

This is our summary of some of the key legal developments across a range of sectors for the week of 5 October 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

Advocate General's Opinion in Mobile Roaming Caps Dispute

The European Court of Justice (ECJ)'s Advocate General has ruled that the ECJ was right to introduce caps on the fees phone operators can charge customers for using their mobile phones abroad, as the regulation was in the interests of the internal market. The Commission had introduced caps for roaming rates in 2007 via the Roaming Rate Regulation 717/2007. Mobile phone operators Vodafone, Telefonica O2, T-Mobile and Orange had challenged the validity of the EU roaming law before the High Court, Queen's Bench Division (Administrative Court), which

referred the case to the European court. The challenge to the regulation was based on assertions that the Roaming Regulation is invalid on the basis that Article 95 did not provide an adequate legal basis for Community action and that, even if this were not so, the imposition of retail price controls by the regulation constituted an infringement of the principles of proportionality and subsidiarity. The Advocate General said that "the Community legislator could regulate roaming prices under Article 95 for a different reason: namely the removal of restrictions to free movement arising from the behaviour of private parties which disfavors cross-border economic activity. The differences in price between calls made within one's own Member State and those made while roaming can reasonably be regarded as discouraging the use of cross-border services such as roaming" and noted that there was "perhaps no clearer cross-border economic activity in the mobile telecommunications sector than roaming itself. The imposition of a price cap on roaming services can legitimately be seen as serving the establishment of the internal market by removing obstacles to cross-border economic activity". (*Vodafone Ltd & Ors v Secretary of State for Business, Enterprise and Regulatory Reform, Case 58/08* - see <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&numaff=C-58/08&nomusuel=&docnodecision=docnodecision&allcommjo=allcommjo&affint=affint&affclose=affclose&alldocrec=alldocrec&docor=docor> for the Opinion).

IPO Initiatives for Increased Efficiency for Patents

The Intellectual Property Office has announced a number of initiatives which are intended to improve business efficiency - these include the introduction of a new, free Priority Document Access Service (PDAS) which will allow patent priority documents to be stored at the World Intellectual Property Organisation (WIPO) for future use thereby removing the need to provide paper copies of GB priority documents to each participating IP office, and offering e-filed applications and search and examination a 15% reduction in fees, amongst other worksharing proposals. (*IPO Press Release, 5 October 2009* - see <http://www.ipo.gov.uk/press-release-20091005> for details).

Broadcasting

Ofcom Updates Guidance on TWF Directive for European Production Quotas

Ofcom have updated their Guidance on compliance with Articles 4 and 5 of the Television without Frontiers Directive (which relate to the production and promotion of European works) in order to give effect to the provisions of the Audio Visual Media Services Directive. See <http://www.ofcom.org.uk/tv/ifi/guidance/epq.pdf> for details.

BBC Trust Consults on Revised Draft Editorial Guidelines

The BBC Trust have for the first time put their revised draft editorial guidelines for consultation. The guidelines are reviewed every five years, but this is the first time that the Trust has invited comment. According to the Trust "The Editorial Guidelines set out the standards required of people making programmes and other content for the BBC. They exist to guide content producers in making considered editorial decisions that balance freedom of expression with their responsibilities to the audience, contributors and others. The Guidelines cover these responsibilities in great detail". The Trust had asked the Executive to examine and update the Guidelines in advance of formal consultation. The submissions to the consultation and independent research commissioned by the Trust will inform the review, and once approved, the new guidelines will come into effect in summer 2010. The existing guidelines will remain in place until then. See http://www.bbc.co.uk/bbctrust/assets/files/pdf/our_work/editorial_guidelines/draft_ed_guidelines.pdf for details. The proposed changes have already generated comment and interest, not least because of the proposals, for the first time, specifically place all BBC internet content as an equal partner to television and radio, tightening editorial controls over language used after the watershed and requiring all pre-recorded programmes to be editorially approved before broadcast; they also attempt to deal with what has been described as product placement creep, whereby the use of props becomes a form of product placement.

Corporate

Solvency Statements in Support of Reduction of Capital - Practical Guidance for Directors

With effect from 1 October 2009, a private company limited by shares will be able to reduce its share capital without a court order by having its directors make a solvency statement before passing a resolution to reduce the share capital. The directors must have reasonable grounds for making such statement and they will commit an offence if they do not and the statement is then delivered to the Registrar of Companies. The Company Law Committee of the Law Society have published a memorandum on the practical steps that directors can take before making such a solvency statement in order to reduce the risk of committing an offence under section 643 of the

Companies Act 2006, including recording the information they considered in reaching their opinion, considering the company's actual circumstances and obtaining a report or opinion from third parties - see <http://www.citysolicitors.org.uk/FileServer.aspx?oID=661&IID=0> for details.

New Legislation - Sensitive Words and Expressions for LLPs and Business Names

The Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2009, SI 2009/2615 came into force on 1 October 2009. The Regulations revoke the Company and Business Names Regulations 1981 and the various related amendment regulations and specify the 155 words and expressions for which prior approval is required for their inclusion in the registered name of a company or an LLP or in any person's business name; a further six words are prescribed so that prior approval is required only for their inclusion in the registered name of a company or an LLP. This prior approval is required by section 55(1) of the Companies Act 2006, which provides that a person must obtain the approval of the Secretary of State to register a company by a name that includes certain words or expressions specified by regulations made under section 55. Section 1194(1) of the Act also provides that a person must not carry on a business in the UK under a name that includes a word or expression specified in regulations without the approval of the Secretary of State - see http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092615_en.pdf for details.

Gambling

Further Affirmation that Poker is a Game of Skill, Not Chance

Reaffirming an earlier court's decision that poker, specifically Texas Hold'em, was a game of skill and should therefore not be considered gambling under law, a South Carolina court has reversed the convictions of five individuals who had been accused of illegal gambling, having been arrested for playing poker in a private home. The Circuit Judge said the South Carolina's Code of Laws, Section 16-19-40 (of 1802), which provides for unlawful games and betting bans "any game with cards or dice" was overly vague and broad, as it could be used to convict anyone playing poker (or many other games) in their own home. The State is expected to appeal the ruling, which at the time of writing had not been published.

Litigation

Twitter and the Law - High Court Approves Service Via Twitter

The High Court has allowed an injunction to be served via the social networking site, Twitter. The order was served against an unknown Twitter user, who anonymously posted to the site using the same name as a right-wing political blogger and sought to have the anonymous Twitter user reveal their identity and stop posing as the blogger (Donal Blaney). In seeking the injunction the applicant also relied on infringement of copyright and a false attribution claim under section 84 of the Copyright Designs and Patents Act applying the principles of *Clark v Associated Newspapers* [1998] EWHC Patents 345. The granting of the injunction (being referred to as Blaney's Blarney Order) has, not surprisingly, generated much comment, (although a copy is unavailable). The Order was described as a "huge step forward in preventing anonymous abuse of the internet".

Public Inspection of Documents - Public's Right to Know

The Audit Commission, which was an "interested party" in litigation between Nottinghamshire County Council and Veolia ES Nottinghamshire Ltd, has published a press release following the judgment of the High Court. The Commission welcomed the ruling which they said backed their definition of what documents were subject to public inspection during an audit. The case was about the extent to which details of the Council's waste management contracts with private contractors could be disclosed - the contractor, part of a French-owned environmental concern, had sought an injunction to stop the Council making details of the private finance initiative (PFI) arrangements public and had argued that a more liberal definition of what should be disclosed compromised its commercial position. The Commission had argued the law gave residents a right to see documents during the audit. (*Veolia ES Nottinghamshire Ltd v Nottinghamshire County Council* [2009] EWHC 2382 (Admin) - see <http://www.bailii.org/ew/cases/EWHC/Admin/2009/2382.html> for the ruling and <http://www.audit-commission.gov.uk/pressoffice/pressreleases/Pages/01102009nottscourtcase.aspx> for the Commission's Statement).

ICAEW Launch Forensic Accountant and Expert Witness Accreditation Scheme

The Institute of Chartered Accountants in England and Wales (ICAEW) have announced the launch of a Forensic Accountant and Expert Witness Accreditation scheme, which takes the form of a register of accredited accountants

and expert witnesses who have passed the ICAEW's examination of experience and are therefore considered to be a possible "independent and reliable resource for potential clients looking for forensic experts with recent and relevant experience". (ICAEW Press Release, 2 October 2009 - see http://www.icaew.com/index.cfm/route/167895/icaew_ga/en/Qualifications/Specialist_qualifications_and_programmes/Forensic_Accountant_and_Expert_Witness_Accreditation/FAQs/FAQs_about_the_Forensic_Accountant_and_Expert_Witness_Accreditation for details).

Publishing

Statement in Open Court - False Allegations in Television Broadcast

The claimant, a Member of Parliament brought libel proceedings against the defendant broadcasting corporation (BBC) following the broadcast of a television programme which wrongly alleged that the claimant had proposed an amendment to a government motion on MPs' expenses so that he would benefit financially and in that way had acted in an unprincipled and selfish way and abused his position as an MP. The defendant accepted that the claimant had not benefited from the proposed amendment and apologised for the broadcast and agreed to pay a "substantial sum" in damages, together with costs. (*Mackinlay, MP v British Broadcasting Corporation, Unreported, QBD, 1 October 2009*).

PCC Rules on Complaints About Parliamentary Expenses Articles

At the same time, the Press Complaints Commission (PCC) has ruled on two separate complaints from MPs about The Daily Telegraph's recent coverage of parliamentary expenses. The Commission upheld a complaint from Brian Binley, MP for Northampton South, after The Daily Telegraph claimed he was a "millionaire" and possessed a "multi-million pound fortune". Mr Binley said that both assertions were inaccurate and supplied evidence of his actual financial situation however the paper said it took other assets into account when making the claim. The complaint was made that the article breached Clause 1 (accuracy). The Commission acknowledged that it was being asked to adjudicate on a narrow but important point - "The newspaper had made a clear claim about the complainant's finances on two occasions and had been unable to corroborate the position adequately following the complaint, arguing only that the complainant must have amassed considerable wealth. The newspaper did not put the claim to the complainant before publication and - despite the complainant's comprehensive analysis of his financial position - had not offered promptly to publish a correction and apology which accepted the articles were incorrect on this point". The complaint was upheld as a result. See <http://www.pcc.org.uk/cases/adjudicated.html?article=NTk2Nw==> for details. The second complaint was not upheld. The Commission found that as the complainant had accepted that the specific reference to the repayment in the article was accurate, the question was whether it was misleading to include it in an article discussing "phantom", "inflated" and "dubious" claims. A more detailed explanation, referring to the "mix-up" was contained within a special supplement, which was published on the same day. In these circumstances, the Commission was satisfied that readers would not generally have been misled and the complaint was, therefore, not upheld.

Consultations & Reports

Ofcom Report - Television Broadcast Licensing Update, September 2009 - <http://www.ofcom.org.uk/tv/ifi/tvlicensing/tvupdates/monthly/200909> (details the television services licensed, ceased to be licensed (handed back or revoked), transferred or had their service names changed in September 2009)