

*This is our summary of some of the key legal developments across a range of sectors for the week of 17 August 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

#### Update on Implementing "Digital Britain"

The BIS and DCMS have published an implementation plan for "Digital Britain", in which they set out the governance arrangements and allocate responsibility for implementing some of the 70 actions which will be needed to give force to the Digital Britain strategy. The plan deals with governance of the programme (although it does not set out a timetable for each action), implementation of the proposals that will require legislation and implementation of the non-legislative proposals. The legislative proposals set out in the Final Report will be taken forward through the Digital Economy Bill - amongst other things the Bill will amend the Communications Act 2003 to make the promotion of investment in communications infrastructure and content one of Ofcom's principal duties (which was discussed in last week's Need to Know), provide backstop powers for Ofcom to place additional conditions on Internet Service Providers (ISPs) to reduce or prevent online copyright infringement by the application of various technical measures, legislate to ensure matched penalties for online and physical copyright infringement and introduce legislation to enable commercial schemes for dealing with orphan works to be set up on a regulated basis. Other actions included within the remit of the Bill are considering whether there is sufficient flexibility to allow commercial Public Service Broadcasters' public service obligations to be adjusted up to and beyond the completion of Digital TV Switchover, in line with the diminishing value of the licences and updating the statutory remit for C4 Corporation, having regard to the views of the Channel 4 Board. Implementation of non-legislative proposals will be carried out through a new series of specific Projects such as Digital Inclusion and Participation, Digital Skills, Current and Next Generation Broadband, Video Games, Public Service Content, Independently Funded News Consortia, BBC/Independent Production in the Nations and Online Consumer Protection. The plan outlines the various actions from the Final Report which each of the Projects will be responsible for. See [http://www.culture.gov.uk/images/publications/DB\\_ImplementationPlanv6\\_Aug09.pdf](http://www.culture.gov.uk/images/publications/DB_ImplementationPlanv6_Aug09.pdf) for details.

#### OFT to Undertake Advertising and Pricing Market Study

The Office of Fair Trading (OFT) has invited comments from interested individuals, businesses and other organisations about the scope of a market study it will be conducting to look at the impact on consumers from potentially misleading advertising and pricing of goods and services. According to the OFT, the study will look at the application of consumer law to advertising and pricing, with a particular focus on the Internet. It will evaluate which online and offline pricing and advertising practices have the potential to be most detrimental to consumers, and may also look at the use of personal information in advertising and pricing - in particular, where information from a consumer's online activity is used to target the Internet advertising they receive. The study will be launched in the Autumn. (*OFT Press Release 103/09, 19 August 2009*).

#### ASA Announces Processes Review

The Advertising Standards Authority (ASA) has announced that it will be undertaking a review of its processes, starting in the Autumn. The review will focus on the ASA's core operations function, particularly the manner of its handling of complaints and investigations from the public and competitors, its proactive monitoring of advertisements by the Executive, compliance work to enforce its decisions and the provision of pre-publication advice and guidance by the Copy Advice team. The review will not look at the content of the various Advertising Codes. (*ASA Press Release, 17 August 2009* - see [http://www.asa.org.uk/asa/about/process\\_review/](http://www.asa.org.uk/asa/about/process_review/) for details).

#### Commission Publishes 2008 Report on Competition Policy

The European Commission has published its Report on Competition Policy for 2008. For the first time the Commission chose a topic of interest for the report - in this case the focus was on "cartels and consumers" (the Commission fined 34 undertakings in seven cartel decisions in 2008) but it also emphasised the Commission's assessment of rescue and restructuring measures in light of the economic situation and set out how the various legislative instruments were applied across a wide range of sectors. See [http://ec.europa.eu/competition/publications/annual\\_report/2008/en.pdf](http://ec.europa.eu/competition/publications/annual_report/2008/en.pdf) for the Report and [http://ec.europa.eu/competition/publications/annual\\_report/2008/part2\\_en.pdf](http://ec.europa.eu/competition/publications/annual_report/2008/part2_en.pdf) for the accompanying Staff Working Document, which contains an analysis of key court cases such as the collecting society decision and Sony/Impala as well as sector-based information, including information about policy developments in the ICT and media sectors. (*EC Press Release IP/09/1241, 19 August 2009*).

#### Commission Adopts Recommendation to Promote "Media Literacy"

The European Commission has adopted a Recommendation on media literacy in the digital environment for a more competitive audiovisual and content industry and an inclusive knowledge society. In practice this will involve the development of policy guidelines which will call on Member States and industry to promote media literacy across Europe

through activities that help people access, understand and critically evaluate all media they are exposed to. The Commission defines "media literacy" as the ability to access, understand and critically evaluate different aspects of the media and media content and communicate in a variety of contexts. It relates to all media, including television and film, radio and recorded music, print media, the Internet and all other digital technologies. The Recommendation calls on Member States, in co-operation with the authorities in charge of audiovisual and electronic communication regulation and in collaboration with supervisory data protection authorities, to develop and implement co-regulatory initiatives leading to the adoption of codes of conduct by the main stakeholders and promote self-regulatory initiatives and guidelines, on the identified subjects for the Media Industry. See [http://ec.europa.eu/avpolicy/media\\_literacy/docs/recom/c\\_2009\\_6464\\_en.pdf](http://ec.europa.eu/avpolicy/media_literacy/docs/recom/c_2009_6464_en.pdf) for the Recommendation. (EC Press Release IP/09/1244, 20 August 2009).

## Corporate

### Guidance on Restricting Disclosure of Residential and Service Address Details

Companies House have published practical guidance for officers of companies, limited liability partnerships (LLPs) and overseas companies registered in the UK on how they may restrict the disclosure of details about service addresses and usual residential addresses of every director, LLP member and permanent representative. Under sections 243 or 1088 of the Companies Act 2006, which come into force on 1 October 2009, an application may be made for certain addresses on the public record to be made unavailable for public inspection and for the disclosure of protected information (residential addresses of directors, LLP members and directors and permanent representatives of overseas companies) to credit reference agencies to be restricted. See <http://www.companies-house.gov.uk/about/pdf/gp7.pdf> for details.

### Consultation on Updating Guidance on Competition Disqualification Orders

The OFT has published a consultation on proposed changes to its Guidance on the circumstances in which the OFT and other sectoral regulators (including Ofcom) will exercise their powers to apply for a Competition Disqualification Order (CDO) under the Company Directors Disqualification Act 1986 (as amended). Under the provisions of the Company Directors Disqualification Act 1986, the court must disqualify a director from acting as a director for a period of up to 15 years if the company of which he is a director breaches competition law and the court considers that the director is unfit to be concerned in the management of a company. The OFT and regulators believe that the current Guidance does not maximise the deterrent effect of CDOs - the consultation considers whether in certain cases it may be appropriate to apply for a CDO in relation to a breach of competition law which has not been proven in a decision or judgment or in cases where no financial penalty has been imposed. It also considers whether, in certain cases, it may be appropriate to apply for a CDO against a director of a company which has benefited from Type C leniency under the OFT's Guidance as to the Appropriate Amount of a Penalty or a reduction in a fine imposed by the European Commission under its Notice on immunity from fines and reduction of fines in cartel cases. See [http://www.of.gov.uk/shared\\_of/consultations/of1111con.pdf](http://www.of.gov.uk/shared_of/consultations/of1111con.pdf) for details.

### Law Society Comments on Draft Companies (Shareholders' Rights) Regulations

The Law Society has published its response to the BERR's (now BIS's) request for comments on the draft Companies (Shareholders' Rights) Regulations 2009, which will implement the Shareholders Rights Directive in the UK. The Law Society has questioned whether certain regulations, as drafted, fully implement the requirements of the Directive. See [http://www.lawsociety.org.uk/secure/file/181016/e:/teamsite-deployed/documents/templatedata/Internet/Documents/Government proposals/Documents/lsresp\\_shareholderrights\\_may09.pdf](http://www.lawsociety.org.uk/secure/file/181016/e:/teamsite-deployed/documents/templatedata/Internet/Documents/Government%20proposals/Documents/lsresp_shareholderrights_may09.pdf) for details. The Law Society has also published the joint response of the Company Law Committee of the City of London Law Society and the Law Society's Standing Committee on Company Law to the Commission's call for evidence as part of the review of the Market Abuse Directive (MAD) - the Committees are of the opinion that reform and revision of the MAD regime is required in a number of respects, particularly so as to clarify the circumstances in which issuer may delay the disclosure of inside information. See [http://www.lawsociety.org.uk/secure/file/181015/e:/teamsite-deployed/documents/templatedata/Internet/Documents/Government proposals/Documents/lsresp\\_marketabuse\\_june09.pdf](http://www.lawsociety.org.uk/secure/file/181015/e:/teamsite-deployed/documents/templatedata/Internet/Documents/Government%20proposals/Documents/lsresp_marketabuse_june09.pdf) for details.

### Validity of Allotment of Shares and Appointment of Company Officers - Whether Shareholders Notified

The claimant companies sought summary judgment on their claim that an allotment of shares and an appointment of company officers in the first respondent company were irregular and therefore void. The claimants were shareholders in the first respondent company - after a purported meeting of shareholders, a resolution was passed authorising the first respondent's incumbent director to allot 700 new shares without first offering them to the claimants as would otherwise have been required under the first respondent's articles of association. A minute of that meeting was filed at Companies House, allegedly signed by the claimants' representatives. Later, the incumbent director was replaced as the first respondent's director at a subsequent extraordinary general meeting (EGM) called by one of the claimants. Thereafter, a number of purported EGMs were held and the replacement director was removed and replaced. Filings were made at Companies House relating to the removal and appointment of another director. The claimants argued they had received no notice of the EGM where the allotment of extra shares had been authorised and that the documents filed with

Companies House in that regard had been produced dishonestly and, on that basis, the allotment of shares was invalid and that the resolution purportedly appointing and removing a director pursuant to an EGM was invalid for failure to comply with the Companies (Tables A to F) Regulations 1985, Schedule 1, paragraph 38 as neither claimant had been given notice of such a meeting as required by section 169 of the Companies Act 2006. The court found the allegations against the first respondent and the evidence adduced in support of the claim against it manifestly established the invalidity of the documents purporting to allot the new shares. In the absence of any challenge, this invalidity was sufficient to invalidate the filings at Companies House of the purported allotment of shares. (*Charrydale Limited & Anor v Intercaoutchouc (UK) Limited & Anor* [2009] EWHC 2060 (Ch) - the judgment is available via Lawtel).

#### Article - Draft Bribery Bill and Calls for Anti-Corruption Procedures

The latest New Law Journal looks at the Government's proposed corporate corruption clampdown following the report by the Joint Committee on the Draft Bribery Bill, which strongly supported the Bill and recommended that commercial organisations should be strictly liable for any bribe paid by a person performing services on their behalf. The article makes the point that if the recommendations become law, as is likely, companies will have to be proactive in ensuring that they have robust anti-corruption procedures in place. The draft Bribery Bill was published by the Ministry of Justice in March this year. The Bill proposed replacing the bribery offences at common law and under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 with a Bribery Bill which creates two general offences covering the offering, promising and giving of a bribe and requesting, agreeing to receive a bribe or accepting a bribe, a discrete offence of bribery of a foreign public official and a new offence of negligent failure on the part of commercial organisations to prevent bribery. ("*Strictly Liable*" (2009) 159 NLJ 1171 - this article is available via LexisNexis; see <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtbribe/115/115i.pdf> for the Joint Committee's report).

#### Film & TV

##### BBFC Refuses Film Classification

The British Board of Film Classification (BBFC) has refused to classify the Japanese feature film "Grotesque" on the grounds that it featured sexual sadism for its own sake and that giving the film a rating would involve a "risk of harm" to those viewing it. The film apparently had minimal narrative or character development and according to the BBFC presented the audience with little more than an "unrelenting and escalating scenario of humiliation, brutality and sadism". The BBFC Director said, "Rejecting a work outright is a serious matter and the board considered whether the issue could be dealt with through cuts. However, given the unacceptable content featured throughout cutting the work is not a viable option in this case and the work is therefore refused a classification." This means that it will be illegal to sell or supply the film although the decision can be appealed. Despite the decision, statutory powers on films remain with local councils, which may overrule any of the BBFC's decisions, passing films they have rejected, banning films they have passed, and even waiving cuts, instituting new ones, or altering categories for films exhibited under their own licensing jurisdiction. Cinemas require a licence from the local authority in which they operate. The licence must include a condition requiring admission to any film to be restricted in accordance with the recommendations of the BBFC or the licensing authority.

##### APC Updates Code of Practice for Submission of Programme Proposals

The Alliance for the Protection of Copyright (APC), which comprises BECTU, Writers Guild, Directors Guild, NUJ, Society of Authors, Women in Film and Television, Musicians Union and PACT, has published a newly updated Code of Practice. The Code offers practical guidelines on submitting film and programme proposals (including for interactive and on-line content) to film, broadcasting and production companies, sets out the obligations of those submitting and receiving programme proposals and details procedures in the event that a dispute arises. Parties who adopt the Code and receive proposals undertake to adopt and maintain internal procedures that ensure as far as reasonably possible the appropriate confidentiality under which the proposal was submitted. The Code's key objective is minimising the likelihood of disputes concerning the ownership and development of any programme proposal. See [http://www.pact.co.uk/uploads/file\\_bank/APCCodeofpractice.pdf](http://www.pact.co.uk/uploads/file_bank/APCCodeofpractice.pdf) for details.

##### Proposed Merger of UK Film Council and the British Film Institute

The DCMS has announced details of the proposal to merge the UK Film Council (UKFC) and the British Film Institute (BFI). According to the DCMS, the overall remit of the BFI and UKFC will not be reduced. The proposal is for a "streamlined organisation, which can spend more of its money on film and services and less on infrastructure, and in turn offer better support for Britain's film culture and promotion of its film industry. Its remit would span securing investment across the sector, steering the industry through the transition to digital, championing the cultural importance of the UK's film heritage and guaranteeing that the full diversity of film culture is available to all". A project board is being established to consider the practical and legal issues that will need to be resolved before such a merger can take place. It is expected to complete this analysis before the end of the year. See [http://www.culture.gov.uk/reference\\_library/media\\_releases/6317.aspx](http://www.culture.gov.uk/reference_library/media_releases/6317.aspx) for details.

## Gambling

### ASA Rule on Free Money Ad for Online Bingo

The Advertising Standards Association (ASA) has adjudicated on a complaint about an online promotion on BingoHero.co.uk and whether the claim "£15 FREE! No deposit required" misleadingly implied that the user would obtain a £15 credit against which they could play games and win money. The ASA found that the advertisement was for the opportunity to use the website and play for notional winnings, which could never actually be withdrawn. As a result, the advertisement breached Clauses 7.1 and 7.2 (Truthfulness) of the CAP Code and the ASA ordered that it not appear in that form again. See [http://www.asa.org.uk/asa/adjudications/Public/TF\\_ADJ\\_46769.htm](http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_46769.htm) for the adjudication.

## Litigation

### HMRC and Legal Professional Privilege

HM Revenue and Customs (HMRC) has published a Business Brief giving guidance about the new regulations about whether information it has requested can be withheld on the grounds of legal professional privilege. The Information Notice: Resolution of Disputes as to Privileged Communications Regulations 2009, SI 2009/1916 came into force on 7 August 2009 and set out the procedures for referring a dispute as to whether information or a document required under an information notice is subject to legal professional privilege to the First-Tier Tribunal. The Business Brief gives an overview of the system that HMRC will apply when dealing with disputes about whether a requested document can be withheld on the grounds of legal professional privilege. See <http://www.hmrc.gov.uk/briefs/brief5409.htm> for details.

### New York Supreme Court Orders Disclosure of Anonymous Blogger's Details

The Supreme Court of the State of New York has ruled on an application to compel disclosure and ordered the respondent, Google, to disclose to the petitioner, a former model, the identity of the person who posted five separate weblogs on websites under Google's control which contained allegedly defamatory statements about the petitioner. The Court noted that under New York law, a petition for pre-action discovery could only be granted where the petitioner demonstrates that they have a meritorious cause of action and the information sought is material and necessary to the actionable wrong. This was according to the court demonstrated by the petitioner and disclosure was ordered. See [http://www.citmedialaw.org/sites/citmedialaw.org/files/2009-08-17-Order\\_Granteeing\\_Cohen's\\_Petition.pdf](http://www.citmedialaw.org/sites/citmedialaw.org/files/2009-08-17-Order_Granteeing_Cohen's_Petition.pdf) for the Order. Google has provided the information and, according to reports, the blogger is "known" to the petitioner.

## Publishing

### Statement in Open Court -Article Misrepresented Meeting

The claimant, a well known TV personality and pop singer, brought a defamation action against the publisher of The People following the publication of an article which alleged he had made "inappropriate" advances to a woman in a nightclub whilst he was still married. The defendant accepted that the allegations were wholly untrue and misrepresented the meeting between the claimant and the woman and apologised to the claimant, undertook not to repeat them and paid substantial damages and costs. (*Peter Andre v MGN Limited, Unreported, QBD*).

### Statement in Open Court - Article Alleging Claimant's Involvement with Bribery and Corruption and Effect of Apology

The claimant, the President of South Africa, brought libel proceedings against the defendant, the publisher of The Guardian following the publication of an article which alleged that he was involved in corruption and bribery and had been guilty of rape - the claimant complained to the defendant and an apology, which included a clarification about certain elements of the story was published however, the claimant was not satisfied that the apology adequately dealt with his complaint. In particular it was claimed that the apology was less prominent than the original article (in breach of Clause 1(ii) of the PCC Code of Practice). The defendant made an offer of amends and agreed to pay "very substantial damages" and legal costs and publicly apologised and leave to withdraw the record was sought. (*Jacob Zuma v Guardian News and Media Limited, Unreported, QBD, 30 July 2009*).

## Technology

### Commission Announces Funding for Next Generation Mobile Internet Technology

The European Commission has announced that from January 2010 it will make of €18 million funding available for the development of next generation 4G mobile networks through the Long Term Evolution (LTE) technology. The Commission described LTE as "the latest wireless technology, providing mobile Internet speeds of up to 100 megabits per second, ten times faster than 3G mobile networks". It said that in Europe it is currently being trialled by mobile operators in Finland, Germany, Norway, Spain, Sweden and the UK and is expected to be commercially available in Sweden and Norway in the

first half of 2010. (EC Press Release IP/09/1238, 18 August 2009 - see <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1238&format=HTML&aged=0&language=EN&guiLanguage=en> for details).

#### Article - Harassment and Cyber Bullying - Is the Law Fit for Purpose?

The latest Journal of Criminal Law has an interesting article which asks whether the current legislative regime dealing with harassment is sufficiently robust to deal with the increase in cyber bullying as a result of growing usage of social networking sites. The article makes the point that the fact that there are a number of separate pieces of legislation that can be applied to instances of cyber bullying and harassment is in itself a problem and says that as the law currently stands, there are too many offences leading to a "web of duplicity". It notes "These are ultimately distinguishable only on technical grounds, such as the number of acts, the medium through which the act is conducted and how the conduct in question is interpreted - whether it is offensive or distressing, whether the result was intended or not". It says a "single, clearly drafted offence is required in order to restore certainty and accessibility in this area". (*Regulating Harassment: Is the Law Fit for the Social Networking Age?* (2009) JoCL 73 (241) - this article is available via LexisNexis).