

*This is our summary of some of the key legal developments across a range of sectors for the week of 15 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

## General

Claim for Damages for Destruction of Television Set Abandoned in Property

The claimants sought damages arising out of the destruction by the first defendant or the second defendant or both of tailor-made equipment, which had been used to make a television series. The second defendant counterclaimed for mesne profits or damages for trespass or both. The claimant had purchased the equipment after the television series had finished - it was not used again but left in storage in a building on a former air-force base, which was subsequently bought by the second defendant. When the equipment was discovered in the

building, the second defendant complained to the agents as the building had been sold with vacant possession and the set was subsequently removed and destroyed on the instructions of the first defendant. However, some enquiries had been made as to the owner of the equipment prior to its destruction. The claimants claimed damages for the wrongful destruction of the equipment and the second defendant counterclaimed for 42 days use and occupation of the building between January and March 2005. The court noted that if goods were abandoned on the land of a property owner, he was entitled to dispose of them. If the goods had not been abandoned by the true owner, the result was that the person on whose property the goods were found was a possessor of someone else's goods. A person's liability for conversion by destruction was conditional upon his failure to establish that he was not aware and should not reasonably have become aware of the true ownership of the goods when he committed the act of destruction. Liability for conversion depended on whether the person knew or ought reasonably to have known that the goods belonged to a third party and what is reasonable depends on the circumstance - here, although the purchasers of the property had discovered the remains of the equipment in an unlocked building on site and had ordered its removal and destruction, they were not liable for conversion as, following enquiries, they had been reasonably entitled to conclude that no one was interested in the goods. As the removal and scrapping of the equipment from the building had not given rise to any additional cost to the second defendant but had, on the contrary, resulted in its receiving a small scrap value, it was not appropriate to make any award on the counterclaim, which would, accordingly, be dismissed, albeit that essentially followed and was a result of the findings in the defendants' favour on the claim. (*Robot Arenas Ltd & Anor v Waterfield & Anor* [2010] EWHC 115 (QB) - the judgment is available via Lawtel).

### Law Society Practice Note - Guidance on Executing Documents at Virtual Closings

The Law Society has published a Practice Note on the execution of documents by virtual means, which is intended to assist parties who wish to take "a cautious approach" to virtual signing in light of the High Court decision in *R (on the application of Mercury Tax Group Limited and Masters) v Her Majesty's Revenue & Customs* [2008] EWHC 2721 (Admin) - the decision in *Mercury* led to considerable discussion about the effectiveness, under English law, of the use of pre-signed signature pages and "virtual" signings and closings where signature pages are sent/transmitted by email or fax (and see <http://www.bailii.org/ew/cases/EWHC/Admin/2008/2721.html> for the judgment). The Law Society Note is based on guidance published by a joint working party of The Law Society Company Law Committee and The City of London Law Society Company Law and Financial Law Committees. That guidance made the point that there were a range of options available to parties when executing documents at "virtual" signings or closings (ie where some or all of the signatories are not physically present at the same meeting) and outlined three possible options - have pdf/Word counterparts signed by each party (for deeds, real estate contracts, guarantees and simple contracts); print off and sign the signature page from the final document (for guarantees (not executed as deeds) and simple contracts); or use pre-signed signature pages collected before the documents are finalised (alternative for guarantees and simple contracts). However, the Law Society Note does differ to the extent that it highlights situations where a virtual signing or closing may not be appropriate due to the parties being unwilling to rely on the other parties' undertakings or contractual obligations to produce "wet-ink" signed originals - for example, it notes that "In particular, a virtual signing or closing is very unlikely to be suitable for property documents that require registration". Further, the Note states that for an email to be a sufficient memorandum or note of a guarantee, one of the requirements is for the email to contain the name of the guarantor with the intention that it constitutes a signature and it says that, for these purposes, the name must be included in the body of the email. See <http://www.lawsociety.org.uk/productsandservices/practicenotes/executionofdocs/4447.article> for details.

### New Legislation - Correcting Anomaly in Goods Infringing Intellectual Property Rights (Customs) Regulations 2004

The Goods Infringing Intellectual Property Rights (Customs) (Amendment) Regulations 2010, SI 2020/324 come into force on 10 March 2010. The Regulations amend the Goods Infringing Intellectual Property Rights (Customs) Regulations 2004 so as to correct an anomaly regarding time limits for administering IP rights cases that previously existed in the Regulations and bring them fully into line with Council Regulation 1383/2003. The Council Regulation provides a facility for owners of IP rights to apply to customs administrations for action to help them protect their rights in respect of consignments of goods crossing the European Community's external frontier. Under these arrangements, goods suspected of infringing an IP right are detained by the customs authority for a limited period to enable rights holders to take any action they consider necessary to protect their rights. See [http://www.opsi.gov.uk/si/si2010/pdf/uksi\\_20100324\\_en.pdf](http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100324_en.pdf) for details.

## No Regulation for Secondary Ticket Market

The Government has announced that it will not be imposing regulation on websites who resell tickets for "crown jewel" sporting events despite having suggested last year that the practice could be banned. Following consultation the decision has been made to allow such websites to regulate themselves. The Minister for Sport said "The best way forward is to encourage a strong, self-regulated primary market, but one that recognises the need for a healthy and safe secondary market" and backed the Society of Ticket Agents and Retailers (STAR) and its ongoing work in managing and developing a new code of practice. STAR said what was important was "education not legislation" and that when consumers used a reputable ticket exchange there was no danger of them being defrauded. However, the decision has also raised concerns that ticket resellers increase the cost of tickets in the music and sporting sectors for "big names" and undermine smaller acts.

## Betting & Gaming

### Online Gaming Operator Sponsors Burnley FC

Burnley FC has announced a multi-million pound two-year deal with Asian online gaming operator Fun88, becoming the UK's eighth Premier League football team to obtain sponsorship from an online gaming operator. Burnley join Premiership clubs Hull City, Tottenham Hotspur, West Ham United, Sunderland, Bolton Wanderers, Wigan Athletic, and Wolverhampton Wanderers as UK football teams which have received sponsorship from gambling operators including Mansion, totesport, SBOBET, Sportingbet, Boylesports and 188BET, Bet2Go, Party Poker, Bet365.

## Broadcasting

### ASA Finds Ad Volume Breaches CAP Code Rule

The Advertising Standards Authority (ASA) has adjudicated on a complaint about whether eight ads which were shown in an ad break during Sherlock Holmes on ITV3 were excessively noisy compared to the surrounding programme material. The ASA said it noted that the programme had a "wide dynamic range, with periods of quiet suspense punctuated by short, louder bursts". It noted that the "maximum subjective loudness of ads was consistent with other ads during the break, but that it was not well matched to the overall sound levels of the programme, making the ads seem loud in comparison". It said it recognised that commercial breaks sometimes occurred during especially quiet parts of a programme, but nevertheless concluded that the ads were excessively strident and breached CAP (Broadcast) TV Advertising Standards Code rule 6.9 (sound levels in advertisements). See [http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2010/2/ITV3-Ltd/TF\\_ADJ\\_48082.aspx](http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2010/2/ITV3-Ltd/TF_ADJ_48082.aspx) for details. The ASA did say however that it acknowledged that ITV3 were working with other broadcasters and the industry generally to ensure compliance and welcomed their efforts in this regard.

## Publishing

### Media and Free Speech Organisations Given Permission to Intervene in Mosley ECHR Privacy Case

According to reports, a collection of media and free speech organisations have successfully applied to the European Court of Human Rights (ECHR) for permission to intervene in the case being brought by Max Mosley on the question as to whether English law's failure to impose an obligation on media organisations to notify in advance those about whom they intend to publish private material amounts to a breach of his right to respect for privacy and family life under Article 8 of the European Convention. Media organisations have reportedly raised concerns about the relationship between the right to privacy as protected in Article 8 and media freedom and the fact that scope of protection of the Article has been "extended significantly, frequently without much jurisprudential basis". The organisations are concerned that the obligation of prior notification being sought by Mr Mosley would seriously stifle the right to freedom of expression guaranteed by Article 10 of the Convention and the impact this would have on media freedom across Europe as well as further afield. (*Society of Editors News, 15 February 2010 - the organisations involved were Media Legal Defence Initiative (MLDI), Index on Censorship, the International Media Lawyers Association, the European Publishers' Council, the Mass Media Defence Centre, the Romanian Helsinki Committee, the Bulgarian Access to Information Programme Foundation, and Global Witness*).

## PCC Adjudicate on "Difficult and Important" Case on Press Freedom and Columnist's Right to Comment

The Press Complaints Commission (PCC) has published its lengthy and detailed ruling on the complaint from Andrew Cowles, the civil partner of Stephen Gately, against an article by Jan Moir published in the Daily Mail in October 2009. In what the Commission described as a "difficult but important case" the complaint was made that the column was inaccurate, intrusive at a time of grief and discriminatory and breached Clause 1 (Accuracy), Clause 5 (Intrusion into grief or shock) and Clause 12 (Discrimination) of the Editors' Code of Practice. The PCC acknowledged that the publication of the article had "clearly caused serious concern to not only the complainant but also the 25,000 who lodged formal complaints with the Commission - by far the largest number of complaints the PCC has ever received on a single issue" (although it noted that this record number of complaints was an internet phenomenon "whipped up in a few hours on the social networks of Facebook and Twitter" and had to be kept in perspective). In addition, the Commission noted that the complaint also raised an essential point of principle for the Commission: the extent to which a newspaper has the right to publish opinion that many readers may find to be unpalatable and offensive. The paper had published a strongly expressed contrary opinion by another columnist shortly after the column in question and had also published a selection of letters on the controversy and its website comment facility had been kept open for all sides to set out their views. The columnist in question had also published an apology. The complaint was not upheld. The PCC said that on the first issue whether the article had breached Clause 1, which states that comment, conjecture and fact should be clearly distinguished, in addition to making clear that newspapers should take care not to publish inaccurate or misleading information, the article was a "comment piece" and while the complainant may have disagreed with claims in the piece, and many readers had objected to them, the Commission felt that these individual judgments did not constitute assertions of fact. On the Clause 5 complaint the Commission said it "did not consider that the publication of the article had breached Clause 5 of the Code. To rule otherwise would be to say that newspapers are not entitled to publish certain opinions (which may be disagreeable to many) on events that are matters of public discussion. This would be a slide towards censorship, which the Commission could not endorse". Finally, on the discrimination element, the Commission said there was a distinction between critical innuendo, which, though perhaps distasteful, was permissible in a free society and discriminatory description of individuals, and the Code was designed to constrain the latter rather than the former. While it "may have been uncomfortable with the tenor of the columnist's remarks on the topic; it did not consider ... that the column had crossed the line on this occasion such as to raise a breach of the Code". (*Mr Andrew Cowles v Daily Mail, Report 80, 18 February 2010* - see <http://www.pcc.org.uk/news/index.html?article=NjlyOA==?oxid=0645c8bqeqsiv4f36n5lr9uu6> for the ruling).

## MoJ Consultation on Controlling Costs in Defamation Closes

The Ministry of Justice's consultation on controlling costs in defamation proceedings by means of a proposal to reduce the maximum "success fee" which may be charged in defamation proceedings funded under Conditional Fee Agreements from 100% to 10% of base costs closed this week. The MoJ described the proposal as "an interim measure for dealing with disproportionate costs while the Government considers [Jackson's report on civil litigation costs] which seek to radically change the existing arrangements for all cases where CFAs are used" however it is intended to complement the earlier changes which were introduced on 1 October 2009 in respect of defamation proceedings and which were designed to control the costs of individual cases. The MoJ said that a response to the consultation would be published within three months.

## Technology

### Government Focuses Resources on Cyber Crime and Enforcement

The Minister of State for Further Education, Skills, Apprenticeships and Consumer Affairs has announced the establishment of a new specialist cyber enforcement team together with extra funding for Trading Standards. This will involve the creation of an enforcement team to deal with rogue traders who use the Internet and email to defraud consumers. According to the Government, the focus of the team will be on fake products and traders who try to hide their identity to avoid giving consumer redress; ticket scams where counterfeit tickets are sold for entertainment or sporting events; and websites selling counterfeit products that dupe consumers into making purchases through advertising low prices. The Office of Fair Trading will co-ordinate which enforcer is best placed to take action on a particular issue and will focus on the most serious cyber scams. Cases will continue to be passed to the Police, Serious and Organised Crime Agency and Companies Investigations Branch when it is appropriate to do so. (*Government News Distribution Service, 15 February 2010*).

## Advocate General's Opinion on Interpretation of .eu Implementing Regulation

Advocate General Trstenjak has delivered an opinion following a reference from the Austrian court, on the provisions of Commission Regulation (EC) No 874/2004 on the implementation of the .eu top-level domain (TLD) regime which were designed to counter "domain-name grabbing" during the early (sunrise) phase of registration. Commission Regulation 874/2004 lays down public policy rules concerning the implementation and functions of the .eu top-level domain and the principles governing registration. It sets out certain rules and procedures relating to various aspects of the .eu TLD system - in the case before the Austrian court the claimant, Internetportal und Marketing GmbH (IMG), ran websites and sold products over the internet and wished to register a large number of .eu domain names. In order to be eligible to apply to register .eu domain names during the first phase of registration (when precedence was given to trade mark owners) it applied to register 33 German generic terms as Swedish trade marks, each of which included an "&". One of the names registered in IMG's name was [www.reifen.eu](http://www.reifen.eu) which was based on its Swedish trademark &R&E&I&F&E&N&. The defendant owned the Benelux trademark REIFEN for glass window-cleaning products and services and had applied to register REIFEN as a Community trademark for those goods and services. The defendant challenged the [www.reifen.eu](http://www.reifen.eu) domain before the Czech Arbitration Court, which transferred the domain to the defendant - IMG started proceedings in the Austrian courts seeking a declaration that the contested domain should not have been transferred and the matter was subsequently referred to the ECJ. The Advocate General said that Article 21(1)(a) of the Regulation must be interpreted as meaning that the proprietor of a national trade mark has a right within the meaning of that provision so long as that trade mark has not been cancelled, on grounds of bad faith or on other grounds, by the competent authorities or courts in accordance with the procedures laid down in national law and that that right exists even if the trade mark which provides the basis for the domain registration differs from the domain name as a consequence of the correct elimination from the latter of the special characters which that trade mark contained. It was for the national court making the reference to determine whether those special characters could have been rewritten. (*Internetportal und Marketing GmbH v Richard Schlicht*, Case C-569/08 - see <http://curia.europa.eu/jurisp/cgi-bin/gettext.pl?lang=en&num=79899789C19080569&doc=T&ouvert=T&seance=CONCL> for the Advocate General's Opinion; the ECJ is still to rule on the matter).

## EC Approves Microsoft's Proposed Acquisition of Yahoo!

The European Commission has announced that it has approved under the EU Merger Regulation the proposed acquisition of the Internet search and search advertising businesses of Yahoo! Inc by Microsoft. The Commission concluded that the concentration would not significantly impede effective competition in the European Economic Area (EEA) or any substantial part of it (the Commission stated that in the EEA, Microsoft's and Yahoo's activities in Internet search and online search advertising are "very limited" with combined market shares generally below 10% - Google, by contrast, generally enjoys market shares above 90%). (*EC Press Release IP/10/167, 18 February 2010*).

## Competition Commission Provisionally Approves Brightsolid's Acquisition of Friends Reunited

Still on the subject of acquisition approvals, the Competition Commission has given its provisional findings in the proposed acquisition by Brightsolid Group Limited (Brightsolid) of Friends Reunited Holdings Limited (Friends). Both companies operate as providers of online family history data and other services (described by the Commission as online genealogy services). The Commission noted "The UK online genealogy market has grown very rapidly over the last ten years, with a considerable pace of change in the number of suppliers and the range of their product offerings" and examined a range of evidence in order to assess the unilateral effects of the merger, ie whether any loss of competition between the parties would be such as to allow the merged company profitably to raise prices, at least in the short term. The Commission said it found that "the unilateral effects of the merger would be unlikely to result in an SLC, due to the extent of differentiation and limited overlap between the parties and the other constraints on prices remaining after the merger, or create the incentive or ability for the merged firm profitably to increase prices. There is also the potential for the merger to have pro-competitive effects on prices, given, among other things, the complementary nature of at least part of the parties' offer" and therefore provisionally concluded that the merger would not be likely to result in a SLC in the relevant market. See [http://www.competition-commission.org.uk/inquiries/ref2009/brightsolid/pdf/summary\\_of\\_provisional\\_findings.pdf](http://www.competition-commission.org.uk/inquiries/ref2009/brightsolid/pdf/summary_of_provisional_findings.pdf) for a summary of their Provisional Findings - the Commission is expected to publish its final report by 16 April 2010 but in the meantime has invited comment.

## Consultations & Reports

Ofcom Consultation - Digital Dividend: 600 MHz Band and Geographic Interleaved Spectrum - Consultation on Potential Uses - [http://www.ofcom.org.uk/consult/condocs/600mhz\\_geographic/600condoc.pdf](http://www.ofcom.org.uk/consult/condocs/600mhz_geographic/600condoc.pdf) (Ofcom's consultation looks at the potential for usage of the 600 MHz band and geographic interleaved spectrum, which is part of the UK's digital dividend that will be freed up for new uses with the switchover from analogue to digital terrestrial television (DTT) that is due to be completed in 2012 - Ofcom noted that there is a wide range of potential uses of this spectrum, the most likely of which appear to be DTT and mobile broadband alongside others including mobile multimedia services (MMS - eg mobile television), programme making and special events (PMSE), broadband wireless access (BWA) and communications for the emergency services).