

*This is our summary of some of the key legal developments across a range of sectors for the week of 20 July 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

### Data Capture Process - ECJ Rule on Interpretation of Reproduction in Copyright Directive

The ECJ has ruled on the interpretation of interpretation of Article 2(a) of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society and the conditions for exemption of temporary acts of reproduction within the meaning of Article 5 of the Directive. The reference was made in the context of proceedings between Infopaq International A/S (a media monitoring and analysis business, which selects and draws up summaries of selected articles from Danish daily newspapers and other periodicals - the selection was made by means of a "data capture process" and the summaries are then sent to customers by email) and Danske Dagblades Forening (a professional association of Danish daily newspaper publishers, which assists its members with copyright issues). The proceedings concerned the dismissal of Infopaq's application for a declaration that it was not required to obtain the consent of the rightholders for acts of reproduction of newspaper articles using the automated process of scanning and converting the articles into digital files followed by electronic processing of the files. The ECJ said an act occurring during a data capture process, which consisted of storing an extract of a protected work (comprising 11 words) and printing out that extract, came within the concept of reproduction in part within the meaning of the Article 2 of the Copyright Directive if the elements thus reproduced were the expression of the intellectual creation of their author. The act of printing out such an extract did not fulfil the condition of being transient in nature as required by Article 5(1) of the Copyright Directive and, therefore, that process could not be carried out without the consent of the relevant rightholders. The ECJ said it was now for the national court (in this case, the Højesteret) to determine whether the elements had been so reproduced. (*Infopaq International A/S v Danske Dagblades Forening, Case C-5/08* - see <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&newform=newform&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&docj=docj&docnoj=docnoj&typeord=ALL&affclose=affclose&numaff=c-5%2F08&ddatefs=&mdatefs=&ydatefs=&ddatefe=&mdatefe=&ydatefe=> for the judgment).

### EESC Adopts Opinion on Proposals for New Consumer Rights Directive

Last week's Need to Know discussed various concerns which had been raised about the proposals for a new Consumer Rights Directive. This week it is the turn of the European Economic and Social Committee (EESC) to raise their concerns. The EESC said full harmonisation of consumer protection rules should be limited to areas most affected by cross-border trade, namely distance and off-premises sales, and not extended to unfair terms and sales guarantees. The EESC said while it supports the harmonisation of rules related to off-premises and distance sales, it opposed changes to the rules on unfair terms and on the sale of consumer goods. The EESC said it believed harmonisation in these areas was premature and said it "might create problems in national legal systems and thus lower consumer protection in general". The EESC said it supported upholding the current system and encouraging Member States to keep a register of terms deemed to be unfair as an adequate step towards protecting consumers and traders. It also said it was disappointed the proposal failed to bring progress with regard to a number of important aspects such as after-sales assistance and spare parts, or the direct liability of the producer and distribution networks. (*EESC Press Release 100/2009, 17 July 2009* - see <http://www.eesc.europa.eu/activities/press/cp/docs/2009/communiqué-presse-eesc-100-2009-en.doc> for details; nb, the opinion adopted by the EESC is not available at the time of writing).

### IPO Consult on Increases to Fees and Charges Regime

The Intellectual Property Office (IPO) is consulting on proposed changes to the current fees and charges for patent applications, renewals and litigation and recording transactions of IP rights. The IPO has said it is considering "modest"

increases (although the end result is still a 100% increase in some charges - an increase in the search fee from £100 to £200, an increase in the examination fee from £70 to £150, and an increase in the search of an international application (UK) fee from £80 to £160) and that even with the proposed increases, the search and examination fees would still be amongst the lowest in the world, and would still only form a small proportion, for most applicants, of the total cost of acquiring patent protection. The IPO said it wishes to retain relatively low fees for searches and examinations and will continue to use renewal fees to subsidise the work they undertake in this area. See <http://www.ipo.gov.uk/consult-fees.pdf> for details - nb, the IPO did say that there have been no significant fee increases since 1992.

#### OFT and STAR Agree Model Terms for Consumers Buying Tickets

The Office of Fair Trading (OFT) and the Society of Ticket Agents and Retailers (STAR), which represents businesses selling or re-selling tickets to the general public or agents, whether through websites, box offices at entertainment venues or ticket booths, have concluded negotiations on agreeing and implementing Model Terms and Conditions. STAR members, which include Encore Tickets, TKTS, lovetheatre.com, lastminute.com, Ticketmaster, The Ticket Factory, TicketSOUP.com, Live Nation and Cameron Mackintosh Limited, will implement the new terms and conditions over the next 12 months. The terms state that "All Tickets are sold subject to availability and to these Terms and Conditions" and deal with issues such as price and payment, delivery, changes to the event, refunds and exchanges (tickets cannot be exchanged or refunded after purchase unless the performance is cancelled or rescheduled or where there is a material change to the programme of Event), cancelled or rescheduled events, the resale of tickets, restrictions on the purchase of tickets, conditions of admission and restrictions and prohibitions at events, amongst other things. The terms also make provision for the resolution of any disputes regarding the terms. (OFT Press Release 87/09, 22 July 2009; STAR News Release, 22 July 2009 - see <http://www.star.org.uk/media/4775/tc.pdf> for the agreed Model Terms and Conditions, which are also an extension of STAR's Code of Practice - see also the latest Entertainment Law Review, which has an article about the Government's proposals for a voluntary code of principles for primary ticket sales and events of outstanding national significance - "Ticketing and ticket touting - the new Government code of principles" (2009) Ent LR 20(6), 229 - the article is available via Westlaw).

### Broadcasting

#### Broadcast Bulletin - Latest Issue

The latest issue of Ofcom's Broadcast Bulletin has been published, with details of adjudications on breaches of Rules, 2.1 (generally accepted standards), 2.3 (offensive material must be justified by the context), 9.5 (no promotional reference to sponsor), 10.2 (advertising and programme elements must be kept separate), 10.3 (products and services must not be promoted in programmes), 10.4 (no undue prominence in programme to product or service) and 10.12 (advertising must be clearly separate from programmes) of the Broadcasting Code; a complaint about a breach of Rule 1.14 (the most offensive language must not be broadcast before the watershed) was resolved. A complaint of unfair treatment and unwarranted infringement of privacy and a complaint of unfair treatment were also upheld. Separately, Ofcom also recorded breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to Pennine FM's Licence were also recorded (which deal with the agreed format for the station's broadcasts). See [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb138/Issue138.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb138/Issue138.pdf) for details.

#### New Legislation - Welsh Authority Digital Switchover

The Welsh Authority (Digital Switchover) Order 2009, SI 2009/1968 comes into force on 12 August 2009. The Order amends the Communications Act 2003 to provide that the Welsh Authority will, from the first date scheduled for switchover to a digital service in Wales (in this case, 12 August 2009), no longer have an obligation to provide the analogue service, S4C. To ensure that viewers in Wales continue to receive the public broadcast service provided the Welsh Authority after switchover, the Order transfers that obligation to the provision of the S4C digital service. To give flexibility, S4C will retain the ability to provide a service in analogue form, should the need arise. See [http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20091968\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091968_en.pdf) for details.

### Corporate

#### Liability of Directors for Transaction at Undervalue - No Reasonable Prospect of Avoiding Liquidations

The applicant liquidator applied for summary judgment in respect of an application under section 214 of the Insolvency Act 1986 against the respondent directors. Prior to the voluntary winding-up, the company's assets had been transferred to another company under a business sale agreement purportedly for a consideration of £250,000, but no consideration had been given for the transfer. The liquidator sought a declaration that the sale constituted a transaction at an undervalue under section 238(4)(a) of the Insolvency Act 1986, as well as orders against the directors under section 214. The court held that a case of wrongful trading under the section 214 had been made out against the two respondent directors as they knew or ought to have known before entering into the agreement that there was no reasonable prospect that the company would be able to avoid going into insolvent liquidation. Consequently, they were jointly and severally liable to make a contribution to the company's assets, their contribution representing the value of the assets, which had

been removed from the company prior to its liquidation. (*Valentine The Liquidator of Bangla Television Limited (In Liquidation) v Bangla TV Limited & Ors* [2009] EWHC 1632 (Ch) - the judgment is available from Lawtel).

#### GC100 Update Guidance on Auditors' Limitation of Liability Agreements

The GC100 has updated its guidance note on auditors limitation of liability agreements to expand the details on the issue of what is meant by proportionate liability as to what the auditor's liability will be if a claim arises (although it does make the point that "It is important to appreciate that limiting an auditor's liability on a proportionate basis brings no certainty in advance (either to the company or the auditor). Until the claim has arisen, it is not possible to tell whether others will share a significant degree of responsibility for the loss arising. Each case will be very fact sensitive"). PLC have also commented that it is thought that very few public companies have yet sought shareholder approval to enter into such an agreement. The updated GC100 note is available via PLC - see <http://corporate.practicallaw.com/downloadFile.do?item=58260968> for details.

#### New Legislation - Companies Share Capital and Acquisition by Company of its Own Shares Regulations

The Companies (Share Capital and Acquisition by Company of its Own Shares) Regulations 2009, SI 2009/2022, come into force on 1 October 2009. The Regulations are in the same form as the previous draft and make three key changes to the Companies Act 2005 - they reduce the minimum pre-emption rights issue subscription period set out in section 562(5) of the Act from 21 days to 14 days, they introduce a 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 they repeal section 725 of the Act to remove the 10% limit on companies holding shares in treasury and extend the period for which authorisation may be given for the purchase by a company of its own shares from 18 months to five years. See [http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20092022\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092022_en.pdf) for details.

#### New Legislation - Overseas Companies Execution of Documents and Registration of Charges Regulations

The Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009, SI 2009/1917 come into force on 1 October 2009. The Regulations apply to companies incorporated outside the UK as defined in section 1044 of the Companies Act 2006 and relate to the exercise of the powers in sections 1045 (company contracts and execution of documents) and 1052 (company charges). The result of failing to register a charge in accordance with the Regulations will be that the charge is void against a liquidator, administrator or creditor of the company. See [http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20091917\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091917_en.pdf) for details.

### Film & TV

#### Commission Approves State Aid for Italian Film Tax Support and Opens Investigation into Digital Cinema

The European Commission has approved under EC Treaty State Aid rules Italy's €82 million package of film tax incentives until 31 December 2010 to stimulate investment from outside the film production sector into European cultural films and to support the distribution of such films. At the same time, the Commission also opened a formal investigation into Italy's proposed 30% tax credit for installing digital projection equipment in Italian cinemas. The Commission said it had specific concerns about the maximum eligible costs, the incentive effect of the aid for more profitable cinemas (such as large multiplexes), the limited access for smaller cinemas to the aid and the social and cultural impact of the aid. The Commission has invited third parties to comment on the proposed measure. (*EC Press Release IP/09/1181, 23 July 2009*).

#### Article - Product Placement, the AVMS Directive and Branding Issues

The latest Entertainment Law Review has a topical article, which considers the additional issues that may arise as a result of increasing product placement in television and films, which although is still largely prohibited in the UK may well be subject to change after 2011/12 if the Government undertakes its promised review. The article considers the potential problems that may arise with the use of trade marks, passing off and copyright, considers the recent case law and provides a brief practical checklist of issues that programme and film makers may want to consider when dealing with various brand issues. (*"Brand Issues in Film and Television: Product Placement and Rights Infringement"* (2009) *Ent LR* 20(6), 206 - this article is available via Westlaw).

### Gambling

#### Treasury Consult on Changes to Gaming Machines Taxation Regime

The Treasury has published a consultation document on the modernisation of gaming machines taxation, which considers proposals for moving towards a gross profits tax for gaming machines, as defined by the VAT Act 1994 and the Betting and Gaming Duties Act 1981. The Treasury have said that the current regime is "out-dated and relatively ill equipped to deal with regulatory changes and technological innovation in the gaming machines sector". It invites views on the costs and

benefits of a move toward a gross profits tax regime for machines, which would replace the current amusement machine licence duty (AMLD), a licence fee which must be paid before a gaming machine may be made available to play, with gross profits tax (GPT), which would be charged as a percentage of a gaming machine's gross profit (stakes received minus prizes paid out). The Treasury said under a GPT system, machine taxation would no longer involve a fixed cost payment and this would remove a potentially significant barrier to entry to the machines market. See [http://www.hm-treasury.gov.uk/d/consult\\_gamingmachinestax\\_160709.pdf](http://www.hm-treasury.gov.uk/d/consult_gamingmachinestax_160709.pdf) for details.

### Application and Licence Fee Changes Announced

The Gambling Commission has announced details of the changes in application and licence fees that will take effect from 1 August 2009. The changes include an increase of 4.75% for all other category A and B operators, an increase of 6.25% for all other operators (including all casino operators in categories A and B), a reduction of 5% in application fees for all licence types and the introduction of revised arrangements for operators who provide facilities for a remote casino, remote bingo and remote betting on virtual events. See [http://www.gamblingcommission.gov.uk/UploadDocs/publications/Document/Fee\\_and\\_licence\\_changes\\_from\\_1\\_August\\_2009.pdf](http://www.gamblingcommission.gov.uk/UploadDocs/publications/Document/Fee_and_licence_changes_from_1_August_2009.pdf) for details.

### Commission Outlines Latest Views on SWP and Gaming Machines

The Gambling Commission has written to BACTA (British Amusement and Catering Trade Association), setting out its current thinking about skill with prizes machines (SWPs) and whether or not some games described as SWPs are in fact gaming machines - the Commission said it is "of the view that 'skill games' which are designed to look like recognised games of chance (such as roulette or bingo) are being presented as involving an element of chance and are therefore games of chance according to section 6(2)(a)(iii) of the Act". The Commission identified outlines its concern regarding the compensation or control mechanism used in some types of machines and said where the compensation or control mechanism operates in such a way that it introduces an element of chance into the way the game is played, at least on some occasions then the machines are gaming machines as defined by section 6(2)(a)(i) of the Act. The Commission said it would like to work with the industry to develop a list of characteristics exhibited by genuine SWP machines to provide the industry, regulators and the public with greater clarity about the status of individual machines. See [http://www.gamblingcommission.gov.uk/UploadDocs/publications/Document/SWP\\_letter\\_to\\_BACTA.pdf](http://www.gamblingcommission.gov.uk/UploadDocs/publications/Document/SWP_letter_to_BACTA.pdf) for details.

### New Legislation - Amendment of Gaming Duty Regulations

The Gaming Duty (Amendment) Regulations 2009, SI 2009/2046 come into force on 1 October 2009. The Regulations amend regulation 5 of the Gaming Duty Regulations 1997, SI 1997/2196 to substitute a new Table reflecting changes to the bands of gross gaming yield for gaming duty made by section 19 of the Finance Act 2009. The changes will apply in to payments on account of gaming duty for any quarter that ends on or after 31 October 2009. See [http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20092046\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092046_en.pdf) for details.

### New Legislation - Definitions of Gaming Tables in Casinos

The Gambling Act 2005 (Gaming Tables in Casinos) (Definitions) Regulations 2009, SI 2009/1970 come into force on 11 August 2009. The Regulations make provision in respect of the definition of "gaming table" for the purposes of section 172(3)-(5) of the Gambling Act 2005 by introducing a new definition of a wholly automated gaming table and excluding wholly automated gaming tables from the description of a gaming table for the purpose of section 172(3)-(5) and also introducing a requirement as to what constitutes a gaming table for the purpose of section 172(3)-(5) (a gaming table is to be treated as being used in a casino at a particular time only if it is being used to play a casino game at that time or it is available at that time to be used for that purpose). See [http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20091970\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091970_en.pdf) for details.

## Litigation

### Application to Set Aside Permission for Service Out of Jurisdiction for Defamatory Remarks Published on Internet

The claimant, a provider of adult distance learning courses, brought proceedings against various parties in respect of allegations published on the Internet. The first defendant was incorporated under the laws of Oregon in the US and maintained a website which provided "news, professional reviews, and opportunities for public discussion"; the second defendant was a subsidiary of the well known US corporation, Google Inc, which was joined as third defendant. The complaint in the proceedings against the first defendant related to information which appeared on one of its web bulletin boards posted by third parties. Since the first and third defendants were outside the jurisdiction, permission was sought and granted to serve out. The third defendant then applied set aside the order and/or seek a declaration pursuant to CPR Part 11 that the court had no jurisdiction to try the claim or that, if it had, the court should decline to exercise it. The court noted "It has long been established that publication takes place, for the purposes of a defamation claim, where the relevant words are heard or read" and "As to publication on the Internet, it has been held that: "If a publisher publishes in a multiplicity of jurisdictions it should understand, and must accept, that it runs the risk of liability in those

jurisdictions in which the publication is not lawful and inflicts damage". However, the court then considered the question whether the operator of a search engine could be liable for publication, noting there was "no previous English authority dealing with this modern phenomenon". The court said "It is true that the circumstances and characteristics of a search engine are in certain respects different from those of the defendants who have so far been considered in English court decisions. The immediate question is whether those distinctions are material when it comes to establishing legal liability". The appropriate question was whether the third defendant should be regarded as a mere facilitator in respect of the publication of the "snippet" and whether, in particular, that would remain a proper interpretation even after the date of notification. At the heart of the matter for the court was whether the third defendant was to be regarded as a publisher of the words complained of at all and if it was, what the position was regarding the innocent dissemination defence. The court ruled that the order should be set aside for two reasons. It said "First, I do not consider that on the evidence before me the third defendant can be regarded as a publisher of the words complained of, whether before or after notification. Accordingly, on the evidence before me, I can conclude that the claimant would have "no reasonable prospect of success". Secondly, I regard the misrepresentations and omissions, as to the nature of the cause of action relied upon, as sufficiently serious to justify setting aside the Master's order in any event". (*Metropolitan International Schools Ltd (t/a SkillsTrain and/or Train2Game) v Designtecnica Corporation (t/a Digital Trends) & Ors* [2009] EWHC 1765 (QB) - see <http://www.bailii.org/ew/cases/EWHC/QB/2009/1765.html> for the judgment, which contains a detailed description of how search engines work and a brief overview of the position in other jurisdictions, including the Europe and the US).

### Technical Error in Part 36 Offer - Whether Offer Letter a Part 36 Offer

The Court of Appeal has ruled on a dispute as to whether proceedings pending in the Court of Appeal had been the subject of a binding compromise or not - as proceedings were ongoing and the court found that there had not been a binding compromise agreement there were issues of confidentiality however the Court said that the application raised issues which seemed to be of potentially wider significance as to the interpretation of Part 36. A Part 36 offer had been made on behalf of the respondent (the defendant to the original claim) however there was a technical error in the letter and the claimant argued that as a result, the offer did not, as required by Rule 36.2(2)(b), "state on its face that it is intended to have the consequences of Part 36" and that even it was within Part 36 it only related to the proposed counterclaim in the proceedings. The court noted that whether an offer was properly to be regarded as a claimant's offer depended on the construction of the offer as a whole, not just on a statement made by the offeror - the offer letter had stated on its face that it was intended to have the consequences of a claimant's offer to settle. It also noted that a Part 36 offer made in respect of the whole of a claim had to state that it did so relate and it also had to state whether the offer took into account any counterclaim. It said that this situation was unusual because the counterclaim had not been pleaded, and therefore did not exist as a claim in the proceedings. However it also noted the counterclaim was a genuine claim. A Part 36 offer could be made before the commencement of proceedings, therefore the fact that the counterclaim had not been formulated or pleaded did not matter. Moreover, the offer made clear that it had been put forward on a net basis, and that acceptance of it would constitute full and final satisfaction both of the proposed counterclaim and of all the claims asserted by the applicant against the respondent. Therefore, the offer letter was a Part 36 offer, the proceedings to which it related were the entire proceedings, both original claim and proposed counterclaim, and upon acceptance it would have the effect not only that the entire proceedings would be stayed but that the applicant would become liable to pay the respondent his costs not only of asserting the proposed counterclaim but of defending the applicant's original claim. (*AF v BG* [2009] EWCA Civ 757 - see <http://www.bailii.org/ew/cases/EWCA/Civ/2009/757.html> for the judgment).

## Publishing

### Application to Restrict Media from Reporting Residence and Contact Proceedings Details About Child of Celebrity

The media has been excluded under Rule 10.28(4) of the Family Proceedings Rules 1991 from attending residence and contact proceedings concerning the child of well-known public figures. The celebrity father had applied to exclude the media - the court noted "First, private law family cases concerning the children of celebrities are no different in principle from those involving the children of anyone else. An application by a celebrity who happens also to be a parent who is unable to agree with a former spouse or partner over the appropriate arrangements for their child(ren) is not governed by any principle or assumption more favourable to the privacy of the celebrity than that applied to any other parent caught up in the court process". In considering whether or not to exclude the press under Rule 10.28(4)(a)(i), court said the focus was upon the interests of the child and not the parents. In this case, the interests and welfare of the child constituted a "strong case of necessity for the press to be excluded in protection of X's Article 8 rights". (*Re Child X* [2009] EWHC 1728 (Fam) - see <http://www.bailii.org/ew/cases/EWHC/Fam/2009/1728.html> for the judgment, which contained strict instructions as to the need to maintain anonymity).

### Statement in Open Court - Broadcast of Defamatory Statements

The claimant, the Secretary General of the Muslim Council of Great Britain, brought libel proceedings against the BBC as a result of comments made during a programme, which implied that he had failed to condone the kidnapping and killing of British soldiers. The defendant accepted that the allegations that the claimant thought the killings were a good

and Islamic thing to do were completely false and made an offer of amends, paid substantial damages (which were donated to charity) and apologised. (*Muhammad Abdul Bari v BBC, Unreported, QBD, 16 July 2009*).

### Commission Invites Comment on Google Online Books Deal

The European Commission has announced that it is to hold a hearing in September for interested parties to comment on the impact on EU writers' rights of a 2008 deal struck with the Authors Guild and the Association of American Publishers by Google to make millions of books available online. The agreement would create a Book Rights Registry, where authors and publishers register works and are then compensated by institutional subscriptions or book sales. A number of Member States have raised concerns that Google Books does not adequately respect European law on the protection of authors' rights. (*EurActiv.com, 22 July 2009*).

## Technology

### More Problems for Phorm

More problems for Phorm have been reported - Nationwide Building Society have announced that they will not be having their website monitored by Phorm as they did not think that it would be of benefit to their customers. This follows similar decisions by BT and Carphone Warehouse's subsidiary Talk Talk. In April this year, the European Commission opened infringement proceedings against the UK in respect of several issues with the UK's implementation of EU ePrivacy and personal data protection rules, under which EU countries must ensure, among other things, the confidentiality of communications by prohibiting interception and surveillance without the user's consent. These issues emerged during the Commission's inquiry into the UK authorities' action in response to complaints from Internet users concerning Phorm. The Government responded, saying that Phorm's technology was fully compliant with UK legislation and relevant EU directives and that this had been confirmed by BERR and by the UK regulatory authorities. The Information Commissioner also said that the technology did not infringe privacy as long as consent was given on the basis of an "opt-in" system, which means that people must agree to use it and the Commission is now considering the Government's reply. Despite this, potential users of the technology still appear to have concerns...

### Intel to Appeal Fine for Abuse of Dominant Position

Intel has filed an appeal in the European Court of First Instance against the Commission's €1.06 billion fine, which was imposed on Intel in May this year for abusing its dominant position and using anti-competitive practices to encourage manufacturers to carry its micro-processor chips in breach of Article 82. See the Need to Know of 11 May 2009 for details about the Commission's investigation and ruling.

## Sport

### FA Bans and Fines Players for Betting Breaches

Following a lengthy investigation into unusual betting patterns in the lead-up to a League Two match, which had unusually high amounts being staked, and an independent Football Association Regulatory Commission hearing, the FA has suspended and fined four players for betting on the outcome of their game. The Chairman of the Commission said, "The regulatory commission have serious concerns that the outcome of the match may have been fixed although none of the players were charged with these offences". The FA's rules on betting prohibit players from staking money on any match or competition in which they are participating or on which they have "direct or indirect influence".

## Consultations & Reports

Ofcom Research Document - Public Service Broadcasting Annual Report 2009 - [http://www.ofcom.org.uk/tv/psb\\_review/annrep/psb09/psbrpt.pdf](http://www.ofcom.org.uk/tv/psb_review/annrep/psb09/psbrpt.pdf) (detailed and lengthy report on current delivery of public service content in the UK, giving a factual account of broadcast hours, viewing figures and audience opinions of the channels over the last five years - the opening statement notes spend on all network programming by the five main PSB channels has decreased over the last five years, by 10%, reducing from a total of £3,110 million in 2004 to £2,799 million in 2008; the volume of first-run originated programmes on the five main PSB channels in 2008 was 33,177 hours a year, which showed a 3% decrease on levels seen in 2004 (by 1099 hours or); investment in first run originated children's programming fell by just over a third between 2004 and 2008, with spend by the commercial PSBs down from £42 million to £11 million; and the combined viewing share of the five main PSB channels declined from 75% in 2004 to 61% in 2008)