

*This is our summary of some of the key legal developments across a range of sectors for the week of 23 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

#### Council of EU Ministers Approves Telecoms Package

The Council of EU Ministers has unanimously approved the EU's telecoms reform package and the entry into force of the whole telecoms reform package will take place with its publication in the EU's Official Journal, which is expected sometime in December 2009. Member States will then have until June 2011 to transpose the telecoms reform package into their national legislation. The EU telecoms reform package comprises five separate Directives (the Framework Directive, Access Directive, Authorisation Directive, Universal Service Directive and the e-Privacy Directive) and a new Regulation setting up the European Body of Telecoms Regulators (BEREC), the establishment of which is expected to take place by Spring 2010. See <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/513&format=HTML&aged=0&language=EN&guilanguage=en> for a Commission Memo summarising the key reforms which the package will introduce.

#### SABIP Research Agenda for Economic Value of IP

The Strategic Advisory Board for Intellectual Property Policy (SABIP) has published a research agenda and plan of action on the economic value of intellectual property (IP), which is intended to provide SABIP and the IPO with a better understanding of the impact of IP on innovation and growth of the UK. SABIP said they are establishing a number of national and international partnerships and work to clarify the role of IP in innovation and economic growth has already begun. Issues being considered include questions as to whether stronger or weaker IP protection results in more or less innovation, the impact of digital media changing copyright value-chains and how societies can continue to finance the creation of "cultural" goods in the digital era. See <http://www.sabip.org.uk/forumip-planofaction.pdf> for details.

#### Court of Appeal Considers Battle of the Forms Issue

The Court of Appeal has considered the question of whether in what is sometimes called "the battle of forms", there can be circumstances in which the traditional offer and acceptance analysis can be displaced by reference to the conduct of the parties over a long-term relationship. The issue arose in a dispute between parties who were in a chain of suppliers to a major manufacturer - the defendant sold equipment to claimant who gave purchase orders stating that orders were to be on claimant's own terms and conditions. The defendant gave acknowledgements which contained its own terms and conditions. A dispute arose about whether the contract was concluded on claimant or defendant's terms. At first instance it was said that it had never been intended that the defendant's terms should apply because the parties had always intended that the claimant's terms were to apply. The defendant appealed. The issue arose as to whether the judge had correctly analysed the overall contractual relationship between the parties and whether he had been right to come to the conclusion that he had. The Court of Appeal ruled that there would be cases when one had to glean from the documents passing between the parties and from their conduct whether an agreement had been reached. However, the traditional offer and acceptance analysis had to be adopted unless the documents passing between the parties and their conduct showed that their common intention was that some other terms had been intended to prevail. Accordingly, the circumstances of the case were not sufficiently strong enough to displace the result which a traditional offer and acceptance analysis would dictate, namely that the parties had contracted on the terms of defendant's acknowledgement. The appeal would be allowed. (*Tekdata Interconnections Ltd v Amphenol Ltd* [2009] EWCA Civ 1209 - see <http://www.bailii.org/ew/cases/EWCA/Civ/2009/1209.html> for the judgment).

#### New Legislation - Rome I and the Law Applicable to Contractual Obligations

The Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009, SI 2009/3064 have been published and come into force on 17 December 2009. The Regulations modify the relevant current national law in England and Wales and Northern Ireland and disapply, in relation to England and Wales and Northern Ireland, The Contracts (Applicable Law) Act 1990 as regards contracts concluded on or after the 17 December 2009. These contracts will be dealt with under Rome I. Further, the Regulations extend, with one

exception (in relation to insurance cases), the application of Rome I to certain cases that would otherwise not be regulated by it - these are cases where the choice of the law applicable is confined to a choice between the laws of the UK's three jurisdiction, England and Wales, Scotland and Northern Ireland, and the law of Gibraltar. See [http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20093064\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20093064_en.pdf) for details.

## Broadcasting

### BBC Trust Announces Findings From Commercial Review of BBC Worldwide

In July 2008, the BBC Trust launched a review of the mandate, strategy and governance arrangements for BBC Worldwide (BBCW) to assess whether any changes were needed as a result of developments since the present arrangements were established in the current BBC Charter. In March 2009 it published an interim statement, setting out its "emerging findings" which were concerned with ensuring that BBCW's strategy was aligned with the BBC's public service interest and that its strategy and operations were sensitive to other commercial players. The final results of the review have now been published. The Trust has accepted that there is a need for the BBC to be sensitive to market considerations, not just in its public services but also its commercial operations and said it accepted the recommendations to place new limits on BBCW's activity. The changes to the future remit of BBCW therefore means that there will be an end to mergers and acquisitions, unless there are exceptional circumstances; there will also be a clearer focus on securing value from the BBC's own intellectual property, an exit from any activity that is not in keeping with the BBC brand, divestment of stakes in non-BBC branded international channels over time where it makes commercial sense, a more transparent "first look", with greater market testing to establish the right pricing structures and a governance framework that complies with the combined code wherever possible and greater separation between the BBC Executive Board and the Worldwide Board. See [http://www.bbc.co.uk/bbctrust/assets/files/pdf/our\\_work/commercial/commercial\\_review.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/our_work/commercial/commercial_review.pdf) for the summary of the BBC Trust's statement about the recommendations and the executive summary of the commercial review and [http://www.bbc.co.uk/bbctrust/assets/files/pdf/our\\_work/commercial/sml\\_commercial\\_strategy\\_reviews.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/our_work/commercial/sml_commercial_strategy_reviews.pdf) for the BBC Chairman's statement about the changes.

### Broadcast Bulletin - Latest Issue

The latest issue of Ofcom's Broadcast Bulletin has been published with details of adjudications on breaches of Rules 1.14 (the most offensive language must not be used pre-watershed), 9.1 (news and current affairs may not be sponsored), 9.13 (sponsorship must be clearly separated from advertising), 10.2 (advertising and programming elements of broadcasts must be kept separate), 10.3 (products and services must not be promoted in programmes) and 10.4 (no undue prominence to product or service in any programme) of the Broadcasting Code. Ofcom also partly upheld a complaint of unwarranted infringement of privacy in breach of Rule 8.1. A breach of Rule 4 of COSTA (no more than 12 minutes of advertising or teleshopping in one hour) was also recorded. Ofcom included in the Bulletin a note to broadcasters about the use of sponsorship credits as a result of what it described as the "range of compliance issues in this area". It was particularly concerned that some broadcasters had breached the relevant rule (9.13) repeatedly and it warned that further breaches might result in further regulatory action. See [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb146/Issue146.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb146/Issue146.pdf) for details.

### Commission Recommendation on Digital Dividend

Commission Recommendation of 28 October 2009 facilitating the release of the digital dividend in the European Union has been published in OJEC. The Recommendation calls on Member States to take all measures necessary to ensure that all terrestrial television broadcasting services use digital transmission technology and cease using analogue transmission technology in their territory by 1 January 2012 and support regulatory efforts towards harmonised conditions of use in the Community of the 790-862 MHz sub-band, which will be released following the switchover from analogue to digital television - see the Need to Know of 19 & 26 October 2009 for further details. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:308:0024:0026:EN:PDF> for the Recommendation.

### Draft Community Radio (Amendment) Order

The draft Community Radio (Amendment) Order, which proposes amending aspects of the existing community radio licensing regime as set out by the Community Radio Order 2004, has been published. The draft Order is proposing a five year extension to community radio licences in recognition of the fact that in practice it takes time for community radio stations to become fully established, a rule prohibiting a community radio station from receiving more than 50% of its funding from one source to ensure that a station does not become overly reliant on one source of funding and to ensure that a single majority funder could not exert editorial influence over a station's content and a rule prohibiting a community radio station overlapping with another local licence whose coverage area has fewer than 50,000 adults to protect the smaller stations, amongst other things. See [http://www.opsi.gov.uk/si/si2010/draft/pdf/ukdsi\\_9780111488089\\_en.pdf](http://www.opsi.gov.uk/si/si2010/draft/pdf/ukdsi_9780111488089_en.pdf) for details.

## Commission Sends Statement of Objections to Cartels of TV and Computer Tube Manufacturers

The European Commission has confirmed that it has sent a Statement of Objections to a number of companies active in the cathode ray tubes industry, concerning their alleged participation in two separate cartels in violation of EC Treaty rules on restrictive business practices (Article 81 of the EC Treaty and Article 53 of the Agreement on the European Economic Area). Cathode ray tubes are used in television sets and computer monitors. The recipients of the Statement may now reply in writing to the Statement, setting out the facts known to them and they may also request an oral hearing to present their comments on the case - the Commission may then take a decision on whether the conduct addressed in the Statement of Objections is compatible or not with the EC Treaty's antitrust rules. (*EC Press Release Memo/09/525, 26 November 2009*).

### Corporate

#### Companies House FAQs on Statements of Capital Updated

Companies House has updated section 13 (Capital) of its Frequently Asked Questions on the Companies Act 2006 to include four questions on the requirement for statements of capital to state either the voting rights, or the prescribed particulars attached to shares. Companies House said that, in most instances, a company's articles of association will be the first point of reference for establishing the prescribed particulars (although an ordinary resolution may also set out that information). It also said that it will reject statements of capital which either do not give full information or which refer to another document, which sets out the information on the rights attached to shares. See <http://www.companieshouse.gov.uk/companiesAct/faq.shtml> for details.

#### BIS Consults on Changes to Clarify Statement of Capital Requirements

Still on the subject of statements of capital, the BIS has said that it is consulting to deal with acknowledged problems for certain companies in complying with one of the requirements of the Companies Act 2006 to provide financial information in the statement of capital. As well as financial information about the nominal value of shares and the amounts unpaid, the statement of capital also includes requirements for other information including voting and dividend rights and the BIS said it was aware that some companies have concerns about these requirements. They are now consulting on proposals for amending the requirements that balance the interest of third parties in obtaining information with the cost to the company of supplying it. The consultation asks what elements of financial information about share capital should be included in the statement of capital and considers issues such as the ease with which companies can provide pieces of information and at the potential value of the information to third parties who might choose to obtain the statements of capital from Companies House so as to find out about the capital of a company. The consultation proposes three options - leave the requirements unchanged, minimise the information requirements in the statement of capital or remove the requirement for statement of capital to show share premium by class of share. See <http://www.berr.gov.uk/files/file53716.pdf> for details.

#### BIS Consults on Changes to Improve Measures for Objecting to Registered Office Address

BIS are also consulting on whether there is a need to amend the Companies Act 2006 to prevent the situation whereby one company may incorrectly use, as their registered office address, the address of another business or private individual with whom they have no connection. BIS said that although there is evidence that the problem is only small (Companies House receive an average of 18 complaints a month relating to the misuse of a registered office addresses), it is aware that it is "distressing" for the companies involved. The Companies Act 2006 provides for the removal of fraudulent or inaccurate material from the register however BIS has said that it is of the view these provisions do not allow for the removal of a registered office address filed by the company itself. BIS is proposing a process by which "a third party can apply to stop their address being used as a company's registered office address. On receipt of a notice from a third party, Companies House would notify the company and require a new registered office address from the company. If the company does not provide a new address within a set timescale, Companies House may put a note on the register to indicate that documents and notices to be served on the company may instead be published in the Gazette or some other publication and strike off action may be taken". Views are invited - see <http://www.berr.gov.uk/files/file53750.pdf> for details.

## BIS Consults on Changes to Notification Procedure for Auditors Leaving Office

Finally, BIS are also consulting on proposals to simplify the provision of information to shareholders, creditors, audit and accounting authorities and Companies House when auditors leave office. At present, even in many of the most routine cases, the audit authorities have to be notified, and reasons provided. Notifications and statements of reasons may also need to be filed with Companies House. The Government has said it is of the view that after 18 months of operation of the current system, which is a combination of measures put in place under the successive Companies Acts to provide information to shareholders and Companies House and measures introduced in 2006 to meet the requirements of the EU Audit Directive for the provision of similar information to the audit regulatory bodies, the arrangements "may be more complex than necessary and are potentially duplicatory". BIS is therefore consulting on proposals to remove the duty to notify audit authorities of an auditor's departure in some cases where it is of little interest to those authorities; remove the duty on the audit authorities to notify the accounting authorities of all auditor departures of which they are informed; decide whether there should be any changes to requirements for information to be provided to investors when auditors leave listed companies; remove the need for companies to notify Companies House in certain cases of auditor departure; and simplify the legislation by clarifying certain definitions. See <http://www.berr.gov.uk/files/file53766.pdf> for details.

## Revised Bribery Bill and Commercial Organisations

The revised Bribery Bill was introduced into the House of Lords on 19 November 2009, had its First Reading and was ordered to be printed. The "widely welcomed" draft Bill was first published in March 2009, following a report published by the Law Commission in November 2008 and was substantially amended following a call for evidence by the Parliamentary Joint Committee (and see <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtbribe/115/11502.htm> for their report). Sections 7 and 8 of the revised Bill introduce a strict liability bribery offence for corporate bodies and partnerships negligently failing to prevent bribery. See <http://www.publications.parliament.uk/pa/ld200910/ldbills/003/10003.i-ii.html> for the text of the Bill and <http://corporate.practicallaw.com/9-385-6038> for PLC's very useful Practice Note on the Bill, which includes a summary of the current common law offence of bribery and discussion about the proposed Bill generally.

## Film & TV

### New Legislation - Films Co-Production Agreements Order Amended

The Films Co-Production Agreements (Amendment) Order 2009, SI 2009/3009 comes into force on 1 January 2010. The Order amends The Films Co-Production Agreements Order 1985, SI 1985/960 by substituting an amended Schedule to the Order, extending the list of agreements scheduled to the 1985 Order to include the agreement of 12 October 2009 reached with Morocco (Cm 7670) (and see the Need to Know of 2 November 2009 for details). See [http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20093009\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20093009_en.pdf) for details.

## Music

### Private Members Bill - Live Music Bill's First Reading in House of Lords

A Private Member's Bill to amend the Licensing Act 2003 with respect to the performance of live music entertainment has (finally) had its First Reading in the House of Lords. The Live Music Bill was introduced by Baroness Bonham-Carter of Yarnbury, on behalf of Lord Clement-Jones, read a first time and ordered to be printed. The second stage of the Bill is still to be scheduled. The Bill proposes amending the Licensing Act by "providing a conditional exemption for live music in small venues licensed under the Licensing Act 2003. This exemption will be conditional on Section 177 [which applies to venues up to 200 capacity], which will be triggered so that a licence for live music can be reviewed, and if complaints by local residents are made, then there can be a full, proper hearing. The second element of the Private Member's Bill will be to reintroduce the two-in-a-bar rule so that any performance of unamplified live music by up to two people will be exempt from the need for a licence. Thirdly, the Private Member's Bill will provide a total exemption for hospitals, schools and colleges from the requirement to obtain a licence for live music when providing entertainment where alcohol is not sold and the entertainment involves no more than 200 people". See <http://www.publications.parliament.uk/pa/ld200809/ldbills/066/09066.1-i.html> for details. The Bill was first announced back in June this year, after much debate (and no comment will be made here about the number of Bills now before Parliament, nor questions asked about the possibility of passing any or all of them before the next General Election).

## PRS for Music and BHS Agree Licence Requirement for Music in Hotel Rooms

The British Hospitality Association (BHA), the national trade association for hotels, restaurants and caterers and PRS for Music have announced that they have reached a settlement in their long running dispute concerning the playing of music in hotel bedrooms. PRS for Music said that it had been in discussion with the BHA for many years about whether music played in a hotel bedroom is a "public performance requiring a licence" but the BHA has now agreed to advise their members to pay licence fees for music played in hotel bedrooms, via TV, radio or any other device. PRS for Music has said that the licences for music in hotel bedrooms start from £44 plus VAT per year, for 15 bedrooms.

## Publishing

### PCC Upholds Complaint Over Article About Child's Behaviour

The Press Complaints Commission (PCC) has upheld a complaint by the father of a child identified in an article published by the Scottish News of the World. The article alleged that the child was "terrorising" his neighbourhood with his behaviour. The child's father complained that the article breached Clause 1 (Accuracy) and included a photograph of his son taken without consent in breach of Clause 6 (Children) of the editors' Code of Practice. The newspaper said the article was in the public interest and had not named the child and taken care to obscure his identity. The paper said it had evidence to support the claims in the article concerning the child's behaviour. However, the PCC upheld the complaint - it said while the newspaper clearly had some grounds for its story as there was a public interest in reporting anti-social behaviour in communities, the most serious claims about the boy's behaviour - the allegations of violence and the assertion he had been expelled from a string of schools - could not be substantiated. This was a significant matter under the Code, particularly given his age, and raised a breach of Clause 1. In the context of unsubstantiated assertions about his behaviour, the justification for publication of the photograph was insufficient and there was therefore also a breach of Clause 6 (Children) of the Code. (*A Man v Scottish News of the World, Report 80 - see <http://www.pcc.org.uk/news/index.html?article=NjA1Nw==?oxid=8c934424979c543c5b69618a5b72bd12> for details*).

### PCC Upholds Harassment and Intrusion Complaint

The PCC has also upheld a complaint against the Daily Record for harassment in breach of Clause 4 and the publication of an intrusive photograph in breach of Clause 3 of the Editors' Code of Practice. The complainant was pregnant with a Scottish Premier League footballer's child and had already been contacted by the newspaper but had requested privacy. A story about the pregnancy was subsequently published, together with a photograph of the complainant. The complainant said that she did not want to speak further to the newspaper, and the managing editor said that this request had been passed on to the paper's journalists. Despite this request a journalist from the paper approached her on two further occasions. The PCC said the approaches in breach of the newspaper's undertakings were a "clear case of harassment under the Code". The Commission also agreed with the complainant that she was in a place where she had a reasonable expectation of privacy when she was photographed. "Her home was very secluded, on a private road, and there would have been very few passers-by to see her at the time the photograph was taken. The newspaper had, therefore, also breached Clause 3 (Privacy) of the Code". (*Nicola Shields v Daily Record, Report 80 - see <http://www.pcc.org.uk/cases/adjudicated.html?article=NjA2MA==?oxid=8dfd53eb10cc64caa00c142faa40179b> for the adjudication - the PCC separately rejected a further complaint about the accuracy of a separate article which was also discussed in the adjudication*).

### Statement in Open Court - Unconfirmed and False Allegations in Published Article

The claimant, a model, brought a libel action against the publisher of the Sunday Mirror following the publication of an article which alleged that he had been violent towards his wife and that this was the cause of the marriage breaking up. The publisher did not contact the claimant prior to publishing the allegations, which were totally unfounded. The parties settled the claim with the defendant agreeing to pay £15,000 damages and costs and undertaking not to repeat the allegations. (*Matthew Peacock v MGN Limited, QBD, Unreported, 17 November 2009*).

## Consultations & Reports

Ofcom Media Literacy Bulletin, Issue 27, November 2009 - [http://www.ofcom.org.uk/advice/media\\_literacy/medlitpub/bulletins/issue27/mlb\\_issue27.pdf](http://www.ofcom.org.uk/advice/media_literacy/medlitpub/bulletins/issue27/mlb_issue27.pdf) (Ofcom's bulletin summarises key events and issues in the area of media literacy).