

This is our summary of some of the key legal developments across a range of sectors for the week of 4 May 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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Consultations & Reports

General

IPO Report on Penalties for Copyright Infringement

The IPO has published a report on the outcome of its consultation on the penalties for copyright infringement. The consultation was launched following the recommendation of the Gowers Review that the penalties for online and physical copyright infringement should match. The consultation put forward three options: making no change in the law (and continuing to rely on the Proceeds of Crime Act 2002 to tackle infringement); increasing the fines available in a magistrates' court from £5,000 to £50,000 for copyright offences; or increasing fines in a similar way for all IP-related offences. Many responses expressed some concern that the options put forward did not fully meet Gowers Recommendation 36 (matching custodial penalties for physical and online copyright offences), however the majority supported the approach set out in Option 3 - introducing exceptional statutory maxima of £50,000 for all IP offences. The Government has said it will now identify the suitable legislative options for taking this forward. See <http://www.ipso.gov.uk/response-gowers36.pdf> for details.

Home Office Consults on Communications Data Storage - Protecting the Public in a Changing Communications Environment

The Home Office has published its consultation on "Protecting the Public in a Changing Communications Environment" in which they look at the collection and use of "Communications Data". The Government said it was "imperative to strike a careful balance between the need for potentially intrusive investigative techniques and the right to privacy. Establishing an appropriate balance in this respect is also an important part of the Government's wider national security and counter terrorism strategies". The consultation document stated, "The regulatory framework set up by the Government ... is based upon the principles of necessity, proportionality, oversight and accountability. In particular, although large amounts of data are necessarily retained by the communications service providers both for their own business and national security reasons, access by public authorities to any of that data is tightly controlled". The Government said it needs to arrange for the collection and storage of communications data in connection with services accessed over UK communications networks, which is not already retained by the service providers for their business purposes. This would include third party data relating to Internet-based services and communications services provided from outside the UK. It also said it needs to ensure that UK companies collect and store additional types of communications data about their own services, which are not included under the EU Data Retention Directive. This includes data that communication service providers do not generate or process about their services. A range of approaches are considered - a "single store" (although the Government has already said there are no plans to introduce this), doing nothing or taking what it describes as the "middle way", which would involve legislation to ensure that all the data that public authorities might need, including the third party data, is collected and kept in the UK. Communications service providers based in the UK would therefore continue to collect and retain communications data relating to their own services but also collect and store the additional third party data crossing their networks. Views are invited on the proposed approach - see <http://www.homeoffice.gov.uk/documents/cons-2009-communications-data?view=Binary> for details.

Competition Commission and OFT Consult on Joint Merger Guidelines

The Competition Commission and the Office of Fair Trading (OFT) have issued draft joint guidelines on how they assess the competitive impact of mergers and have called for comments on the document from interested parties. The publication revises and expands guidance material currently contained in several publications issued separately by the two authorities after the introduction of the Enterprise Act 2002 - see http://www.competition-commission.org.uk/press_rel/2009/apr/pdf/21-09.pdf for details. This is the first time the OFT and the Commission have worked together to produce a single set of guidelines - see http://www.competition-commission.org.uk/about_us/our_organisation/workstreams/analysis/pdf/mergers_guidelines.pdf for the draft Guidelines.

Directive on Injunctions for Protection of Consumers' Interests

Directive 2009/22/EC on injunctions for the protection of consumers' interests has been published in OJEC. The Directive notes that "Current mechanisms available for ensuring compliance with those Directives, both at national and at Community level, do not always allow infringements harmful to the collective interests of consumers to be terminated in good time". These difficulties are believed to be likely to diminish consumer confidence in the internal market and may limit the scope for action by organisations representing the collective interests of consumers or independent public bodies responsible for protecting the collective interests of consumers, adversely affected by practices that infringe Community law. Accordingly, the Directive harmonises national laws on remedies designed to protect the collective interests of consumers. It also codifies and replaces Directive 98/27 on injunctions for the protection of consumers'

interests, which has been substantially amended several times. The Directive enters into force on 29 December 2009. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:110:0030:0036:EN:PDF> for details.

Telecoms Reform - Parliament Rejects Compromise on Internet Users

The European Parliament has rejected an earlier compromise with Member States over the protection of Internet users' rights and blocked a wide-ranging reform of EU telecoms rules. MEPs "overwhelmingly" supported the reinstatement of an amendment, which made it clear that Internet access cannot be restricted "without prior ruling by the judicial authorities ... save when public security is threatened". This is in obvious contrast to the current position being taken by the French Parliament, which is proposing a three-strike cancellation policy in the face of increasing opposition. The European Parliament does, however, agree with the Council on investments in new communications infrastructure, the reform of radio spectrum use, clear consumer rights and privacy protection. See http://www.europarl.europa.eu/pdfs/news/expert/infopress/20090505IPR55085/20090505IPR55085_en.pdf for the European Parliament's Press Release detailing the current position - the EU Telecoms Commissioner has called for serious consideration to be given to the proposals and has questioned whether agreement on the reform package is still possible. The Council of Telecoms Ministers is due to meet in June and will decide then whether or not to accept the reforms. See also <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/219&format=HTML&aged=0&language=EN&guiLanguage=en> for the Commission Press release, which usefully summarises the 12 main reforms proposed.

European Parliament Resolution to Amend E-Privacy Directive

The European Parliament has also adopted a legislative resolution in its second reading of the European Commission's proposal to amend the E-Privacy Directive. It proposes inserting a new Article 4(1a) into the Directive, which will set out more precisely a provider's obligation to "take appropriate technical and organisational measures to safeguard security of its services". It also dropped the proposition to insert a new Article 6(7) that would have allowed providers to process traffic data for their legitimate interest for the purpose of implementing technical measures to ensure network and information security. The proposals will now be sent to the Council for their second reading. However, commentators have suggested that, in the light of the rejection by the Parliament of one of the amendments agreed between the institutions in relation to the permissibility of graduated response schemes, the future of the entire package is now uncertain.

Corporate

Guidelines Monitoring Group Report on Compliance with Walker Guidelines

The Guidelines Monitoring Group (GMG) has published its update report on compliance with the Walker Guidelines on disclosure and transparency within the UK private equity industry, together with its recommendation for changes to the Guidelines. It notes that, "There continues to be a high level of commitment to the guidelines from the industry and this is demonstrated by the almost complete conformity in respect of the disclosure requirements that were reviewed in the preparation of this update report". It recommended that the definition of "portfolio company" in the Guidelines be amended and that as a result of the change in the definition, it estimated that the number of portfolio companies required to conform with the Guidelines will be increased from 27 to approximately 50. The Group is also considering whether the threshold of £500 million used in the current definition of a "portfolio company" should be lowered. See http://walker-gmq.co.uk/sites/10051/files/gmq_update_report_-_april_2009.pdf for details.

Authority of Director Executing Documents by Forged Signature - Whether Documents Binding on Company

The court was asked to determine whether the administrators of a property development company had been validly appointed in the light of the forgery of one director's signature on a debenture document by another director. The forgery had been done in order to secure a debenture in favour of the company's bank. The issues for determination were whether one director had authority to sign on the other's behalf; if the debenture was invalidly executed as a result of the forgery, could it be rendered valid by operation of section 44 of the Companies Act 2006 (which deals with the execution of documents); whether the forging director actually had authority to bind the company to the documents; and whether the forged was precluded by acquiescence estoppel from challenging the appointment of administrators. The forged director argued that section 44 did not validate documents that were a forgery, and that such documents were a legal nullity. However, the court held that the forgery did not render the document a legal nullity for the purposes of section 44. The forging director had acted with ostensible authority sufficient to debar the company from challenging the validity of the powers vested in the debenture - a principal could be bound by the fraudulent acts of an agent if the agent was acting with ostensible authority and in this case, the forging director signed the documents in his capacity as the company's director and in his capacity as company secretary. Over the years the forging director had dealt with all issues relating to the company's finances and all dealings with the bank. (*In the matter of Carson Country Homes Limited (2009)*, Unreported, Ch D, 1 May 2009 - the case summary is available via Lawtel).

New Legislation - Company and Business Names (Miscellaneous Provisions) Regulations

The Company and Business Names (Miscellaneous Provisions) Regulations 2009, SI 2009/1085 have been published. The Regulations come into force on 1 October 2009 and make arrangements for dealing with the restrictions on the choice of name under which a UK company may be registered or which may be adopted by an overseas company as its UK name. It also provides for exemptions from the requirement for a private company's name to conclude in "limited" and ensures that this and other indicators of legal status for various bodies are only used in the names of such bodies. The Regulations replace the requirements and prohibitions in sections 26, 30, 31, 33, 34 and 34A of the Companies Act 1985 (and the equivalent provisions in the Companies (Northern Ireland) Order 1986), which cease to have effect from 1 October 2009. See http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091085_en.pdf for details.

Gambling

US Lawful Internet Gambling Bill Published - Industry Split?

The delays that had previously been plaguing the much-anticipated House of Representatives Financial Services Committee Chairman Barney Frank's Bill to repeal the Unlawful Internet Gambling Enforcement Act are now over, giving weight to the suggestion that change is in the air. HR 2267, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act of 2009, proposes amending title 31 of the United States Code, by inserting a new Subchapter V on the regulation of lawful internet gambling. The Bill contains proposals for an "effective Federal licensing system" which "would ensure that licenses are issued only to Internet gambling operators which meet strict criteria to protect consumers". Despite the fact that the Chairman has stressed the safeguards in the Bill, to prevent underage and compulsive gambling and illegal activity, which were welcomed by both industry and interested parties such as the Safe and Secure Internet Gambling Initiative, the ideas in the Bill have been subject to significant criticism from both political opponents and various religious groups. Further, press reports indicate that the American Gambling Association, which represents the commercial casino entertainment industry and describes itself as having an "aggressive public education program designed to bring the industry's message to target audiences", has said that it is "neutral" on the issue of online gambling, due to the "divergent" views of its members. The Bill has been described as having "a long way to go". See http://www.house.gov/apps/list/press/financialsvcs_dem/21frank_008_xml.pdf for the text of the draft Bill.

France - Talks Begin on Online Regulation

France has one of the most active online gambling markets in the EU. Accordingly, significant interest is likely to be generated in the series of seminars that French MPs will be holding this month to consider issues relating to the proposed regulation of online gambling. A series of four seminars is planned - the first will look at how the French gaming model can be adapted to fit with online gambling, the Internet and community law; the second seminar will look at the different online gambling product offerings that will be made available to French players and how the current dominant players will be affected and what they can do; it will also look how at the various Member States competitive status might be affected. The various tax rates that are applicable to different types of gambling will also be considered. The third seminar will look at the potential of the French market and the impact that the online market might have on land based venues and how mobile gaming technology is likely to impact on players' behaviour. The final session, coming at the end of the month, will look at intellectual property issues and the potential problems in enforcing the regulations.

Turkish National Lottery Privatisation Stalls

The privatisation of the state-owned Turkish national lottery, Milli Piyango, has been cancelled after the final two bidders, OPAP and Turkcell, failed to match the US\$1.62 billion valuation set for the lottery by the tender commission. According to reports, both parties deferred from offering any new proposals, with OPAP stating that it would await the decision of the commission before proceeding any further.

Music

PRS for Music Announces New Online Music Licences

PRS for Music has announced the introduction of new Online Music Licences that will replace the existing Joint Online Licence. The licences are being released in two stages - the first stage covers the rates charged for music downloads and subscription services. The second stage covers streaming services and will be released shortly, following further consultation. The new licences will apply from July - see <http://www.prsformusic.com/playingbroadcastingonline/onlinemobile/MusicServices/onlinemusiclicences/Pages/onlinemusiclicences.aspx> for access to the terms and fees. (PRS for Music News, 1 May 2009).

Publishing

House of Commons Select Committee Hearing on Press Standards, Privacy and Libel

The House of Commons Select Committee on Culture, Media and Sport is currently hearing evidence on press standards, privacy and libel from a range of legal and press sources - the latest evidence is being given by press sources and makes for entertaining reading, given the strongly held and contrasting views and practical experience of some of the witnesses (such as the Daily Mail representatives - see <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmcomeds/uc275-vii/uc27502.htm> and a number of independent and freelance writers - see <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmcomeds/uc275-vi/uc27502.htm>).

Allegations of Malicious Falsehood and Data Protection Breaches Following Publication of Election Leaflet

The claimant was the Conservative candidate for a district council election seat, who was defeated by the first defendant, the Liberal Democrat candidate. The second defendant was the first defendant's election agent. The claimant sued the defendants in respect of an election leaflet, which was said to contain a number of untrue factual statements about him. The claim was said by the court to venture into "largely uncharted territory" as the claimant said that the defendants had published the allegations in the leaflet maliciously and argued that the leaflet had infringed the principles of accuracy and fairness which were required under the Data Protection Act, and that the contents of the leaflet was "personal data"; the information in the leaflet were "processed" by both defendants; and that the first defendant had fallen within the definition of "data controller". The court noted that it was "unhappily clear that no love is lost between them". It dismissed the claim and held that the first defendant had not been malicious. Further, the court was prepared to proceed on the assumptions that the offending material had been personal data and that both defendants had been data controllers. However, it would not accept (assuming the statute to apply to the leaflet) that there had been an infringement of either of the principles requiring accuracy and fairness. As to the former, there was no reason to apply different criteria or standards in that respect from those applied when addressing the tort of injurious falsehood. (*Quinton v Peirce & Anor* [2009] EWHC 912 (QB) - see <http://www.bailii.org/ew/cases/EWHC/QB/2009/912.html> for the judgment).

PCC Upholds Complaint About Reporting Suicide Details

The Press Complaints Commission (PCC) has upheld a complaint against the Reading Chronicle for publishing an inquest report that contained excessive detail about a method of suicide. The complainants made the complaint following the publication of an article that reported the suicide of their daughter, who had taken her own life by consuming poisonous leaves. The PCC said the point of clause 5(ii) in the Code was to minimise the risk of copycat suicides by requiring that care be taken not to publish excessive detail of the method used in suicide cases. This requirement extended to the reporting of inquests. On this occasion, the PCC considered that the level of detail was excessive - on the basis of the facts contained in the article the PCC said it was concerned that this information may have been sufficient to spell out to others how to carry out such a suicide. There was therefore a breach of the Code and the complaint was upheld. See <http://www.pcc.org.uk/cases/adjudicated.html?article=NTY4Mw==?oxid=d7cf2dc84a1e697d2b99e7584238f1cf> for the adjudication.

Technology

All Party Parliamentary Group on Communications Consult on Internet Issues

The independent All Party Parliamentary Group on Communications is launching an inquiry into Internet traffic to assess regulation of ISPs and a range of Internet traffic issues from behavioural advertising and privacy to child abuse images and Internet neutrality to determine what role Government should play when regulating Internet traffic. The Committee is inviting comment on five issues - the circumstances when ISPs should be forced to act to deal with some type of "bad traffic"; whether the Government should be intervening over behavioural advertising services (to encourage or discourage them); whether there is a need for new initiatives to deal with online privacy, and if so, what should be done; whether the current global approach to dealing with child sexual abuse images is working effectively and if not, what should be done; and who should be paying for the transmission of Internet traffic. (*The Group considers all communication issues as they affect society informing current Parliamentary debate through meetings, informal receptions and reports and is open to all Parliamentarians in both the House of Commons and House of Lords - views are invited by mid May - see <http://www.apcomms.org.uk/category/Activities/> for details*).

EC Directive on Legal Protection of Computer Programs

The European Commission has published Directive 2009/24 on the legal protection of computer programs (the Computer Programme Directive) in OJEC. The Directive requires Member States to protect computer programs, by copyright, as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works. The protection afforded by the Directive applies "the expression in any form of a computer program". Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under this Directive. The Directive also repeals Directive 91/250/EEC on the legal protection of computer programmes however the repeal of that Directive does not affect the time limits for transposition as references to the

repealed Directive are to be read as references to the new Directive. The Directive comes into force with effect from 25 May 2009. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:111:0016:0022:EN:PDF> for details.

Commissioner Calls for New Arrangements for Internet Governance by ICANN

The EU Commissioner for Information Society and Media has called for greater transparency and accountability in Internet Governance from the Internet Corporation for Assigned Names and Numbers (ICANN) after October 2009. ICANN is responsible for making key decisions relating to Internet Governance, such as top-level domains and managing the Internet's core directory. The current operating arrangements for ICANN expire at the end of September and the Commissioner has urged the US to apply a new governance model for the Internet, which would include a fully private and accountable ICANN, accompanied by an independent judicial body, as well as a "G12 for Internet Governance" - a multilateral forum for governments to discuss general Internet governance policy and security issues. (*EC Press Release IP/09/696, 4 May 2009*).

Commission Launches eYouGuide on Consumer Rights Online

The European Commission has launched the eYouGuide, a new online tool that is intended to provide consumers with practical advice about the "digital rights" they have under EU law. The Commissioner for Information Society and Media said "consumer rights online should not depend on where a company or website is based. National borders should no longer complicate European consumers' lives when they go online to buy a book or download a song. In spite of progress made, we need to ensure that there is a single market for consumers as well as businesses on the web". In June 2007, the Commission passed a resolution calling for support for the development of a "suitable framework for the development of e-commerce that would boost the current low level of consumer confidence, create a more attractive business environment, improve the quality of legislation, reinforce consumer rights and the position of small business operators on the market, and stop the fragmentation of the internal market in the digital environment". The new guide is intended to be a response to that resolution. (*EC Press Release IP/09/702, 5 May 2009* - see http://ec.europa.eu/information_society/eyouguide/index_en.htm for the Guide).

Consultations & Reports

Ofcom Research Document - Telecommunications Market Data Tables, Q4 2008 - http://www.ofcom.org.uk/research/cm/tables/q4_2008/q42008.pdf (details key trends in UK fixed, Internet and mobile telecommunications sectors in October - December 2008)