

This is our summary of some of the key legal developments across a range of sectors for the week of 8 February 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

Joint Committee on Human Rights Reports on Digital Economy Bill

The House of Lords and the House of Commons Joint Committee on Human Rights has published its report on the Digital Economy Bill. Given the time constraint under which the Committee operated it considered only one key issue in the Bill - illegal file sharing. The Committee said that the proposal in the Bill to establish a mechanism whereby holders of copyright will be able to issue a "copyright infringement report" to an ISP where it appears that the ISP's service has been used by an account holder to infringe copyright and require ISPs to notify account holders when a copyright infringement report is received in connection with their account will be unlikely, on its own, to lead to a significant risk of a breach of individual internet users' right to respect for privacy, their right to freedom of expression or their right to respect for their property rights (Articles 8 and 10 of the ECHR) although called on the Government to provide a further explanation as to why they consider their proposals to be proportionate. However, in relation to the proposals for the Secretary of State to have the power to require ISPs to take "technical measures" in respect of account holders who have been the subject of copyright infringement reports the Committee said they "do not believe that such a skeletal approach to powers which engage human rights is appropriate". They said, "There is potential for these powers to be applied in a disproportionate manner which could lead to a breach of Internet users' rights to respect for correspondence and freedom of expression" and further, "Without a clear picture of the criteria for the imposition of technical measures it is difficult to reach a final conclusion on the fairness of the process for the imposition of technical measures. This is a further argument against the skeletal nature of the technical measures clauses". They asked for further information about the quality of evidence to be provided and the standard of proof to be applied to be provided on the face of the Bill. The Committee also raised concerns regarding the breadth of Clause 17 of the Bill, which provides the Secretary of State with the power to amend the Copyright, Designs and Patents Act 1988 by secondary legislation - they were concerned that parliamentary scrutiny may be inadequate and called for "clarification". See <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/44/44.pdf> for the Report.

BEREC's Rules of Procedure

The Body of European Regulators for Electronic Communications (BEREC), which replaced the ERG and which is composed of one member per Member State who shall be the head or nominated high-level representative of the national regulatory authority established in each Member State with primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services, has published their Rules of Procedure, in accordance with which the Board will exercise its assigned tasks - see http://erg.eu.int/doc/publications/berec/bor_10_03_rop_board_of_regulators_final_100202.pdf for details. The

Rules of Procedure for the BEREC Management Committee have also been published - see http://erg.eu.int/doc/publications/berec/mc_10_02_rules_of_procedure_management_committee_final_100202.pdf for details.

Betting & Gaming

Online Gambling Operators Face French Court Over Illegal Operations Claims

Four online gambling sites, Britain's Sportingbet and 888 Holdings, Malta's Unibet and Bwin of Austria are being sued by three of France's biggest casino operators in a test case ahead of the implementation of the French Government's proposals to end a state monopoly on Internet gambling. According to reports, Tranchant, Barrière and Joagroupe, which run a total of 104 casinos, and Casinos de France trade union have claimed that the action of the four operators in offering casino games contravenes current gaming legislation and of new e-gaming laws set to come into effect in June in "a deliberate and patent manner", and are pursuing symbolic €1 damages and €30,000 costs. They are also said to be asking for the four companies to have their operating licences withheld for two years. Unibet's legal advisor said the casino groups' additional allegations that the four operators had deprived the French State of tax revenues and of not "upholding the principles of player protection and fighting against problem gambling, fraud and money laundering" were matters of public order and that the casino groups could not substitute themselves for the French State. The case is still ongoing before the Correctional Court of Paris.

EU Executive to Review Regulation of Online Gambling?

The European Commission's Internal Market Commissioner has announced that the EU Executive will be looking for a more coherent way to address the issue of what he described as "ad-hoc" rulings on regulating gambling by the European Court of Justice, which have resulted in contradictory decisions on the extent to which governments can restrict access to online gambling. There are currently nine Commission infringement procedures in the area of cross-border betting on sports events online underway and the Commissioner said that the most recent ruling (Santa Casa, Case C-42/09) does not change fundamentally the Commission's approach towards infringement procedures. The Commissioner said that the Santa Casa ruling of 8 September 2009 was based on considerations specific to Portugal and to its national monopoly operator and that the Commission will continue to examine the compliance of national legislation with EU law on a case-by-case basis. However the Commissioner noted that the Executive would suggest changing national legislation to ensure compliance with EU rules and said "I want to launch a constructive dialogue [on gambling] with the Parliament and Member States and concerned stakeholders". An EU Green Paper would be the first step in the process and the Commissioner said a thorough examination of the reasons why Member States restrict access to online gambling was necessary, in particular with regard to societal aspects such as addiction. (*EurActiv, 12 February 2010 - The European Gaming & Betting Association said they welcomed the prospect of a Commission Green Paper which they said could offer a real opportunity to test the interest and support of the European Parliament and Member States for future EU harmonisation in the sector*).

Court Dismisses Claim Over Copyright Infringement of Computer Game

The claimant, a computer games designer, brought an action against the defendants claiming infringement of his copyright in a document which recorded an idea for a computer game and breach of an obligation of confidence owed to him in relation to the idea. The claimant had been employed by a company (Circle) which subsequently went into voluntary liquidation - the first defendant was a director of the second defendant company which bought some of the IP assets after the liquidation of Circle. The court described the claim as being something that had been pursued "as a result of a misunderstanding" and said that it was "regrettable" that it reached trial at all. The court dismissed the claim and said the claimant had failed to make out his claims - it said it was established law that in order to attract confidence an idea must contain some significant element of originality, be clearly identifiable (as an idea of the confider), be of potential commercial attractiveness and be sufficiently well developed to be capable of actual realisation. The court said the claimant was employed as a senior games designer - "It was his job to come up with ideas. If he came up with an idea and shared it with his employer he was doing what he was paid to do: the disclosure would not be in circumstances importing any duty of confidence owed by the employer to the employee ... He had not claimed it as an original personal idea ... The whole purpose of disclosing the idea was to enable Circle and its team to work up the idea and to take it to market (and if they were successful in that endeavour then [the claimant] would get a share of the bonus pool). There is in my judgment nothing in the circumstances of the disclosure to impose upon the conscience of Circle (or the individual consciences of its management...) any obligation of confidence in relation to [the claimant]". As for the claim of breach of copyright against the first director, the court said the claimant had voluntarily and without the imposition of any express conditions used work that he had previously completed for the purpose of performing the tasks required for the fulfilment of his current duties as an employee. If that has to be put into a legal category for the purposes of the application of the law of copyright then it would most naturally be viewed as an

assignment- a unilateral act requiring no agreement on the part of the recipient. Copyright in a work created in Circle's time and at its expense vested in Circle and there was no means by which the employment contract could be read as entitling the claimant to retain copyright but to licence Circle to use it. (*Burrows v Smith & Anor* [2010] EWHC 22 (Ch) - see <http://www.bailii.org/ew/cases/EWHC/Ch/2010/22.html> for the judgment).

Broadcasting

Product Placement - Meaningful Commercial Benefits Balanced Against Legitimate Concerns

Last week's Need to Know mentioned the proposed restrictions that the Government was considering applying in respect of product placement in order so as to "provide meaningful commercial benefits to commercial television companies and programme makers while taking account of the legitimate concerns that have been expressed". The Secretary of State for Culture, Media & Sport has now officially confirmed the Government's plans for permitting product placement in programmes made for broadcast in the UK in a Written Ministerial Statement. The statement said the Government has "decided to legislate to allow UK television companies to include product placement in programmes which they make or commission to appear in their schedules" but that the legislation (which will be made by Regulations under section 2 of the European Communities Act 1972, giving legal effect to the requirements of the EU Audiovisual Media Services Directive on TV product placement) will "specify some important exceptions" and specifically prohibit the placement of products and services for alcoholic drinks, foods and drinks high in fat, salt or sugar, gambling, smoking accessories, over-the-counter medicines and infant formula and follow-on formula. As for the question of what programmes will be covered by the proposed changes the Secretary of State said "The EU Directive requires that Member States prohibit product placement but permits them to derogate from that in the four separate genres of 'cinematographic works, films and series made for television or on-demand services, sports programmes, and light entertainment programmes'. Our legislation would therefore follow this pattern of imposing an overall ban on product placement except in these four genres. The legislation will not provide more precise definitions of these terms. Instead, it will allow Ofcom to intervene in the event that broadcasters unacceptably stretch the envelope and include product placement in programming which cannot properly be seen as falling into any of these permitted categories. The existing powers, including the code-making powers, which Ofcom have allow them to do that in an appropriate and effective way". The legislation will not permit product placement in the BBC's licence-fee funded services, which will continue to be prevented by the BBC's Charter and its Agreement with the Government. The regulations will allow Ofcom to permit product placement under its Broadcasting Code regulating the content of TV programmes, and Ofcom will need to consult on the detailed changes to the Code before these can come into effect. See http://www.culture.gov.uk/reference_library/minister_speeches/6624.aspx for the Statement.

Broadcast Bulletin - Latest Issue

The latest edition of Ofcom's Broadcast Bulletin has been published with details of adjudications on breaches of Rules 1.3 (children must be protected by appropriate scheduling), 1.24 (adult sex material restricted to overnight services with mandatory restricted access), 2.1 (generally accepted standards), 2.3 (material which may cause offence must be justified by context) and 9.13 (sponsorship must be clearly separate from advertising) of the Broadcasting Code; Ofcom also recorded a breach of Licence Condition 11 (retention and production of recordings) and Licence Condition 12 (general provision of information to Ofcom) in respect of a non-PSB television licensee. A breach of Licence Condition 2(1) contained in Part 2 of the Schedule to the Hereford & Worcester (AM) commercial radio licence by Classic Hits Radio Ltd was also recorded. A complaint of unwarranted infringement of privacy was upheld. See http://www.ofcom.org.uk/tv/obb/prog_cb/obb151/Issue151.pdf for details.

Secretary of State Accepts Formal Commitment from BSkyB for ITV Divestment

The Secretary of State for Business, Innovation and Skills, has announced that, after consultation, he has accepted formal commitments from British Sky Broadcasting Plc (BSkyB) that "using its best endeavours and acting in good faith, as soon as reasonably practicable, and in any event by the end of the Divestment Period, effect to the satisfaction of the Secretary of State the divestment of the Divestment Shares in a manner approved by the Secretary of State in advance and in writing in accordance with the provisions of these undertakings". The undertakings require BSkyB to submit for approval one or more proposed schemes for the divestment of the divestment shares and that pending the approval of the proposed scheme, BSkyB will comply with the terms of the undertakings in respect of the management of ITV, exercising the voting rights of the Divestment Shares and maintaining separation from ITV in respect of its management and shareholding. . (*BIS News Release, 8 February 2010* - see <http://www.berr.gov.uk/files/file54441.pdf> for the Final Undertakings).

Commission Approves Acquisition of Tower Productions by All3Media Germany and BBC Worldwide

The European Commission has granted clearance under the EU Merger Regulation to the acquisition of joint control of the newly created company Tower Productions GmbH of Germany by BBC Worldwide Limited, controlled by the British Broadcasting Corporation (BBC) of the UK and All3Media Deutschland GmbH of Germany. BBC Worldwide licenses pre-produced TV content to broadcasters worldwide. All3Media develops and produces TV programmes for German broadcasters. Tower Productions will develop, produce and adapt programmes based among others on BBC Worldwide television formats for the German-speaking public. (*EC News Briefing MEX/10/0209, 9 February 2010*).

Corporate

Fees Introduced for Reduction of Capital by Solvency Statement or Court Order

Companies House has announced that as from 6 April 2010 it will be imposing a fee in conjunction with the submission of form SH19 Statement of Capital. The fees relate to a reduction of capital by solvency statement (section 644) and a reduction of capital by court order (section 649). The fees will be £10 for a standard service and £50 for a same day service and should be attached to the SH19 form. Companies House has confirmed that any forms delivered to Companies House on or before 5 April will not require the payment of a fee.

Definitive Sentencing Guideline for Corporate Manslaughter and Health & Safety Offences

The Sentencing Guidelines Council has published its "Definitive Guideline" in respect of corporate manslaughter and health and safety offences that cause death. The guidelines apply with effect from 15 February 2010 and after that date all courts must have regard to them when sentencing organisations where the most serious form of harm has been caused, ie the death of one or more persons. The Guideline set out the elements of the offence and give examples of factors which are likely considered in determining its seriousness; it details the level of the fines which are likely and the various factors which will be considered and information which will be required when setting the fine. The Council said, "The advice is clear - punitive and significant fines should be imposed both to deter and to reflect public concern at avoidable loss of life" and it noted that fines for companies and organisations found guilty of corporate manslaughter "may be millions of pounds and should seldom be below £500,000". For other health and safety offences that cause death, it said fines from £100,000 up to hundreds of thousands of pounds should be imposed. Further, it said that when setting the amount of the fine, a court should not be influenced by the impact on shareholders and directors, nor should it consider the costs of complying with other sanctions. However, the effect on the employment of the innocent may be relevant, as may the effect on provision of services to the public. See http://www.sentencing-guidelines.gov.uk/docs/guideline_on_corporate_manslaughter.pdf for the Guideline. At the same time, the Ministry of Justice published a circular, detailing the arrangements for implementing section 10 of the Corporate Manslaughter and Corporate Homicide Act 2007, which sets out details about the publicity order which a court can make in respect of an organisation convicted of corporate manslaughter/homicide. An organisation guilty of the offence is potentially liable to an unlimited fine, a remedial order requiring it to take steps to address the failures behind the death, and, from 15 February 2010, to a publicity order, requiring it to publicise details of its conviction and sentence. See <http://www.justice.gov.uk/about/docs/circular-04-2010-corporate-manslaughter-corporate-homicide-act.pdf> for details.

Company Names Tribunal's Practice Note on Use of Correspondence in Name Disputes

The Company Names Tribunal has published a Practice Note on the use of correspondence which may have been produced in the context of a dispute between parties about a company name. The Note states that while parties may wish to use material to best support their case, the "without prejudice" rule must still have effect upon proceedings before the Tribunal and that there is no opt out from the fundamental principles of the "without prejudice" rule and the normal criteria for considering whether matter is "without prejudice" will be taken into account. The Tribunal has said that where the parties have legal representation, it will be up to the legal representatives to submit that documents should be excluded as being "without prejudice" - the adjudicator will not act on his or her own motion. See <http://www.ipo.gov.uk/cna/cna-practicenote/cna-pn-0110.htm> for details.

Film & TV

EU Media Intergroup Chair Warns on Risks to Cultural Life by Focussing on Competition

The chair of the European Parliament's newly-established media Intergroup, which met recently to discuss issues facing the media industry, has spoken about the need for the EU to pay more attention to the content placed in the media and take into account concentration issues and financial support for filmmakers. According to the chair, "Europe's focus on competition has led to a situation where European media groups struggle to compete with global giants" and said Europe should try to "combine the possibility of concentration [while] respecting competition rules". He noted further "I am not saying we should subsidise the media. I am only saying that one should create the market conditions of cultural life, and I was mostly thinking about cinema".

Litigation

Consequences of Delay in Issuing Proceedings for Interim Injunction for Passing Off and Trade Mark Infringement

The applicant applied for an interim injunction restraining the respondent from using the name BLINKBOX. The applicant had operated the website blinkx.com, an Internet video service that provided access to film, television and video content since 2004. In 2008, the respondent launched a website blinkbox.com, which allowed its customers the ability to choose, customise and share video and television clips. The respondent applied to register a number of community trademarks in various forms that included the word "blink" however the applicant complained that the registration was an attempt to benefit from its reputation. After some delay, the applicant complained that the respondent was guilty of trademark infringement and passing off and submitted that it was appropriate to delay the commencement of proceedings against the respondent until confusion arose in the market between the two services. The court refused the application - it said the delay in issuing proceedings for trademark infringement and passing off was fatal to an aggrieved party's application for an injunction restraining the offending party from using the name complained of. The applicant had been aware, at least since 2008, that the respondent was providing an on-demand media service through its website but took no steps to issue proceedings despite that knowledge. The possibility that the two services might be confused should have been apparent in the light of what the applicant knew. It was therefore wholly unreasonable and completely unjustified to wait to issue proceedings. The court noted had the application been made at the time of the initial launch, or even the official launch, the factors in the balance might have resulted in a different conclusion. (*Blinkx UK Ltd v Blinkbox Entertainment Ltd* [2010] All ER (D) 78 (Feb) - a summary of the judgment is available via LexisNexis).

High Court Orders Winding Up of Ticket Tout Companies

The High Court has ordered the winding up of two ticket tout companies, following an investigation by Companies Investigation Branch (CIB) of the Insolvency Service. The Online Ticket Exchange Limited (TOTE) and Ticketmate Limited (Ticketmate) advertised for sale, tickets for pop and rock concerts, festivals and sporting events. According to the Insolvency Service, in making the winding up orders the court noted that both companies had been effectively run by a disqualified director and were a repetitious operation of his previous companies (which had failed with a combined deficiency to their creditors of £7,395,547). Both companies failed to supply (50%) of the tickets sold between 1 April 2008 and 30 September 2009 and had made gross misrepresentations as to their ability to supply tickets and their trading history. The companies had also illegally sold tickets to football matches (worth over £400,000) in breach of section 166 of the Criminal Justice & Public Order Act 1994, which prohibits the sale of tickets to designated football matches by unauthorised persons. Petitions to wind up the two companies were presented on 8 December 2009 under section 124A of the Insolvency Act 1986. The Official Receiver was appointed as provisional liquidator of TOTE and Ticketmate on 9 December 2009 and the companies went into compulsory liquidation on 28 January 2010. See <http://nds.coi.gov.uk/content/detail.aspx?NewsArealD=2&ReleaseID=411088&SubjectId=2> for details.

Court of Appeal Dismisses Appeals Against Conviction for Internet Incitement Crimes

The Court of Appeal dismissed two appellants appeal with the leave of the full court against their convictions for a number of offences relating to racially inflammatory material under the Public Order Act 1986. The appellants had sought to argue that the English courts did not have jurisdiction to try offences under section 19 of the Act when the website publishing the material was located outside the jurisdiction, in this case in California. The Court of Appeal confirmed that the question of jurisdiction was governed by the "substantial measure" test, and found that

in this case most of the activities constituting the crime took place in the UK - it said "The material was aimed primarily at the British public. The only 'foreign' element was that the website was hosted by a server in Torrance California and, as the judge observed, the use of the server was merely a stage in the transmission of the material". This was consistent with the purpose of section 19 of the Act, as "written material" was clearly wide enough to include material disseminated by the defendants' website - the court noted that "Whilst in 1986 the world-wide web was a thing of the future and computers were in their infancy it seems to us clear that 'written material' is plainly wide enough to cover the material disseminated by the website in the present case" and said that "the meaning of 'written material' as interpreted by section 29 is sufficiently clear to cover the present case without recourse to Hansard. The word 'includes' in section 29 is plainly intended to widen the scope of the expression". The court also found the defendants' argument that there could not be publication under section 19 without a "publishee" was fundamentally misconceived. (*R v Sheppard & Anor [2010] EWCA Crim 65* - see <http://www.bailii.org/ew/cases/EWCA/Crim/2010/65.html> for the judgment - commentators have noted that this is reported to be the first conviction in the UK for inciting racial hatred via a foreign website).

Music

Live Music Bill - Passes to the Commons

The Live Music Bill has had its Third Reading in the House of Lords and was passed with no further amendment and sent to the House of Commons - a First Reading date of mid March has been mentioned. (*Lords' Hansard Record*, 9 February 2010, Column 611 - see <http://www.publications.parliament.uk/pa/ld200910/ldbills/007/10007.1-i.html> for the text of the current draft of the Bill, which proposes a range of amendments to the Licensing Act 2003 in order to support and encourage the live music industry).

CAT Orders Competition Commission to Reconsider Live Nation/Ticketmaster Merger After Eventim Appeal

The Competition Commission will have to re-examine Live Nation's merger with Ticketmaster Entertainment in the UK, following the successful application by CTS Eventim before the Competition Appeal Tribunal (and see http://www.catribunal.org.uk/files/1150_CTS_Notice_200110.pdf for a summary of the application, setting out the grounds of Eventim's appeal). The Tribunal ruled that the Commission must re-visit the investigation because testimony presented by Eventim had not been fully considered when it came to the merger's impact on the ticketing market. The Tribunal proposed "that, upon referring the matter back, the Commission ... treat its Report as Provisional Findings and then reconsider and, at least to some extent, reinvestigate the matters in question" and directed the Commission to "reconsider the questions contained in paragraph 2 of the Office of Fair Trading's Terms of Reference dated 10 June 2009, which are the statutory questions which it normally has to decide in relation to anticipated mergers". Eventim agreed to this proposal. (*CTS Eventim AG v The Competition Commission [2010] CAT 7* - see http://www.catribunal.org.uk/files/1150_CTS_Ruling_110210.pdf for the Tribunal's ruling).

OFT Clears Ambassador Theatre Group's Theatre Acquisitions

The Office of Fair Trading (OFT) has announced that it has cleared the acquisition by Ambassador Theatre Group of the portfolio of 22 theatres formerly owned by Live Nation. The OFT had been asked to consider concerns that post-merger, Ambassador would face less direct competition, giving it the ability to increase prices to producers, foreclose rival theatres by cross-selling a portfolio of theatres to producers and foreclose rival producers by restricting their access to its enlarged portfolio of theatres. The OFT said it "believes that there is no realistic prospect of theatregoers losing out through higher prices or an overall reduction in choice of productions or theatres" and as a result the matter will not need to be referred to the Competition Commission. (*OFT Press Release 16/10, 10 February 2010* - the OFT has said that a copy of its decision will be made available in due course).

High Court Dismisses PPL's Appeal Against Copyright Tribunal Decision on New Tariffs

The High Court has dismissed the appeal by Phonographic Performance Ltd (PPL) against the ruling of the Copyright Tribunal in respect of in respect of PPL's Tariff 110 for public houses, bars, restaurants and cafés, Tariff 111 for shops and stores and Tariff 112 for factories and offices. The Tribunal had ruled that the tariffs were "not reasonable" and made an order under section 128B(3)(a) of the Copyright, Designs and Patents Act 1988 varying the New Tariffs. The effect of the variation, shortly stated, was to re-instate the Previous Tariffs and extend them to all means of delivery subject to an increase in the royalties payable by 10% in addition to an adjustment in line with the Retail Price Index and the imposition of a concessionary discount rate for some small users. PPL appealed against that decision, arguing that the Tribunal had "erred in law". The court disagreed. PPL said "Naturally the company is extremely disappointed that the Judge found there was no error of law although he identified some problems with the decision of the Tribunal. This leaves PPL with tariffs that it believes substantially undervalue

the rights of its performer and record company members". (*Phonographic Performance Ltd v The British Hospitality Association & Ors* -see <http://www.bailii.org/ew/cases/EWHC/Ch/2010/209.html> for the judgment).

Publishing

PCC Warns Again About Pregnancy Stories and Risk of Privacy Breach

The Press Complaints Commission (PCC) has upheld two complaints from Dannii Minogue against the Daily Mirror and the Daily Record, noting that in both cases, "a regrettable lapse in editorial judgement" had led to an invasion of her privacy in breach of Clause 3 (Privacy) of the Editors' Code of Practice. Both articles referred to the pregnancy before a 12 week scan had taken place. Both papers newspaper said that they were aware of the general "first scan" rule in regard to pregnancy however, they also said the news of the pregnancy had been in the public domain before their articles, having appeared on a blog and a newspaper website the previous day. The PCC said however that case law on this matter was absolutely clear - "as a matter of common sense newspapers and magazines should not reveal news of an individual's pregnancy without consent before the 12-week scan, unless the information is known to such an extent that it would be perverse not to refer to it". The PCC said further "This case is an important reminder to editors of the high standards required by Clause 3 (Privacy) of the Code around health matters. The Commission's case law in this area make absolutely clear the care the PCC expects newspapers to take when considering stories about pregnancy". (See <http://www.pcc.org.uk/cases/adjudicated.html?article=NjJwOA==?oxid=vq9vn0ajh2cj3k9lmjhd0cfs16> for the Daily Mirror adjudication and <http://www.pcc.org.uk/cases/adjudicated.html?article=NjJwOQ==?> for the Daily Record adjudication).

Statement in Open Court - Same Name Confusion Results in Libel Action

The claimant, a Bafta nominated director and producer, brought a libel action against the defendant following the publication of an article which claimed that he had "narrowly" avoided sentencing after pleading guilty to downloading "unspeakable" child pornography. Unfortunately, the claimant had the same name as the person who had actually pleaded guilty to the offence but was otherwise totally uninvolved - the defendant realised that an honest mistake had been made and took steps to correct the story however it had already been circulated and was subsequently published by a number of local and national papers and websites and was then discussed on various blogs and forums etc. The defendant apologised to the claimant, agreed to pay "substantial" damages and costs and the claimant agreed not to pursue the libel action, having achieved his principle aim of vindication. (*Martyn Smith v The Press Association Limited, Unreported, QBD, 4 February 2010*).

Sport

Competition Commission's Provisional Findings in JJB Sports Store Acquisition

The Competition Commission has announced that it has provisionally cleared Sports Direct International's acquisition of 31 sports stores from JJB Stores, having concluded that the deal "has not resulted, and may not be expected to result, in an SLC in any market in the UK". Sports Direct operates 363 stores in the UK and JJB operates 251 - both stores continued to operate after the store transfers. The Commission noted that in the market for sports stores in the UK customers considered JJB and Sports Direct to be each other's closest competitors and they concluded provisionally that the market included only Sports Direct and JJB. They also considered whether a new entrant could replace any competition lost by the transfer of 31 JJB stores to Sports Direct but found that to provide a competitive constraint a new entrant would have to compete with volumes which would be on a large and significant scale. They did not identify any large retailers which had the intention of entering on such a scale and judged that smaller retailers and direct retailers (eg Internet retailers) were unlikely to increase significantly the extent of their constraint on the parties. Although they noted the store transfers had created an incentive for Sports Direct to increase its national prices by a very small amount (less than 1%), JJB remained in the market and, over the longer term, was likely to be able to expand into areas where it was not currently competing with Sports Direct and therefore impact on price. The Commission has invited comment before its Final Report is published in April. See http://www.competition-commission.org.uk/inquiries/ref2009/jjb/pdf/summary_of_provisional_findings.pdf for details.

Technology

Commission Calls for Further Action on Implementing Safer Social Networking Principles

One year after the launch of the Safer Social Networking Principles, which were designed to protect children using social networking websites, the European Commission has commented on the implementation of the Principles on the 25 sites run by the various signatories (Arto, Bebo, Dailymotion, Facebook, Giovanni.it, YouTube, Hyves, Windows Live, Xboxlive, Myspace, Nasza-klaza.pl, Netlog, One.It, Piczo, Rate.ee, Skyrock, SchülerVZ StudiVZ MeinVZ, Habbo, IRC Galleria, Tuenti, Yahoo!Answers, Flickr, and Zap.lu). The Commission said studies have shown that while 19 out of 23 sites provided safety tips and information specifically targeted towards children and/or teenagers, less than half the social networking companies (40%) made profiles of under-18 users visible only to their friends by default and only one-third replied to user reports asking for help. The EU Commissioner for Information Society and Media said "I expect all companies to do more. Minors' profiles need to be set to private by default and questions or abuse reports have to receive quick and appropriate responses. The Internet is now vital to our children, and it is the responsibility of all to make it safe". (*EC Press Release IP/10/144, 9 February 2010*).

Consultations & Reports

Ofcom's Decision Letters on the proposed joint sales process for Capacity on Multiplexes B, C and D - Arqiva and the BBC requested Ofcom's consent to offer jointly to the market spare capacity which has become available on Multiplex B ahead of digital switchover and new capacity that will become available on Multiplexes C and D following digital switchover - see http://www.ofcom.org.uk/tv/ifi/tvlicensing/letters/Consent_Arqiva.pdf (for the letter of consent to Arqiva) and http://www.ofcom.org.uk/tv/ifi/tvlicensing/letters/consent_BBC.pdf (for the letter of consent to the BBC).