

This is our summary of some of the key legal developments across a range of sectors for the week of 16 November 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

The Digital Economy Bill - Delivering a "Strategic Vision" for the Digital Age

The Queen's Speech has seen the confirmation of the current Government's proposals towards undertaking the legislative measures required to deliver the strategic vision it set out in the Digital Britain White Paper - the speech confirmed that the "Government will introduce a Bill to ensure communications infrastructure that is fit for the digital age, supports future economic growth, delivers competitive communications and enhances public service broadcasting". The Bill has already had its First Reading in the House of Lords - the date for the Second Reading, at which substantive debate on its content will begin, is yet to be set. The Bill has been published however - see <http://www.publications.parliament.uk/pa/ld200910/ldbills/001/10001.i-ii.html> - top for the text of the draft Bill as presented and <http://www.publications.parliament.uk/pa/ld200910/ldbills/001/en/10001x--.htm> for its accompanying Explanatory Memorandum. The Bill covers 11 "topics" - Topic 1 deals with the general duties of Ofcom; Topic 2 deals with online infringement of copyright (clauses 4 to 17 impose on Internet Service Providers obligations aimed at reducing online infringement of copyright. Ofcom will be responsible for the specification of the procedural and enforcement aspects of these obligations through the approval or adoption of legally binding codes of practice. Clause 17 gives power to the Secretary of State to make provision by order to amend Part 1 or Part 7 of the Copyright Designs and Patents Act 1988 for the purpose of preventing or reducing on-line copyright infringement); Topic 3 deals with powers in relation to internet domain registries; Topic 4 deals with the Channel Four Television Corporation and the extension of its functions; Topic 5 deals with independent television services and the updating of the statutory framework for the Channel 3 and Channel 5 licences to introduce more flexibility; Topic 6 deals with independent radio services and the introduction of changes to the licensing regime for independent radio services to facilitate the change to digital services; Topic 7 deals with the regulation of television and radio services and provides for the alteration of the conditions of public service provision that Ofcom must include in Channel 3 and 5 licences, with the option to change the conditions back at a later date; Topic 8 deals with access to electromagnetic spectrum and the reallocation of spectrum currently used by mobile network operators; Topic 9 deals with video recordings and the implementation of the recommendations from the Byron Review on extending the range of video games that are subject to requirements to be age-rated and supplied only in accordance with the rating; Topic 10 deals with copyright and performers' property rights, licensing and penalties and the regulation of collecting societies, the conferral of extended powers on collecting societies to grant licences over works of non-members, the granting of licences in respect of orphan works and increasing penalties for some forms of copyright infringement; and Topic 11 deals with the public lending right so as to allow inclusion of non-print formats (audio-books and e-books) in the public lending right payment regime.

ICO Welcomes MoJ Proposals for Increased Sanctions for Data Offences

The Information Commissioners Office (ICO) has published its response to the Ministry of Justice (MoJ)'s proposals to introduce custodial penalties for offences committed under section 55 of the Data Protection Act 1998 (see the Need to Know of 12 October 2009 for details). The Commissioner said he "continues to believe that custodial penalties are necessary if the law is to provide an effective deterrent against the illegal trade in personal data" and that custodial sentences need to be set at the "maximum available under the power in order to have the necessary deterrent effect". This response is well timed and not surprising, given the recent announcements about the sale of mobile telephone customers' data, for profit, by mobile telephone company employees. On this matter the Commissioner said, "It is clear that an effective deterrent to the section 55 offence is needed. More and more personal information is being collected and held by government, public authorities and businesses. In the future, as new systems are developed and there is more and more interconnection of these systems, the risks of unlawful obtaining and disclosure become even greater. If public trust and confidence in the proper handling of personal information, whether by government or by others, is to be maintained effective sanctions for unlawful obtaining etc are essential". The point was made however that under the law as it stands, there is a public interest defence for section 55 offences. The Commissioner said, "the defence available to journalists would be strengthened under the proposal for a custodial sentence". See

http://www.ico.gov.uk/upload/documents/library/corporate/detailed_specialist_guides/section_55_response_to_moj_consultation_20091112.pdf for the ICO's response to the MoJ proposals and http://www.ico.gov.uk/upload/documents/pressreleases/2009/mobile_phone_records_s55_171109.pdf for the ICO's announcement about the sale of mobile telephone customer records.

OFT Consults on Annual Plan for 2010 - 2011

The Office of Fair Trading (OFT) is consulting on its draft Annual Plan for 2010 - 2011. The draft sets out the OFT's aims and objectives for the year and a final version, which will be published in March 2010, will take account of the responses to the consultation - see http://www.offt.gov.uk/shared_offt/consultations/Annual-Plan-2010-11-cons.pdf for details. Amongst the general proposals to improve efficiency etc, the OFT has said that it will be looking at the increasing impact of online transactions and the potential for greater government intervention in markets.

Google Books - Amended Settlement Agreement Filed with Court

The latest in the ongoing Google Books saga has seen an Amended Settlement Agreement being reached between Google Inc and the Authors Guild and the Association of American Publishers and then filed with the US District Court in the Southern District of New York (Case No 05 CV 8136 (SDNY)). The agreement is intended to settle the 2005 class action lawsuit which saw Google being accused of copyright infringement after it started scanning "vast libraries of books" - the new proposal will apply only to books that were registered with the US Copyright Office or published in Britain, Australia or Canada. This means that 95% of non-US books will now not be covered by the settlement, which will be binding only in America. Google Books will therefore only include works registered in countries which have "contributed the largest number of English-language works to American libraries" made possible by similarities in their legal systems and the structure of their publishing industries. Google has said that it will begin discussions with European rights holders as it seeks to broaden the scope of the project. The Agreement also sought to address concerns about "orphan works" with the establishment of an independent fiduciary body charged with protecting the interests of the rights holders - any money made from such works must be held for ten years in case details of the copyright holder emerge, after which time any unclaimed money will be shared among charities in the US, Canada, Australia and the UK. A proportion of the revenue generated from unclaimed works must also be used by Google to search for the rights holders. The Federation of European Publishers (FEP), which represents 26 national publishers, "acknowledged that the parties considered the concerns of European publishers and made some steps," but also said that it wanted "to analyse more thoroughly the new settlement before giving a final comment". The Agreement is awaiting the court's final approval however, preliminary approval has already been given.

PhonpayPlus Announces Decrease in Customer Complaints

PhonpayPlus has announced that it has seen a 62% decrease in the number of complaints about mobile phone-paid services since last year - it said that in July 2008 there had been 1,981 complaints but in October 2009 there had been only 746. In January this year, PhonpayPlus introduced new rules for mobile phone-paid services, which included requiring customers joining a subscription service to actively confirm they wish to proceed with the subscription services, increased price transparency and the application of a "stop" request under which providers offering subscription services or sending promotional text messages must enable consumers to easily opt out of the service. (*PhonpayPlus News Release, 17 November 2009; the release also makes reference to the announcement by the EU Consumer Commissioner regarding the results of an investigation by the various regulatory authorities into websites mis-selling ringtones, wallpapers and other mobile phone services - the Commission said "301 websites were investigated by national enforcement authorities for serious breaches of EU consumer law. 70% of the 301 cases investigated, have now been resolved. 52% (159 websites) have been corrected and 17% (54 websites) have closed. The three main problems were unclear pricing (eg, information missing or incomplete); failure to provide complete trader information; and misleading advertising, in particular, advertising ringtones as "free" where the consumer was actually tied into a paying subscription - only Portugal, Ireland and Slovenia recorded no infringements*).

Whether Unsigned Agreement is Legally Binding - Intention of Parties to Create Legal Relations

The defendants had entered into a funding agreement with the claimants in accordance with which the claimants agreed to invest and in return the defendants were to fulfil certain obligations. A version of the agreement was signed by both the claimants and defendants. At the defendants' request, the claimants produced an amended agreement, which was signed by the claimants but not by the defendants. When the defendants failed to fulfil their obligations under the agreement, on the basis that no binding agreement had been concluded, the claimants brought proceedings for breach of contract. The High Court held the claimants were entitled to damages for

breach of contract on the basis that a contractually binding funding agreement had been concluded by the parties with the mutual intention to create legal relations. The amended version of the contract, although not signed by the defendant, had merely been a variation of the original agreement. In all the circumstances, the agreement was binding and enforceable. The defendants appealed. The Court of Appeal dismissed the appeal - it noted that courts would be very slow to find that a commercial agreement, which was intended to have contractual effect and be performed in good faith, was not, in law, a binding contract. The defendants' subjective intention was irrelevant - the intention to create legal relations in a contractual context was to be assessed objectively and in this case, although the agreement had not been signed, there was no consensus that the agreement was not to be binding unless it had been signed. Signatures were evidence of what had been agreed, but were not conditions of the agreement. The dealings between the parties indicated that there had been an intention to create legal relations and just because the defendants regretted the deal they had made, that did not deprive the contract of its value. (*Maple Leaf Marco Volatility Master Fund & Anor v Rouvroy & Anor* [2009] All ER (D) 199 (Nov) - only a digest of the case is available, via LexisNexis).

Broadcasting

New Legislation - Audiovisual Media Services Regulations

The Audiovisual Media Services Regulations 2009, SI 2009/2979 have been laid before Parliament and will come into force on 10 December 2009. The Regulations implement those provisions of the Audiovisual Media Services (AVMS) Directive 2007/65 EC that are not already implemented in UK law or contained in Ofcom's statutory codes. The Regulations amend the Communications Act 2003 and make provision to define the on-demand services to which they apply as on-demand programme services. They also establish a regulatory framework for such services and set out minimum content standards to which they must adhere; they modify the definition of a television licensable content service to remove the exclusion for broadcast services provided over the Internet so as to ensure that all television broadcasting services are within the scope of regulation and therefore require a broadcasting licence from Ofcom; they place on Ofcom a duty to ask a broadcaster to comply with the broadcasting rules of another EU Member State when a substantiated request is received from that Member State for the broadcaster to do so (but there is no obligation for Ofcom to impose or enforce them); and they bring within the scope of regulation non-EU satellite television services which are uplinked to satellite from within the UK. The Government has said that these changes will give effect to the requirements of the Directive but will not go beyond what the Directive permits or requires. It said, "This approach will avoid imposing undue or excessive new regulatory burdens on broadcasting and on-demand services while securing the level of public protection which the Directive seeks to achieve". See http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092979_en.pdf for the Regulations and http://www.opsi.gov.uk/si/si2009/em/uksiem_20092979_en.pdf for the accompanying Explanatory Memorandum. The Government also said it will bring forward further Regulations early next year to require providers of on-demand programme services to notify the regulatory authorities that they are providing, or intend to provide, such a service, and to allow the regulatory authorities to levy fees on service providers in order to cover the cost of regulation. These measures are currently the subject of a notification to the European Commission under the Technical Standards Directive. Also of note is the fact that the TVWF Directive, which was amended by the AVMS Directive and the AVMS Directive itself are currently undergoing a codification procedure in the European Parliament and the Council. The codified Directive, which will repeal the existing Directives, is expected to come into force by the end of 2009. The Government has said that it expects to include in its further Regulations provisions to ensure that the implementing legislation refers to the codified Directive.

Corporate

FRC's Practical Guidance for Audit Committees

The Financial Reporting Council (FRC) has published a report on the challenges facing audit committees in the current economic climate. The report notes that while the economic outlook appears to be less depressed than this time last year, "significant economic risks remain and will present challenges for many audit committees during the 2009/10 reporting season. Past experience shows that insolvencies have increased after the technical end of recessions as companies run out of working capital". The report focuses on a number of key issues for committees such as reliance on models for cash flow and valuation information, liquidity risk and going concern issues and year-end planning and suggests a series of questions for audit committees to ask themselves when they are compiling their report - see http://www.frc.org.uk/images/uploaded/documents/Challenges_for_audit_committees_November_20093.pdf for details.

Government Response to Consultation on Disclosure of Loans to Directors in Company Accounts

The Government has published its response to the consultation on the disclosure of loans to directors in company accounts. Although the main focus of the consultation was concerned with the position of the directors of banking companies and the holding companies of credit institutions under section 413(8) of the Companies Act 2006, the Government also sought views on the general position relating to directors of other companies. The Government said it has decided to make regulations to amend section 413(8) of the Companies Act 2006, which specifies the information that must be given about directors' benefits, advances, credits and guarantees, so that banking companies and the holding companies of credit institutions are only required to make aggregate disclosures of the amounts specified in section 413(5)(a) and (c) (correcting an incorrect cross-reference) - these sections require the disclosure of information about the amount of an advance or credit and the amount of the maximum liability that may be incurred by the company or its subsidiary. The law, as currently drafted, appeared to require the information for each director, and not an aggregate figure. See <http://www.berr.gov.uk/files/file53630.pdf> for details. See also http://www.opsi.gov.uk/si/si2009/pdf/uksi_20093022_en.pdf for The Companies Act 2006 (Amendment of Section 413) Regulations 2009, SI 2009/3022, which will come into force on 23 December 2009 and amend section 413(8) so that banking companies and the holding companies of credit institutions are only required to make aggregate disclosures of the amounts specified in section 413(5)(a) and (c).

New Legislation - Limited Liability Partnerships Amendment No 2 Regulations

The Limited Liability Partnerships (Amendment) (No 2) Regulations 2009, SI 2009/2995 come into force on 14 December 2009. The Regulations amend the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009, to extend to LLPs the amendment of section 54(1)(a) of the Companies Act 2006 by the Government of Wales Act 2006 (Consequential Modifications, Transitional Provisions and Saving) Order 2009. The effect of the amendment is to place restrictions on LLPs being registered with names that suggest a connection with the Welsh Assembly Government. See http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092995_en.pdf for details.

New Legislation - Prohibited Business Name Regulations

The Company, Limited Liability Partnership and Business Names (Public Authorities) Regulations 2009, SI 2009/2982 have also been made and came into force on 10 November 2009. These Regulations impose a requirement of obtaining the prior approval of the Secretary of State before the registration of a business name which suggests a connection with any one of the 26 listed public authorities (legislatures, government auditors and financial regulators, non-departmental public bodies with Crown functions and Government departments where there is a risk of harm from the public being misled). The Regulations do provide a saving provision in that any name, which would otherwise be prohibited under the Regulations but which had already been registered between 1 October 2009 and the date the Regulations came into force, will continue to be permitted to be used (even if it would otherwise be an offence to use the name). See http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092982_en.pdf for details.

Application for Relief from Unfair Prejudice - Conduct of Directors and Pricing of Shares

The petitioner held shares in the fourth respondent (Sunrise), which had been incorporated in 1989 for the purpose of operating a radio station. The petitioner claimed the affairs of the company had been and continued to be conducted in a manner unfairly prejudicial to her. She sought relief from unfair prejudice under section 994 of the Companies Act 2006. In a lengthy judgment, the court noted that in considering a petition under section 994, the words "unfairly prejudicial" were to be applied flexibly to meet the circumstances of the particular case and gave detailed consideration to the law of unfair prejudice. It ruled that the failure of company directors to give proper consideration to the price of shares in a rights issue might amount to a breach of fiduciary duty. Where a company's directors had unthinkingly allotted shares to another company at par, which resulted in a significant discrepancy between the price paid and the shares' value, the minority shareholder had suffered unfair prejudice. The court said the fair course in the circumstances was to require the petitioner's shares to be valued on an undiscounted basis: "In other words, she will receive a rateable proportion of the value of the Sunrise shares as a whole". (*In the Matter of Sunrise Radio Limited and in the Matter of the Companies Act 2006; Kohli v Lit & Ors [2009] EWHC 2893 (Ch)* - see <http://www.bailii.org/ew/cases/EWHC/Ch/2009/2893.html> for the judgment).

Gambling

Report Identifies Lack of Research into Problem Gambling in Europe

A report presented to the European Parliament has identified significant problems relating to a lack of research into problem gambling - the report provides a country-by-country analysis of the known empirical evidence of gambling and problem gambling in Europe and highlights the gaps between Member States in carrying out gambling research, which results in the Member States falling into three different categories. Some countries have carried out national surveys on gambling and/or problem gambling and some have carried out studies at a regional or local area however, there were however a number of countries where almost nothing was known empirically about gambling and/or problem gambling. According to the report, the majority of European markets are lacking in research of sufficient quality, consistency and breadth into the issue of problem gambling. Only Belgium, Denmark, Estonia, Finland, Germany, Great Britain, The Netherlands, Lithuania, Sweden and Switzerland had undertaken national surveys.

Publishing

Court of Protection to be Opened to the Media

Following an application by The Independent and other interested parties, the High Court (Family Division) has ruled that proceedings in the Court of Protection, which was created by the Mental Capacity Act 2005, concerning an unidentified young man who was severely disabled but whose specific talents and gifts had brought him into the public domain, may be opened up to the media. The applicants (collectively referred to as the media) sought permission to attend hearings about his care - the court first asked whether the media could show "good reason" for their presence at the hearing, with the potential for reporting its outcome. It said, "Their case can be put like this. 'A' is well known to the public through the exercise of his gifts; also well known to the public are the nature and gravity of his disability. Thus the need for decisions to be made on his behalf, the financial and personal implications of such decisions and the consequent responsibility that lies on those who take such decision must be self evident to the public. There is accordingly, so it is said, a proper public interest in how the Court of Protection deals with these issues together with its decisions and the reasons for them". The court then undertook the balancing of the Article 8 and Article 10 rights - it noted 'A's and his family's Article 8 rights were "self evidently engaged" but that the matter of 'A's disability and its consequent limitations on his life have been "fully aired in the public sphere as have his remarkable skills and the demonstrations of them. It follows that any intelligent member of the public drawn to these stories will appreciate that 'A' must be incapable of managing his earnings and indeed of deciding whether (and, if so, to what extent) he should appear in public at all. That member of the public might therefore have a legitimate interest in knowing, given that proceedings have been instituted, how these matters are regulated, by whom and on what principles. The media contend that their Article 10 rights cover the meeting of those legitimate interests by being able to report those proceedings". The court said it was "satisfied that it is possible to accommodate the legitimate concerns for privacy and the legitimate aspirations for publicity at the same time". It said "In particular the media should be allowed to report two types of material: first, that which is within the public domain already; and secondly, that which answers the legitimate questions of a reasonable person who knows what is presently within the public domain. These are the principles upon which the court proposes to exercise its regulatory powers ... That means that 'A's name, the nature of his talent, the nature of his disability, his reliance on others for his care and the management of his affairs can all be reported ... On the other hand the nature of his earnings, the details of his care, the nature of family discussions about these matters, the question of medical treatment and the criteria the family wish to employ (if such be entrusted to them) in relation to decisions about public appearances should all enjoy privacy and not be reportable". The court noted further "to a significant extent the legitimate concerns of 'A' under Article 8 and the legitimate aspirations of the media under Article 10 could both be met and that accordingly some opening up of these proceedings is justified and that this can be done consistently with his best interests as required by Section 1(5) of the 2005 Act". (*Independent News and Media Ltd & Ors v A* [2009] EWHC 2858 (Fam) - see <http://www.bailii.org/ew/cases/EWHC/Fam/2009/2858.html> for the judgment, which was handed down in private and was subject to restrictions in terms of identifying the parties involved).

Agreed Statement in Open Court - Untrue and Offensive Allegations in Magazine Article

The claimant, a TV personality and pop singer, brought a libel claim against the defendant, the publisher of Now magazine, following the publication of an article which contained a number of allegations about his relationship with his former wife and his attitude to their marriage and which called into question his ability to care for her son. The defendant accepted that the allegations were untrue and were offensive and upsetting to the claimant.

The defendant apologised and agreed to pay substantial damages and legal fees. The defendant agreed to the agreed statement in order to set the record straight. (*Andre v IPC Media Limited, Unreported, QBD, 10 November 2009*).

Sport

Commission Funding for Sports-Related Projects

The European Commission has announced that it will be providing financial support to 18 sport-related projects in the European Union, involving 150 sporting organisations. The grants, totalling € 4 million, are part of the 2009 Preparatory Action in the field of sport, which was approved by the European Parliament as a step towards the implementation of the new EU competence for sport enshrined in the Lisbon Treaty. In total, 207 applications were received - 134 were for promoting health-enhancing physical activity, 63 for promoting education and training in sport, 32 for promoting European fundamental values by encouraging sport for persons with disabilities and 26 for promoting gender equality in sport. See http://ec.europa.eu/sport/preparatory_actions/doc866_en.htm for details about the selected projects. (*EC Press Release IP/09/1705, 13 November 2009*).

Technology

Commission Publishes Regulation Implementing Network Services Requirements

The European Commission has published in OJEC Regulation 976/2009 of 19 October 2009 implementing Directive 2007/2/EC of the European Parliament and the Council as regards Network Services. The Regulation makes provision for the establishment and maintenance of the Network Services provided for in Article 11(1) of Directive 2007/2/EC and obligations related to the availability of those services to the public authorities of the Member States and third parties pursuant to Article 12 of the Directive. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:274:0009:0018:EN:PDF> for the Regulation and <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:108:0001:0014:EN:PDF> for the Directive, which states that "Network services are necessary for sharing spatial data between the various levels of public authority in the Community. Those network services should make it possible to discover, transform, view and download spatial data and to invoke spatial data and e-commerce services. The services of the network should work in accordance with commonly agreed specifications and minimum performance criteria in order to ensure the interoperability of the infrastructures established by the Member States. The network of services should also include the technical possibility to enable public authorities to make their spatial data sets and services available".

Commission Reports on Broadband Access in the EU

The Commission has also published a Working Document on the level of broadband access in the European Union as at 1 July 2009. The report by the Communications Committee showed that broadband take-up is continuing but at a slowing rate, due to the economic slowdown and had reached an average penetration level of 23.9%, which was a small increase from 21.6% level of July 2008. Denmark and the Netherlands continued to be world leaders in broadband take up, with nearly 40% of the population having a broadband connection; in the UK the figure was 28.4%. The report also showed that mobile broadband was gaining momentum, with a 54% increase since January and a penetration rate of 4.2% and that the speed and quality of broadband had also improved - 80% of broadband lines in the EU now deliver speeds above 2 Mbps. Also included in the report was data on individual Member States' local broadband access. See http://ec.europa.eu/information_society/eeurope/i2010/docs/interinstitutional/cocom_broadband_july09.pdf for the report. (*EC Press Release IP/09/1731, 17 November 2009*).

European Ombudsman Publishes Report on Intel Complaint Findings

The European Ombudsman has published a non-confidential version of the ruling it made in July 2009 in the complaint about the manner in which the investigation into the complaint about Intel Corporation was carried out (Case 1935/2008/FOR). The complaint to the Ombudsman arose as a result of an investigation being carried out by European Commission into Intel following a complaint the Commission received from Intel's competitor, AMD. The Commission's investigation (Case COMP/37.990) sought to verify whether Intel had abused its dominant position in contravention of Article 82 EC by using anticompetitive practices to exclude competitors from the market for certain central processing units. This investigation resulted in the complaint being made to the Ombudsman about procedural errors made by the Commission committed during its investigations. The Ombudsman eventually ruled that the Commission had infringed the principles of good administration and the Commission was informed of the findings; the Ombudsman also made a suggestion to the Commission about its procedures for note taking, which

had been the basis for the complaint. (*EC Press Release EO/09/19, 18 November 2009* - see <http://www.ombudsman.europa.eu/cases/decision.faces/en/4164/html.bookmark> for the report).

Consultations & Reports

Ofcom Report to the Secretary of State (Culture, Media and Sport) on the Media Ownership Rules - <http://www.ofcom.org.uk/consult/condocs/morr/statement/morrstatement.pdf> (Ofcom has a duty to regularly review the media ownership rules and provide a report to the Secretary of State on the operation of the rules and any recommendations for change - the Report notes that while use of the Internet is growing, the large majority of people still consume news through television, radio and newspapers and that current economic challenges are having an impact, with significant pressures being put on local media - Ofcom recommended removal of the local radio multiplex and service ownership rules and the removal of the national radio multiplex rules, the liberalisation of the local cross media ownership rules and the retention of the national cross media ownership rules. It also recommended retaining the restrictions on holding broadcast licences, the appointed news provider rule and the media public interest test. It is now for the Government to decide what, if any action to take on the Report).

Government Response to the Consultation on the Proposed New Duties for Ofcom to Promote Efficient Investment in Infrastructure, to Provide a Full Assessment of UK Communications Infrastructure Every Two Years - <http://www.berr.gov.uk/files/file53526.pdf> (the Digital Britain White Paper set out proposals to change Ofcom's general duties to give them additional duties in relation to the promotion of investment in communications infrastructure and regular reporting on the state of the UK's communications infrastructure - BIS consulted on these proposals and the Government has responded saying that it "will introduce a clause in the Digital Economy Bill to amend Ofcom's general duties in section 3 of the Communications Act 2003. The effect of the amending provision would be to require Ofcom, whenever performing its principal duty, to have particular regard in all cases to the need to promote appropriate levels of investment in infrastructure". The new duty will require Ofcom to give greater weight to investment in infrastructure than is currently the case. The Government also said it has decided to move ahead with a new duty on Ofcom to report on the communications infrastructure as set out in the consultation. The new duty will require Ofcom to produce an initial snapshot of the position existing in the first year after the provision comes into force. Ofcom would then prepare subsequent reports at two-yearly intervals).