

This is our summary of some of the key legal developments across a range of sectors for the week of 21 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

WIPO IP Indicators Report on Utilisation of IP Rights

The World Intellectual Property Organization (WIPO) has published its intellectual property indicators report for 2009. WIPO stated that "This report is intended to give a detailed and comprehensive view of the current state of the utilization of different forms of IP rights world wide. Because of the time required to collect and publish statistics, the impact of the economic recession in 2008 is not fully reflected in this report, although signs of a slowdown in the use of IP rights can be seen already in 2007". The report focuses on four areas of industrial property: patents, utility models, trademarks and industrial designs. Statistics are reported for as many countries or IP offices as possible, with a special effort to report on emerging economies. It notes however that, "Preliminary figures for 2008 indicate that growth rates in the numbers of applications for new IP rights are tending towards zero, or declining, as the recession takes full effect". See http://www.wipo.int/export/sites/www/ipstats/en/statistics/patents/pdf/wipo_pub_941.pdf for details.

Commission Publishes Intel Abuse of Dominant Position Decision

The European Commission has finally published a non-confidential version of its ruling in the Intel anti-trust suit. In May 2009, the European Commission adopted a decision which found that Intel Corporation had infringed Article 82 of the EC Treaty by abusing its dominant position on the x86 central processing unit (CPU) market through the use of hidden rebates and direct payments. Intel was fined €1.06 billion and obliged to cease the identified illegal practices, to the extent that they were ongoing, and not to engage in the same or equivalent practices in the future. According to the Commission, the decision outlines specific cases of Intel used conditional rebates and naked restrictions and sought to conceal its practices and how computer manufacturers and Intel recognised the growing threat represented by the products of Intel's main competitor, AMD and describes the basis on which the fine was calculated and also the absence of any mitigating circumstances. (*EC Press Release Memo/09/400*, 21 September 2009 - see http://ec.europa.eu/competition/sectors/ICT/intel_provisional_decision.pdf for the Decision (all 518 pages of it) or http://ec.europa.eu/competition/sectors/ICT/intel_summary_decision_en.pdf for the Decision Summary).

Advocate General's Opinion in Trade Mark Search Engine Dispute

The Advocate General has published his Opinion in the References for a preliminary ruling from the Cour de cassation (France) in dispute between Google and Louis Vuitton relating to Google's AdWords system in the context of a claim that Louis Vuitton's trade mark had been infringed by Google's practice of allowing advertisers to buy keywords corresponding to registered trade marks. These ads typically consisted of a short commercial message and a link to the advertiser's site; they were differentiated from natural results by their placement and design. Google supported its search engine with its income from AdWords. Louis Vuitton initiated legal proceedings against Google as to the legality of the use, in the AdWords advertising system, of keywords corresponding to trade marks. It was established that entering certain trade marks into Google's search engine triggered the display of ads for sites offering counterfeit versions of the products covered by the trade mark or identical or similar products of competitors. The French court, called upon to settle the issue at last instance, asked the ECJ whether Google had committed a trade mark infringement by making available such keywords to advertisers and if the company could be held liable for the content featured in AdWords. The Advocate General's opinion stated that Google had not infringed trade mark rights by allowing advertisers to buy keywords corresponding to registered trade marks. In effect, the mere display of relevant sites in response to keywords is not enough to establish a risk of confusion on the part of consumers as to the origin of goods or services. It was said that Internet users are aware that not only the site of the trade mark owner will appear as a result of a search in Google's search engine and sometimes they may not even be looking for that site. These users will only make an assessment as to the origin of the goods or services advertised on the basis of the content of the ad and by visiting the advertised sites; no assessment will be based solely on the fact that the ads are displayed following the entry of keywords corresponding to trade marks. However, Google's liability may be engaged for featuring content in AdWords that involves trade mark infringement. According to the Opinion, the final decision of the ECJ will determine the extent to which keywords corresponding to trade marks can be used outside the control of the proprietors of the trade marks. (*Google*

France & Anor v Louis Vuitton Malletier, Joined Cases C-236/08, C-237/08 and C-238/08 - see <http://curia.europa.eu/juris/cgi-bin/form.pl?lang=en&newform=newform&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&docop=docop&ypeord=ALL&numaff=c-236%2F08&ddatefs=&mdatefs=&ydatefs=&ddatefe=&mdatefe=&ydatefe=&nomusuel=&domaine=&mots=&> for the Opinion; while the Advocate General's Opinion is not binding on the ECJ is it often seen as indicative of the approach which the court will take).

French Parliament Passes Amended Hadopi 2 - Concerns Still Remain...

The French National Assembly has (finally) voted to adopt, by 258 votes to 131, the amended and redrafted High Authority for the Dissemination of Creative Works and Protection of Rights on the Internet bill or the "three strikes" law (now being referred to as Hadopi 2), which will attempt to deal with illegal file-sharing. The Senate had previously approved the same text. With the French Parliament now in agreement, the text only requires only the signature of President to become law, although commentators have noted that the possibility of another appeal being lodged with the Constitutional Council cannot be ruled out. The bill had previously been rejected by the Constitutional Court, which expressed concerns, particularly about the fact that disconnection could be ordered with no judicial authority or approval - the new bill requires that suspension of Internet access be ordered by a judge, rather than decided by in an automated process, and it has increased sanctions in other areas. However, concerns have been raised about the fact that the bill does not specify the mechanism to be used to search for illegal downloads, which could result in innocent exchanges being identified; further, it has been said that Internet users will break the law just by visiting an illegal download site, even before they download anything and alleged offenders will not be given details of the illegal download when the disconnection order is issued. Finally, loss of Internet access for one year after receipt of two infringement notices has been described as being "clearly disproportionate" and posing a major threat to free expression. Under Hadopi 2, anyone who "abuses freedom of communication" by downloading a song or a film protected by copyright could have their own freedom of expression and communication similarly restricted. Reporters Without Borders have accordingly urged French politicians to protect the fundamental right of access to the Internet - they said the protection of literary and artistic property rights should not in any way curtail freedom of expression, which is "essential" for a democracy.

IPO Consults on Operation of Opinions Service

The Intellectual Property Office (IPO) is consulting on the operation of its Opinions Service, which was introduced in October 2005, as a result of an amendment to the Patents Act 1977 by the Patents Act 2004. Section 13 of the Patents Act 2004 inserted new sections 74A and 74B into the 1977 Act, permitting the IPO to give non-binding opinions on the issues of validity or infringement - according to the IPO this "helps businesses to resolve patent disputes by providing a quick, balanced and affordable impartial assessment of the key issues of any actual or potential patent dispute". The IPO has just issued its 100th Opinion and has said that it believes that it is an opportune time to review the service. (*IPO Press Release, 18 September 2009*).

EESC Opinion on Commission Proposal for Consumer Rights Directive

The European Economic and Social Committee (EESC) have published an Opinion on the Proposal for a Directive of the European Parliament and of the Council on consumer rights. The EESC recommend that the proposal be reworded in the terms set out in the Opinion and should deal only with horizontal harmonisation on distance and off-premises sales, rather than attempting to achieve full harmonisation because these are the areas most affected by cross-border trade. Further, the EESC say the sections of the proposal for a Directive on unfair terms and on the sale of goods and associated guarantees should be removed, as these sections deal with issues that cannot be dealt with appropriately through full harmonisation with Community law at its current stage of development. The EESC said it believes that establishing "common" definitions would provide a greater level of legal certainty to commercial players and consumers and called on the Commission to "iron out the inconsistencies which currently exist in this area of the proposal" and ensure that its proposal clarifies whether or not the definitions it provides are to be fully harmonised or whether the Member States will have some discretion to elaborate on these concepts. See <http://eescopinions.eesc.europa.eu/eescopiniondocument.aspx?language=EN&docnr=1190&year=2009> for details.

EDPS' Annual Report 2008

The European Data Protection Supervisor (EDPS) has issued his Annual Report, which covers 2008 as the fourth full year of activity of the EDPS as an independent supervisory authority. According to the EDPS, the report shows that "significant progress" was achieved both in the EDPS' supervisory and advisory tasks. Most Community institutions and bodies were found to be making good progress in ensuring compliance with data protection rules, but it noted

that there were still "great challenges" ahead. See http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/Publications/Annualreport/2008/AR2008_EN.pdf for details. The Report also sets out the objectives for the EDPS for 2009, which will include a strategic assessment of the roles and tasks of the EDPS and setting out main lines of development for the next four years. The EDPS said intends to give "special attention" to the preparation of a new five-year policy programme for the area of freedom, security and justice, for adoption by the European Council at the end of 2009. The need for effective safeguards for data protection will be emphasised as a "key condition", and the use of new technologies and developments taking place in the Information Society, such as RFID and ambient intelligence, and possible contributions of the EDPS to the EU research and technological developments will be highlighted. (*EDPS Press Release, 24 September 2009*).

Broadcasting

Select Committee's Further Report on Commercial Operations of BBC

The House of Commons Culture, Media and Sport Committee have published a Further Report on the commercial operations of the BBC, following their initial report, which was published in April. The BBC Trust responded to the Committee's report in July and this Further Report is in response to the Trust's comments. The Committee was blunt in its views and forthright in its language - while it acknowledged that there was continuing uncertainty about the models for the future of BBC Worldwide, it expressed its "disappointment" that the BBC Trust "appeared to have used this as an excuse to avoid responding to a number of our wider recommendations" and said that, "As a consequence, the BBC Trust's response cannot be regarded as a coherent response to the Committee's Report". Further, "In view of its important statutory functions, we naturally assumed that the BBC Trust, in recognition of those functions, would have responded in more detail and with greater diligence to a select committee report". Ouch. See <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmcomeds/968/968.pdf> for the Report.

New Legislation - Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations

The Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2009, SI 2009/2517 come into force on 15 October 2009. The Regulations give effect to Commission Decision 2009/343/EC on allowing the use of radio spectrum equipment using ultra-wideband technology in a harmonised manner in the European Community and revoke and replace the Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2007, SI 2007/2084 and the Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption)(Amendment) Regulations 2007, SI 2007/2440. The Regulations exempt the establishment, installation or use of equipment using ultra-wideband technology from the requirement to be licensed under the Wireless Telegraphy Act 2006. See http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092517_en.pdf for details. See also <http://www.ofcom.org.uk/consult/condocs/regs2009/statement/statement.pdf> for Ofcom's Statement on the decision to make the Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2009.

Corporate

Takeover Panel Amendments Relating to Companies Act 2006 Enforcement

The Takeover Panel has published Instrument 2009/3, Amendments relating to the Companies Act 2006 and other minor and consequential amendments to the Code, which sets out details of the amendments to the Takeover Code to reflect the coming into force on 1 October 2009 of the final provisions of the Companies Act 2006 and the repeal of relevant provisions of the Companies Act 1985. The amendments to the Code will come into effect on 1 October 2009 and the electronic version of the Takeover Code available on the Panel's website will also be updated on that date. See <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/Instrument-2009-31.pdf> for details.

Rectification of Register of Members - Shareholding and Directorship

The claimants brought an action in the High Court pursuant to section 359 of the Companies Act 1985 (which will be repealed from 1 October 2009 and replaced by section 125 of, the Companies Act 2006) for rectification of the register of members of the third defendant company - the claimants claimed to be shareholders and directors and sought declaratory and injunctive relief aimed at preventing their exclusion from the company's offices and ensuring the recognition of their status as shareholders and directors. The defendants denied the claimants were shareholders or directors as their shares had reverted back to the company and their directorships had been terminated. Two issues of law arose as to whether shares had been successfully surrendered or transferred to the company and as to whether a shareholders protective agreement was effective to modify the company's constitution or whether it was simply a private arrangement between the defendants. In a lengthy judgment, the

court found that each claimant was a director and together constituted a majority of the directors and were therefore able to decide who should have the right to take the chair at general meetings of the company and thereby exercise any casting vote necessary to break any deadlock. Further, the court found that the issued share capital consisted of 40 shares, with the claimants each holding 10 shares. (*Jordan & Anor v Roberts & Ors* [2009] EWHC 2313 (Ch) - the judgment is available from Lawtel).

European Council Publishes Amending and Codifying Directives to Reduce Administrative Burdens and Improve Clarity

In March 2007, the European Council agreed that administrative burdens on companies should be reduced by 25% by 2012 in order to enhance the competitiveness of companies in the Community. Company law was identified as one area imposing on companies numerous information obligations, some of which seem "outdated or excessive". To that end, Directive 2009/109/EC amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions has been published (the Directive was adopted as a legislative resolution in April). Member States are required to implement the provisions of the Directive by 30 June 2011. See <http://register.consilium.europa.eu/pdf/en/09/st03/st03644-re02.en09.pdf> for details. The European Council has also published Directive 2009/101/EC on co-ordination of safeguards, which for the protection of the interests of members and third parties, are required by Member States of companies with a view to making such safeguards equivalent throughout the EU. The Directive, which comes into force on the 20th day following its publication in the Official Journal, supersedes and codifies the First Company Law Directive 68/151/EEC. The First Company Law Directive is repealed, but without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law. See <http://register.consilium.europa.eu/pdf/en/09/st03/st03631-re03.en09.pdf> for details. The Council also published Directive 2009/102/EC in the area of company law on single-member private limited companies. The Directive, which comes into force on the 20th day following its publication in the Official Journal, supersedes and codifies the Twelfth Company Law Directive 89/667/EEC. The Twelfth Company Law Directive is repealed, but without prejudice to the obligations of the member states relating to the time-limits for transposition into national law. See <http://register.consilium.europa.eu/pdf/en/09/st03/st03636-re03.en09.pdf> for details. Directives can be codified when the Council decides that it is necessary to do so for the purposes of "clarity and rationality".

Film & TV

Commission Announces Funding for International Co-operation Projects

The European Commission has announced that €5 million of funding will be made available to support 40 different projects as part of its MEDIA International funding programme. The Commission said that this demonstrated the "start of intensified EU efforts to increase consumer choice by bringing more diverse films to European and international markets and create new business opportunities for audiovisual professionals from Europe and around the globe". The funding will support training, promotion, distribution and screening and measures to increase audience access to films. This new EU programme for international film co-operation will run from 2011 to 2013 and provide a total of €15 million funding to "capitalise on growing interest and the opportunities offered by global cooperation of the EU audiovisual industry". The Commission said the extra funding, aimed at "encouraging audiences in Europe and abroad to discover foreign films" will allow EU audiovisual professionals "to learn new skills and promote the industry" by boosting collaboration with colleagues based outside Europe. (*EC Press Release IP/09/1334, 18 September 2009* - see <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1334&format=HTML&aged=0&language=EN&language=en>, which includes brief details about the individual projects being supported).

Gambling

Commission Advice on Complying with POCA Obligations

The Gambling Commission has published advice for gambling operators and information aimed specifically at small businesses to enable them to comply with the Proceeds of Crime Act 2002 (POCA). The advice to operators on the duties and responsibilities under the Proceeds of Crime Act 2002 excludes casino operators - POCA imposes duties on all operators to disclose instances where operators know or suspect that another person is engaged in money laundering, make disclosures in the prescribed form and manner and obtain appropriate consent to do a prohibited act, where appropriate. See [http://www.gamblingcommission.gov.uk/pdf/Duties_and_responsibilities_under_the_Proceeds_of_Crime_Act_2002_-_advice_to_operators_\(excluding_casino_operators\)_September_2009.pdf](http://www.gamblingcommission.gov.uk/pdf/Duties_and_responsibilities_under_the_Proceeds_of_Crime_Act_2002_-_advice_to_operators_(excluding_casino_operators)_September_2009.pdf) for the advice, which sets out the obligations imposed by POCA and offers advice and examples of how it should be applied in practice. The information notice, which is aimed at small businesses (and in particular operating licence holders in

Categories A or F), provides a very abridged summary of POCA's requirements and refers to the advice notice - see http://www.gamblingcommission.gov.uk/pdf/Proceeds_of_Crime_Act_2002_-_Information_for_small_businesses_-_September_2009.pdf for the notice.

Gambling Commission Warns Sports Clubs About Sponsorship Issues with Gambling Providers

The Gambling Commission has published a brief advice note, aimed at ensuring that sporting clubs are aware of the restrictions that apply when they seek to enter into sponsorship deals with gambling providers based outside Great Britain. The Commission noted that sports sponsorship falls within the definition of advertising in section 327(2)(a) of the Gambling Act 2005 and that such sponsorship deals raise two principle issues, the first is whether foreign gambling providers may advertise within Great Britain; the second is the need to comply with the gambling industry code for socially responsible advertising. The Commission reminded sports clubs that any gambling operator who wishes to advertise within Great Britain must be licensed and regulated in either an EEA state or be on the DCMS White List and that any advertisement by a licensed operator must also comply with the gambling industry code for socially responsible advertising and must not target children. See http://www.gamblingcommission.gov.uk/pdf/Sponsorship_of_British_sporting_clubs_by_foreign_gambling_operators_-_advice_note_September_2009.pdf for details.

ASA Find Ad for Online Bingo Not Misleading - No Breach of BCAP Code

The Advertising Standards Authority (ASA) has adjudicated on a complaint about a TV ad, for an online bingo site. Daub Ltd, which trades as Poshbingo.com, ran an ad which included a voice-over that stated "Join Poshbingo.com and get twenty pounds free play". The text on screen stated that terms and conditions applied and a complaint was made that the ad was misleading because it did not make clear that it was necessary for players to deposit and spend £20 before they could withdraw any money from their account. The ASA investigated the ad under CAP (Broadcast) TV Advertising Standards Code Rules 5.1.1, 5.1.2 and 5.1.3 (misleading advertising) but did not find it to be in breach. The ASA said viewers were unlikely to be misled into thinking that they could withdraw money having taken advantage of the free play on offer and concluded that the ad was not misleading. See http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_46963.htm for details.

Litigation

MoJ & HMRC Consultation and Government Proposals for AOs and EROs

The Ministry of Justice and HMCS have published details about the responses to their consultation on areas where secondary legislation will be used to establish the constraints and limits required for the effective operation of both the revised Administration Order (AO) and the Enforcement Restriction Order (ERO). The Government said that it intends to use the majority of the conclusions from the consultation to support the development of approved, non-court based Debt Management Schemes (DMS). It said DMS' would allow debtors' problems to be "addressed in a holistic manner, with the provision of debt advice, money handling, the identification of the most appropriate debt solution and, where appropriate, management of that debt solution all carried out in one place". The Government considers that this would offer the best prospect for delivering early support for debtors and said also that it intends to carry out a public consultation on its proposals for approved non-court based DMS before the summer recess, with a view to their possible introduction in early 2010. See <http://www.justice.gov.uk/about/docs/admin-enforcement-orders-response-web.pdf> for details.

Publishing

PCC Announces Amendments to Code of Practice

The Press Complaints Commission (PCC) has announced that three amendments to the Editors Code of Conduct have been approved and will take effect from 19 October 2009. The changes apply to privacy, harassment and the public interest exception. Clause 3 has been amended to make clear that the PCC will take into account relevant previous disclosures made by the complainant (the Secretary of the PCC's Code Committee said, "When considering complaints of alleged intrusions into privacy the PCC has traditionally had regard for any relevant previous disclosures by the complainant. That has now been codified"). Clause 4 will require journalists in situations where harassment could become an issue to identify themselves and whom they represent if they are requested to do so. Finally, the Public Interest exception has been amended require editors, when the public interest exception is invoked, to demonstrate fully how they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest. (PCC Press Release, 24 September 2009 - see <http://www.pcc.org.uk/news/index.html?article=NTk0Mg==> for details).

OFT Decide Not to Refer Newspaper and Magazine Distribution to Competition Commission

The Office of Fair Trading (OFT) has published its Decision not to make a market investigation reference to the Competition Commission about newspaper and magazine distribution in the UK. Under section 131 of Enterprise Act 2002, the OFT may make an market investigation reference to the Competition Commission where it has reasonable grounds for suspecting that any feature, or combination of features, of a market in the UK for goods or services prevents, restricts, or distorts competition in connection with the supply or acquisition of any goods or services in the UK or part of the UK. The OFT said that although the reference test had been met, the balance of the evidence reviewed and the resulting assessment pointed in favour of the OFT exercising its discretion not to make a reference to the Commission of newspaper or magazine distribution in the UK. Further, the OFT said it had identified a number of instances of best practice which, if adopted more widely, it considered could enable the newspaper and magazine supply chains to work more effectively in to the future. It said, "In addition, the wider adoption of this best practice could address some of the concerns raised by certain retailers. Given the potential benefits of such best practice, the OFT has set out high-level guidance for industry parties to consider regarding issues such as ensuring effective competition for the market and addressing some of the apparent areas of concern of certain retailers". In respect of any future reviews in the context of guidance for the industry the OFT said it "fully recognises that this sector has been subject to significant review in recent years. Were the OFT to undertake a short update review, it would focus on new developments in this sector that are relevant to the features examined in this decision. In addition, any such review would also consider what action industry parties have taken following the OFT's guidance in relation to industry best practice". See http://www.ofg.gov.uk/shared_ofg/business_leaflets/general/ofg1121.pdf for the Decision.

Consultations & Reports

Ofcom's Public Response to the DCMS Consultation - "Sustainable Independent and Impartial News; in the Nations, Locally and in the Regions" - <http://www.ofcom.org.uk/consult/ofcomresponses/dcms.pdf> (the response concludes that the costs of the Channel 3 licences to provide ITV television programmes across the UK will outweigh the benefits by 2012 and that new funding will be required if regional news on Channel 3 is to be maintained).

Ofcom Discussion Document - Local and Regional Media in the UK - <http://www.ofcom.org.uk/research/tv/reports/lrmuk/lrmuk.pdf> (the report brings together Ofcom's research and analysis which is relevant to the various duties in relation to the provision of local and regional content across the UK (it primarily covers media on a regional (county or broader geographic area), local (town or local district) and ultralocal (immediate community or neighbourhood) basis; it also covers some of the broader media issues in the devolved nations of Scotland, Wales and Northern Ireland); the Report reviews a range of opportunities and initiatives for sustaining a healthy and vibrant local media sector in the future and provides an evidence base behind Ofcom's response to the DCMS consultation - see above - it shows that the UK's local and regional media are facing "unprecedented challenges, driven by growing use of the Internet").

Ofcom Notification, Draft Direction and Explanatory Statement - Draft Direction under Section 106 of the Communications Act 2003 Suspending the Application of the Electronic Communications Code in the case of Infolines Public Networks Ltd due to repeated and serious contraventions of Regulation 16 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 - http://www.ofcom.org.uk/consult/condocs/draft_direction_infolines/notification.pdf (the notice outlines the grounds for the draft Direction (Infolines was applying to local authorities to install further payphones despite its failure to put in place an instrument to provide funds in compliance with the Regulations) and invites comment ahead of Ofcom's decision as to what further action will be required).

Ofcom Analysts' Briefing - Broadcasting and Media, 22 September 2009 - http://www.ofcom.org.uk/media/speeches/2009/09/Analyst_briefing_slides_Sep1.pdf (this summarises Ofcom's views and current actions in respect of some of the current key issues facing the media sector - media ownership rules review, commercial public service broadcasters, product placement and the pay TV market investigation).

Ofcom Consultation - Simplifying Spectrum Trading - Regulatory Reform of the Spectrum Trading Process and Introduction of Spectrum Leasing - <http://www.ofcom.org.uk/consult/condocs/simplify/simplify.pdf> (this consultation looks at whether the spectrum trading framework should be simplified for most licence classes by amending the Trading Regulations to omit the requirement for the parties to obtain Ofcom's consent. However, Ofcom noted that trading would still not be allowed in certain specified circumstances, such as if licence fees were outstanding or licence revocation or variation proceedings were in progress and Ofcom also said its consent would still be imposed on a selective basis for individual licence classes for which it considered it necessary and proportionate, but it would no longer be a blanket requirement).

Scottish Government Discussion Paper - Opportunities for Broadcasting - Taking Forward our National Conversation - <http://www.scotland.gov.uk/Resource/Doc/285350/0086693.pdf> (the paper examines options for the legislative and operational future of broadcasting in Scotland under different constitutional arrangements, having noted that "Broadcasting is the most significant part of Scotland's cultural landscape to be reserved to Westminster" - the paper says "There is scope to retain the major UK-wide broadcasting institutions while devolving greater powers to Scottish Ministers" by retaining the major UK-wide broadcasting institutions (notably Ofcom and the BBC) while strengthening their obligations to cater for Scottish audiences, and devolving powers to ensure that the framework is set and scrutinised by Scottish Ministers and the Scottish Parliament).