

*This is our summary of some of the key legal developments across a range of sectors for the week of 22 June 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

BIS Consultation on Legislation to Address Illicit P2P File Sharing

The Government has published its consultation on legislation to address illicit P2P file sharing. The consultation takes forward Recommendation 39 of the Gowers Review of Intellectual Property, which proposed legislation in the event that the industry protocols for sharing data to remove and disbar users engaged in piracy is not successful, the recent BIS consultation on possible regulatory options and Action 13 of the Digital Britain Interim Report, which suggested requiring ISPs to notify alleged infringers of rights (subject to reasonable levels of proof from rights-holders) that their conduct was unlawful. The proposals are intended to "provide a legislative baseline aimed at changing the behaviour of the majority of file-sharers, provide a mechanism for identifying any further action to be taken against repeat infringers if appropriate, and facilitate rights holder efforts in taking legal action against the most frequent infringers". The consultation states that the "implementation and effectiveness of the proposals in this paper would be facilitated by the establishment of some form of industry body representing both rights holders and intermediaries and others with a direct interest, which might correspond to the rights agency floated within the Interim Report". The Government said it hoped that an industry body (ie, the "rights agency" envisaged in the Digital Britain Interim Report) would come into being in order to draft codes under which the obligations would operate for Ofcom to approve. It did acknowledge that while there had been no consensus in the responses to its recent consultation on the establishment of a rights agency straw man and no consensus of support for any top down role for an industry body outside the code-drafting area, it saw a case for a "small industry body" to take on the code framing function. The consultation invites comments on the proposals that would require Ofcom to place specific obligations on ISPs within a framework that requires a code (with which ISPs will be legally required to comply) to establish the detail of how those obligations are to work. Ofcom would also have the power to go further and require ISPs, by statutory instrument, to take specified technical measures in relation to repeat infringers should they consider it necessary subject to consultation with industry representatives and other interested parties and review by both Houses of Parliament. See <http://www.berr.gov.uk/files/file51703.pdf> for details, which include a brief review of the current measures to deal with illicit P2P file sharing that are being taken in other jurisdictions. Responses to the proposals are requested by September 2009 - the Government has said it would respond by the end of the year however, the timetable for implementation of any legislative regime is still not fixed and as was discussed in last week's Need to Know, the continuing obligations of monitoring and setting a baseline for determining the success or otherwise of any proposed action will also mean the actual implementation timetable will itself be ongoing.

Commission Decision Harmonising Radio Spectrum for Short Range Devices

The European Commission has published in OJEC its Decision amending Decision 2006/771/EC on harmonisation of the radio spectrum for use by short-range devices. The 2006 Decision harmonises the technical conditions for use of spectrum for a wide variety of short-range devices, including applications such as alarms, local communications equipment, door openers and medical implants. The Decision acknowledges that as a result of rapid developments in technology and changing societal demands, new applications for short-range devices can emerge which require regular updates of spectrum harmonisation conditions. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:119:0032:0039:EN:PDF> for details.

#### **Commission Decision Harmonising Radio Spectrum for Equipment Using Ultra-Wideband Technology**

The Commission has also published in OJEC its Decision amending Decision 2007/131/EC on allowing the use of the radio spectrum for equipment using ultra-wideband technology in a harmonised manner in the Community. The 2007 Decision harmonises the technical conditions for radio equipment using ultra-wideband technology in the Community in order to eliminate barriers to the uptake of ultra-wideband technology and creating an effective single market for such systems with consequent economies of scale and benefits to the consumer. The 2007 Decision acknowledges that although ultra-wideband signals are typically of extremely low power, the possibility of harmful interference with existing radio communication services does exist and needs to be managed. This technology supports a range of communication applications, including measurement, location, medical and surveillance and imaging applications. The Commission again cites rapid technological changes as the reason for the amendment, in order to continue to provide benefits for consumers. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:105:0009:0013:EN:PDF> for details.

#### **EDPS' Second Report on Implementation of Data Protection Rules**

The European Data Protection Supervisor (EDPS) has issued his second general report measuring progress in the implementation of data protection rules and principles by Community institutions and bodies, as laid down in the Data Protection Regulation (Regulation (EC) No 45/2001). The report shows that while Community institutions have made good progress in meeting their data protection requirements, a lower level of compliance is observed in Community agencies, which will now be monitored closely by EDPS in an attempt to encourage further compliance. See [http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Inquiries/2009/09-06-22\\_Report\\_Spring\\_2009\\_EN.pdf](http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Inquiries/2009/09-06-22_Report_Spring_2009_EN.pdf) for the Report.

#### **Working Party Opinion on Social Networking Sites and Data Protection**

Still on the subject of data protection, the Article 29 Data Protection Working Party has adopted Opinion 5/2009 on online social networking, which focuses on how the operation of social networking sites (SNS) can comply with the requirements of EU data protection legislation. It says that it is "intended to provide guidance to SNS providers on the measures that need to be in place to ensure compliance with EU law". The Opinion notes that "Personal data published on social network sites can be used by third parties for a wide variety of purposes, including commercial purposes, and may pose major risks such as identity theft, financial loss, loss of business or employment opportunities and physical harm" and said it was "important that SNS operate in a way which respects the rights and freedoms of users who have a legitimate expectation that the personal data they disclose will be processed according to European and national data protection and privacy legislation". The Working Party made a number of recommendations, including requiring SNS providers provide adequate warnings to users about the privacy risks to themselves and to others when they upload information on the SNS, reminding SNS users that uploading information about other individuals may impinge upon their privacy and data protection rights and advising SNS users that if they wish to upload pictures or information about other individuals, this should be done with the individual's consent. See [http://ec.europa.eu/justice\\_home/fsj/privacy/docs/wpdocs/2009/wp163\\_en.pdf](http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2009/wp163_en.pdf) for the Opinion.

#### **PhonepayPlus Consults on Code Revision**

PhonepayPlus have published for comment a consultation revising the current edition of the Code of Practice. In announcing what they have described as a statement of intent as regards the current version of the Code, the Chairman outlined the main reasons for the change of direction in the current approach to regulation - the explosion of mobile phone-paid services which now account for nearly half of revenues and an "eye-watering 90% of complaints"; the publication of Ofcom's PRS Scope Review in May this year which highlighted the need for regulatory intervention as it set out the ways in which consumers may be harmed or inconvenienced; and the lessons which have been learned working with the industry under the current version of the Code. As a result of these developments, the consultation proposes four significant changes to the current regulatory regime - the new Code be based on identifying desirable outcomes, and supporting them with rules where appropriate, rather than prescribing a step-by-step guide to compliance; every business in the phone-paid services value chain will assume an appropriate degree of responsibility for the provision of compliant services and the delivery of consumer protection measures; subject to the outcome of Ofcom's Scope Review, and to facilitate due diligence and risk management, PhonepayPlus will examine the best way to build and maintain a database on which all SPs and IPs will be registered; and providers must have in place adequate customer care facilities to ensure consumers are able to register a complaint and seek redress as quickly as possible. See <http://www.phonepayplus.org.uk/upload/Code12-GreenPaper-FINALv2-June2009.pdf> for the discussion paper.

## IPO Crime Group Report on IP Crime for 2008 - 2009

The IPO Crime Group has published its 2008 - 2009 report on IP crime (counterfeiting and piracy). The Report notes that while it is difficult to quantify the actual figures for the level of IP crime since there is no standard recognised methodology for calculating loss, there are indications that those sectors which have invested in enforcement and awareness initiatives will begin to see reduced levels of counterfeiting and piracy. It says further that 2008 - 2009 has seen many positive steps forward from industry and enforcement bodies, which are part of a long-term strategy. The report also made the point that there have been "notable inconsistencies" in the sentences given by courts for IP offences. It said there was not universal recognition of the seriousness of IP offences and the harm that could result from them but that significant work has been done to raise awareness among the relevant officials. See <http://www.ipa.gov.uk/ipcreport08.pdf> for details.

## Article - Luxury Goods and Discount Outlets

The latest New Law Journal looks at a recent ruling by the European Court of Justice which decided that trade mark owners can enforce their contractual rights to prevent sales to discount outlets if such sales would damage the allure and prestigious image of goods which bestow an aura of luxury on goods sold under a particular mark. *Copad SA v Christian Dior Couture SA & Ors*, Case C-59/08 (see <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&numaff=C-59/08%20&nomusuel=&docnodecision=docnodecision&allcommjo=allcommjo&affint=affint&affclose=affclose&alldocrec=alldocrec&docor=doc> for the judgment), concerned a trade mark licence agreement between Christian Dior Couture SA and Société Industrielle Lingerie (SIL) for the manufacture and distribution of luxury corsetry goods bearing the CHRISTIAN DIOR mark. The agreement contained a selective distribution provision aimed at maintaining the repute and prestige of the CHRISTIAN DIOR mark, which prohibited SIL from selling to wholesalers, buyers' collectives, discount stores, mail order companies, door-to-door sales companies or companies selling within private houses without prior the agreement of Dior. The article states that luxury brand owners must persuade national courts that their marks have an "allure and prestigious image" which bestows an aura of luxury on those goods sufficient to enjoy this protection. However, it also notes that these terms were not defined and so the owners of the brands may still face difficulties enforcing their trade mark rights as it remains to be seen how broadly national courts will interpret the ECJ's judgment. (*"Living in Luxury" (2009) 159 NLJ 892 - this article is available via LexisNexis*).

## Broadcasting

### OFT Rule on Arqiva Acquisition of Digital One

The Office of Fair Trading (OFT) has ruled on the anticipated acquisition by Arqiva, a wholly owned indirect subsidiary of Macquarie UK Broadcast Ventures Limited, of Digital One Limited and other entities controlled by Global Radio Group and decided that the merger will not result in a substantial lessening of competition within the digital audio broadcasting multiplex businesses market or markets in the UK. As a result of this transaction Arqiva, Digital One and Now Digital will cease to be distinct. See [http://www.offt.gov.uk/shared\\_offt/mergers\\_ea02/2009/Arqiva.pdf](http://www.offt.gov.uk/shared_offt/mergers_ea02/2009/Arqiva.pdf) for details.

### Report on "Taste, Standards and the BBC"

The Report on "Taste, Standards and the BBC", which looked at public attitudes to morality, values and behaviour in UK broadcasting and which was commissioned by the BBC Executive in response to a request from the BBC Trust following the Sachsgate affair to look at the broader question of public attitudes to broadcasting standards in respect of four key areas - strong language; sexual content; generational expectations; and conditioning of expectations by platform, station and time slot, has been published. The Report found that while there was concern about taste and morality this was "often connected with broader concerns about falling standards in terms of quality and over-reliance on reality formats" and that standards or morality, values and behaviour were not a "top-mind issue" for the majority of the public; further, there was very little public consensus as to what constitutes offense. The majority of respondents valued creativity and accepted that in developing this there may be offence caused to some viewers. In this area however, the issue of context was of "paramount importance" as were "judgments of quality". The Report contained a series of recommendations, which will be implemented through further research and training, additional guidance in terms of audience information and warnings and the revision of editorial guidelines and guidance. See [http://www.bbc.co.uk/info/running/reports/pdf/taste\\_standards\\_june2009.pdf](http://www.bbc.co.uk/info/running/reports/pdf/taste_standards_june2009.pdf) for the Report and [http://www.bbc.co.uk/bbctrust/assets/files/pdf/review\\_report\\_research/taste\\_standards.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/review_report_research/taste_standards.pdf) for the BBC Trust's commentary on the Report, which makes the point that "the public shares the Trust's expectation that broadcasters should set standards as well as reflect them". The Trust said that both they and the public expect the BBC to have "higher standards than other broadcasters".

### Broadcast Bulletin - Latest Issue

The latest issue of Ofcom's Broadcast Bulletin has been published with details of adjudications on breaches of Rules 1.3 (children must be protected by appropriate scheduling), 2.3 (offensive material must be justified by the context), 2.4

(programmes must not condone dangerous or anti-social behaviour), 5.11 (due impartiality must be maintained on political and major policy matters), 9.5 (no promotional references to sponsor), 9.13 (sponsorship must be clearly separated from advertising), 10.3 (products and services must not be promoted in programmes) and 10.4 (no undue prominence in programmes to products or services) of the Broadcasting Code; a breach of Licence Condition 11 (retain recordings for 60 days after transmission) was also recorded following a complaint to the ASA about the volume of an advertisement on the Sci-Fi Channel. Ofcom also upheld parts of a complaint about unfair treatment in breach of Rule 7.1. See [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb136/Issue136.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb136/Issue136.pdf) for details.

## Corporate

### Government Response to Comments on Draft Companies Share Capital and Acquisition of Shares Regulations

BIS has published the Government's response and a summary of the comments it received on the draft Companies (Share Capital and Acquisition by Company of its Own Shares) Regulations 2009, which were published in March. The draft Regulations propose changes to Parts 17 and 18 of the Companies Act 2006 to reduce the rights issue subscription period in section 562(5) of the Companies Act 2006 from 21 days to 14 days; introduce a requirement in section 646 for creditors to show that their claim is at risk, and that the company has not taken adequate safeguards, when objecting to a reduction in a company's capital; and in relation to the acquisition of own shares, to take account of flexibilities in EC Directive 2006/68 including increasing from 18 months to five years the amount of time for which a public company may be authorised by special resolution to make off-market purchases of its own shares, vary a contract for an off-market purchase or release its rights under a contract for off-market purchases. According to BIS, most of the respondents (all seven of them) were supportive and the draft Regulations will now be introduced without further amendment. See <http://www.berr.gov.uk/files/file51932.pdf> for details.

### BIS Announce Company Rescue Consultation

In a Written Ministerial Statement, the Minister for Business, Innovation and Skills has announced a consultation on measures aimed at giving "struggling, but viable, companies a greater chance to succeed". The proposed measures include extending the option of a moratorium against creditor action to medium and large-sized companies which is currently only available to small companies, introducing a new court-sanctioned moratorium which will be available to all companies to allow them time to reach agreement on a company voluntary arrangement; and providing greater security to repayment of monies loaned post company voluntary arrangement or administration, to allow firms in difficulties more chance of accessing the funding they need to get secure their financial position. (*Hansard, Col 9WS, 16 June 2009; at the date of writing however the consultation document is still to be published*).

### Draft Legislation - Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order

The draft Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 has been published. The Order, which will come into force on 1 October 2009, brings into force almost all the remaining provisions of the Companies Act 2006 on that date and also makes a number of consequential amendments and savings (some 215 pieces of UK legislation (both primary and secondary) are affected). It also clarifies the position regarding the change of name of an existing company on or after 1 October 2009 and confirms that a company will not need to change its articles of association and also confirms that the repeal of sections 306 (limited company may have directors with unlimited liability) and 307 (special resolution making liability of directors unlimited) of the Companies Act 1985 (and equivalent Northern Ireland legislation) does not absolve liabilities arising under those provisions before 1 October 2009. See [http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi\\_9780111481035\\_en.pdf](http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111481035_en.pdf) for the draft. PLC have prepared a practice note on the issue regarding change of name, which had for a time been unclear.

## Film & TV

### New Editorial Guidelines to Follow BBC "Taste Report"

Following the publication of the report, "Taste, Standards and the BBC" (see above for details), the BBC has announced that it is to implement new production guidelines for both in-house and independent production to guard against "malicious intrusion, intimidation and humiliation" and make sure that they are "never celebrated for the purposes of entertainment". The Report said "The BBC's Editorial Policy department should use the new research to inform the ongoing revision of the BBC's Editorial Guidelines which is expected to be completed by the end of this year" and the BBC Trust said that it expects to undertake its own research which will also feed into the assessment of the draft Editorial Guidelines prior to their approval and publication in early summer 2010. (*BBC Press Release, 24 June 2009 - see [http://www.bbc.co.uk/pressoffice/pressreleases/stories/2009/06\\_june/24/standards.shtml](http://www.bbc.co.uk/pressoffice/pressreleases/stories/2009/06_june/24/standards.shtml) for details*).

### BBFC Revise Classification Guidelines

Last week's Need to Know referred to the changes which were being introduced to the current system of classifying video games so as to standardise the classification process using the PEGI ratings. The British Board of Film Classification

(BBFC) has announced that it has revised (they said tweaked) its guidelines for films, DVDs and video games, introducing what will be a more stringent system of classification. The BBFC said "Works which were clearly 'U', or '15', or 'PG' or '12A' under the old Guidelines would still be in the same category under the new Guidelines, but works which fell on the borderline between two categories previously could now find themselves being pushed into a different category". The guidelines also include a clearer definition of "harm", which results from the High Court ruling on the video game "Manhunt 2", and have introduced "discrimination" as a key classification issue in each of the categories covering race, gender, religion, disability or sexuality. They also contain "clearer and more detailed information about how the tone and impact of a film is taken into account, as opposed to simply considering what is actually shown on screen". See [http://www.bbfc.co.uk/downloads/pub/Guidelines/BBFC\\_Classification\\_Guidelines\\_2009.pdf](http://www.bbfc.co.uk/downloads/pub/Guidelines/BBFC_Classification_Guidelines_2009.pdf) for the revised Guidelines.

## Gambling

### Sports Betting Integrity Panel Established to Address Threats to Integrity of UK Sport

The Department for Culture, Media and Sport have announced the establishment of the Sports Betting Integrity Panel to "address issues threatening the integrity of sport". The Panel will examine the scale of the current risk to sports' integrity through betting corruption, including how suspicious betting patterns are identified and assessed, in markets within and outside the UK. The Government said it was concerned that although considerable progress has been made in recent years by sports governing bodies, the betting industry and the Gambling Commission, there remained an ever-present threat to the integrity of sport, which required a multi-agency solution. The Panel, which is widely representative of various interested parties such as the betting industry, sports governing bodies, players, the Gambling Commission and the police, will make recommendations on how the various bodies concerned can work together more effectively. (DCMS Media Release 093/09, 24 June 2009 - see [http://www.culture.gov.uk/reference\\_library/media\\_releases/6238.aspx](http://www.culture.gov.uk/reference_library/media_releases/6238.aspx) for details; Written Ministerial Statement, 23 June 2009).

## Litigation

### Service by Fax - Whether Validly Effected

The claimants applied to the court for a declaration that they had validly effected service on the seventh and eighth defendants by sending a fax to their respective solicitors and said that that constituted valid service, pursuant to Rule 6.3(1)(d) of the CPR; the seventh and eighth defendants denied that the service was effective and applied for declarations that the claim form had not been validly and effectively served upon them. The claimants applied for permission to serve the claim form, under Rule 6.15, by sending it by fax to the defendants' solicitors. The defendants said that the claimants' interpretation of the CPR distorted the regime for service of the claim form, and that a claim form could not be served on a solicitor unless Rule 6.7 required that it be served; and that Rule 6.3, and the new Practice Direction 6A supporting it, were concerned with the method of service. The claimants submitted that the service of the claim form by fax should stand as good service. The court allowed the defendants' application that there had not been valid service and dismissed the claimants - it said there was no reason that the fact that a defendant's solicitor had a fax number on his writing paper should mean that the solicitor could be validly served. The claimants' argument that the claim was validly served amounted to a contention that the amendments to CPR Part 6 and the new Practice Direction introduced a radical change allowing service of the solicitor by fax when the claimant had been given no reason to think that the defendant had authorised this. The court did not accept this. Accordingly, the claim form had not been validly or effectively served upon either the seventh or eighth defendant or within the four-month time limit, and therefore it had not been served upon them at all. (*Brown & Ors v Innovatorone plc & Ors* [2009] EWHC 1376 (Comm) - see <http://www.bailii.org/ew/cases/EWHC/Comm/2009/1376.html> for the judgment).

### Libel Action - Second Application for Summary Judgment and Application to Introduce Malice

The defendant bank made a renewed application for summary judgment against the claimant, a former employee, on the whole of his libel claim and a fresh application for summary judgment on, or to strike out, a re-amendment to his reply by which the claimant introduced a new case on malice in respect of another bank employee who had also been involved with a press release, which was the subject of the libel claim. The court had previously made certain orders in favour of the defendant bank, but dismissed its application for summary judgment against the claimant on the whole of the claimant's claim (and see the Need to Know of 9 June 2008 for details). The court found that the plea of malice against the bank based on the allegations directed to the other employee had no real prospect of success, and summary judgment must be given against the claimant on that issue - it said it was not clear that the claimant's case was fanciful or that it was contradicted by all of the contemporaneous documents. Whilst the defence did not lack a real prospect of success, the allegations against the two senior managers responsible for the press release were fit for trial. The bank's application for summary judgment on the whole of the claimant's claim failed accordingly; however, the defendant's second application for summary judgment against the claimant on the whole claim was dismissed and defendant's application for summary judgment on the plea of malice relating to the other employee succeeded. (*Bray v Deutsche Bank AG* [2009] EWHC 1356 (QB) - see <http://www.bailii.org/ew/cases/EWHC/QB/2009/1356.html> for the judgment).

## Music

## Latest Study on Illegal Downloading - Same Questions, Different Answers?

The thing about studies, reports and statistics is that they are all open to interpretation and can often be directly contradictory so that without a detailed understanding of the study and how it was constructed it can be difficult for an interested observer to reconcile differing results from similar demographic groups. The illegal downloading market is a case in point - a recent study by Futurescope Consulting ("Living With Digital: Consumer Insights into Entertainment Consumption" - see [http://www.futurescope-consulting.com/press/2009-06\\_ConsumerDownloadsResearch\\_release.pdf](http://www.futurescope-consulting.com/press/2009-06_ConsumerDownloadsResearch_release.pdf) for details) has reported that less than 8% of consumers in the UK, France, Germany and the US admitted to downloading *video* illegally however, contrast this with the 2008 study by IFPI which showed that 95% of all *music* downloads were illegal (with some 40 billion music tracks being illegally file-shared in 2008).

## Commission Decision on Design Standards for Personal Music Players

The European Commission has published its Decision on the safety requirements that must be applied to personal music players pursuant to Directive 2001/95/EC of the European Parliament and of the Council. The Decision acknowledges that the current standards prescribe no maximum sound limit nor require any specific labelling in respect of noise emissions but merely require that a statement be put in the instruction manual to warn of the adverse effects of exposure to excessive sound levels. The Decision states that there shall be a requirement in Directive 2001/95/EC on general product safety that personal music players shall be designed and manufactured in a manner that ensures that, under reasonably foreseeable conditions of use, they are inherently safe and do not cause hearing damage. For the purpose of this Decision, a "personal music player" is defined as a portable device, that is not covered by Directive 1999/5/EC or Directive 2006/95/EC, with headphones or earphones, used to listen to recorded, generated or broadcasted sound. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:161:0038:0039:EN:PDF> for details.

## Publishing

### US Acts on UK Libel Tourism with Bill Prohibiting Recognition of Certain Foreign Defamation Judgments

The US House of Representatives has passed draft Bill HR 6146, which proposes amending title 28 of the United States Federal Judicial Code to prohibit the recognition and enforcement of foreign defamation judgments. The Bill is intended to protect US bloggers and writers from what is described as "libel tourism" by prohibiting US federal courts from enforcing a foreign defamation judgment if the provisions for the freedom of speech in the respective jurisdiction are deemed to be "inconsistent with the first amendment to the Constitution of the United States". The onus will be on the plaintiff to show that a foreign judgment is consistent with the first amendment. The Bill also applies to computer service providers. According to the Bill's sponsor, "This will ensure that libel tourists cannot chill speech by suing a third party interactive computer service". The Bill was first introduced in September last year and now moves to Congress for its consideration. Some critics have made the point however that the Bill does not go far enough and the example was given that it does not authorise writers and publishers to counter-sue for damages.

### Journalist's Right Not to Disclose Sources to Police - Right to Life and Protection of Journalist's Integrity

The Northern Ireland Chief Constable has failed in his attempt to force a journalist to disclose the identity of her sources following her interview with two Real-IRA suspects who were thought to be involved in the murder of two British soldiers at an army base. The police requested the information be disclosed and when the journalist refused applied for a court order to compel her to provide them with her notes and telephone records. The journalist refused, claiming her life would be in danger if she did so. The court acknowledged that although there was a great public interest in those responsible for the murder being apprehended that did not outweigh the journalist's right to life. The court accepted that there was "objective evidence" that the journalist would be considered a legitimate target if the information were disclosed, even if the disclosure was the result of a court order but also noted that journalism as a whole would be undermined if the court ordered her to reveal the information. The National Union of Journalists described the ruling as "a landmark victory for journalism and civil liberties" against the background of the Police Service of Northern Ireland's attempt to use anti-terrorism legislation to force disclosure of the information. Press Gazette described the decision as setting an important precedent (but unfortunately, despite its importance, a copy of the decision is not yet available).

### Agreed Statement in Open Court - Libel Following Reference in Article to Celebrity Couple

The claimants, a "celebrity couple", commenced proceedings against their former nanny following the publication of an article in the News of the World which resulted from her having given an interview in which private and confidential information was disclosed about the family. A separate article then appeared in The People, which alleged that the couple had made threatening phone calls to the nanny following the publication of the article in the News of the World (The People article was litigated and settled separately). Proceedings were commenced however the parties subsequently agreed the statement in which the nanny unconditionally apologised and accepted permanent undertakings of confidentiality in respect of the couple and also agreed to withdraw her Employment Tribunal claim for constructive dismissal. (*Beckham & Anor v Gibson, Unreported, QBD, 16 June 2009*).

## Agreed Statement in Open Court - Allegations About Behaviour Towards Model

The claimant, a celebrity footballer, commenced defamation proceedings against the defendant, the publisher of The Daily Star, following the publication of an article in which a model claimed that she had been "chatted up" by the claimant, who had made a "play" for her and invited her to a private party. The defendant accepted that the claimant had not behaved in the manner described in the article, apologised and retracted the allegations. It also agreed to pay substantial damages to the claimant. (*Beckham v Express Group Newspapers Limited, Unreported, QBD, 23 June 2009*).

## High Court Refuses Application for Press Ban in High Profile Divorce Proceedings

The High Court has for the first time since the rules regarding access to the Family Courts were changed, ruled against a joint application by both parties in high-profile divorce proceedings that there should be a blanket ban on the press being in court in order to protect the couple's human rights. The judge said that he had to weigh up their right to privacy and a fair trial under the European Convention on Human Rights against the freedom-of-expression rights of the media but that the law had to be taken as it was found (this comment related to the fact that the access arrangements had changed during the course of the divorce proceedings). (*Earl Spencer and ex-wife in secret talks after failing to ban media* *The Times, 25 June 2009*).

## NLA Announces New Licences for Newspapers' Web Content

The Newspaper Licensing Agency (NLA), which charges news monitoring and PR companies to reproduce printed articles from 1,400 member newspapers, has announced that it will be extending its licenses to cover national and regional newspapers' web content with effect from September 2009, although the charges will only apply from January 2010. From September 2009, web aggregators that charge clients for their services will require a NLA licence and will be charged from January 2010. (*NLA News Release, June 2009*).

## Sport

### UEFA and Danske Spil Co-operate with European Lotteries Monitoring System for Football

The Union of European Football Associations (UEFA) has announced the establishment of a new organisation, the European Lotteries Monitoring System (ELMS), which will be headed by Denmark's state gaming group Danske Spil, in an effort to prevent football matches from being "manipulated by criminals". The organisation will work with UEFA and will officially begin operations in August. It will collect and analyse information about unusual betting patterns in the Champions League, European Cup, and both senior and junior European Championship qualifiers from lottery organisers across Europe and if turnover is above what would be expected then a report will be made to UEFA and the match will be investigated.

### New Legislation - Safety of Sports Grounds (Designation) (No 3) Order

The Safety of Sports Grounds (Designation) (No 3) Order 2009, SI 2009/1501 comes into force on 10 July 2009. The Order designates the Pirelli Stadium, occupied by the Albion Football Club (Burton-on-Trent) Limited, as a sports ground requiring a safety certificate under the Safety of Sports Grounds Act 1975. Under the Act, the Secretary of State may designate as a sports ground requiring a safety certificate any sports ground which has accommodation for more than 10,000 spectators. The Safety of Sports Grounds (Accommodation of Spectators) Order 1996 reduced the number of spectators to 5,000 in respect of sports grounds in England and Wales at which association football matches are played and which are occupied by a club which is a member of the FA Premier League or the Football League, which is the case here. See [http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20091501\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091501_en.pdf) for details.

## Consultations & Reports

Ofcom Consultation - Pay TV Phase Three Document - Proposed Remedies - [http://www.ofcom.org.uk/consult/condocs/third\\_paytv/paytv\\_condoc.pdf](http://www.ofcom.org.uk/consult/condocs/third_paytv/paytv_condoc.pdf) (Ofcom's consultation sets out details of a proposed "wholesale must-offer" obligation, which is designed to address concerns about the restricted distribution of premium sports and movies channels operated by Sky - Ofcom has identified three potential areas of concern which arise in the context of Sky's market power: as a vertically integrated firm, with market power in a key upstream market, Sky may distribute its premium content in a manner that favours its own platform and its own retail business; Sky may exploit content rights selectively in order to favour its own retail business and platform; and Sky may set high wholesale prices for its content in order to maximise wholesale profits, which can be reflected in high retail prices. In response Sky said "We disagree fundamentally with Ofcom's approach, analysis and conclusions. In light of Ofcom's determination to pursue its preferred outcome, we will use all available legal avenues to challenge this unwarranted intervention")

Ofcom Consultation - Notification under Section 107(6) of the Communications Act 2003 - Proposal to Modify a Direction Applying the Electronic Communications Code to Airwave Solutions Limited -

<http://www.ofcom.org.uk/consult/condocs/airwave09/main.pdf> (Ofcom propose modifying the terms on which the Electronic Communications Code is applied in Airwave Solutions Limited's case under the Deemed Direction by way of a further direction under section 106 of the Communications Act 2003)

Ofcom Consultation - Digital Dividend: Band Manager Award - Second Consultation on Detailed Award Design - <http://www.ofcom.org.uk/consult/condocs/bandmanager09/bandmanager09.pdf> (Ofcom is consulting on further proposals for the management of the spectrum needs of programme makers and special events (PMSE) organisers in the award of interleaved spectrum which will become available following the digital switchover - the PMSE sector, which is described as a diverse community spanning theatres, broadcasters, major event organisers, community users and others, used the spectrum in a variety of ways such as wireless microphones in West End theatres or for wireless cameras at major news events)