

This is our summary of some of the key legal developments across a range of sectors for the week of 18 January 2010. 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

SABIP Report on "Non-Internet" Digital World and Implications for IP

The Strategic Advisory Board for Intellectual Property (SABIP) has published the report they commissioned as a comparison to their earlier review, "Copycats? Digital Consumers in the Online Age", which looked at copyright issues facing the online, web-based digital world. Their latest report now warns about the dangers facing IP owners as a result of changing attitudes in what they describe as the "non-internet digital world" - for example, where content is transferred physically by means of a portable storage device. (The report describes "non-internet" digital technologies as comprising "offline" (eg, CDs, DVDs, hard drives, USB pen drives) but notes that the term also covers a range of proprietary, non-open internet network technologies, such as mobile phone networks, game console networks and Bluetooth). The report finds that offline copyright infringement is more premeditated than online infringement and takes place in "real-world social contexts". The report says "current legal, technological and social deterrents are not, in general, effective at deterring copyright infringement, although there is some difference for the offline digital world, as technology solutions here are more proprietary and effective than online". It notes that many consumers were unaware that they were actually breaking the law in the first instance and that the deterrents to the behaviour were weak - "the laws are not currently capable of being effectively enforced and infringement has little of the social stigma normally associated with criminal activity". See <http://www.sabip.org.uk/sabip-noninternet.pdf> for the report, which calls for support for further research. (The report makes reference to the 2009 review of copyright law in 16 countries by Consumers International (and see the Need to Know of 6 April to 27 April 2009 for details), which said that UK copyright law was the worst in the world (out of the 16 countries studied). That report said, "UK copyright law is substantially different from that of other countries ... it is generally very restrictive". The UK was rated particularly badly in respect of its provisions allowing users the freedom to access and use material for home users, education and for public affairs and also for its freedom to allow sharing by users in a variety of ways, including purchasing it at a fair price, renting it, and downloading non-commercial content freely, as well as sharing such content with their peers).

Royal Assent for Video Recordings Bill

The Video Recordings Bill, which was fast-tracked through Parliament to ensure the repeal and reintroduction of the Video Recordings Act 1984 has received Royal Assent and came into force on 21 January 2010. All of the offences under the Act, with the exception section 13, are now fully enforceable (section 13 relates to the supply of video recording not complying with requirements as to labels). The new labelling Regulations will be made, laid and come into force shortly and section 13 will be fully operational once that is done. Problems regarding the enforceability of the 1984 Act became apparent during preparatory work for the Digital Economy Bill - the draft Bill was then notified to the European Commission on 10 September 2009 and the three-month notification period expired on 11 December 2009 and the Bill was introduced on 15 December 2010, which was the earliest possible date after the expiry of the notification period - it was fast-tracked in order to secure the enforceability of provisions which had been on the statute book since 1984 and restore the protection provided to the public by the 1984 Act as quickly as possible after the end of the waiting period under the Technical Standards Directive. The House of Lords' Constitution Committee had said that it was a matter of "considerable regret" that an oversight in notifying the European Commission about the 1984 Act had rendered it unenforceable and welcomed the use of the fast-track legislative process to remedy the situation. See <http://www.publications.parliament.uk/pa/ld200910/ldselect/ldconst/36/36.pdf> for the Committee's Fifth Report on the draft Bill and http://www.opsi.gov.uk/acts/acts2010/pdf/ukpga_20100001_en.pdf for the Video Recordings Act 2010. (DCMS Press Release 008/10, 21 January 2010).

New Legislation - Trade Mark Fees and Charges

The Patents and Patents and Trade Marks (Fees) (Amendment) Rules 2010, SI 2010/33 come into force on 6 April 2010. The Rules amend the Patents Rules 2007, SI 2007/3291, the Patents (Fees) Rules 2007, SI 2007/3292 and the Trade Marks (Fees) Rules 2008, SI 2008/1958 and update the fees that the Intellectual Property Office (as the Patent Office) charges in respect of its patent-granting functions. See http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100033_en.pdf for details. The Government said the fees for the processing of patent applications still remain relatively low, and the cost to the Patent Office of examining and granting patent applications will continue to be recovered by the payment of patent renewal fees. The Trade Marks (International Registration) (Amendment) Order 2010, SI 2010/32 will also come into force on 6 April 2010. The Order amends the Trade Marks (International Registration) Order 2008, SI 2008/2206 and introduces a fee of £50 for registering transactions under rule 49(1)(d) of the Trade Marks Rules 2008, SI 2008/1797 (as applied to international trade marks (UK) by article 3 of the Order). See http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100032_en.pdf for details.

Private Members Bill - Protecting Digital Heritage

A Private Members Bill, the Digital Heritage Bill, which proposes enabling specified institutions to make digital copies of cultural artefacts for archival purposes, notwithstanding the existence of any intellectual property right, has been introduced in the House of Commons. According to the MP introducing it, the Bill is being proposed to "allow cultural works that are often rotting on shelves awaiting copyright clearance to be saved for digital archiving purposes". The Bill was read a First time, ordered to be read a Second time on 12 March 2010 and also ordered to be printed. See <http://www.parliament.the-stationery-office.co.uk/pa/cm200910/cmhansrd/cm100120/debtext/100120-0006.htm> - 10012070000001 for the Hansard record of the debate concerning the Motion for leave to bring in the Bill.

Syria Accedes to Madrid Protocol

The Syrian Arab Republic acceded to the Protocol relating to the Madrid Agreement concerning the International Registration of Marks on 21 December 2009. According to WIPO, the Madrid Protocol will enter into force in Syria on 21 March 2010. (*WIPO Notification No 187, 21 December 2009*).

Betting & Gaming

New Legislation - Fees for Appeals to First-tier Tribunal

Last week's Need to Know mentioned the changes being introduced by the Tribunals, Courts and Enforcement Act 2007, which made arrangements for the transfer of the jurisdiction of the Gambling Appeals Tribunal to the First-tier Tribunal. The First-tier Tribunal (Gambling) Fees Order 2010, SI 2010/42, which came into force on 18 January 2010 specifies the fees for bringing an appeal under sections 141 or 337(1) of the Gambling Act 2005 before the Tribunal. The fees payable are the same as those which were payable for appeals under those provisions to the Gambling Appeals Tribunal. See http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100042_en.pdf for details.

Broadcasting

BSkyB and ITV Acquisition - Court of Appeal Upholds Tribunal's Divestment Requirements

The Court of Appeal has delivered its ruling in the appeal by Sky against the decision of the Competition Appeal Tribunal that Sky's acquisition of 17.9% of ITV's issued share capital would have the effect of substantially lessening competition in the relevant market (the UK all-television market) and recommendation that Sky be required to divest itself of enough shares to reduce its holding to below 7.5%. (The court said "The Commission did not find that the acquisition would have operated against the public interest if it had only had regard to a specific public interest consideration which was the particular reason for the reference by the Secretary of State, namely a material adverse effect on the sufficiency of the plurality of persons with control of media enterprises serving relevant UK audiences. This came to be known as the media plurality issue"). The Secretary of State accepted that recommendation and the findings of the Commission, and imposed that remedy. Sky applied for the Commission's findings and the Secretary of State's direction to be reviewed. Virgin, who had also announced an offer for ITV's shares, also applied for a review of the decision on the media plurality point, and of the decision as to remedy. Sky argued that the Tribunal had erred in law in several respects including the content of the obligation to apply judicial review principles, the fact that the Tribunal should have set aside the Competition Commission's decision because it applied the relevant standard of proof wrongly, and because it applied the necessary counterfactual analysis wrongly, and also that the Commission's decision to reject alternative remedies

proposed by Sky was incorrect in law. Sky also said Competition Commission was correct on the media plurality issue, and that the Tribunal was wrong to set aside that part of the decision. The Secretary of State and the Commission made common cause with Sky on that point. Virgin however argued that the Tribunal was correct on this point. The court dismissed Sky's appeal on the competition issues and said that the Tribunal's direction that it must reduce its shareholding to less than 7.5% would stand. Accordingly, Virgin's appeal as to remedy did not have to be considered separately. The court disagreed with the Tribunal's conclusion as to media plurality, and said the Commission's conclusion on that point would be reinstated. They said this did not affect the outcome of the present case, but it may be of relevance in future. On that point, the court said Sky's appeal was successful, as was the challenges by the Commission and the Secretary of State. The court then refused Sky permission to take the case to the Supreme Court but said that it could apply directly for a hearing. Sky said it would "review the judgement and order carefully and consider next steps in due course". (*British Sky Broadcasting Group plc v The Competition Commission [2010] EWCA Civ 2* - see <http://www.bailii.org/ew/cases/EWCA/Civ/2010/2.html> for the edited, non-confidential version of the judgment).

Competition Commission's Provisional Decision on CRR Undertakings

The Competition Commission has published its provisional decision on proposed variations to the undertakings which were given by Carlton Communications Plc (Carlton) and Granada plc (Granada) at the time they merged to form ITV in 2003. The undertakings include the contract rights renewal (CRR) remedy, which was put in place to address concerns that the merger would lead to adverse effects in the sale of TV advertising airtime. In September 2009, the Commission provisionally concluded that the CRR undertakings should be retained, given ITV1's continued advantage in delivering large audiences for advertisers, although developments since their introduction in 2003 could justify some variations. The Commission said there was a "strong case for widening the definition of ITV1 in the CRR Undertakings to include both ITV1+1 and ITV1 HD" and that this had been largely supported by ITV and other parties. They also said they believed that this change would go a considerable way towards reducing the unintended costs to ITV of the current system. Despite the changes proposed by the Commission, ITV said it believes that CRR distorts the market and the fundamental relationship between advertisers and free-to-air broadcasters and that its use was "highly detrimental to continued investment in original programme production and to the health of the UK creative industries". ITV called for a "thorough and comprehensive review" of the cumulative impact of regulation of the independent broadcasting sector. The Commission is now inviting views on the changes it proposes making - see http://www.competition-commission.org.uk/inquiries/ref2009/itv/pdf/provisional_decision_remedy.pdf for details. The Commission has said that it will take comments into account before it makes its final decision.

Corporate

IoD & ICSA Announce Joint Working Group on Board Performance Evaluation

The Institute of Directors (IoD) and the Institute of Chartered Secretaries and Administrators (ICSA) have announced the launch of a joint working group on board performance evaluation. The objective of the group is to develop "best practice" guidance on the undertaking of externally facilitated board evaluations. The IoD and ICSA both said that they believe that "periodic evaluation of the performance of company boards with independent external facilitation of the process can contribute to improved standards of corporate governance" and that the proposed guidance would seek to address any potential conflict of interest issues that may arise in the conduct of such evaluations.

Transparency in Governance and Disclosure in Annual Reports - Recognising Best Practice

The Institute of Chartered Secretaries and Administrators (ICSA) has also published a report in conjunction with Hermes Equity Ownership Services Ltd on the ability of companies to communicate effectively with their shareholders. The report summarises the results of the recent ICSA/Hermes Awards, which recognise and reward transparency in governance disclosure by offering a positive incentive for good reporting, and provides details about the "development of the thinking that led up to the Awards, and the insights gathered during the judging process, to help companies continue to improve standards of governance disclosure". The report noted that the quality of disclosure varied greatly between top FTSE100 and low FTSE100, and not just between the FTSE100 and FTSE250 - it said some top FTSE250 companies performed better than their FTSE100 counterparts and that the reporting varied tremendously within individual reports. Further, it was noticeable that those companies in more sensitive, or controversial, business activities provided better explanations, "presumably because they see value in doing so". It said that more emphasis was needed on evidence of progress on governance issues, on achievements and on outputs as "bland narrative is increasingly unacceptable". See <http://www.icsa.org.uk/assets/files/pdfs/Policy2/TIGApastawards.pdf> for details. PartyGaming Plc was recognised for having demonstrated best practice disclosure on strategy formulation and execution - the report

said their report described their strategy, success factors and associated risks "in a way that was entertaining, organised and accessible, and which explained clearly the main drivers of the company's strategy". PartyGaming was also found to have demonstrated best practice in terms of disclosure on stakeholder engagement - they were said to be "upfront about the challenges faced by its industry".

Private Members Bill - Health and Safety (Company Director Liability) Bill

A Private Members' Bill, The Health and Safety (Company Director Liability) Bill, has had its First Reading in the House of Commons. The Bill proposes amending the Health and Safety at Work etc Act 1974 in respect of the liability of company directors so as to "place a positive duty on all company directors to take all reasonable steps to ensure health and safety in all aspects of the company's activities-effectively to put them in the same position as all other employers". The introduction of the Bill was described as removing a glaring anomaly in the UK's health and safety laws. The Bill was read the First time, ordered to be read a Second time on 23 April and also ordered to be printed. See <http://www.parliament.the-stationery-office.co.uk/pa/cm200910/cmhansrd/cm100119/debtext/100119-0005.htm> - 10011957000001 for the Hansard record of the Motion for leave to bring in the Bill.

Litigation

MoJ Consults on Proposals to Reduce Costs of Conditional Fee Agreements

The Ministry of Justice (MoJ) have published the latest consultation in the ongoing saga of costs and access to justice in defamation proceedings. The proposals under consideration look at measures to reduce Conditional Fee Agreement (CFA) success fees. The Lord Chancellor and Secretary of State for Justice said while CFAs have increased access to justice for claimants by making it easier to bring cases, "experience over the past decade suggests that - in defamation proceedings in particular - the balance has swung too far in favour of the interests of claimants, and against the interests of defendants. The current arrangements appear to permit lawyers acting under a CFA to charge a success fee that is out of proportion to the risks involved. Aside from the cost burden this places on the opposing side, this could encourage weaker and more speculative claims to be pursued". The consultation notes "National media in general - and regional and local media in particular - may feel that they cannot afford the costs involved in defending a claim brought under CFA, given the risk of significant costs that they might have to pay if they lose. The media say that this puts them under huge commercial pressure to make an early settlement in respect of an allegedly defamatory publication, which in their view was legitimate to publish". The MoJ consultation is seeking views on proposals to reduce the maximum success fee that lawyers can currently charge from 100% to 10% of the base costs. This is described as an "interim measure for dealing with disproportionate costs" while the Government considers Lord Justice Jackson's wider proposals to radically change the existing arrangements for all cases where CFAs are used. A draft Order to amend the Conditional Fee Agreements Order 2000, SI 2000/823, which currently prescribes the maximum level at 100% is included with the consultation - see <http://www.justice.gov.uk/consultations/docs/costs-defamation-proceedings-consultation.pdf> for details. The consultation also usefully summarises the wider issues and action taken to date by the Government in attempting to deal with the high level of costs in some defamation proceedings.

Increased Access of Media to Family Courts - MoJ Analyses Interest Levels

The MoJ has also published the results of a study on the impact of changes to court rules governing media attendance in family proceedings following the relaxation of the rules governing media attendance in April 2009. The results are not encouraging - the MoJ said, "The study does provide evidence to suggest that the impact of the media attendance rules in the family courts in England and Wales has been minimal. The vast majority of contributors to this study have had little or no experience of the media attending proceedings since the attendance rules were changed". The study quoted one court staff member, who said it was "Very difficult to form an opinion [about the success of the changes] due to the apathy shown by the press since the changes ...". See <http://www.justice.gov.uk/publications/docs/media-family-proceedings.pdf> for details. According to a MoJ spokesman, legislative proposals included in the proposed Children, Schools and Families Bill to change reporting restrictions should encourage media attendance at family court cases. The Bill, which is currently at the Committee stage in the House of Commons, introduces new arrangements for the publication of information from family court proceedings, enabling the media to report these proceedings more widely. In introducing the Bill, the Secretary of State for Justice said, "Greater media access to family courts will lead to greater trust in family courts". However, interim findings just published by the Children's Commissioner for England, has, perhaps not surprisingly shown that children may be less willing to discuss sensitive issues during family court proceedings if journalists are given greater access to the hearings - the Commissioner warned that most children involved in family court cases would be unwilling to disclose maltreatment by a parent or other problems if a journalist was present and said that children were "sceptical at the power of the law to protect their privacy".

DCMS Proposes Clarifying Definition of Entertainment to Promote Live Music

The DCMS has published details of its proposal to clarify the definition of "entertainment facilities" in order to exclude the provision of musical instruments from the definition of entertainment facilities in the Licensing Act 2003 and to confirm that entertainment facilities are not separately licensable if they are used solely for the provision of "incidental" music. The proposal would also ensure that the provision of musical instruments (such as a piano made available to members of the public to entertain themselves) is excluded from the definition of regulated entertainment. The DCMS said that, for clarity, this exemption "will extend to items provided to enable a musical instrument to be played without amplification" and will be of benefit to "premises such as pubs, cafes, restaurants and community venues that do not have authorisation for regulated entertainment, but who wish to provide incidental live music to their customers". See http://www.culture.gov.uk/images/consultations/091020PN_FACILITIES_clarification_condoc.pdf for details - these proposals are interesting, when considered in the context of the debate that took place recently in the House of Lords regarding the importance of the Live Music Bill (see below for details).

Live Music Bill - Second Reading in the Lords

The Live Music Bill has had its Second Reading in the House of Lords. Lord Clement-Jones opened the debate with a reminder about the negative impact that the current Licensing Act 2003 (described as having created a "bureaucratic nightmare") has had on live music generally and the consequential need for reform - "Ministers called the new licensing legislation a licensing regime for the 21st century. However, where live music is concerned, they actually turned back the licensing clock more than 100 years. A case in 1899 established that a pub landlord could let customers use a piano on his premises without an entertainment licence. Today, such a landlord could face criminal prosecution where the maximum penalty is a £20,000 fine and six months in prison). The proposed Bill amends the Licensing Act 2003 in four main respects. There is an exemption for live music in small venues that are licensed under the Licensing Act 2003, which is conditional on a new section 177, which can be triggered to review a licence and make live music in that venue licensable if complaints by local residents are made; secondly, there is a reintroduction of the "two-in-a-bar" rule, so that any performance of unamplified and minimally amplified live music of up to two people is exempt from the need for a licence; thirdly, there is an amended section 177 to the Licensing Act 2003 that will act as an effective licence review mechanism for complaints about live music in licensed premises; fourthly, there is 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 persons. The Bill was read a second time and committed to a Committee of the whole House. See <http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100115-0006.htm> - [10011519000411](http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/10011519000411) for the Hansard record of the debate and <http://www.publications.parliament.uk/pa/ld200910/ldbills/007/10007.1-i.html> for the Bill as read.

Media Standards Trust Research Demonstrates Support for Reform of Press Regulation

The results of an independent study by the Media Standards Trust as part of its ongoing review of press regulation have shown that there is "strong public support for reform of the current system of press self-regulation". The Trust's poll showed there is public support for an independent self-regulator and not a newspaper complaints body and that 73% of those polled were of the view that the chief purpose of an independent self regulator should be to monitor compliance with the code of practice and conduct investigations rather than mediating complaints between newspapers and complainants (as is the current practice). Further, almost half the respondents said this independent body should be obligated to investigate where there is evidence of inaccuracy in newspapers rather than waiting for a complaint to be made by someone directly affected by an article (as is the current position). The director of the Media Standards Trust said the research demonstrated that there was a "significant gap between public expectations of press self-regulation and what the current system can, and does, provide" and that it was critical that the Press Complaint Commission's current governance review, which was announced in August last year, works out how best to meet this challenge. (*Media Standards Trust News Report, 21 January 2010* - see <http://www.mediastandardstrust.org/medianews/newsdetails.aspx?sid=49876> for details - the PCC review group is expected to make its recommendations to the PCC Board in the Spring).

PCC Adjudicate on Complaint About Contact for Comment on Article and Source of Material Used

The Press Complaints Commission (PCC) has upheld a complaint brought by the mother of a university student following her daughter having been approached by a reporter after her son had died. The complainant alleged that the approach by the reporter, which took place after an "inaccurate and insensitive" article had appeared in The Sunday Times, was in breach of Clause 5 of the Editors Code of Conduct (Intrusion into grief or shock). While the PCC's investigation was ongoing in respect of the article, another reporter from the paper contacted the complainant's daughter through Facebook, inviting comments about the article in question. The paper accepted that the reporter should not have continued questioning the complainant's daughter once the complaint was mentioned. The PCC noted the reporter understood her error and apologised for it. The paper said nothing from the correspondence would be used in any future article and that all section editors and deputies had been alerted to the complaint and told not to contact the family. The paper also offered to send a private letter of apology to the family. However, the PCC upheld the complaint and said was "regrettable that a communication failure at the newspaper resulted in a further approach being made to the family despite the fact that there was an outstanding complaint about the previous coverage. It would also have been sensible for the reporter not to have pursued the matter directly with Mrs Rundle's daughter once the complaint was brought to her attention". The PCC said it was the combination of these two factors led it to conclude that the handling of this approach was intrusive in breach of Clause 5, and the complaint was upheld on this point. The complaint under Clause 1 (Accuracy) was not upheld - the PCC said the burden of the complaint under this section of the Code seemed to be that the newspaper had taken old information out of context, thereby giving a misleading impression of the complainant's son. The information used in the article had been taken from the complainant's son's social networking site and the PCC said, "newspapers still remained entitled, when reporting the death of an individual, to make use of publicly available material obtained from social networking sites". However it went on further and said "editors should always consider the impact on grieving families when taking such information (which may have been posted in a jocular or carefree fashion) from its original context and using it within a tragic story about that person's death". While the PCC said it had "great sympathy" for the family, the complaint under this clause was not upheld. (*Mrs Deborah Rundle v The Sunday Times, Report 80, Adjudication issued 04/01/10 - see <http://www.pcc.org.uk/news/index.html?article=NjE1NQ==?oxid=e2dbf045871f2870d152756a80521545> for details*).

Technology

Australian Government to Implement ISP Filtering Requirements

The Australian Minister for Broadband, Communications and the Digital Economy announced recently that the Australian Federal Government is proposing amending the Broadcasting Services Act 1992 in order to implement compulsory Internet Service Provider (ISP) level filtering measures for content from pornographic, violent or crime-related sites. The amendments will require all ISPs in Australia to use ISP-level filtering to block overseas hosted material on a list of Refused Classification-rated material (the RC Content list) maintained by the Australian Communications and Media Authority (ACMA). ACMA and the Federal Department of Broadband, Communications and the Digital Economy are to consult with ISPs about the details for implementing the filtering technology. According to the Department, legislation to amend the Broadcasting Services Act 1992 will be introduced later in the year and ISPs will then have until 2011 to implement the measures. Failure to filter the RC Content list will be subject to the same law enforcement and sanction regime as applies to current online provider rules in the Broadcasting Services Act 1992. An ISP that fails to filter content on the list of Refused Classification-rated URLs will commit an offence that carries a penalty of up to \$27,500 per day for non-compliance. The Federal Government said "ISP-level filtering will reduce the current inconsistency where Refused Classification-rated material that is hosted in Australia is subject to take-down, while the same material that is hosted overseas remains readily accessible. The Government's ISP filtering policy is consistent with the International Telecommunications Union Guidelines on Child Online Protection, which recommend '(t)he strategic objective for the Internet Industry for child internet safety should be to reduce the availability of and restrict access to harmful or illegal content and conduct". See http://www.dbcde.gov.au/funding_and_programs/cybersafety_plan/internet_service_provider_isp_filtering/isp_filtering_live_pilot/isp_filtering_-_frequently_asked_questions for the Department's FAQs on the proposals and http://www.dbcde.gov.au/_data/assets/pdf_file/0020/123833/TransparencyAccountabilityPaper.pdf for the Consultation Paper.

European Commission Approves Oracle/Sun Acquisition

The European Commission has confirmed that it has cleared the merger between Oracle and Sun. The Competition Commissioner said that she was "satisfied that competition and innovation will be preserved on all the markets concerned" and that "Oracle's acquisition of Sun has the potential to revitalise important assets and create new and innovative products". The Commission had opened an investigation into the merger in September 2009 in order to assess whether Oracle's acquisition of MySQL, described as the leading open source database, would lead to a significant impediment of effective competition within the EEA. The Commission noted that the database market was highly concentrated with the three main proprietary database vendors - Oracle, IBM and Microsoft - accounting for approximately 85% of the market in terms of revenue. The Commission's investigation focussed on the nature and extent of the competitive constraint that MySQL exerted on Oracle and whether this would be affected by the proposed transaction. The Commission said its investigation showed that although MySQL and Oracle competed in certain parts of the database market, they were not close competitors in others, such as the high-end segment. Oracle had received US antitrust approval for the acquisition in August 2009 and commentators are already suggesting that the Commission's decision (described by some as a U-turn) was the result of pressure being applied by the US - the US had reportedly highlighted job losses at Sun Microsystems as a result of the EU's objections to the deal and these concerns had been acknowledged by the Commissioner who said "Sun is in trouble and we need to consider that". (*EC Press Release IP/10/40, 21 January 2010*).

Consultations & Reports

Ofcom Consultation - Content Management on the HD Freeview Platform - http://www.ofcom.org.uk/consult/condocs/content_mngt/condoc.pdf (Ofcom's consultation considers a proposal from BBC Free to View Ltd that would require the inclusion of content management technology in receivers for High Definition Television services on the Freeview Digital Terrestrial Television platform. This technology would enable broadcasters to control the copying of content from high definition receivers to other consumer devices and its distribution to others over the Internet - Ofcom is considering whether to approve both the proposed licence amendment and, if it were to do so, whether or not it should approve the detailed proposals of the BBC in relation to the implementation of content management through the restriction of programme listing data).