EU content through YouTube services". (*EurActiv.com, 10 March 2009*).

Consultations & Reports

Ofcom Report - Television Broadcast Licensing Update February 2009 - <http://www.ofcom.org.uk/tv/ifi/tvlicensing/tvupdates/monthly/200902> (details the television services licenses granted, transferred, or amended in February 2009)

Analysys Mason - Final Report for Ofcom - Delivering High-Quality Video Services Online - http://www.ofcom.org.uk/research/technology/research/emer_tech/hqvs/analysyshqvs.pdf (independent report to Ofcom on the impact that bandwidth congestion could have on the delivery of high-quality video services over the Internet and what regulatory measures, if any, may be required to alleviate the problem)