

This is our summary of some of the key legal developments across a range of sectors for the weeks of 5 and 12 April 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

Digital Economy Bill - BIS Consults on Proposals for Sharing Costs of Dealing with Online Infringement

The Government is consulting on its proposals for the sharing of costs relating to the initial obligations for addressing the problem of online infringement of copyright. The obligations are set out in the Digital Economy Act (and see below for details). These obligations take forward Recommendation 39 of the Gowers Review of Intellectual Property, which addressed the issue of illicit use of peer-to-peer file-sharing (P2P), the recent BIS consultations on possible regulatory options and Action 13 of the Digital Britain Interim Report. Clause 16 of the Bill allows the Secretary of State to make an Order which sets out how these costs which are associated with the obligations will be covered by introducing a new section 124M into the Communications Act 2003. According to the proposal, the Order can only apportion costs to either or both copyright owners and ISPs except in the case of the appeals process where it can also require a subscriber to contribute to the costs of an appeal. Copyright owners may be required to contribute towards the costs incurred by an ISP and both copyright owners and ISPs may be required to contribute towards the costs that Ofcom incurs. The Order can set out how the costs can be calculated (or estimated) and how the payments must be made. The consultation sets out the costs which are involved and is inviting comment on apportionment, on the cost elements and the associated mechanisms. See <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/10-915-consultation-online-infringement-of-copyright.pdf> for details.

Digital Economy Bill Passed After Amendments Before Committee and Third Reading Before Parliament Dissolved

The Digital Economy Bill has finally passed, having been before a Committee of the Whole House of the House of Commons in order to get the Bill through before Parliament dissolved prior to the General Election. See <http://www.publications.parliament.uk/pa/cm200910/cmbills/089/amend/pbc0890704m.1319-1325.html> for the list of amendments, which were voted on and http://www.opsi.gov.uk/acts/acts2010/pdf/ukpga_20100024_en.pdf for the final Act, which received Royal Assent on 8 April. BIS said some of the measures in the Act came into effect immediately (sections 5 to 7, regarding the initial obligations code (see above); section 15, regarding the sharing of costs in relation to provisions on online infringement of copyright; and sections 30 to 32, regarding digital radio switchover and renewal of radio licences) with others coming into effect in two months' time however, many of the Act's provisions require further public consultation and in some cases approval by Parliament, before they can be implemented (specifically the online infringement sections). However, according to reports, the former digital engagement minister told the House of Commons during the debates that some 20,000 people had e-mailed MPs to say they were "extremely upset" about the lack of scrutiny being given to the measures - the Secretary of State for Culture, Media and Sport said "It was 'not ideal' for the Bill to go through the wash-up process but the legislation had been thoroughly scrutinised in the Lords" (although remember what they had to say about the whole process?) and one commentator noted that the House of Commons had no more than 25 MPs in the chamber when the Bill was being debated. Despite these concerns the Act was welcomed by the music industry and the BPI described it

as a measure that would "go a long way towards reducing illegal freeloading and will help to build a more sustainable ecosystem for content on the Internet". The IFPI said the Act "recognises that Internet Service Providers have an essential role to play in curbing online piracy and reducing infringements on their networks". Others were not quite so welcoming - one major ISP said while "Bill is now in much better shape than when first tabled by the Government last year - the ability of the Government to impose disconnection at will has been checked and the Henry VIII clause that literally allowed the Government to do anything else to reduce copyright infringement has been removed ... many draconian proposals remain such as the responsibility on customers to protect their home networks from hacking at a collective cost of hundreds of millions of pounds a year, the presumption that they are guilty unless they can prove themselves innocent and, as in China, the potential for legitimate search engines and websites to be blocked" and went on to say that they would refuse to disconnect an account due to alleged copyright infringement even saying they would "tell the rightsholders we'll see them in court". However despite the varying views, Ofcom has already published the terms of reference for introducing measures to tackle online copyright infringement - they said this can be done either by a code drafted by industry or by a code which itself introduces, but the Act requires that this must be done such that the initial obligations code is made no later than eight months from Royal Assent. Ofcom said their first task will be to establish the feasibility of an industry drafted code - see <http://www.ofcom.org.uk/telecoms/copyright/tor/> for details. And while on the subject of the Internet, the European Commission's Vice President said in her recent speech to L'Autorité de Régulation des Communications Electroniques et des Postes on net neutrality and related concerns (including what was described as the "big brother" element) that "Internet users should be able to access and distribute the content, services and applications they want. Content providers and network operators should have the right incentives and opportunities to keep investing and innovating. If further regulation is required to achieve this, it would have to be based on specific justifications" - at the same time, the Commission's intention to launch a public consultation before the summer, in order to progress Europe's net neutrality debate was also announced - see <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/153&format=HTML&aged=0&language=EN&uiLanguage=en> for the speech.

Commission Publishes Consolidated Directives for EU Electronic Communications Regulatory Framework

The European Commission has published a collection of legislation and policy texts on the EU regulation of electronic communications, which includes the unofficial consolidated versions of the legislation that was recently amended by the electronic communications reform package. With effect from 19 December 2009, the Framework Directive 2002/21/EC, the Access Directive 2002/19/EC and the Authorisation Directive 2002/20/EC were amended by the Better Regulation Directive 2009/140/EC while the Universal Services Directive 2002/22/EC, the Data Protection Directive 2002/58/EC and Regulation 2006/2004, on co-operation between national authorities responsible for the enforcement of consumer protection laws were amended by the Citizens' Rights Directive 2009/136/EC. The Commission said "This collection of texts, which includes a consolidated version of the electronic communications reform package as amended in 2009, will prove a very useful resource for all those concerned with the application of law in the electronic communications sector". See http://ec.europa.eu/information_society/policy/ecomms/doc/library/regulatoryframework_forelectroniccomm_Dec2009.pdf for details.

Competition Commission's Corporate Plan for 2010/11

The Competition Commission has published its Corporate Plan for 2010/11, in which they set out their priorities for the next 12 months. While the Commission acknowledges the challenges it faces in terms of budgetary constraints, it nevertheless stated the objectives for ensuring that it is "one of the world's best competition authorities based on the quality of its analysis and the effectiveness of its remedies", and said that it "seeks to make a strong contribution to the development of competition policy, both in the UK and internationally". See http://www.competition-commission.org.uk/our_role/corporate_plan/corporate_plan_10_11.pdf for details.

ICC Publish 10th Roadmap on Current and Emerging IP Issues

The International Chamber of Commerce (ICC) has published the tenth edition of its annual roadmap on current and emerging IP issues for businesses. According to the ICC, the report contains "updated information on all the major IP issues including patents, trademarks, copyright issues and discussions of less established areas such as the protection of databases and genetic resources" and has "integrated significant new developments in the IP field, such as increased co-operation by patent offices to address the patent backlog and approached the important issue of technology transfer in a more holistic manner, including in the area of climate change". See [http://www.iccwbo.org/uploadedFiles/ICC/policy/intellectual_property/pages/IP_Roadmap-2010-FINAL_Web+cover\(5\).pdf](http://www.iccwbo.org/uploadedFiles/ICC/policy/intellectual_property/pages/IP_Roadmap-2010-FINAL_Web+cover(5).pdf) for the report, which also contains links to a very wide range of additional reference materials.

HMRC Guidance Note on Enforcement of IP Rights at Border

HMRC have published guidance note CIP(10)25 on Intellectual Property (IP) rights enforcement at the border, which deals with the enforcement of IP right controls at the border as provided for by the Goods Infringing Intellectual Property Rights (Customs) (Amendment) (No 2) Regulations 2010, SI 2010/992. Under Council Regulation 1383/2003, IP right holders may make an application to customs for enforcement action at the EU external border to help them protect their IP rights. When goods suspected of infringing an IP right are detected at the border the goods are detained for a maximum of ten working days and the right holder or their nominated representative is informed. In appropriate cases the detention period may, on request, be extended by up to a maximum of a further ten working days. For the detention to be maintained beyond ten (or 20) working days right holders must initiate court proceedings to determine whether their IP right has been infringed. The destruction of the goods, whether following agreement to abandon the goods or as a result of the court action, is then carried out at the expense and under the responsibility of the right holder. HMRC said they are introducing new UK national legislation to implement a simplified procedure permitted by Article 11 of the Council Regulation that will allow for the abandonment and destruction of the goods without the need for Court action. The destruction of the goods will be carried out at the expense and under the responsibility of the right holder. The new procedure will be effective from 16 April 2010 and will be applicable to consignments detained on or after that date.

Broadcasting

Commission Consults on Priorities for EU Multi-Annual Radio Spectrum Policy Programme

The European Commission has launched a consultation on its strategic priorities for an EU multi-annual radio spectrum policy programme for 2011 - 2015, which is to be submitted to the European Parliament and the Council by mid-2010. The Commission said radio spectrum policy had been recognised as a matter of strategic importance for the EU and was an "essential element of the forthcoming Digital Agenda for Europe". The Commission said there would be "much to gain from a holistic approach by extending the [Radio Spectrum Policy Programme] to all types of radio spectrum use with an internal market or EU policy dimension". See http://ec.europa.eu/information_society/policy/ecomm/radio_spectrum/document_storage/consultations/2010/rspp/rspp_consultation.pdf for details.

Codified Version of AVMS Directive Published in OJEC

A codified version of the Audiovisual Media Services (AVMS) Directive has been published in OJEC - Directive 2010/13/EU of 10 March 2010 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services comes into force 20 days after its publication in OJEC (15 April 2010) - see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF> for details. Directive 89/552/EEC had been "substantially amended several times" and it was in the "interests of clarity and rationality the ... Directive should be codified". The new Directive contains a useful correlation table (Annex II) showing how the Articles are numbered in the new codified version

Broadcast Bulletin - Latest Issue

The latest edition of Ofcom's Broadcast Bulletin has been published, with details of adjudications on breaches of Rules 1.14 (the most offensive language must not be broadcast pre-watershed), 2.3 (offensive material must be justified by context), 9.3 (sponsorship must comply with advertising content and scheduling rules for that medium), 9.5 (no promotional reference to sponsor in programme), 10.3 (products and services must not be promoted in programmes) and 10.4 (no undue prominence may be given in a programme to any product or service) of the Broadcasting Code. A complaint of unfair treatment and unwarranted infringement of privacy was partly upheld and a breach of Licence Condition 8, Part 2 (retention and production of recordings) was also noted. In addition Ofcom also recorded breaches of Rules 5.1.1, 5.1.2 and 7.1.1 of the BCAP Television Advertising Standards Code in respect of misleading advertising and the susceptibility of children. See http://www.ofcom.org.uk/tv/obb/prog_cb/obb155/Issue155.pdf for details.

Corporate

Corporate Governance Guidance for Unlisted European Companies

EcoDa, the European Confederation of Directors' Associations, has published corporate governance guidance for unlisted European companies. The guidance was described as providing a major step forward in helping unlisted companies address the issues involved in designing an appropriate corporate governance framework as while

unlisted companies make a major contribution to economic growth and employment in all EU Member States, their corporate governance needs have, to date, been relatively neglected by governance experts as well as by policy-makers. The guidance sets out 14 principles, divided into two phases, which take into account the degree of openness, size, complexity and level of maturity of individual enterprises - see http://www.iod.com/intershoproot/eCS/Store/en/pdfs/policy_article_corp_gov_unlisted_companies_eu.pdf for details.

Professional Oversight Board Announces Major Audit Targets for 2010/11

The Professional Oversight Board, which is part of the Financial Reporting Council, has published details about the various entities whose audits will be deemed to be "major audits" for the purposes of audit inspections between 1 April 2010 and 31 March 2011. Such audits will come within the scope of the work of the Board's independent Audit Inspection Unit in 2010/11. The Board also announced that it has chosen to simplify the definition of UK unquoted companies, limited liability partnerships and industrial and provident societies to include all such entities having either a Group turnover greater than £500 million or having a Group turnover in excess of £100 million and external long-term debt in excess of £250 million. The Board also said that it has chosen to include all banks incorporated in the UK as a separate category. No other significant changes have been made to the Unit's scope of inspection. See http://www.frc.org.uk/images/uploaded/documents/AIU_Scope_Document_2010-11_final_1.pdf for details.

Film & TV

WIPO and FRAPA to Provide ADR Services for Resolving Format Disputes

The World Intellectual Property Organization (WIPO)'s Arbitration and Mediation Center has announced that it has joined forces with the Format Recognition and Protection Association (FRAPA) in order to provide alternative dispute resolution services to address problems of format plagiarism or the unauthorised copying of television formats, such as those used for game, reality or talent shows and sitcoms. According to WIPO, under the new arrangement, the WIPO Center will take on FRAPA's existing mediation activity and will administer TV format-related disputes filed under the WIPO Mediation and Expedited Arbitration Rules for Film and Media (and see <http://www.wipo.int/amc/en/film/rules/> for the Rules). (*WIPO Press Release PR/2010/636, 7 April 2010 - see <http://www.wipo.int/amc/en/film/> for details*).

Litigation

High Court Rules on Application of E-Commerce Regulations Hosting Defence in Blog Libel Action

The High Court has dealt with an appeal relating to Regulation 19 of the Electronic Commerce (EC Directive) Regulations 2002 by the second defendant against the refusal of his application for summary judgment under CPR Part 24 against the claimant striking out her claim against him for damages for libel. The claim related to an alleged defamatory blog post, which had been placed on a webpage made available on a website called Labourhome.org and which was controlled and operated by the second defendant. The author of the allegedly defamatory blog was alleged to have been the first defendant, who was also alleged to have placed it on the webpage. The second defendant claimed defences under section 1 of the Defamation Act 1996 and Regulation 19 of the E-Commerce Regulations and said that he had not participated in any way in the publication of the comment in issue, beyond being the person who ultimately controlled the website and that he had not moderated or closely monitored postings. The court said however that there was a realistic prospect that the defence under Regulation 19 might fail at trial - it therefore refused to strike out the claim, and dismissed the appeal. The court first considered whether the second defendant provided an information society service within the definition set out in Regulation 2(1) and then whether the information society service provided by consisted of the storage of information provided by a recipient of the service. The court asked "Is it the storage of the particular information provided by the particular recipient of the service the storage of which results in the liability which would exist but for the exemption conferred by Regulation 19, or is it the storage of all the information which is provided by all recipients of the service? I have not found this an easy question. It is potentially important in a case where a blog post website or web page host operates the website and/or web pages in such a way that it cannot be said that the service provided is as a whole confined to and consists only of the storage of all the blogs posted on the website and/or web pages, but where the host's conduct in respect of the particular blog the hosting of which would give rise to liability for libel damages in the absence of Regulation 19 protection is so confined to and does consist only of mere storage. In such a case the question whether Regulation 19 protection is applicable would depend on the answer to the question which I have posed". It said further "when considering in a particular case whether a defendant is entitled to the immunity conferred by Regulation 19 ... the question to be asked is whether the information society service provided by the defendant in respect of the information containing the defamatory words which would otherwise give rise to liability consists only of and is limited to storage of that information. If

the answer to that question is that it does consist only of storage of the information, Regulation 19 immunity is potentially available even if it would not be available in respect of other information also stored by the defendant in respect of which the service provided by the defendant goes beyond mere storage". The court said on the evidence, the hosting of the blog "consisted merely of storage and that Regulation 19 immunity would be potentially applicable. The question therefore is whether there is a realistic prospect that the court at trial would not accept that evidence as correct. Bearing in mind that in my view this is an issue on which the burden of proof lies on Mr Hilton since it is for him to establish that his Regulation 19 defence is made out and that in the nature of things the manner in which he operated the website is largely within his own knowledge, it does not seem to me that it can be said that there is no realistic prospect of him failing to establish what has to be established". (*Kaschke v Gray & Anor* [2010] EWHC 690 (QB) - see <http://www.bailii.org/ew/cases/EWHC/QB/2010/690.html> for the judgment).

Court of Appeal Upholds High Court Ruling on Right of Media to Attend Court of Protection Hearing

The Court of Appeal has upheld a High Court decision to open to the media a hearing in the Court of Protection about the respondent, a gifted but severely disabled musician, who was well known and dismissed the appeal by the Official Solicitor on behalf of the musician (A) that the High Court had been wrong to conclude that there existed good reason to permit the media to be present (and see the Need to Know of 16 November 2009 for details). Under the Court Protection Rules 2007, SI 2007/1744, the general rule is that a hearing is held in private unless "there is good reason" for ordering the contrary. The Court of Appeal ruled that there was no reason to interfere with the lower court's "carefully considered" finding that there was good reason for a partial lifting of the embargo on the presence of a limited number of representatives of the media at the hearing - the interests of the public and the media were legitimately engaged as details of A's private life were already in the public domain. (*A, by his Litigation Friend, The Official Solicitor v Independent News and Media Limited & Ors* [2010] EWCA Civ 343 - see <http://www.bailii.org/ew/cases/EWCA/Civ/2010/343.html> for the judgment).

Application for Suspension of Committal Order for Copyright Infringement

The first claimant, who was involved in the business of the design, manufacture and sale of mechanical devices, applied for an order that the suspension of the execution of an order against the first respondent be lifted with the result that the suspended sentence of imprisonment for contempt of court for 12 months made by that order take immediate effect. The defendant was a director and shareholder of a company also engaged in similar business. The claimant had instituted proceedings against the defendants for breach of confidence, infringement of copyright, inducing breach of contract and a common design to commit the same acts. It sought injunctive relief, delivery up, damages or profits and all necessary and consequential accounts and enquiries. Following the execution of search orders it was found that the defendant was in possession of "thousands of copies of the claimant's technical drawings in his possession at his business premises" - the defendant admitted the very serious contempts and undertook to assist the claimant identify where the material had been used. On the proffering of that undertaking the court made an order committing the first respondent to prison for contempt for a period of 12 months for each of his contempts sentences to be concurrent. It directed further that there would be another when it should consider further the sentences imposed and the continuation of the suspension. On the evidence before the court it said it was satisfied beyond reasonable doubt that he had deliberately not complied with the conditions attached to the suspension of the order for imprisonment - the standard of proof to be applied in assessing whether or not he had failed to comply was the civil standard. Accordingly it said it would therefore lift the suspension and send him to prison, subject to what might be said on his behalf in mitigation at that time. (*Aifa Laval Tumba AB & Anor v Separator Spares International Ltd (in administration) & Anor* [2010] EWHC 674 (Ch) - see <http://www.bailii.org/ew/cases/EWHC/Ch/2010/674.html> for the judgment).

Committee to Investigate Use of Super-Injunctions

The Judicial Communications Office has announced that the Master of the Rolls has established a committee to examine the issues around the use of injunctions which bind the press and so-called "super injunctions", following the recent report by the Culture, Media and Sport Committee's report on press standards, privacy and libel and concerns expressed to the judiciary. The Committee had said that they strongly suggested that a way be found to limit the use of super injunctions as far as possible and to make clear that they are not intended to fetter the fundamental rights of the press. See http://www.judiciary.gov.uk/publications_media/media_releases/2010/1510.htm for details.

Government Abandons Proposals for CFA Amendment

The Government has quietly abandoned its proposals to reform the current arrangements for conditional fee agreements by setting a ceiling of 10% on the amount that can be claimed as a success fee when opposition to the

draft Conditional Fee Agreements (Amendment) Order - the Order was withdrawn when it became clear that there was insufficient time for it to be passed. The House of Lords had passed a motion which forced the Order to be debated, saying that there had not been sufficient time for consultation with all of the professional and legal bodies concerned and highlighting to the benefit of no-win, no-fee arrangements for those on modest and low incomes and the Order was rejected by the House of Commons Delegated Legislation Committee - see <http://www.publications.parliament.uk/pa/cm200910/cmgeneral/deleg1/100330/100330s01.htm> for the debate.

Law Society Welcomes Commons' Committee's Refusal of Draft Conditional Fee Agreements Proposal

The Law Society has commented on the recent defeat of the Government's proposals for changing the way in which libel proceedings are funded following the defeat of the Draft Conditional Fee Agreements (Amendment) Order 2010 in the Commons' First Delegated Legislation Committee. The Law Society said that the reforms were "subject to very rushed consultation process and inadequate research" and said, "Attempting to rush legislation, delegated or otherwise, through Parliament fails to consider the impact it can have". The Law Society called for more substantial research and consultation to take place before further proposals are made. (*Law Society Press Release, 1 April 2010* - see <http://www.publications.parliament.uk/pa/cm200910/cmgeneral/deleg1/100330/100330s01.htm> for details of the debate before the Committee).

Music

No Further Progress for Live Music Bill

So much effort only to fall at the last - the Live Music Bill, which was presented to the House of Commons on 9 February 2010 for its First Reading, will now not be progressed. The Bill was not debated in the House of Commons and as the 2009 - 10 session of parliament has prorogued, the Bill did not have the opportunity to proceed to its Second Reading.

Article - Online Music and the Commission's Recent Initiatives in Cross-border Copyright Management

The latest European Intellectual Property Review has published an interesting and detailed article, which looks at the future of legal online music services in the European Union in light of the EU Commission's recent initiatives in cross-border copyright management. The article looks at the adoption of the non-legally binding Recommendation to deal with cross-border copyright management and the consequential changes which resulted from the Recommendation's adoption. The article notes that the "Online cross-border licensing of copyright has been at the agenda of the EU Commission for some time. To respond to the challenges created by the developments of the internet in this field, the Commission has initiated actions at the level of DG Market, mainly with the 2005 Recommendation, and DG Competition. The position of the EU Commission has been to favour market self-regulation rather than proposing a harmonised legally binding regulatory framework in this field" but questions whether the genuine competition among copyright managers which was expected by the Commission in the 2005 Recommendation has materialised or whether it is likely to do so. (*"The future of legal online music services in the European Union: a review of the EU Commission's recent initiatives in cross-border copyright management" (2010) EIPR, 32(5), 220 - the article is available via Westlaw*).

Publishing

Court of Appeal Delivers "Fair Comment" Ruling

The Court of Appeal has delivered its much-anticipated judgment in the matter of the appeal by the defendant, a scientist and science writer, against the ruling of the High Court in the libel claim brought by the claimant following the publication of an article by the defendant which questioned the efficacy of certain chiropractic treatments. The High Court was asked to rule what defamatory meaning the words in question actually bore and whether they constituted assertions of fact or comment - Mr Justice Eady, in a preliminary ruling, held that the defendant's comments were factual assertions rather than expressions of opinion which meant that the defence of fair comment was not available to him. The defendant appealed, as the Court of Appeal noted, on grounds "that the judge elided the issues of meaning and comment when, though related, they are distinct; he used an unwarranted 'verifiable fact' test to eliminate comment as a defence; contrary to the article 10 jurisprudence, his decision placed an onus on the defendant to prove what was in truth a value judgment; in deciding the meaning of the words the judge overlooked their context; he paraphrased them damagingly; his approach marginalised or underrated the value now placed by the law on public debate on issues of public concern". The claimant's response was that the judge committed no such error of law and came to a perfectly tenable conclusion about meaning, a conclusion which excluded any triable defence of comment. The Court allowed the appeal - it said the judge had

"erred in his approach to the need for justification by treating the statement that there was not a jot of evidence to support the BCA's claims as an assertion of fact" and said "It was in our judgment a statement of opinion, and one backed by reasons". It said that "the critical question in a case such as this was whether the meaning of a passage of prose "includes one or more allegations of fact which are defamatory of the claimant, or whether the entirety of what it says about the claimant is comment (or, to adopt the term used by the European Court of Human Rights in its Article 10 jurisprudence, value-judgment)". The Court said their decision did "not seek to collapse or erode the general distinction between fact and comment: it seeks to relate the distinction to the subject-matter and context of the particular article and the dispute to which it relates". The Court also said they respectfully adopted what the Chief Judge of the US Seventh Circuit Court of Appeals, said in a libel action over a scientific controversy, *Underwager v Salter* 22 Fed 3d 730 (1994): "[Plaintiffs] cannot, by simply filing suit and crying 'character assassination!', silence those who hold divergent views, no matter how adverse those views may be to plaintiffs' interests. Scientific controversies must be settled by the methods of science rather than by the methods of litigation. ... More papers, more discussion, better data, and more satisfactory models - not larger awards of damages - mark the path towards superior understanding of the world around us". They said further "In an area of law concerned with sometimes conflicting issues of great sensitivity involving both the protection of good reputation and the maintenance of the principles of free expression, it is somewhat alarming to read in the standard textbook on the Law of Libel and Slander (Gatley, 11th edition) in relation to the defence of fair comment, which is said to be a 'bulwark of free speech', that '... the law here is dogged by misleading terminology... 'Comment' or 'honest comment' or 'honest opinion' would be a better name, but the traditional terminology is so well established in England that it is adhered to here'. We question why this should be so. The law of defamation surely requires that language should not be used which obscures the true import of a defence to an action for damages". (*Singh v British Chiropractic Association* [2010] EWCA Civ 350 - see <http://www.bailii.org/ew/cases/EWCA/Civ/2010/350.html> for the judgment - this decision has been welcomed by the Coalition for Libel Reform, who said they were "delighted with the judges' ruling", but also that it does not go far enough - the coalition said there was an urgent need for a public interest defence so the rights of publishers, writers, authors and academics in the science fields were protected; Sense About Science, which is campaigning to keep libel laws out of scientific disputes also noted that whilst it was "very pleasing that the judges have applied the law in a way that allows common sense to prevail it just points the way for the long trek to continue" - subsequently, the BCA took the decision to discontinue their action against the defendant).

Government's Response to Committee Report on Press Standards, Privacy and Libel

The Government's response to the Report by the House of Commons Culture, Media and Sport Select Committee on press standards, privacy and libel has been published. On the issue of privacy and breach of confidence it said "Section 12 of the Human Rights Act 1998 reflects Parliament's desire to underline importance of freedom of expression and the protection afforded to it by the common law. However, section 12 does not change the balance between Article 8 (privacy) and Article 10 (freedom of expression), which remains a matter for the courts on a case by case basis. The Government continues to believe that a decision by a court, based on the individual facts of the case is the best way to resolve potential tensions between privacy and freedom of expression. Freedom of expression has traditionally held a special position in our common law and continues to do so today. The Government believes strongly in freedom of expression and in the benefits of a free press to a democratic society. Section 12 emphasises that the traditional importance with which freedom of expression is regarded in this country, means that the courts should have 'particular regard' to it when considering granting an injunction which would impact on the respondent's right to freedom of expression, particularly in the respondent's absence". On issues of libel and press freedom they said they recognised the "concerns that have been expressed in relation to the harmful effects of libel laws on the medical and science community" and said they believe that the work which they intend to take forward in relation to the Committee's recommendations generally and on issues highlighted by the Libel Working Group should help to address these concerns. They said they would consider whether a statutory defence relating to the public interest and responsible journalism could be developed in a way which reconciles the competing interests in relation to reputation and the right to freedom of expression. They also said they "acknowledge the concerns that have been expressed that London has become the forum of choice for those who wish to sue for libel and that this is having a 'chilling effect' on freedom of expression" and said that they believed that the Working Group's proposals in this area would provide "effective practical benefits to address problems relating to the issue of libel tourism". They also confirmed that they were urgently seeking to reduce the maximum CFA success fee in defamation related proceedings to 10% as an interim measure so that the specific concerns around high costs in these cases can be addressed as quickly as possible (however this intention was eventually overtaken by politics - see "Litigation" above). On the issue of self regulation of the press they said that for self-regulation to work it must have the confidence of the public and an increase in the number of lay members would enhance the PCC's credibility and also said that "proactivity by the PCC should be a key component of its work in preventing breaches". The Government said the press should "recognise that the freedom it enjoys must be balanced with a number of responsibilities. Those responsibilities are set out in the Code of Practice, overseen by the Press Complaints Commission. The press have to understand that we - and the public - expect them to abide by

not just the word of that Code of Practice, but also its spirit". See <http://www.official-documents.gov.uk/document/cm78/7851/7851.pdf> for details.

PCC Responds to Criticism in Committee Report on Press Standards, Privacy and Libel

The House of Commons Culture, Media and Sport Committee have published the Press Complaint Commission's response to their report on press standards, privacy and libel - the Committee was rather forthright in its views about the role of the Commission and the Commission has responded to the range of concerns which the Committee's report had identified. The Commission said it welcomed constructive criticism, and said that it would consider the recommendations made by the Select Committee in that light. The Commission also said that it accepts that it must be better at examining itself and how it works and the Governance Review will help to achieve that. It also said it "believes that its proper role is to uphold press standards, as defined by the Code of Practice, by providing the public with an effective means of redress by which editors can be held to account. The Select Committee supports this concept. However, the Commission cannot - and does not wish to - seek to uphold general standards relating to taste and offence. This is for good reason. It would be unacceptable for the Commission unduly to restrict freedom of expression of the press by imposing its opinions on the overall suitability of material, unless there are grounds to do so under the Code. The Code does not include matters of taste or offence and the Commission would not suggest to the Code Committee that it should". See <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomeds/532/532.pdf> for details.

Select Committee Reports on Future of Local and Regional Media

The House of Commons' Culture, Media and Sport Committee have published their report on the future for local and regional media. The Committee was asked to consider the "significant challenges being faced by the industry, brought about by structural changes and the impact of a global recession" and looked at what constituted "local" and "regional", and what level of "localness" was necessary and appropriate for different forms of media. They also considered the importance of plurality in an area or on a particular media format. The Committee said in respect of local newspapers that in order to maintain the independence of local media it was not appropriate for the state to subsidise it and that it was vital for local newspaper publishers to innovate to survive, for instance by continuing to develop websites and utilise internet technologies. While noting the concerns of some parties about the current merger regime the Committee said that they did not feel that a review was required. They did recommend some changes to the guidance produced by the Department for Communities and Local Government for local authorities producing publications in order to deal with concerns about political bias in "freesheets", which compete with local newspapers, arguing they often act as a vehicle for "political propaganda" and also suggested that the Office of Fair Trading (OFT) should conduct a review into the impact of local authority publications on local commercial newspapers. On the question of regional news on television, the Committee said the plurality of regional news provision was "vital in a democracy" and restated its support for the principle of public funding, and noted the Government's existing suggestion that this could be met from that part of the income of the licence fee that is currently allocated to the digital switchover help scheme. On local radio the Committee said they supported Ofcom's proposals for deregulation of cross-media ownership, agreed with local radio groups that the localness of radio should be determined by its output rather than location. Finally, on the issue of local news online the Committee acknowledged the concerns local newspaper publishers have about news aggregation and concluded that local printed newspapers were still relevant, not least because of the number of people who do not have access to the internet, however it said newspapers "must innovate and adapt to the digital world if they are to survive". See <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomeds/43/43i.pdf> for their Report.

Technology

ICANN Consults on Options Following Rejection of Application for .xxx Domain Name

ICANN has launched a consultation to consider possible options for further consideration of the .xxx domain, following a decision of its independent review panel in February 2010. The Independent Review Panel issued its Declaration in the Independent Review filed by ICM Registry challenging ICANN's denial of ICM's application for the .XXX sTLD. The .xxx domain was one of ten generic top-level domains for which an application had been made in March 2004, but which, not surprisingly, attracted controversy. The Panel said when it made its decision that it would "specifically reject any notion that there was any sinister motive by any ICANN Director, governmental entity or religious organization to undermine ICM Registry, LLC's application ... the application was rejected on the merits in an open and transparent forum". However, as the conclusions of the Panel are advisory in nature, the consultation has invited respondents to comment on whether ICANN should accept the findings of the majority of the Panel, or that of the dissenting panellist and the next steps it should take. See <http://www.icann.org/en/announcements/announcement-2-26mar10-en.htm> for details.

Consultations & Reports

Ofcom Document - Review of the Contract Rights Renewal Undertakings - Evidence to the OFT and CC following the request for release from undertakings given by Carlton Communications Plc and Granada Plc (now ITV Plc) pursuant to section 88 of the Fair Trading Act 1973 - http://www.ofcom.org.uk/tv/ifi/tvlicensing/contract_rights_renewal/report.pdf (Ofcom recommends, on the basis of available evidence it is credible to argue that the CRR remedy should be lifted. It said "Evidence suggests that while ITV1 retains unique features, which may result in some advertisers or campaigns being reliant on ITV1, there is a group of advertisers/campaigns which can move away from ITV1 without compromising campaign objectives" - it said it "believes that there is a strong case for easing the burden of CRR regulation on ITV1 where market forces can provide a credible constraint on ITV's pricing. However, concerns remain such that the CC may wish to consider implementing safeguards (or alternatives to the CRR remedy) that continue to protect advertisers dependent on ITV1 for the quick delivery of mass audiences, but only if it is clear that competitive forces will not provide sufficient protection.).

Ofcom Research Document - The Communications Market: Digital Progress Report, Digital TV, Q4 2009 - http://www.ofcom.org.uk/research/tv/reports/dtv/dtv_2009_q4/dtv_2009_q4.pdf (Ofcom's 25th Digital Progress Report covering developments in multichannel television, including quarterly take-up figures, subscriber figures and device sales data).

Ofcom Consultation - Notice of Ofcom's Proposal to make the Wireless Telegraphy (Licensing Procedures) Regulations 2010 - http://www.ofcom.org.uk/consult/condocs/wt_regs2010/notice.pdf (the Notice details Ofcom's proposal to make the Wireless Telegraphy (Licensing Procedures) Regulations 2010, which will specify the time limits within which a decision on the application for the grant of a WT Act licence must be made, notified to the applicant and published by Ofcom and also set out the requirements that must be met by prospective licensees applying for the grant of a WT Act licence. They also provide information on the terms, provisions and limitations that licensees may be subject to. The current licensing procedures are outlined in the Wireless Telegraphy (Licensing Procedures) Regulations 2006, SI 2006/2785, which will be revoked by the new Regulations).

Ofcom Statement - Statement on Commercial Radio Localness Regulation - http://www.ofcom.org.uk/consult/condocs/radio/statement/Localness_statement.pdf (Ofcom's statement sets out its proposals to deregulate the commercial local radio sector "while ensuring that stations continue to deliver programming that consumers and citizens value" - Ofcom said the "main challenge for regulation is to ensure, as far as possible, that all UK listeners are served by one or more commercial radio stations providing local programming, in such a way that allows the radio industry to remain financially viable").

Ofcom Notice - Notice of Ofcom's Decision to Vary Satellite Earth Station Licence - http://www.ofcom.org.uk/consult/condocs/satellite_services/notice/ (the Notice sets out details of Ofcom's decision to vary and re-issue current Satellite Earth Station licences in order to implement necessary changes as a consequence of the AVMS Directive).