

This is our summary of some of the key legal developments across a range of sectors for the week of 14 September 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

Commission Adopts Communication to Enhance IP Enforcement

The European Commission has adopted a Communication on enhancing the enforcement of intellectual property rights in the internal market. According to the Commission, the Communication contains "practical, non-legislative measures to combat counterfeiting and piracy". The Communication aims to support enforcement through a new EU Observatory on counterfeiting and piracy, foster administrative co-operation across Europe by developing co-ordination to ensure that more effective exchanges of information and mutual assistance can take place and build coalitions between stakeholders to overcome conflicts and disputes by developing collaborative voluntary arrangements that focus on concrete problems, such as the sale of counterfeit goods over the internet, and are capable of adapting quickly to deal with changing markets and technology. (*EC Press Release IP/09/1313, 14 September 2009* - see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0467:FIN:EN:PDF> for the Communication).

New Legislation - Trade Marks (International Registration) (Amendment) Order

The Trade Marks (International Registration) (Amendment) Order 2009, SI 2009/2464 comes into force on 1 October 2009. The Order amends the Trade Marks (International Registration) Order 2008, SI 2008/2206 so as to increase the fee for requesting an extension of time in trade mark proceedings before the Intellectual Property Office involving international trade marks from £50 to £100 - the Order also removes the requirement to register in the supplementary register (as defined) any restriction of the goods and services covered by a request for extension. See http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092464_en.pdf for details.

PhonepayPlus' Notice to Industry About Public Information Services

PhonepayPlus have published a Notice to Industry about Public Information Services, as a result of a number of recent complaints about the Services and subsequent investigations. Public Information Services are defined as premium rate phone-paid services that provide information or advice which is also, or mainly, available from another, free, source provided by a government department or other publicly-funded body. PhonepayPlus identify in the Notice a number of problems with the manner in which the Services are being provided that are causing consumer harm, including the practice of charging for information that is available elsewhere at no cost and the misleading use of domain names which imply that there is no cost involved in using the service and set out how it will now apply the provisions of the Code of Practice in relation to the provision of such Services. See <http://www.phonepayplus.org.uk/output/news/notice-to-industry-public-info-services.aspx> for the Notice, which is effective from the date of its publication.

Broadcasting

Competition Commission Consults on Changes to CRR

The Competition Commission is consulting on possible changes to ITV's Contract Rights Renewal (CRR) Undertakings, which were originally given to protect advertisers from the loss of competition in the sale of TV advertising, following the merger of Carlton and Granada in 2003/4. Earlier this year, the Commission was asked by the Office of Fair Trading (OFT) to review the Undertakings and consider whether circumstances had changed sufficiently since they were first put in place to warrant either their removal or some degree of variation (and see the Need to Know of 25 May 2009 for details). The Commission has now published its Provisional Decision on the matter and has said that it has found that "ITV1's continuing ability to reach large numbers of viewers, and the strong bargaining position this gives it with media buyers, requires the retention of the CRR Undertakings, although some variations

might be justified". The Commission noted that although there are now more alternative available to advertisers, ITV remains "crucial" for advertisers looking to reach large number of viewers, particularly if this needs to be done rapidly. However, it said that it does need to consider whether some variations might be justified in light of the changed circumstances since 2003, and possible "unintended" effects of the operation of the Undertakings in practice. These variations include proposals to widen the definition of ITV1 to include any ITV+1 or ITV1 High Definition channel that ITV may decide to launch. The Commission has said it aims to publish its final decision by the end of the year. (*Competition Commission News Release 45/09, 15 September 2009* - see http://www.competition-commission.org.uk/inquiries/ref2009/itv/pdf/prov_decision.pdf for the Commission's Provisional Decision and http://www.competition-commission.org.uk/inquiries/ref2009/itv/pdf/notice_possible_variations.pdf for the Notice of Possible Variation to the Undertakings).

Broadcast Bulletin - Latest Issue

The latest edition 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), 1.14 (no most offensive language before the watershed), 2.1 (generally accepted standards), 2.3 (offensive material must be justified by the context), 2.13 (broadcasters must take precautions to maintain low risks to those with PSE), 5.5 (observe due impartiality on matters of political controversy or public policy), 6.13 (where coverage is given to constituency or electoral areas then details of all the parties or individual candidates standing should be given) and 9.3 (sponsorship must comply with the advertising and scheduling rules for that medium) of the Broadcasting Code; parts of a complaint of unfair treatment were also upheld. Ofcom also found breaches of Rules 5.1.1 (no cross promotion may mislead directly or by implication) and 5.1.2 (no cross promotion may mislead by implication) of the BCAP Television Advertising Standards Code and Section 2, Rules 3 and 6 of the BCAP Radio Advertising Standards Code (misleading claims). Two separate breaches of Licence Condition 11 (retention and production of recordings) were also decided. See http://www.ofcom.org.uk/tv/obb/prog_cb/obb141/Issue141.pdf for details.

Corporate

BIS' Final Guidance on Constitutional Documents

BIS have published their final guidance on the final elements of the Companies Act 2006 implementation programme and a summary of what the changes to a company's constitutional documents, including its model articles, actually means. Starting with the basics of what the constitutional documents are and what they do, the guidance looks at the before and after position and includes a useful comparison chart of the Companies Act 1985 Table A articles with the Companies Act 2006 model articles. The guidance contains a summary of what a company should do with its model articles as well as a useful list of "Twenty things for private companies to know about Companies Act 2006 model articles of association". See <http://www.berr.gov.uk/files/file52852.pdf> for details.

New Legislation - Companies (Disqualification Orders) Regulations

The Companies (Disqualification Orders) Regulations 2009, SI 2009/2471 come into force on 1 October 2009. The Regulations are made under section 18 of the Company Directors Disqualification Act 1986 and revoke and replace the Companies (Disqualification Orders) Regulations 2001, SI 2001/967 and apply to any order or grant of leave or action made after that date. The Regulations also prescribe the form in which the particulars are to be provided by the court officers to the Secretary of State - these forms have been amended to include changes to reflect the new regime for disclosure of directors' addresses under the Companies Act 2006. See http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092471_en.pdf for details.

New Legislation - Companies Act 2006 and Limited Liability Partnerships Amendment Regulations

The Companies Act 2006 and Limited Liability Partnerships (Transitional Provisions and Savings) (Amendment) Regulations 2009, SI 2009/2476 come into force, for the most part, on 1 October 2009. The Regulations make minor and transitional amendments to the Companies Act 2006 (Commencement No 8, Transitional Provisions and Savings) Order 2008, SI 2008/2860 and the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009, SI 2009/1804 in respect of the property of a dissolved company or limited liability partnership; the entrenched provisions of a company's articles of association; and in respect of company and business names which suggest a connection with the Welsh Assembly Government. See http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092476_en.pdf for details.

Film & TV

Equity Criticises "Loophole" for Exploitation of Talent Show Contestants

According to reports, actors' union Equity has raised concerns about a number of popular primetime television shows such as Britain's Got Talent and The X Factor, which do not pay contestants for their performances. Equity has said that it will table a motion at the forthcoming annual TUC conference calling for contestants who qualify for shows to be paid the going rate for the job. An Equity spokesman said unions had reached agreement with the BBC to ensure contestants received above the minimum wage for shows such as a "How Do You Solve a Problem Like Maria" but that not all programme-makers were following similar procedures and were exploiting a loophole in the National Minimum Wage Act 1998 for competitions, which meant contestants "generally do not get paid".

Gambling

ASA Sanctions Betfair for Email Ad Involving "Young" Person

The Advertising Standards Authority has upheld a complaint against an email advertisement by Betfair Ltd for its poker site. The ad was said to be irresponsible as it encouraged underage gambling and featured a very young looking poker professional. The complainant objected that the ad was irresponsible, because it might encourage children and young people to gamble. The ad was found to have breached CAP Code clauses 57.2 and 57.41 (Gambling) as the professional used looked young (even though she was actually 20) and the accompanying text implied that she was even younger than she was. The ASA said it had told Betfair to ensure that no one who was, or seemed to be, under 25 years old appeared gambling or playing a significant role in their ads going forward. See http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_46921.htm for the adjudication.

Gambling Commission Advises Removal of Unlicensed Sponsor's Logo from Football Club's Shirts

Football League Championship team Cardiff City Football Club has advised that it has removed its sponsor's logo from its shirts after the Gambling Commission warned it that its sponsor, Asian online gaming operator 777ball, had not obtained a UK operating licence which would enable it to advertise in the country. The Commission had informed the club that 777ball was unable to advertise its services since it did not currently hold a UK gaming licence and told the club to remove the sponsor's logo ahead of a forthcoming Championship game - the club said that it had entered into the arrangement in good faith, after discussions with the Football League. 777ball.com is operated by True Partner Group Limited and is licensed in the Philippines - it is currently in the process of applying for a UK licence. (*Cardiff City Football Club Statement, 16 September 2009*).

Litigation

Admissibility of Experts Report Introducing Allegations Beyond Pleadings

The Technology and Construction Court has ruled on the admission of an expert's report, which contained information that went beyond the pleadings. The claimant was an engineering company contracted to undertake work on behalf of the defendants in connection with the development of a site. The claimant commenced proceedings seeking payment of unpaid fees. During the proceedings, the claimant alleged that the defendants' expert's report contained numerous allegations that were not pleaded and brought an application to have the report debarred. The court granted the application - it noted where information was contained in an expert's report but not within that party's pleadings, then to the extent that the report introduced new allegations that went beyond the pleadings, that part of the report was barred from use at trial. It said it was a matter of fact and degree as to where a pleading should have stopped and the detailed exchange of views by technical advisors at experts' meetings should have started. There should have been a clear issue on the pleadings set out at the outset, which both sides and their experts understood. If there was not, then it might not be an issue which the experts were entitled to consider at all at their joint meeting, unless both parties expressly agreed that they could. (*Upton McGougan Ltd v Bellway Homes Ltd & Ors [2009] EWHC 1449* - see <http://www.bailii.org/ew/cases/EWHC/TCC/2009/1449.html> for the judgment).

Application to Substitute Party in Claim Form - Grounds for Substitution

The defendants, members of the Willis Group, brought an application to set aside an order made without notice substituting Willis Group Limited and Willis Limited for the defendant originally named in the claim form, Willis Group Holdings Limited. The defendants argued there was no mistake by the claimant as to the name of the party sued and if there was a mistake, the defendant was misled because the true identity of the party the claimant was intending to sue was not apparent from the claim form or known to the defendant or known on any reasonable

grounds. The court granted the application - it refused permission to substitute two new defendants for the original defendant after the expiry of the limitation period where there had been no intention to sue one of the new defendants at the time the claim form was issued and the mistake in naming the original defendant had caused reasonable doubt as to the identity of the party intended to be sued. It said to come within CPR Rule 19.5(3) the mistake had to be as to the name of the party and not as to the identity of the party - such a mistake could be demonstrated where the pleading gave a description of the party and identified the party but gave the party the wrong name. Given the generous test of mistake, it could be said that the claimant made a mistake as to name rather than identity however, that did not include the substitute company, which was not a holding company but a trading and broking company. It was clear that there was no intention to sue the substitute when the claim form was issued. (*Lockheed Martin Group v Willis Group Limited* [2009] EWHC 1436 (QB) - see <http://www.bailii.org/ew/cases/EWHC/QB/2009/1436.html> for details).

New Legislation - Civil Courts (Amendment) Order

The Civil Courts (Amendment) Order 2009, SI 2009/2455 comes into force on 1 October 2009. The Order amends the Civil Courts Order 1983 and regulations made under the Limited Liability Partnerships Act 2000, which apply and modify provisions of the Companies Act 2006 in relation to limited liability partnerships. The Companies Act 2006 and the regulations give the power to exclude a county court from having jurisdiction to deal with matters under that Act (including as applied to limited liability partnerships) and, for the purposes of those jurisdictions, assign the district of that court to another county court.

New Legislation - Constitutional Reform Act 2005 (Consequential Amendments) Order

With effect from 1 October 2009, the new Supreme Court commences its operations, replacing the appellate function of the House of Lords. The Constitutional Reform Act 2005 (Consequential Amendments) Order 2009, SI 2009/2468, which comes into force on the same day, makes consequential amendments to subordinate legislation concerning the provision of legal aid, replacing references to the House of Lords with references to the Supreme Court. The Constitutional Reform Act 2005 abolished the appellate jurisdiction of the House of Lords and created the Supreme Court. See http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092468_en.pdf for details.

Music

Copyright Tribunal Order in CSC Media/VPL Dispute

Last week's Need to Know referred to the decision of the Copyright Tribunal in the matter between CSC Media Group Limited and VPL - the case involved a reference under section 126 of the Copyright Designs and Patents Act 1988 to settle the terms of a licence for CSC's business relating to the broadcasting of the VPL's repertoire on its seven music video channels. The decision in the matter is now available - see <http://www.ipo.gov.uk/csc-decision.pdf> for the Tribunal's order (section 126 provides that a licensee may apply to the Copyright Tribunal about a licence which is due to expire).

Publishing

MoJ Publishes Consultation on Defamation on the Internet

The Ministry of Justice (MoJ) has published a consultation paper on defamation and the Internet, focusing on the multiple publication rule as part of its wider reform of defamation law. The paper invites views on the current multiple publication rule, which provides that each publication of defamatory material can form the basis of a new cause of action and the alternative of a single publication rule, which would permit only one action to be brought in England and Wales against particular defamatory material and invites views on whether the multiple publication rule should be retained or a single publication rule introduced and on how a single publication rule might work in practice. It also reviews the limitation period for defamation actions in the light of the Law Commission's recommendation in its report on Limitation of Actions that the limitation period should be changed from the current period of one year from the date of publication of the allegedly defamatory material to three years from the date of knowledge of the allegedly defamatory material, with a ten year long-stop from the date of publication. The MoJ acknowledged that "Issues in relation to the multiple publication rule have become more prominent in recent years as a result of the development of online archives" in view of effect of the multiple publication rule whereby each "hit" on a webpage creates a new publication, potentially giving rise to a separate cause of action, should it contain defamatory material. The MoJ also acknowledged that there were several arguments that arose when considering whether the multiple publication rule should have a place in the modern law of defamation and said it was "necessary to bear in mind the need to maintain a balance between freedom of expression and the right to a private life, which might be interfered with if an individual is not able to take action

in respect of defamatory publications which damage his or her reputation". The Secretary of State for Justice said, "Existing defamation law needs to be updated so it is fit for the modern age, and it is important we listen to views on the best way to achieve this". See <http://www.justice.gov.uk/consultations/docs/defamation-consultation-paper.pdf> for the consultation, which includes a brief analysis of the development of the civil law of defamation - the wider reforms referred to above include the decriminalisation of seditious libel which is currently before Parliament, and a consultation earlier this year on controlling costs in defamation proceedings, the responses to which are currently being considered by the MoJ.

Sport

UEFA Approves "Financial Fair Play" Concept

UEFA's Executive Committee has approved the Financial Fair Play concept for the well being of European club football, following recommendations made in August this year by the Professional Football Strategy Council. According to UEFA, the concept promotes financial fairness in European competitions, as well as the long-term stability of European club football by imposing an obligation on clubs whose turnover is over a certain threshold, over a period of time, to balance their books or break even. Under the concept, clubs cannot repeatedly spend more than their generated revenues. Guidance will be given on salaries and transfer spending, indicators provided on the sustainability of levels of debt, and clubs will be obliged to honour their commitments at all times. The proposed measures will be introduced in UEFA competitions in time for the 2012/13 season. (*UEFA News, 15 September 2009 - the European Commission has also announced that it will be organising a conference on the licensing systems for club competitions, including financial discipline - representatives of football federations, leagues, clubs, players and supporters as well as of other team sports with an interest in licensing system will be asked to exchange views and share good practices on this subject and the Commission noted that UEFA's "financial fair play" concept will be discussed in this context - EC Press Release IP/09/1330, 17 September 2009*).

Commission to Survey Volunteering in Sport

The European Commission has launched an online survey into volunteering in sport which invites views on a number of topics relating to voluntary activity in the field of sport, including key trends and problems they face in the recruitment, retention and replacement of volunteers, as well as regarding the way the regulatory framework affects volunteering in sport in their country. The survey is particularly interested in whether there is specific legislation on the promotion or engagement of volunteers, and is looking to establish whether sports organisations benefit from specific tax regimes, exemptions or reduced VAT rates, for example. The EU Executive has expressed its concern that that together with the further "commercialisation and professionalisation" of sport, a fall in the numbers of volunteers will have an impact on European sport structures, especially at the grassroots level.

Consultations & Reports

Ofcom Consultation - Proposals for the Regulation of Video On Demand Services - <http://www.ofcom.org.uk/consult/condocs/vod/vod.pdf> (consultation paper sets out the basis on which Ofcom proposes to fulfil its statutory duties relating to the regulation of VOD editorial services and VOD advertising content included in those services as required by the AVMS Directive, which states that the UK must regulate VOD editorial content and VOD advertising either directly or, at a minimum, through a co-regulatory system for VOD editorial and VOD advertising - after consultation, the Government concluded that a co-regulatory approach was its preferred approach to fulfilling the VOD requirements of the AVMS Directive and a Ministerial Statement emphasised it was the view of Government that industry should be allowed and encouraged to set up and manage its own regulatory arrangements as far as possible, with Ofcom retaining back-stop powers - the consultation notes that central to the working of the new regulatory framework is the need to determine which services will be subject to regulation)

Ofcom Consultation - A Review of the Rules on Party Political and Referendum Broadcasts - A Consultation on Proposed New PPRB Rules and on Proposed Guideline Procedures for the Determination of Disputes under the PPRB Rules - <http://www.ofcom.org.uk/consult/condocs/pprb/pprb.pdf> (the consultation notes that in light of recent experience with application of the PPRB Rules in advance of the European Parliamentary Elections in June 2009, Ofcom has reviewed the current PPRB Rules to provide greater clarity and flexibility where necessary in certain areas and that they also propose to reflect several particular points put to them by the Electoral Commission)

BIS Consultation - Proposed New Duties for Ofcom - Secondary Information - <http://www.berr.gov.uk/files/file52744.pdf> (the consultation seeks to identify the best way to implement the new duty proposed for Ofcom to report on the UK communications infrastructure every two years - it therefore develops ideas to support the delivery of the proposed reporting objectives set out in the Digital Britain Report consultation)

on the proposed new duties for Ofcom published in August (see the Need to Know of 10 August 2009 for details) - it seeks views on the propositions that Ofcom should have the power to require companies to report to it on risk assessments and emergency planning and require companies to test emergency plans and participate where necessary in Government testing of national response plans for telecoms; it also considers how these proposals might go towards meeting the expected changes to the European Regulatory Framework that will increase requirements on national regulatory authorities and operators with regard to the security of networks)

Office of the Adjudicator - Broadcast Transmission Services - Report on Consultation 2/2009: Principles for the Sale of Transmitter Equipment - http://www.adjudicator-bts.org.uk/documents/OTABTS_Report_2009_transmitter.pdf (statement and guidance on the sale of transmitter equipment and summary of the responses received to its earlier consultation)