

*This is our summary of some of the key legal developments across a range of sectors for the week of 7 December 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

#### Pre-Budget Report and Broadband Communications

According to the Pre-Budget Report, a landline duty will be introduced on UK landlines (local loops) from 1 October 2010. The duty will be charged at rate of 50 pence per month on each local loop. The levy is intended to support the Government's commitment to providing the next generation of super-fast broadband (50 - 100 Mbps) to 90% of the population before 2017 by providing a subsidy for the "final third" of the market, which it does not believe will be met without intervention. HMRC and the Department for Business, Innovation and Skills are to consult shortly on the implementation of the new duty.

#### DCMS Consults on Simplifying Licensing Act Procedures for Rescheduling Events

The DCMS is consulting on a range of measures to amend the Licensing Act 2003 to simplify the procedures for Licensing Statements, Interim Authority Notices and Temporary Event Notices, which are intended make it easier for people to put on temporary events if have to be rescheduled at short notice. Stakeholders have already identified certain requirements in the Act which are said to be "unduly restrictive and burdensome" and the Government has said that it agrees that the processes can be simplified without any adverse impact on the licensing objectives. The Government proposes to introduce simplification measures by means of a Legislative Reform Order, the draft of which is included in the Consultation. See [http://www.culture.gov.uk/images/consultations/condoc\\_simplification\\_measures.pdf](http://www.culture.gov.uk/images/consultations/condoc_simplification_measures.pdf) for details.

#### ICO Consults on Proposed Code for Protecting Individuals' Privacy Online

The Information Commissioner's Office (ICO) has launched an online consultation on a new draft code of practice to provide organisations with "clear, comprehensive recommendations" on protecting individuals' privacy online. The code has been issued by the Information Commissioner under section 51 of the Data Protection Act 1998 (DPA), which requires him to promote good practice, including compliance with the DPA's requirements, and empowers him, after consultation, to prepare codes of practice giving guidance on good practice. The ICO said, "The Internet offers great possibilities for convenience and for new experiences, but it can also present risks. A record of our online activity can reveal our most personal interests. This code explains the privacy risks that can arise and suggests ways of dealing with them". It is aimed at all organisations that collect information about people online through their PCs, games consoles, mobile devices or media players, either directly or through the use of a third party and the ICO said that although it is aimed primarily at the data controllers, it should assist all organisations with an online presence to negotiate areas of legal uncertainty by adopting good practices. See <http://ico-consult.limehouse.co.uk/portal/cop/pio?pointId=1061680 - document-1061680> for access.

## Bribery Bill has Second Reading in the Lords

The Bribery Bill has had its Second Reading in the House of Lords. The Bill, which was introduced last month (and see the Need to Know of 23 November 2009 for details), was subjected to "wide-ranging discussion" on issues including the global fight against corruption and the need for reform of the current law in this area. The point was made that "corporate liability for bribery, as with other offences, is an existing feature of our criminal law. But this is another area where there is a compelling case for a bespoke, targeted offence". The Bill is due to go to the committee stage on 7 January 2010. See <http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/91209-0002.htm> - 09120947000329 for the Hansard record of the Lords' debate.

## Article - The ICO and Proposals for Increased Civil Monetary Penalties

The Need to Know of 12 October 2009 and 16 November 2009 discussed the proposals of the MoJ to increase the sanctions for data protection offences in order to create an "effective deterrent" - the latest New Law Journal considers the proposals and asks whether it is appropriate for the Information Commissioners Office to have the power to impose civil monetary penalties of up to £500,000 without court sanction. The MoJ's consultation will end on 21 December 2009 and the power to impose penalties is expected to come into force in April. The article states "The ICO has issued draft guidance on how the level of a fine will be determined, recognising that fines will be reserved for the most serious of situations and that it will not usually be in the public interest for an excessive fine to bring down an organisation which is otherwise contributing towards the good of society" but makes the point that "Organisations which do their best to comply with DPA 1998 - and make at least a half-decent job of doing so - will generally not have anything to fear from the new proposals". (*"The £500,000 Question" (2009) 159 NLJ, Issue 7396, p 1679 - the article is available via LexisNexis*).

## Broadcasting

### Government Consults on Proposed Modifications to Sky's Draft Final Undertakings for ITV Acquisition

The BIS is inviting comment on proposed modifications to the draft "final undertakings", which the Secretary of State proposes accepting from British Sky Broadcasting Plc (Sky) which will require Sky to divest a proportion of its shares in ITV under section 55(2) of the Enterprise Act 2002. The draft "final undertakings" were originally published for consultation in January 2009. The purpose of the modifications will be to clarify how the undertakings should be interpreted and to that end they will need to be read in conjunction with the draft final undertakings themselves. See <http://www.berr.gov.uk/files/file53900.pdf> for the proposed modifications and <http://www.berr.gov.uk/files/file49543.pdf> for the undertakings.

### Follow Up to Independent Panel Review - DCMS Consults on Review of Free-to-Air Listed Events

Following the Independent Advisory Panel's recent report on the UK's free-to-air listed events regime (see the Need to Know of 9 November 2009 for details), the DCMS is consulting on a range of recommendations from the report, including the retention of a list in principle, the use of the Major Event Test as part of the criteria for drawing up a final list and the Candidate Events identified as having passed the Major Event Test. The Consultation notes "the Secretary of State's provisional conclusion is that there should continue to be a list" and to that end "The Secretary of State's provisional conclusion is that, in making any final decision as to which events should be listed, he should take account of the possible impacts such listing might have on the sport for the Candidate Event in question and on those broadcasters who would be both interested in, and capable of, broadcasting a Candidate Event if it were not listed". Further, "the Secretary of State considers that the Major Event Test needs to be accompanied by an impact assessment to enable him to reach a decision as to which events should be listed. This will involve him considering any matters relating to the impacts of listing that are drawn to his attention; and then assessing whether listing would have a disproportionate impact on the interests of those adversely affected by it". See [http://www.culture.gov.uk/images/consultations/listed\\_events\\_review\\_consultation.pdf](http://www.culture.gov.uk/images/consultations/listed_events_review_consultation.pdf) for details.

### Broadcast Bulletin - Latest Issue

The latest issue of Ofcom's Broadcast Bulletin has been published with details of adjudications on breaches of Rules 1.11 (violence must be appropriately limited before watershed), 1.14 (no most offensive language before watershed), 9.1 (no sponsorship of news or current affairs programmes), 9.3 (sponsorship must comply with the relevant advertising content and scheduling rules), 9.5 (no promotional references to sponsor), 10.3 (products and services must not be promoted in programmes) and 10.4 (no undue prominence to product or service in programme) of the Broadcasting Code. Two separate complaints of unfair treatment in a programme as broadcast

were also upheld. In addition, a breach of Licence Condition 11 (retention and production of recordings) was also noted. Ofcom also recorded a breach of Rules 4.2.1(b) of the BCAP Rules on the Scheduling of Television Advertisements (food or drink products high in fat, salt or sugar must not be advertised in or adjacent to children's programmes). See [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb147/Issue147.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb147/Issue147.pdf) for details.

## Corporate

### New Legislation - Place of Business and Service of Documents

The Companies Act 2006 (Substitution of Section 1201) Regulations 2009, SI 2009/3182 comes into force on 28 December 2009. The Regulations replace the current section 1201 of the Companies Act 2006 to ensure that this provision complies with Article 16 (freedom to provide services) of Directive 2006/123/EC on services in the internal market. The new section 1201 (which is to be read with sections 1200 and 1202 of the Act) will ensure that individuals and partnerships that carry on business in the UK disclose on all business documents an address in the UK for service of documents relating to the business if they have a place of business in the UK, and if they do not have a place of business in the UK, they will be required to disclose an address, whether or not in the UK, at which service can be effected by physical delivery and the delivery of documents is capable of being recorded by the obtaining of an acknowledgement of delivery - the change to the requirement for a service address in the UK is required to ensure that section 1201 of the Companies Act 2006 does not infringe the EC Services Directive by indirectly discriminating against persons established in other Member States who do not have a place of business in the UK. See [http://www.opsi.gov.uk/si/si2009/pdf/ukjsi\\_20093182\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/ukjsi_20093182_en.pdf) for details.

## Film & TV

### Pre-Budget Report and Film Tax Relief for Films Covering Multiple Accounting Periods

The Pre-Budget Report announced that the Government will introduce legislation in the Finance Bill 2010 to "correct an unintended anomaly affecting the amount of film tax relief that can be claimed where films are produced over more than one accounting period". See <http://www.hmrc.gov.uk/pbr2009/pbrn7.pdf> for the HMRC note about the change and see also <http://www.hmrc.gov.uk/pbr2009/film-tax-relief-1255.pdf> for the draft legislation that will amend the relevant provisions in section 1201 of the Corporation Tax Act 2009. The amendment will apply to accounting periods ending on or after 9 December 2009 and will be treated as always having had effect in relation to these.

## Gaming

### Pre-Budget Report and Bingo Duty

One small piece of good news in the Pre-Budget Report for the land-based bingo industry - the rate of duty which will be imposed on the industry from the time of the delivery of the Budget 2010 will be reduced from 22% to 20%. The slight reduction being proposed was described as an attempt to appease the industry which has seen significant reductions in the numbers of clubs and players and which had been targeted in the previous budget with a significant increase in duty from 15% to 22%. HMRC has said that full details of the change will be published at Budget 2010.

## Litigation

### Separate Proceedings - Application to Stay Proceedings on Grounds of Forum Non Conveniens

A question of jurisdiction has come before the High Court. The claimant was a global investment bank incorporated under the laws of Germany and with offices worldwide. The defendant was a company incorporated under the laws of the Turks and Caicos Islands. A number of disputes arose between the parties regarding seven separate agreements - of six of the agreements in dispute, five provided for the English courts to have jurisdiction (three being non-exclusive) while the sixth gave jurisdiction to the courts of New York and some agreements contained forum non conveniens waiver clauses. Various proceedings were commenced and the defendant brought an application seeking a stay of the London claim on grounds of forum non conveniens and *lis alibi pendens* by reference to New York proceedings that it had already commenced. It was held by the High Court that where a stay of proceedings was sought where parallel proceedings were taking place in two jurisdictions and there were conflicting non-exclusive jurisdiction clauses in the disputed agreements, then the parties would be held to their contractual choice of jurisdiction unless there were overwhelming reasons for departing from that rule. It was possible for a party to escape the effect of the non-exclusive jurisdiction clause by demonstrating that there was some matter which lay beyond considerations of convenience and that went to the matter of justice. In this case

the defendant had not met the required burden of proof and its application would not be granted. (*Deutsche Bank AG v Sebastian Holdings Inc* [2009] EWHC 3069 (Comm) - see <http://www.bailii.org/ew/cases/EWHC/Comm/2009/3069.html> for the judgment).

## Music

### IFPI Sweden Uses IPRED to Request Disclosure of IP Addresses from ISPs

IFPI Sweden is reported to be taking legal action in the Stockholm District Court to secure the disclosure the IP addresses of a number of suspected filesharers from their ISPs. This follows the coming into force in April 2009 of controversial legislation based on the European Union's Intellectual Property Rights Enforcement Directive (IPRED), which made it possible for copyright holders to obtain a court order requesting ISPs to provide IP addresses linked to computers and users that had downloaded their content. According to reports, the Stockholm District Court has only very recently on another IPRED case - the court ordered ISP TeliaSonera to hand over the identity of the Swetorrents BitTorrent tracker operator to anti-piracy group Antipiratbyrån which was working on behalf of four movie studios, Svensk Filmindustri, Pan Vision, Filmlance and Yellow Bird. This request by IFPI is the first on to be brought under IPRED by the music industry. However, at the time the legislation came into force in Sweden, two ISPs, Bahnhof and Tele2, both announced they would stop logging Internet activity.

### County Court Orders Confiscation of Profits from Pirate CD Sales Under POCA

Snaresbrook Crown Court has made a ruling under the Proceeds of Crime Act 2002 (POCA) ordering the confiscation of £70,000 profit accrued by pirate CD traders and making a compensation order in favour of the music companies whose repertoire was being sold illegally. A compensation order for this amount was also made, with the monies being payable to the BPI. According to reports, this is the first time that record labels in the UK have been awarded compensation from assets that have been confiscated in court from music pirates. Mohammed Sheikh and Farhat Nissa had been convicted of fraud in March 2008 at Snaresbrook Crown Court. Approximately 2,000 discs were seized and the arrests led to the arrest of another market trader and Wasim Mir and the seizure of an additional 35,000 illegal CDs. The value of discs seized by the police was approximately £400,000 however, at the time, the music industry had estimated its actual and projected loss at approximately £5 million. The court said it believed Wasim Mir materially benefited to a greater amount than this, but agreed £70,000 was the sum of money he had available. Mir has six months to pay the money or face 21 months in prison. Mohammed Sheikh was found to have materially benefited from the illegal trade by £30,000, but it was agreed he had no assets to pay a confiscation order. (*IFPI News Release, 8 December 2009*).

## Publishing

### PCC Announces Annual Review of Editors' Code of Practice

The Press Complaints Commission has announced that the Editors Committee is preparing to undertake its annual review of the Editors Code of Practice and has invited comment from interested parties on "how the Code might be revised to improve the system of self-regulation of the press". (*PCC Press Release, 7 December 2009*).

### Statement in Open Court - False Allegations Against Union Joint General Secretary

The claimant, a trade union joint general secretary, brought proceedings against the defendant newspaper publisher following the publication of an article which alleged that he had breached union election rules and misused union funds, which gave him an unfair advantage in an election that he ultimately won. The article further alleged that the claimant was to be fined £100,000 by the trade union. The defendant accepted that all the allegations were wholly untrue, apologised and agreed to pay damages and legal costs. (*Simpson v News Group Newspapers Limited, Unreported, QBD, 4 December 2009*).

## Sport

### Proposals for Bookmakers' Voluntary Levy to Support Grassroots Sport?

The Government is proposing to create a fund for "grassroots sports" by relying on "voluntary levies" from UK bookmakers. Sports Minister Gerry Sutcliffe has written to representatives of the gambling industry and sports organisations outlining plans finance sports through the application of a levy, which would be managed by Sport England. The proposal has not been well received - the Remote Gambling Association and the Association of British Bookmakers have reportedly responded with letters querying the Government's approach. The Chief Executive of the RGA apparently said the plan was "ill conceived" and put Sport England in "an untenable position with no

prospect of success" - the point was also made that "If any sort of voluntary scheme is to work fairly and effectively then it needs the support of the wider industry and neither the online or offline sectors have been consulted as a group".

## Technology

### Eurostat Research into Current Internet Usage in the EU27

According to figures released by The Statistical Office of the European Communities (Eurostat) following a survey into Internet usage in the EU27, in the first quarter of 2009 some 65% of households had access to the Internet compared with 60% during the first quarter of 2008, and 56% had a broadband internet connection, compared with 49% in 2008. Household Internet access ranged between 30% in Bulgaria to 90% in the Netherlands. In 2009, households with highest levels of Internet access were found in the Netherlands (90%), Luxembourg (87%), Sweden (86%), Denmark (83%), Germany (79%), Finland (78%) and the UK (77%). The lowest percentages of access were found in Bulgaria (30%), Greece and Romania (both 38%). Eurostat highlighted the fact that the research showed that one person in two in the EU27 used the Internet daily while for young people that figure increased to three quarters. See

<http://europa.eu/rapid/pressReleasesAction.do?reference=STAT/09/176&format=HTML&aged=0&language=EN&guiLanguage=en> for a summary of the figures by Member State.

### UKCCIS Publishes First Child Internet Safety Strategy

The DCSF has announced the launch of the first UK Internet safety strategy, aimed at helping children and young people stay safe online. The UK Council for Child Internet Safety (UKCCIS), which was established after the publication of the Byron Report "Safer Children in a Digital World", has published its first strategy document (see [http://www.dcsf.gov.uk/ukccis/download-link.cfm?catstr=research&downloadurl=UKCCIS\\_Strategy\\_Report-WEB1.pdf](http://www.dcsf.gov.uk/ukccis/download-link.cfm?catstr=research&downloadurl=UKCCIS_Strategy_Report-WEB1.pdf) for details), which briefly outlines what the Council has achieved so far and then prioritises its next steps. UKCCIS is to report on its progress in its next child Internet safety summit in the autumn of 2010 and in the meantime, the Government has asked Professor Byron to review UKCCIS's progress - this review is expected to commence in January 2010.

### Competition Commission Issues Statement in Brightsolid Acquisition of Friends Reunited

The Competition Commission has published an Issues Statement as part of its inquiry into the anticipated acquisition of Friends Reunited Holdings Limited from ITV by Brightsolid Group Limited. The Commission is investigating whether the acquisition may be expected to result in a substantial lessening of competition within any market or markets in the UK. Brightsolid, which runs websites Find My Past.com and 1911 Census.com, and Friends Reunited, which owns Genes Reunited.com, are two of the three largest suppliers of online genealogy services in the UK. The Commission has invited comment on the acquisition - it is expected to make its report by 16 April 2010 - see [http://www.competition-commission.org.uk/inquiries/ref2009/brightsolid/pdf/issues\\_statement.pdf](http://www.competition-commission.org.uk/inquiries/ref2009/brightsolid/pdf/issues_statement.pdf) for the Issues Statement.

## Consultations & Reports

Ofcom Consultation - Draft Annual Plan 2010/11 - <http://www.ofcom.org.uk/consult/condocs/draftannplan1011/draftannplan1011.pdf> (Ofcom's draft Annual Plan for 2010/11 sets out Ofcom's future work programme to further the interests of citizens and consumers and identifies nine priority areas where it wants to make significant progress over the coming year, including making progress on mobile and broadband not-spots).

Ofcom Research Report - The Consumer Experience 2009 - Research Report - <http://www.ofcom.org.uk/research/tce/ce09/research09.pdf> (Ofcom's fourth annual reports into the consumer experience of the fixed and mobile telecoms, Internet and digital broadcasting markets is aimed at measuring how well consumers are faring in respect of choice, price and range, availability and take-up, awareness, comparing and switching and consumer protection).