

This is our summary of some of the key legal developments across a range of sectors for the week of 10 May 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](#).

Speed Read

General

Damages for Costs Resulting from Defective IT System - Reasonableness of Limitation Clause

AG Opinion on Levy on Fair Compensation and Private Copying Under Copyright Directive

Claim for Damages for Harm Caused by Unlawful Means - Jurisdiction Under Lugano Convention

Broadcasting

Competition Commission Rules on CRR - Undertakings Retained and ITV Definition Widened

Broadcast Bulletin - Latest Issue

Ofcom Consents to BBC/Arqiva Joint Offer of Multiplex Spare Capacity

Gaming & Betting

Grounds for Postponing Licence Revocation Hearing to Allow Sale by Administrators

Litigation

Striking Out Defamation Claim as Abuse of Process - Right of Reply and Question of Reputation

Music

US Court Finds File Sharing Network "Fostered Infringement"

Publishing

PCC Rejects Privacy Complaint Over Material Downloaded from Internet

Sport

Sport Policy Discussed for First Time at EU Council Level - Policy Priorities Identified

Technology

Article 29 Working Party Criticises Facebook's Privacy Setting Policy

Consultations & Reports

Damages for Costs Resulting from Defective IT System - Reasonableness of Limitation Clause

The claimant company operated a hotel in central London. The defendant company supplied information technology systems to the hotel trade and had supplied to the claimant a "front office" computer system. However, in this instance, the defendant did not supply the claimant with the relevant operating manuals in advance. The system contained flaws and the defendant's standard terms and conditions provided that the sole remedy for breach was maintenance and support cover. The defendant failed to resolve the flaws as requested by the claimant and the claimant issued proceedings. The claimant said the system was not of satisfactory quality or fit for its purpose and submitted that the limitation of liability clause should not apply as it was unreasonable within the meaning of section 11(1) of the Unfair Contract Terms Act 1977. It also claimed for lost profits, wasted expenditure and additional and wasted staff costs. The defendant argued that the problems were caused by a lack of training of the claimant's staff, and alternatively that the exclusion clause operated to limit liability to maintenance and support cover and that it was reasonable in the circumstances. The court ruled that the claimant was entitled to recover loss of profits, wasted expenditure and additional staff costs and wasted time. It said the test of reasonableness in section 11(1) was not satisfied, as the parties were not of equal bargaining power - they had bargained only on price, not over the standard terms of the defendant and there was no long course of dealings between the parties. The claimant had relied on the advice of the defendant that the system was suitable for its needs. Further, the standard terms were predicated on the basis that the customer would receive the operating manual, have a demonstration, and decide whether to accept the product for themselves, whereas here, the defendant had induced the claimant to purchase the contract by the representations it had made. In the circumstances, the court said the claimant had been entitled to reject the system, as it was not of satisfactory quality or fit for purpose. (*Kingsway Hall Hotel Ltd v Red Sky IT (Hounslow) Ltd* [2010] EWHC 965 (TCC) - see <http://www.bailii.org/ew/cases/EWHC/TCC/2010/965.html> for the judgment).

AG Opinion on Levy on Fair Compensation and Private Copying Under Copyright Directive

The Advocate General in a reference for a preliminary ruling from the Audiencia Provincial de Barcelona (Spain) on the interpretation of the concept of "fair compensation", mentioned in Article 5(2)(b) of Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society, has published an Opinion to the effect that a levy on private copies may be imposed on digital equipment, devices and media only where it may be presumed that they were to be used for private copying. The reference came in the context of proceedings in which the Sociedad General de Autores y Editores de España (SGAE), a Spanish IP rights management society, brought a claim against the company Padawan SL for payment of flat-rate compensation for private copying in respect of storage media marketed by it during a defined period. The Spanish Government had decided to permit works which had already been circulated to be reproduced without the rightholder's permission for private use and had provided for lump-sum compensation of rightholders by means of a levy on private copies applied indiscriminately to digital reproduction equipment, devices and media. The Advocate General said the concept of "fair compensation" was an autonomous Community law concept, which must be interpreted uniformly in all the Member States and transposed by each Member State. The Copyright Directive conferred a wide discretion on the Member States as to how their respective national systems implemented such fair compensation and regardless of the system used by each Member State to calculate fair compensation, Member States were obliged to ensure a fair balance between the persons affected - the IP rightholders affected by the private copying exception, to whom the compensation was owed, on the one hand, and the persons directly or indirectly liable to pay the compensation, on the other. The concept of "fair compensation" had to be understood as a payment to the rightholder which, taking into account all the circumstances of the permitted private copying, constituted an appropriate reward for the use of his protected work or other subject-matter. Where a Member State opts for a levy system in respect of compensation for private copies on digital reproduction equipment, devices and media, that levy must be linked to the presumed use of those equipment and media for making reproductions covered by the private copying exception, meaning that the application of the charge is justified only where it may be presumed that the digital reproduction equipment, devices and media are to be used for private copying. The indiscriminate application of a levy, on the basis of a private copying rule, to undertakings and professional persons who clearly acquire digital reproduction devices and media for purposes other than private copying, is not compatible with the concept of "fair compensation". In the Opinion of the Advocate General, "A national system which indiscriminately provides for a levy for compensation for private copying on all equipment, devices and media, infringes Article 5(2)(b) in so far as there is insufficient correlation between the fair compensation and the limitation of the private copying right justifying it, because it cannot be assumed that those equipment, devices and media will be used for private copying". (*Sociedad General de Autores y Editores (SGAE) v Padawan S L*, Case C-467/09 - see <http://curia.europa.eu/jurisp/cgi->

bin/form.pl?lang=en&newform=newform&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&docop=docop&docav=docav&typeord=ALL&numaff=C-467%2F08&ddatefs=&mdatefs=&ydatefs=&ddatefe=&mdatefe=&ydatefe=&nomusuel=&dom for the Opinion - the Opinion is persuasive but not binding on the ECJ, which has yet to rule on the matter).

Claim for Damages for Harm Caused by Unlawful Means - Jurisdiction Under Lugano Convention

The claimant, a company domiciled in Switzerland, claimed to be entitled to exclusive rights to the production and exploitation of the international television signal and all other copyright works in the 1998 Football World Cup matches and the opening and closing ceremonies and also claimed the "exclusive rights" to produce and exploit home video of the 1998 Football World Cup (WC98). The defendant, who was also domiciled in Switzerland, was the world governing body of Association Football (FIFA) and arranged the football World Cup. The issue before the court was whether the claimant could invoke the jurisdiction of the English Court under the Lugano Convention to complain about the grant by FIFA to an English third party of rights which included rights to home videograms of WC98. The basic complaint was that FIFA had licensed a third party to market and sell a DVD which was designed to celebrate the FIFA centennial and which contained footage of WC98, which the claimant said it had acquired exclusive rights to. The claimant had bought a claim against the defendant for the tort of causing harm by unlawful means. The claimant argued that the defendant had used unlawful means against the third party, by breaching its express or implied warranty to grant the rights to the regional broadcasting union, by which it wrongfully reassured the third party that it need not deal with the claimant. The claimant further applied to amend its case to clarify the elements of the tort, and to stress the implied warranty. The court dismissed the claim. It said that the law on causing harm by unlawful means had been recently clarified by the House of Lords in *OBG v Allen* [2008] 1 AC 1 - the essence of the tort was (a) a wrongful interference with the actions of a third party in which the claimant has an economic interest and (b) an intention thereby to cause loss to the claimant and it was not unlawful for a person to use unlawful means against a third party which do not affect the third party's freedom to deal with the claimant. It further noted that attempts to use the tort of causing harm by unlawful means as a substitute for a directly enforceable intellectual property right have not enjoyed success historically. The court said that the pleading as amended did not disclose a cause of action in causing loss by unlawful means with a realistic prospect of success and that the facts alleged did not give rise to a realistically arguable case that the third party's freedom to deal with the claimant was in any material respect interfered with. In light of the findings that the claim be dismissed the court said should be sufficient to deal with the jurisdiction aspect of the claim however it did note that if it were not correct on this point "One has to be somewhat cautious about claims in jurisdictional challenges under the Lugano Convention that the claimant suffers loss in the state of its domicile because that is the place where it ultimately suffers loss to its bottom line". The court said, on the evidence available that any such contract would have been made in Switzerland, where Future was based. The evidence did not establish that there was a good arguable case that a Future-IMG licence agreement would have been signed in England. On the jurisdiction question the court noted, "The principles to be applied to a jurisdictional challenge of the kind being run by FIFA are simple to state. The basic principle is that the defendant is entitled to be sued in the courts of the state where he is domiciled". (*Future Investments SA v Federation Internationale de Football Association* [2010] All ER (D) 77 (May) - the judgment is available via LexisNexis).

Broadcasting

Competition Commission Rules on CRR - Undertakings Retained and ITV Definition Widened

The Competition Commission has published its final decision on the ITV Contracts Rights Renewal (CRR) undertakings. The Commission's review looked only at the circumstances surrounding the CRR undertakings in the context of the current television airtime trading system, which the Commission said was "influential" in the decision to retain the CRR in some form. The Commission said that ITV's "unrivalled ability to deliver large audiences on ITV1" meant that the undertakings were still needed "to prevent the channel from exploiting this position to the detriment of advertisers and other commercial broadcasters". The Commission took as its starting point television advertising in the UK which, despite changes in advertising expenditure by media since 2003, was still felt to be the relevant market for the purposes of the review. However, the Commission did say that the definition of ITV1 in the undertakings should be widened to include any future ITV1+1 channel and the recently launched ITV1 High-Definition channel so that impacts on these channels are included in the CRR calculation. These changes will come into effect once revised undertakings have been agreed with ITV. The Commission said that although they had rejected ITV's alternative remedy proposals as they would not be effective in preventing ITV from worsening the deals it offered to media agencies and advertisers, they "had no wish to see CRR in place forever". ITV said the decision was "damaging to the UK's creative industries and fails to take account of the seismic changes within the UK television advertising market over the last decade". It said "Maintaining CRR in its current form further exacerbates the over-regulation that is stifling the UK media sector" and made the point that "Restrictions to the supply of high quality programmes and valuable audiences on which the UK's advertisers rely

have reduced the commercial sector's ability to compete with the BBC". (*Competition Commission News Release 18/10, 12 May 2010* - see http://www.competition-commission.org.uk/inquiries/ref2009/itv/pdf/final_report.pdf for the Final Report).

Broadcast Bulletin - Latest Issue

The latest issue 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), 1.18 (restrictions on "adult" material), 2.1 (application of generally accepted standards), 2.3 (offensive material must be justified by context) and 9.13 (sponsorship must be clearly separate from advertising) of the Broadcasting Code. Ofcom also recorded two separate breaches of Licence Condition 11 (retention and production of recordings), a breach of rule 8 of the Code on Television Access Services (broadcasters are required to meet the targets that apply to their services), two breaches of rule 4 of the Code on the Scheduling of Television Advertising (COSTA) (no more than 12 minutes of advertising or teleshopping in any one hour of broadcasting) and five breaches of Licence Conditions 2(1) and 2(5) of commercial radio licences. See http://www.ofcom.org.uk/tv/obb/prog_cb/obb157/Issue157.pdf for details.

Ofcom Consents to BBC/Arqiva Joint Offer of Multiplex Spare Capacity

Ofcom has announced that it has given consent to the BBC and Arqiva to offer jointly to the market spare capacity that has become available on Multiplex B ahead of the digital switchover and new capacity that will become available on Multiplexes C and D following the digital switchover. BBC and Arqiva had requested Ofcom's consent to start a joint sales process in respect of the paired capacity at the beginning of the year and following completion of the auction process, the BBC and Arqiva sought separate consent for implementation of the joint arrangements. Ofcom said they recognised that consumer benefits could be achieved by pairing and offering jointly to the market the BBC's temporary and geographically limited spare channel capacity on Multiplex B and Arqiva's channel capacity on Multiplexes C and D to be made available at Digital Switchover but noted that the consent was dependent on its approval of the co-operation agreement(s) to be entered into between the BBC and Arqiva. See http://www.ofcom.org.uk/tv/ifi/tvlicensing/letters/consent_BBC.pdf for Ofcom's consent letter to the BBC and <http://www.ofcom.org.uk/tv/ifi/tvlicensing/letters/arqiva-consent.pdf> for the consent letter to Arqiva.

Gaming & Betting

Grounds for Postponing Licence Revocation Hearing to Allow Sale by Administrators

The applicant administrators had been appointed to conduct the administration of the AGORA Group, with the objective of selling the operating companies which comprised the group as going concerns. The group's business was the operation of a number of amusement arcades. The administrators were aware that the Gambling Commission had commenced an investigation into the running of the operating companies by the former directors of the businesses and provided the Commission with material for the purposes of the investigation. The Commission made 12 adverse findings, 11 of which related to the conduct of the business by the former directors. The Commission's stated view was that the seriousness of the findings, if proved, was such that the conditions for the revocation of the relevant licences set out in the 2005 Act appeared to have been met and a review hearing before the regulatory panel to consider the matter further was scheduled. The administrators were concerned by the threat of the revocation or suspension of the relevant licences, on the basis that such an occurrence would mean that the businesses could not be sold as a going concern and a proposed sale would have to be abandoned. The administrators sought to delay the hearing until after the completion date, and informed the Commission that proceedings before its regulatory panel could not continue because they were caught by the provisions of paragraph 43(6) of Schedule B1 to the Insolvency Act 1986 (which states that "No legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the company or property of the company except (a) with the consent of the administrator, or (b) with the permission of the court"). The Commission declined to postpone the hearing on the basis that it did not fall within the scope of paragraph 43(6), whereupon the administrators issued proceedings. The hearing was stayed pending the outcome of the proceedings. The court ruled the nature of the decision which the regulatory panel was called on to make, and the circumstances in which that decision would be made, fell within the description of "legal proceedings" - the process was much closer to an adjudication on a presented case with a defined beginning, namely, the presentation of preliminary findings and the preparation of the case for the panel, a recognisable legal procedure for the conduct of the hearing itself and a definite outcome in the form of a reasoned decision which, was subject to what was plainly a legal appeal. In the circumstances, the court held it was appropriate to suspend the hearing until after the sale had been completed - the focus of the hearing was on the conduct of the former directors and it was not clear in those circumstances why the creditors' hopes of a return should be jeopardised because the Commission wanted to revoke or suspend the current licences because of failures of the former directors; further, there was no

doubt that if a suspension or revocation was ordered, the operating companies would not be able to trade as going concerns and it was apparent that the administrators stood to lose a significant sale if they could not deliver a trading business. The consequences of revocation or suspension would, therefore, be severe. Finally, it was not clear why it was vital that the review should proceed immediately to a hearing before the panel, when alternative courses had been proposed and were available. (*Hudson & Ors v Gambling Commission (Re Frankice (Golders Green) Ltd & Ors)* [2010] All ER (D) 59 (May) - only a digest of the case is available, via LexisNexis).

Litigation

Striking Out Defamation Claim as Abuse of Process - Right of Reply and Question of Reputation

The claimant brought an action against the defendant in respect of an article the defendant wrote on his blog, which referred to the claimant having being imprisoned for a short while as a result of her involvement with an ultraleftist terrorist group in the 1970s and also in respect of some of the comments which subsequently appeared on the blog following the publication of the article. The defendant said he only posted the material about the claimant because he had seen an article published by her on her own website and applied for permission to serve and amended defence raising defences of justification (on a very limited basis), fair comment, qualified privilege and limitation and also applied for the claim to be struck out as an abuse of process. The claimant had made use of the right of reply and had done so fully. The court said the question to be asked was whether there was anything to be gained from the continuation of the proceedings by way of the legitimate objectives of any defamation action, namely the vindication or restoration of the claimant's reputation and noted the question had to be judged by reference to any marginal damage that may have been done to the claimant's reputation by the blog posting over and above the impact on it of her own posting coupled with the republication of the 1975 article. The court referred to the ruling in *Jameel v Dow Jones & Co Inc* [2005] EWCA Civ 75, where the Court of Appeal said that it accepted that in rare cases where a claimant brings an action for defamation in circumstances where his reputation has suffered no or minimal actual damage, this may constitute an interference with freedom of expression that is not necessary for the protection of the claimant's reputation and that therefore the appropriate remedy for the defendant may well be to seek to strike out the action as an abuse of process. The court noted however that this jurisdiction to strike out as an abuse of process, on the basis that the claimant cannot establish that a real and substantial tort has been committed has been exercised in relatively few cases. However, the court accepted that this was one of those unusual cases in which the doctrine of abuse of process, as discussed by the Court of Appeal in *Jameel*, should be applied. It said that even if there was any sting in the original posting it would surely have been drawn for practical purposes by the "right of reply" published three weeks later. It noted further that because of the central issue, relating to abuse of process, there was no need for the amended defence to be served. (*Kaschke v Osler* [2010] EWHC 1075 (QB) - see <http://www.bailii.org/ew/cases/EWHC/QB/2010/1075.html> for the judgment).

Music

US Court Finds File Sharing Network "Fostered Infringement"

The judge in United States District Court in the Southern District of New York has given an Opinion and Order in the secondary copyright infringement claim filed by 13 major record companies against Lime Wire LLC (LW) for its role in the distribution of software programmes, which allow users of the program to share digital files over the Internet. The plaintiffs sought summary judgment on "(1) inducement of copyright infringement; (2) contributory copyright infringement; (3) vicarious copyright infringement; and (4) state common law copyright infringement and unfair competition". The court accepted expert evidence that 93% of a sample of files available for downloading "were protected or highly likely to be protected by copyright, and thus not authorized for free distribution through LimeWire" and accepted that on these results, the expert in question had assessed that "98.8% of the files requested for download through LimeWire are copyright protected or highly likely copyright protected, and thus not authorized for free distribution". The court said the legal standard for secondary liability for copyright infringement was such that it "may be imposed on a party that has not directly infringed a copyright, but has played a significant role in direct infringement committed by others, for example by providing direct infringers with a product that enables infringement". To recover on a claim based on secondary liability, a plaintiff first must establish direct infringement by the relevant third party, ie the party that received the infringement-enabling device. The court said there was "overwhelming evidence that LW engaged in purposeful conduct that fostered infringement: LW created and distributes LimeWire, which users employ to commit a substantial amount of infringement". It said the following factors, taken together, establish that LW intended to encourage infringement by distributing LimeWire: (1) LW's awareness of substantial infringement by users; (2) LW's efforts to attract infringing users; (3) LW's efforts to enable and assist users to commit infringement; (4) LW's dependence on infringing use for the success of its business; and (5) LW's failure to mitigate infringing activities. It noted "The only step LW has taken to address infringement is to post an electronic notice that appears when a user first

downloads LimeWire (which in truth was pretty feeble) and the court said "Failure to utilize existing technology to create meaningful barriers against infringement is a strong indicator of intent to foster infringement". Accordingly, the plaintiffs' motion for summary judgment on the claims for inducement of copyright infringement, common law infringement, and unfair competition were granted. Not surprisingly, the ruling was welcomed by the music industry - the CEO of the Recording Industry Association of America said "This definitive ruling is an extraordinary victory for the entire creative community" and the IFPI Chairman and CEO said "This ruling will be hugely valuable both as an educational message and as a legal precedent internationally". (*Arista Records LLC & Ors v Lime Group LLC & Ors*, Case 1:06-cv-05936-KMW, 12 May 2010).

Publishing

PCC Rejects Privacy Complaint Over Material Downloaded from Internet

The Press Complaints Commission (PCC) have rejected a complaint by a girl who was featured in an article in Loaded magazine - the complainant said the article was intrusive in that the magazine had published her name and the photographs, which had been uploaded to her Bebo site in December 2006 when she was 15 years old, had been taken from there and published without permission. The complainant said given the length of time which had elapsed, she could not remember whether her site had any privacy settings in place and did not know the circumstances in which the photographs had been removed. The complainant said the article had caused her "upset and embarrassment". The PCC said while it had "some sympathy" for the complainant, the issue for consideration was whether the publication of the information was intrusive. The Commission decided that it was not. The magazine had not taken information out of context from a social networking site, but had discussed material that had already been made widely available on the Internet for a considerable time. The Commission said this case turned on the fact that the material that the complainant objected to had already been given much broader dissemination online. The Commission had to pay regard to the extent to which the information had already been made available, and also the context in which it had appeared. It judged that would not have been proportionate to criticise an editor for republishing this material, bearing in mind how - and how far - it had already spread. The test, therefore, was whether the publication intruded into the complainant's privacy, and the Code required the Commission to have regard to "the extent to which material is already in the public domain". In the Commission's view, the information, in the same form as published in the magazine, was widely available to such an extent that its republication did not raise a breach of the Code. The Commission did say however that it could not rule on issues of taste and offence, or of the legality of the material. (*A Woman v Loaded*, Adjudication issued 11 May 2010 - see <http://www.pcc.org.uk/cases/adjudicated.html?article=NjM5OA==?oxid=13068bdoeplrqvj15u3hrf29r0> for details).

Sport

Sport Policy Discussed for First Time at EU Council Level - Policy Priorities Identified

European sports ministers have for the first time debated how to incorporate sport into EU policy in a formal Council setting. Ministers identified a number of key areas for possible EU action - social and educational functions of sport, such as social inclusion through sport and health enhancing physical activity and the possibility of dual careers for athletes; sport structures, in particular those based on voluntary activity; fairness and openness in sport, including the fight against racism, discrimination and violence; the physical and moral integrity of sportspeople, especially the fight against doping and the protection of minors; and the need for dialogue and close co-operation with the sport movement. Ministers agreed that a possible EU financial programme supporting sports activities for 2012 /2013 ought to have a limited number of priorities. The European Commission has said it is committed to including these priorities in its upcoming communication on sport, which is due in November and which should allow the EU to agree common policies in 2011.

Technology

Article 29 Working Party Criticises Facebook's Privacy Setting Policy

The issue of privacy settings and Facebook's attitude to them has been rumbling for some time now however the Article 29 Working Party have now made their views on the matter known - the Working Party has written to Facebook saying that it is "unacceptable" that the company has fundamentally changed the default settings on its social-networking platform to the detriment of a user. The Working Party noted that Facebook made the change shortly after the company and other social networking sites providers participated at a hearing during its plenary meeting in November 2009. The Working Party emphasised the need for a default setting in which access to the profile information and information about the connections of a user is limited to self-selected contacts. It said any

further access, such as by search engines, should be an "explicit choice" of the user. (*Article 29 Working Party Press Release, 12 May 2010*).

Consultations & Reports

Ofcom Consultation - BBC Request for Ofcom's Consent for Wimbledon 2010 Coverage - <http://www.ofcom.org.uk/consult/condocs/wimbledon2010/> (the BBC has requested Ofcom's consent to broadcast live coverage of the 2010 Wimbledon Championships - the finals are Category A events which means that the rights to broadcast live coverage must have been offered to both categories of broadcasters specified in the Broadcasting Act 1996 and all other matches are Category B, which means that broadcasters providing television services in the "second category" must have been given a genuine opportunity to acquire the rights to broadcast highlights or deferred coverage of the event - Ofcom is inviting comment).

Ofcom Guidelines for Dealing with Regulators of Other EU Member States in relation to UK-Licensed TV Channels - http://www.ofcom.org.uk/tv/ifi/Procedural_Guidelines.pdf (under the terms of the AVMS Directive, co-operation between Member States' communications regulators is encouraged - the Guidelines explain the procedures Ofcom will follow in dealing with media regulators from other Member States when handling complaints about services which fall under UK jurisdiction but are primarily directed towards viewers in other Member States).

Ofcom Television Broadcast Licensing Update April 2010 - <http://www.ofcom.org.uk/tv/ifi/tvlicensing/tvupdates/monthly/201004> (the update provides details of the television services licensed, ceased to be licensed (handed back or revoked) and transferred and which changed the name of their service in April 2010).

Office of the Adjudicator - Broadcast Transmission Services (OTA-BTS) Report for the period 1 January to 31 March 2010 - http://www.adjudicator-bts.org.uk/documents/OTABTSReport_janmar10.pdf (the report discusses the work of OTA-BTS in the first quarter of 2010).