

This is our summary of some of the key legal developments across a range of sectors for the week of 16 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](#).

Speed Read

General

Initial Proposals for Digital Rights Agency - Implementing Digital Britain Interim Report on Online Content

ISPAI Question Legality of Threats of Action by Music Majors

Economic Impact of Legislative Reform to Reduce Audio-Visual Piracy - Study Published

Commission Memorandum on Corporate Social Responsibility

New Legislation - Address for Service in Contested Cases Before IPO

Dispute Over Terms of Oral Contract for Promotion of Fights

Government Withdraws Controversial Data Sharing Clause in Coroners and Justice Bill

Broadcasting

Research on VOD - Behaviour, Challenges and Future Directions

Commission Warns Estonia About TVWF Directive Breaches

Corporate

Draft Share Capital and Acquisition by Company of its Own Shares Regulations Published for Comment

Private Members Bill - Committee for Protection of Shareholders

Employment

Exercise of Share Option Agreement Rights - Whether Former Employee Competing With Defendant Company

Gambling

House of Commons Debates Online Gambling

Gambling Commission - Research Commissioned on Relationship Between Gambling and General Health Status

Publishing

Evidence Before Select Committee on Press Standards, Privacy and Libel

PCC Publish 2008 Annual Review

Breach of Code for Brief Interview of Child Without Permission - Breach Not Serious

Statement in Open Court - Completely False Allegations in Published Article

Injunction Maintained to Continue Confidentiality of Documents Already Published

Sport

ECA Calls for Analysis of Football Clubs Balance Sheets

European Sports Movement Invites Views on Future of Sport in Europe

Tax

HMRC Announce Review of Tax Treatment of Business Entertainment for Overseas Clients

Consultations & Reports

General

Initial Proposals for Digital Rights Agency - Implementing Digital Britain Interim Report on Online Content

The DBERR, together with the DCMS and the DIUS, is inviting views on role a "digital rights agency" should play in protecting and promoting the legal use of copyright content online, and how industry, consumer groups and government can work together to create an environment where investment in creativity is rewarded. A discussion paper has been published, which takes forward the Actions 11, 12 and 13 from the Digital Britain Interim Report and explores the role of a rights agency in protecting and promoting the legal use of content online. It also looks at the link between the outcome of discussions on a rights agency and how that might impact on proposed legislation on unlawful peer-to-peer file sharing. The paper outlines the role of the digital rights agency, which, according to the Government must be seen as part of a package with the legislative proposals (although the paper makes it very clear that what is being proposed is not another Government regulatory body but rather an industry-led undertaking in which the Government acts as a "facilitator"). The proposals are "deliberately narrowly drawn" and in the first instance, place what are described as "two simple obligations" on ISPs - an ISP will be obliged to notify an account holder, upon receipt of appropriate evidence (standards to be set by an agreed industry code) from a rights holder of copyright infringement on that account, of the existence of such evidence and then send a notification to the account holder setting out the details of the alleged infringement; the second obligation requires an ISP to maintain data relating to the notifications sent to their customers on behalf of each rights holder or their designated agent (although the paper does emphasise that there is no intention to require ISPs to monitor the activity of their customers but rather, have them collate information on the number of times they have been requested to send notifications to each customer by each rights holder or their representative). The ideas paper does not represent the formal consultation on the legislative proposals contained under Action 13 of the Interim Report (ie, ISP notification about infringement). Comments about this paper will help inform a separate consultation, which is to be issued shortly. See <http://www.ipa.gov.uk/digitalbritain.pdf> for details.

ISPAI Question Legality of Threats of Action by Music Majors

The Internet Service Providers Association in Ireland (ISPAI) has published a Position Statement in which they question the legality of the threat of legal action by music majors EMI, Sony, UMG and WMG. ISPAI said there was "no evidence" of wrong-doing by Internet Service Providers and that the actions could "impact on user privacy, damage the development of new internet services, and hurt Ireland's standing as an e-Commerce hub". See <http://www.ispai.ie/docs/20090313copyright.pdf> for the Statement. The threat of legal action was made following the action against Eircom (as a result of which Eircom agreed to start warning customers who download music illegally, and disconnect them after three search notices - the so "graduated response" (and see the Need to Know of 26 January 2009 for details)). After Eircom's response the music majors wrote to ISPs, warning of legal action if they did not take similar action - the Position Statement is the response of ISPAI's members.

Economic Impact of Legislative Reform to Reduce Audio-Visual Piracy - Study Published

Oxford Economics have just published their study (commissioned by Respect for Film), on the economic impact of legislative reform to reduce audio-visual piracy. Their study looked in detail at the financial benefits to the audio-visual industry of suggested steps to combat IP theft (particularly copyright theft) in the UK. The report cites figures from an ISPOS survey, released in 2009, which indicated an annual revenue loss of £531 million as a result of copyright theft. The study estimates that implementing the Gowers Review proposed reforms would provide direct gross revenue benefits to the audio-visual sector of £268 million - the study's analysis shows "the proposed measures would generate £310 million in value added (GDP), some 7,900 jobs and £155 million to government in tax revenues across the UK economy in total". See http://www.oxfordeconomics.com/OE_FA_UK.asp for access to the Final Report.

Commission Memorandum on Corporate Social Responsibility

The concept of Corporate Social Responsibility (CSR) is now at the heart of most business' operational arrangements but what does it actually mean? The concept was defined in the European Commission's 2006 policy Communication on CSR

(Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on CSR) as "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis". The Commission has now said that it has "noticed a steady increase in CSR activity over recent years, not least through the number of CSR reports that many companies regularly publish". It has said that the "EU's main role is to raise awareness of CSR, facilitate exchange of best practice across Europe, and organise discussion of topical CSR issues leading to further debate and action". It has also published a Memorandum on CSR (see <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/109&format=HTML&aged=0&language=EN&guiLanguage=fr>), which emphasises the continued importance CSR has at both policy and commercial levels, to the Commission.

New Legislation - Address for Service in Contested Cases Before IPO

The Patents, Trade Marks and Designs (Address for Service) Rules 2009, SI 2009/546 come into force on 6 April 2009. The Rules allow parties appearing in contested cases before the Patent Office (ie, the Intellectual Property Office (IPO)), to use an address for the service of documents anywhere in the European Economic Area (EEA) or the Channel Islands. UK law currently requires parties appearing in such cases to provide a UK address. See http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090546_en.pdf for details.

Dispute Over Terms of Oral Contract for Promotion of Fights

The claimant was a "renowned boxing promoter"; the defendant, "an unbeaten professional boxer". The parties had worked together for some time however, at issue between the parties was what the terms were of a binding oral agreement for future fights in respect of their respective shares of the profits. The claimant did not dispute that a substantial sum of money was owed to the defendant in respect of a particular bout although it did dispute that the sum owed was as large as claimed. It justified its non-payment on the basis that it was entitled to set-off against the sum the damages to which it claimed to be entitled for breach of contract. The court noted that in the circumstances, the evidence of each of the key witnesses had to be treated with caution. When judging their evidence on important matters, support had to be found from documentary evidence, where it existed. The evidence, taken as a whole and looked at objectively and dispassionately, led to the conclusion that the claimant had failed to establish that the oral agreement that it alleged had existed - the court said the failure to reduce anything into writing represented a complete departure from the practice which the claimant had adopted in the previous ten years they had worked together. No explanation was given for such a departure from normal practice and it was "inconceivable that any sensible explanation could be offered". (*Sports Network Ltd v Calzaghe* [2009] EWHC 480 (QB) - see <http://www.bailii.org/ew/cases/EWHC/QB/2009/480.html> for the judgment).

Government Withdraws Controversial Data Sharing Clause in Coroners and Justice Bill

The Government has announced that it has withdrawn clause 152 of the Coroners and Justice Bill, which proposed the insertion of a number of provisions on information-sharing into the Data Protection Act 1998. The clause had been heavily criticised for the "unprecedented" level of information-sharing between Government departments that it would facilitate - in making the statement the Minister of State did say however that "Sharing information across Government Departments in a safe and proportionate way, with proper safeguards in place, is vital to the delivery of modern public services" and that "that has always been Government policy". See <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090317/debtext/90317-0002.htm> for the relevant debate.

Broadcasting

Research on VOD - Behaviour, Challenges and Future Directions

Advanced Television Ltd has provided figures from the market research company Coda Research Consultancy, which estimates that Internet users in the UK view at least £1.3 billion worth of online video content annually through illegal peer-to-peer (P2P) file sharing, costing video rights owners at least £100 million in lost revenue. The report said "Year on year increases in these illegal behaviours are irreversible, but can be slowed" - the meeting of consumer demand was vital, through the launch of aggregated catch up, archive and film services online and direct to TV. The report noted however that if these services did not launch (and Project Canvas was singled out for specific mention), then it predicted that illegal activity would jump to at least two-thirds of all VOD activity by 2015. The research was conducted in order to "define future behavioural patterns around VOD in the UK, based upon current and emerging behaviour in order to construct strategic projections, implications and recommendations for broadcasters, service providers, rights holders, product and brand designers, marketers, advertisers and any other organisation with an interest in the future of VOD in the UK". See <http://www.codarc.co.uk/vod2009/vodintro.pdf> for extracts from the Coda's research paper.

Commission Warns Estonia About TVWF Directive Breaches

The European Commission has sent a formal notice to Estonia that it is not complying with TVWF Directive rules about television advertising. According to the Commission, the major Estonian television channels are frequently breaking

Articles 17 and 18(2) in Directive that limit spot advertising and teleshopping to a maximum of 12 minutes per hour. The Commission said it does not agree with Estonia's interpretation that certain forms of advertising spots are sponsorship, which means that there is now a higher amount of advertising than is permitted. (*EC Press Release IP/09/424, 19 March 2009; the Commission is responsible for monitoring the application of EU law in all 27 Member States and as part of this it regularly examines how they are complying with the advertising rules of the Directive. Usually an independent expert records the main TV channels over a period of two months and analyses all forms of advertising second by second. In cases where the report finds a high number or serious infringements, the Commission initiates infringement proceedings - proceedings are already on foot against Spain - see the Need to Know of 24 November 2008 for details*).

Corporate

Draft Share Capital and Acquisition by Company of its Own Shares Regulations Published for Comment

The DBERR have published the draft of The Companies (Share Capital and Acquisition by Company of its Own Shares) Regulations 2009 for comment. The draft regulations amend provisions in Part 17 (A Company's Share Capital) and Part 18 (Acquisition by a Limited Company of its Own Shares) of the Companies Act 2006. The draft regulations reduce the minimum pre-emption rights issue subscription period set out in section 562(5) of the Act from 21 days to 14 days (as recommended by the Rights Issue Review Group in November 2008). They also introduce a new requirement in section 646 of the Act so that when creditors object to a reduction in a company's capital they should demonstrate that their claim is at risk and that the company has not provided adequate safeguards and remove the 10% cap on companies holding shares in treasury and extend the period for which authorisation may be given for the purchase of shares from 18 months to five years. Comments are invited - see <http://www.berr.gov.uk/files/file50486.pdf> for details. The regulations, once finalised, will come into force on 1 October 2009.

Private Members Bill - Committee for Protection of Shareholders

A Private Members Bill for the protection of shareholders has been presented in the House of Commons, and has had its first reading. The Bill proposes amending the Companies Act 2006 by inserting provisions requiring public companies to appoint a shareholders committee, whose function will be to "encourage and enable regular, systematic and, where necessary, urgent communication and consultation on a confidential basis between the directors and the members of the company on matters of concern to them as members". See <http://www.publications.parliament.uk/pa/cm200809/cmbills/076/2009076.pdf> for details. (As previously mentioned, Private Members Bills tend not to be successful).

Employment

Exercise of Share Option Agreement Rights - Whether Former Employee Competing With Defendant Company

The claimant had been employed by the defendant company, which ran a price comparison website and had a share option agreement as part of his contract of employment. The claimant left the employ of the defendant and set up his own website, which specialised in buy-to-let property. The claimant also sought to exercise his rights under the share option agreement. The defendant did not allot shares to the claimant on the grounds that he was not entitled to exercise the option because he had breached his contract of employment and fiduciary duty by operating a competing site. The claimant sought damages for breach of contract. There were also issues of liability and quantum. The court ruled, on the facts, that the claimant had not been in direct competition with the defendant. It said competition broadly meant the striving for custom between two or more for the same object, for example, striving for custom between those who had the same commodity to dispose of. There had been little chance of anyone using a search engine obtaining links to both websites in the results to the same search. In the circumstances, there was no bar to the claimant's exercising his right under the share option agreement. (*Plumbly v Beatthatquote.com Ltd [2009] EWHC 321 (QB)* - see <http://www.bailii.org/ew/cases/EWHC/QB/2009/321.html> for the judgement).

Gambling

House of Commons Debates Online Gambling

The House of Commons has discussed concerns about online gambling in its recent debate (figures were quoted which indicated that there were about 7,000 such websites around the world, of which 6,000 were unregulated; the remaining 1,000 websites were regulated various jurisdictions - other figures quoted said there were 2,381 sites run by 493 companies licensed in 50 jurisdictions worldwide - the point about a lack of regulation was well made in any event). Various issues were raised including the lack of a level playing field in Europe, crime, fraud and addiction and the impact online gambling has on these problems, the current arrangements, by which the Government tests the robustness of the regulatory regime in white-listed jurisdictions and in particular, Antigua's ability to effectively regulate online gaming. (*Hansard, 18 March 2009, Column 233 WH - see <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090318/halltext/90318h0001.htm> - 0903189300001 for the debate*).

Gambling Commission - Research Commissioned on Relationship Between Gambling and General Health Status

The Gambling Commission has published the findings from the research it commissioned to look at the data from the British Gambling Prevalence Survey (BGPS) 2007 and report on the relationship between gambling and general health status, cigarette smoking and alcohol consumption. The findings showed that smokers were more likely than non-smokers to have gambled in both past week and past year; smokers were more than three times more likely than non-smokers to be a problem gambler; and alcohol consumption was significantly associated with having gambled in both past week and past year. Further, the prevalence rate of problem gambling among those with poor health were over three times as likely to be a problem gambler compared to those with good health. See http://www.gamblingcommission.gov.uk/UploadDocs/publications/Document/PS_secondary_analysis_Co-occurring_disorders_March_2009.pdf for the findings.

Publishing

Evidence Before Select Committee on Press Standards, Privacy and Libel

Further evidence has been given before the House of Commons Select Committee as part of its inquiry into press standards, privacy and libel. Both transcripts make for interesting reading given the personalities appearing before the Committee and their individual experiences with the media - both raised a common issue about the damage done by the publication of private material which once published, cannot be redressed - see <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmcomeds/uc275-ii/uc27502.htm> for the transcript of Max Mosley's evidence and <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmcomeds/uc275-iii/uc27502.htm> for Gerry McCann and his advisor's evidence.

PCC Publish 2008 Annual Review

The Press Complaints Commission (PCC) has published its review for 2008. It notes that 2008 saw a record number of complaints being made (some 4,698, although over half were not within the PCC's remit). The PCC issued 1,420 rulings (either by resolving the complaint, issuing a decision or publishing an adjudication). The vast majority of the complaints related to accuracy concerns (71.4%) with privacy complaints totalling 8.8%. The review also looks at some of the key issues which the PCC had to deal with over the year, such as the increasing tensions relating to privacy with the increasing prominence of the Internet and the ability of consumers to access material from unregulated sources, social networking and privacy, reporting suicides, and the prominence of apologies. It also included a number of relevant case studies. Also discussed was the ongoing Select Committee inquiry into press standards, privacy and libel (see above). Of interest was the comment about the increasing prominence of online publishing, resulting in what the Chairman described as "lapses that wouldn't be seen in print publications" - given the increasing convergence this was identified as an area which "needs to be addressed". See http://www.pcc.org.uk/assets/111/PCC_Ann_Rep_08.pdf for the report.

Breach of Code for Brief Interview of Child Without Permission - Breach Not Serious

The Press Complaints Commission (PCC) has upheld a complaint about a breach of Clause 6 (Children) of the Code. The complaint arose as a result of an interview which had been conducted by the Daily Post Wales without the parental consent of the 15-year old girl in question. The girl had been interviewed following an accident which involved a school friend - the paper had been seeking comment in the area where the accident had occurred and had terminated the interview upon noticing that the girl was wearing a school uniform and that there had been no parental consent granted. The PCC considered whether the exchange between the reporter and the complainant's daughter constituted an interview and whether it involved her welfare. The Commission felt that the exchange could therefore be classed as an (albeit brief) interview, and that the Code had therefore been engaged. The subject matter involved her welfare in that news of her friend's injuries had left her distressed. However, the interview had been brief and the breach of the Code was slight - with the benefit of hindsight, the reporter should have taken greater care not to engage the girl in a conversation about the accident but as nothing from the interview was published - so there was no public impact on the complainant's daughter - the Commission was satisfied that the breach of the Code was not serious. (*Mr Phil Adey v Daily Post (Wales)*, Report 78 - see <http://www.pcc.org.uk/cases/adjudicated.html?article=NTYwNA==?oxid=b6d4ad1d1f4ed0e19fa8cecc11f0aeae> for the adjudication).

Statement in Open Court - Completely False Allegations in Published Article

The claimant, a reality television personality, brought a libel action against the Express Newspapers, following the publication of an article which alleged she was involved in a vice scam and was stealing designer clothing. The defendant refused to withdraw the allegations after being contacted by the claimant and proceedings were issued. The defendant accepted that the allegations were completely untrue, apologised and paid damages and costs. The defendant also agreed to publish a report in The Daily Star and withdraw the article from the website. (*Charley Uchea v Express Newspapers, Unreported, QBD, 11 March 2009*).

Injunction Maintained to Continue Confidentiality of Documents Already Published

The Guardian has reported on the continuing injunction granted to Barclays, which prohibits the paper from publishing details about certain tax arrangements from documents, despite the fact that the documents in question had already been published elsewhere. The documents had been obtained by the Liberal Democrats and the paper had published details on their website. Despite the fact that the documents had been removed from the paper's website (in order to comply with an order obtained by Barclays that it use its best endeavours to prevent the publication of anything which identified the published documents) the information was available elsewhere (reference was made to "internet chatter and blogs" discussing the court proceedings and the fact that the documents were available from other sources). The court said it did not mean that all confidentiality had been lost - the "very limited or partial dissemination in remote or expert websites" (the documents had been copied from the original posting) was not enough to destroy all confidentiality. The court therefore refused to accept the paper's claim that the documents were now in the public domain and could no longer be suppressed. The paper was also required to refrain from inciting or encouraging further interest in the documents by disclosing any further information. (*The Guardian, 20 March 2009*).

Sport

ECA Calls for Analysis of Football Clubs Balance Sheets

The European Clubs Association (ECA) has spoken about the importance of football clubs ensuring their own financial stability - a member of the executive board of the ECA said it was the right time to "analyse the balance sheets of clubs and introduce some kind of criteria, like a balance-ratio between income and cost just to establish which kind of ratio is safe for clubs and what kind of limits of respect for that ratio can be set". He went on "However, this cannot be a solution for just one country or club, but must be the solution for all the football industry in Europe in order to maintain the same competitiveness level and have the same safe balance sheet ratio". On the question of salary caps for players the ECA was of the view that they could not easily be introduced but that the introduction of a ratio whereby the level of salary was compatible with the level of income might be appropriate. At the same time, the ECA has agreed the resolution of the Professional Football Strategy Council that no international transfers (or first registration of non-nationals) of players under 18 into Europe or within Europe should be permitted. (*EurActiv, 13 March 2009; ECA News, 10 March 2009*).

European Sports Movement Invites Views on Future of Sport in Europe

The European Sports Movement is currently inviting views from both experts and citizens on "Sport and Europe" as part of its work in providing recommendations on how the future EU competence in sport should be shaped and how the EU can promote sport. Once finalised, an analysis of the answers will be presented to the European Non-Governmental Sports Organisation (ENGSO) general assembly at the end of April. The analysis will frame discussions in a series of workshops, referred to as "citizen panels". See http://www.eusportfuture.eu/index.php?option=com_content&view=category&layout=blog&id=25&Itemid=27 for details, including access to the online questionnaire.

Tax

HMRC Announce Review of Tax Treatment of Business Entertainment for Overseas Clients

HM Revenue & Customs (HMRC) have announced that they are currently reviewing the input tax treatment of business entertainment provided to overseas clients in the light of a recent ECJ judgment in the joined case of Danfoss and AstraZeneca (Case-371/07 - see <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-371/07&datefs=&datefe=&nomusue! =&domaine=&mots=&resmax=100> for the judgment), which concerned a Danish law provision that excluded certain types of expenditure from the right to deduct VAT. HMRC have said that businesses may wish to consider the relevant time limits applying to potential claims and to submit claims, together with supporting evidence, in order to protect their position, pending their statement of their position and suggestions were made as to the types of supporting information which should be submitted any claim - see <http://www.hmrc.gov.uk/news/ent-claim-input-tax.htm> for details.

Consultations & Reports

Ofcom Consultation - Access and Inclusion - Digital Communications for All - http://www.ofcom.org.uk/consult/condocs/access/access_inc.pdf (detailed consultation on Ofcom's priorities for delivering communications services, including identifying those communications services where a lack of widespread availability and take-up raises concerns from an access and inclusion perspective and the geographic and related impediments to the take up and delivery of various services - Ofcom noted that almost three million households now have mobiles as their only phone, and many regard broadband as an essential service)

Ofcom Research Document - Citizens' Digital Participation - Research Report - http://www.ofcom.org.uk/advice/media_literacy/medlitpub/medlitpubrss/cdp/main.pdf (research looking at evidence about the level of engagement in citizen participation and types of activities undertaken among the general population and whether participation levels were different among those with Internet access - within the general population, the middle aged, those in higher socio-economic groups and with higher levels of education reported higher levels of participation, as did those with Internet access at home - some 42% had used the internet for a related citizen activity (eg completing a government form or process))