

This is our summary of some of the key legal developments across a range of sectors for the week of 21 June 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

US District Court Gives Summary Judgment in Viacom and FAPL Suit Against Google

The US District Court in the Southern District of New York has issued its summary judgment in two separate cases against Google by Viacom and the FAPL. The defendants had moved for summary judgment on the grounds that they were entitled to the Digital Millennium Copyright Act's (DMCA), 17 USC, § 512(c), "safe harbor" protection against all of the plaintiffs' direct and secondary infringement claims, including claims for "inducement" contributory liability, because they had insufficient notice, under the DMCA, of the particular infringements in suit. The plaintiffs had cross-moved for partial summary judgment on the grounds that defendants were not protected by the statutory "safe harbor" provision, but were "liable for the intentional infringement of thousands of Viacom's copyrighted works, ... for the vicarious infringement of those works, and for the direct infringement of those works". The question to be decided at summary judgment was whether general awareness of infringements (which were claimed by the plaintiffs to be widespread and common), or actual or constructive knowledge of specific and identifiable infringements of individual items was required for a service provider to fall foul of the Safe Harbor provisions. To answer this the court spent some time considering the legislative history of the DMCA and then the case-law before ruling that YouTube had been complying with the DMCA by effectively investigating and removing videos upon request and noting, "Indeed, the present case shows that the DMCA notification regime works efficiently: when Viacom over a period of months accumulated some 100,000 videos and then sent one mass take-down notice on February 2, 2007, by the next business day YouTube had removed virtually all of them". See http://static.googleusercontent.com/external_content/untrusted_dlcp/www.google.com/en//press/pdf/msj_decision.pdf for the judgment. Commentators have said that an appeal may be expected.

Research and Development Tax Relief and Ownership of IP Requirement

HMRC have published a Budget 2010 Note which discusses the introduction of a measure which will abolish the current condition requiring that any intellectual property deriving from the research and development to which the expenditure is attributable be owned by the company making the claim. The Note indicates that the Government will legislate for this measure in a Finance Bill, which is to be introduced as soon as possible after the summer recess. See <http://www.hmrc.gov.uk/budget2010/bn08.pdf> for details.

Government Response to Select Committee Report on the Future for Local and Regional Media

The DCMS has published the Government's Response to the Culture, Media and Sport Committee Report on the Future for Local and Regional Media. The Committee's Report was published in April 2010 and in response to some of the key recommendations in the Committee's report the Government has said that it does not intend to provide any state funding for newspapers, that it intends to impose tougher rules to stop unfair competition by local-authority newspapers, that it does not support the Committee's call for public funding for regional news through independently funded news consortia (IFNCs) but that it will be looking at the issues around content, technical constraints and regulation with a view to creating commercially sustainable local television as part of a healthy local-media sector and that it will keep the regulatory burden on commercial radio under review. The Government also confirmed that local journalism and local content were "fundamentally important", and that it wants to see local television services emerge on a commercially sustainable basis and across media platforms. See http://www.culture.gov.uk/images/publications/govtresponse_futurelocalregionnews_CM7882_rep.pdf for details.

OFT Decision of Sports Direct International Acquisition of Blacks - No Merger Situation Created

The Office of Fair Trading (OFT) has published details of its decision on the completed acquisition by Sports Direct International plc of a minority shareholding in Blacks Leisure Group plc. The OFT concluded that a relevant merger situation had not been created within the merger provisions of the Enterprise Act 2002 since the enterprises have not ceased to be distinct. See http://oft.gov.uk/shared_oft/mergers_ea02/2010/Sports-Direct.pdf for details.

Commission's FAQ on Counterfeiting and Piracy

The European Commission has published a helpful FAQ guide on counterfeiting and piracy, which sets out the differences between them, the effects they have on the European Union and the range of actions which are available to the Commission to deal with them. See <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/272&format=HTML&aged=0&language=EN&guiLanguage=en> for details.

Commission Sends UK Reasoned Opinion Over Data Protection Directive Implementation Concerns

The European Commission has sent a Reasoned Opinion to the UK Government in which it has requested the Government take appropriate steps to strengthen the powers of its data protection authority so that it complies with the provisions of the EU's Data Protection Directive. In the UK, national data rules are curtailed in several ways, leaving the standard of protection lower than required under EU rules. The Commission said that it had been working with UK authorities to resolve a number of issues concerning the implementation of the Directive, but several remained, "notably limitations of the Information Commissioner's Office's powers: it cannot monitor whether third countries' data protection is adequate ...; it can neither perform random checks on people using or processing personal data, nor enforce penalties following the checks". The Commission said, "Furthermore, courts in the UK can refuse the right to have personal data rectified or erased. The right to compensation for moral damage when personal information is used inappropriately is also restricted". A Reasoned Opinion is the second stage of EU infringement procedures. The UK now has two months to inform the Commission of measures taken to ensure it fully complies with the Directive. (*EC Press Release IP/10/811, 24 June 2010*).

Broadcasting

BBC Trust Formally Approves Project Canvas

The BBC Trust has announced that it has concluded its assessment of Project Canvas, the joint venture between the BBC and five other partners to develop and promote a common standard that would allow digital terrestrial TV viewers with a broadband connection to watch on-demand services and other internet services without paying a subscription (other than for broadband costs). Following the Trust's provisional approval, which was given in December last year, it has imposed a number of conditions on the BBC, including requirements that: viewers must be able to watch BBC programmes without a subscription; the BBC must report on whether accessibility features, such as audio description, have been incorporated in the system; the Trust will review the signposting of content and parental controls at a later date; technical specifications must be published within 20 working days of the Trust's approval, to allow broadcasters and set-top box manufacturers to adapt to the Canvas standard; the final core specifications must be published no later than eight months before set-top boxes are launched; other broadcasters and content providers must have access to the platform; a Trust review, 12 months after its launch, will assess the effects Canvas has on the partner's incentives to syndicate their content to other platforms; and the BBC will need further approval if costs exceed those projected by more than 20% in any one year. See http://www.bbc.co.uk/bbctrust/assets/files/pdf/our_work/canvas/canvas_conclusions.pdf for details.

Broadcast Bulletin - Latest Issue

The latest issue of Ofcom's Broadcast Bulletin has been published, with details of adjudications on breaches of Rules 1.2 (broadcasters must take all reasonable steps to protect under 18s), 1.3 (children must be protected by appropriate scheduling), 1.4 (television broadcasters must observe the watershed), 1.14 (the most offensive language must not be broadcast before the watershed), 2.1 (generally accepted standards), 2.3 (offensive material must be justified by context), 10.3 (products and services must not be promoted in programmes), 10.4 (no undue prominence may be given in any programme to a product or service) and 10.9 (premium rate numbers will normally be regarded as products and services, and must therefore not appear in programmes) of the Broadcasting Code. Ofcom also reminded broadcasters that "serious technical issues" are no excuse for failing to comply with the requirements of the Code. The Bulletin also reports on the outcome of investigations into alleged breaches of those Ofcom codes which broadcasting licensees are required to comply, in this instance Rule 4 of the Code on the Scheduling of Television Advertising (COSTA) (no more than 12 minutes of advertising or telesshopping in any one hour). See http://www.ofcom.org.uk/tv/obb/prog_cb/obb160/Issue160.pdf for details.

Computer Gaming

Emergency Budget Revokes Promised Relief to UK Computer Gaming Industry

The recent emergency Budget has revoked the promises the former Government made earlier this year to introduce tax relief to support the UK's computer gaming industry (and see the Need to Know of 22 March 2010 for details). The Budget proposed dealing with the deficit through measures which were described as "roughly 80 per cent through lower spending and 20 per cent through higher taxes" and as a result, the Chancellor said "In the current climate, with the deficit the size it is, all these reductions in tax must be more than paid for by other changes to business taxation" and therefore, the Government would not be proceeding with the "poorly-targeted" tax relief for the video games industry. Commentators have said that without the proposed £1 billion tax relief, which the measures were intending to introduce, the UK computer gaming industry could be seen as a "risky" proposition.

Corporate

European Parliament Proposal to Amend Prospectus Directive

The European Parliament has passed a legislative resolution to adopt, with amendments, the Commission's proposal to amend the Prospectus Directive. Parliament's position will be forwarded to the Council, the Commission and the national parliaments under the ordinary legislative procedure. Some of the proposed changes include an increase in certain of the thresholds for offers to fall outside the scope of the Prospectus Directive or within an exemption from the requirement to produce a prospectus and the introduction of a requirement for the electronic publication of all prospectuses. Member States will be required to implement the Directive within 18 months of it coming into force. See <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0227&language=EN&ring=A7-2010-0102> for the Resolution. PLC have also done a useful summary of the changes being proposed - see <http://corporate.practicallaw.com/9-502-5500?email=1247373636519&source=updateemail> for details.

Appeal Against Disqualification Order - Whether Grounds for Appeal Against Length of Disqualification

The Chancery Division has dismissed appeals against the applicant's disqualification and his period of disqualification pursuant to the Company Directors Disqualification Act 1986, on the basis that both appeals lacked merit. The applicant had held the directorship in two companies both of which had gone into creditors' voluntarily liquidation as a result of financial difficulties which included a liability to the Revenue for £577,000. In May 2003, the Secretary of State commenced proceedings for the applicant's disqualification pursuant to the Company Directors Disqualification Act 1986 on various charges. The registrar found the applicant unfit to be a director and disqualified him for a period of eight years. The applicant issued an appellant's order, seeking to set aside that order, and sought an order either that the claim against him be dismissed, or alternatively, that there be a new trial before a different registrar. The applicant was granted permission to appeal against the length of the period of disqualification, but refused permission to appeal on any other ground. Amongst many things, the appellant sought to argue that there had been an inadequacy of reasoning and certain findings had been against the weight of the evidence. The High Court said, in dismissing the appeals that it was following guidance to an appellate court in such cases given by Hoffmann LJ in *Re Grayan Building Services Limited* [1995] Ch 241 at 254 ... "The [trial] judge is deciding a question of mixed fact and law, in that he is applying the standard laid by the courts (conduct appropriate to a person fit to be a director) to the facts of the case. It is in principle no different from the decision as to whether someone has been negligent ... On the other hand, the standards applied by the law in differing contexts vary a great deal in precision and generally speaking, the vaguer the standard and the greater the number of factors which the court has to weigh up in deciding whether or not the standards have been met, the more reluctant an appellate court will be to interfere with the trial judge's decision ... I agree with the way in which the matter was put in *Re Hitco 2000 Ltd* [1995] BCC 161 .. "Plainly, the appellate court would be very slow indeed to disturb such conclusion as to fitness or unfitness. In many, perhaps most, cases the conclusion will have been so very much assisted and influenced by the oral evidence and demeanour of the director ... that the Appellate Court will be in nowhere near as good a position to form a judgment as to fitness or unfitness than was the trial judge". The court noted, having heard the applicant's arguments, it was plain that he still did not understand that he had done anything which fell below the normal standards of commercial probity or warranted the description of serious misconduct. In those circumstances, it could be understood why the view might be held that the protection of the public required an eight-year period of disqualification. (*Kotonou v Secretary of State for Business, Enterprise and Regulatory Reform* [2010] EWHC 19 (Ch) - see <http://www.bailii.org/ew/cases/EWHC/Ch/2010/19.html> for the judgment).

Exceptional Circumstances for Granting Winding Up Order Where Debt is Disputed

The Chancery Division has allowed the petitioner company's application pursuant to section 124 of the Insolvency Act 1986 for a winding up order against a company in circumstances where the petitioner was a creditor of the company by virtue of the second debt on which the petition was based and the company was unable to pay its debts for the purposes of section 122 of the 1986 Act. The court took the view that even if the debt in question had been the subject matter of a bona fide dispute on substantial grounds, the case had displayed exceptional circumstances which justified the making of such an order. The court noted that "there is no absolute jurisdictional bar to a petition being allowed to proceed, or indeed the making of winding-up order, where the debt on which the petition is founded is bona fide disputed on substantial grounds. However, before the Companies Court will make a winding-up order or even allow a petition to proceed where the debt is bona fide disputed on substantial grounds, there have to be exceptional circumstances". (*Lacontha Foundation v GBI Investments Ltd* [2010] EWHC 37 (Ch) - see <http://www.bailii.org/ew/cases/EWHC/Ch/2010/37.html> for the judgment).

Court of Appeal Rules on Claim for Damages for Breach of SPA Warranties - Preparation of Accounts

The Court of Appeal has ruled on an appeal by the purchaser of a group of companies against the rejection of its claim for damages for breach of warranty. In the course of a sale and purchase agreement for the sale of shares in a company being prepared, warranties were provided by the seller of the company that the accounts in question had been prepared in accordance with relevant accounting standards, gave a true and fair view of the relevant assets and liabilities, were prepared diligently, fairly reflected the company's financial position, and were not misleading. The purchaser was liable for any unexpected charges which were incurred before the sale and no provision was made for the charges in the accounts before the sale. As a result of an accounting error certain charges were not recorded and as a result, the value of shares was reduced. The appeal turned upon the correct construction of warranties given to the purchaser. The issue for the court was whether the seller was in breach of the warranties. The court ruled that there were no exceptional circumstances which could lead to the conclusion that the draft audited accounts, despite being prepared in accordance with the relevant accounting standards, had not given a true and fair view of the assets and liabilities - it found that the management accounts had been prepared in the manner required by the relevant clause and that they had attained the requisite degree of accuracy. Accordingly, the court dismissed the appeal. (*Macquarie Internationale Investments Ltd v Glencore UK Ltd* [2010] EWCA Civ 697 - see <http://www.bailii.org/ew/cases/EWCA/Civ/2010/697.html> for the judgment).

Article - Procedures for Reductions of Share Capital

The latest PLC Journal has an interesting article looking at the two procedures by which companies may reduce their share capital and the commercial reasons why a company might wish to reduce its share capital. It looks at the court-approved procedure, and the additional rules for public and listed companies, but focuses on the solvency statement procedure for private limited companies. It also includes a useful comparative timetable for both procedures for private limited companies. (*"Reductions of Share Capital: The New Order" PLC (2010) Vol 21, No 5, p 37 - the article is available from PLC*).

FRC's Annual Report 2009/10 and Mission Statement

The Financial Reporting Council (FRC) has published its Annual Report for 2009/10, which it says shows how, in partnership with its stakeholders, it has "responded proactively" to the financial crisis. The FRC has also introduced a new mission statement, "to promote high quality corporate governance and reporting to foster investment". The FRC said the new statement reinforces its strategy, which in turn "aims to ensure its work leads to tangible benefits for investors and to improvement in the relationship between company boards and investors". See <http://www.frc.org.uk/documents/pagemanager/frc/FRC%20Annual%20Report%202009-10.pdf> for the Report.

Film & TV

HMRC Budget 2010 Note on Multi Year Claims for Film Tax Relief

HMRC have published a Budget 2010 Note on multi year claims for film tax relief - the Note is aimed at film production companies making films whose production spans two or more accounting periods and which have some overseas expenditure. The Note corrects an unintended anomaly affecting the amount of tax credit claimable where films are produced over more than one accounting period and has effect for accounting periods ending on or after 9 December 2009 and is to be treated as always having had effect for those periods. See <http://www.hmrc.gov.uk/budget2010/bn12.pdf> for Note.

Gambling & Betting

RGA and EGBA Lodge Joint Complaint with Commission About Belgian Gambling Laws

The Remote Gambling Association (RGA) and the European Gaming and Betting Association (EGBA) have lodged a joint complaint with the European Commission on the basis that the recently adopted Belgian gambling legislation is not compliant with EU law. The RGA said "A number of elements of the Belgian legislation are designed to protect the domestic Belgian gambling market from legitimate competition by putting in place unacceptable barriers to new entrants seeking to offer online gambling. The new law requires in particular applicants for an online licence to first obtain an offline one and actively participate in the offline market: this is a clear barrier to entry considering that the majority of the European remote gambling operators do not conduct land-based business". It said further that the law requiring operators to duplicate all of their infrastructure by locating their servers, technical equipment, and the relevant personnel in a permanent establishment in Belgium "completely ignores the obligations and safeguards to which foreign operators are already subject in their Member State of establishment". The RGA said the Belgian authorities were asserting their capacity to judge the integrity of private operators while denying the ability of other countries to do so. They said further that the complaint "provides the Commission with solid legal arguments to challenge the Belgian legislation through an infringement procedure". See http://www.rga.eu.com/data/files/Pressrelease/rga_pr_complaint_against_belgium_2.pdf for the RGA Press Release.

ASA Adjudicate on Gambling Email in Breach of CAP Code

The Advertising Standards Authority (ASA) has upheld a complaint about an email advertisement by William Hill which was adjudged to have been misleading for not prominently stating that customers would have needed to place a minimum of 50 bets within a month totalling at least £1,320 in order to benefit from the advertised bonus offer. The complainant said that the ad was misleading, because it did not make clear that customers had to make numerous bets of significant value in order to redeem the £66 free bonus and deposit £35 of their own money in order to withdraw any winnings from the bonus up to a limit of £200. The ASA found that the advertisement in its current form breached CAP Code clauses 7.1, 7.2 (Truthfulness) and 32.5 (Free offers and free trials) and ordered that it not appear in that form again. See [http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2010/6/William-Hill-\(Gibraltar\)-Ltd/TF_ADJ_48645.aspx](http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2010/6/William-Hill-(Gibraltar)-Ltd/TF_ADJ_48645.aspx) for the adjudication.

New Legislation - Gaming Duty (Amendment) Regulations 2010

The Gaming Duty (Amendment) Regulations 2010, SI 2010/1677 come into force on 1 October 2010. The Regulations amend regulation 5 of the Gaming Duty Regulations 1997, SI 1997/2196 which deals with the amount of payments on account and substitute a new Table reflecting changes to the bands of gross gaming yield for gaming duty made by section 20 of the Finance Act 2010. The new duty rates will apply in the case of payments on account of gaming duty for any quarter that ends on or after 31 October 2010. See http://www.opsi.gov.uk/si/si2010/pdf/uksi_20101677_en.pdf for details.

Litigation

Court of Appeal Rule on FOI Application and Information Held for Purposes Other than Journalism

The appellant appealed against decision that the respondent BBC had no obligation under Schedule 1, paragraph VI of the Freedom of Information Act 2000 to disclose a report held to a significant extent "for purposes other than those of journalism", even though it was also held for other purposes. The BBC had declined to meet the applicant's request under the Act for sight of a report concerning its coverage of events in the Middle East. It claimed that the report directly impacted its reporting of crucial world events and therefore fell outside the scope of the Act, which was only applicable to information "held for purposes other than those of journalism". The Information Commissioner found that the BBC had correctly applied the Act however that decision was reversed on appeal, the tribunal finding that although the report had initially been commissioned for journalistic purposes, that purpose had ceased to be the dominant purpose once the report had been elevated to a higher strategic level within the BBC and it had therefore ceased to be exempt from disclosure. On appeal to the High Court, the judge held that the tribunal had been wrong and that the BBC was entitled to refuse disclosure. The Court of Appeal dismissed the applicant's appeal and ruled that the judge had properly construed the phrase "held for purposes other than those of journalism" as meaning that once information was established to have been held for a genuine journalistic purpose, it was effectively exempt from production under the Act even if it was also held for other purposes. The question whether information was held for the purposes of journalism was to be considered in a relatively narrow way. It said that it was difficult and dangerous to lay down guidance, even in general terms, about the meaning of "journalism", since each case had to be decided on its own facts. In this case, the tribunal's definition could not be improved upon, namely that the three elements of functional journalism were the collection, writing and verification of material; the editing and presentation of material for publication; and the upholding of journalistic standards by supervision, training and review of journalists and their work. Further, in this case, the question of whether the tribunal had been right to adopt a "dominant purpose" approach was a question of statutory interpretation and was a point of law that the court had a duty to interfere with. The tribunal's decision as to whether information was held for purposes other than journalism ought arguably to have been left alone, but the error it made was not to apply its own definition of "journalism" and the court was therefore justified in interfering. (*Sugar v British Broadcasting Corporation & Anor [2010] EWCA Civ 715* - see <http://www.bailii.org/ew/cases/EWCA/Civ/2010/715.html> for the judgment).

Supreme Court Rules on Continuation of Anonymity Order - Grounds for Continuation

The Supreme Court has ruled on whether it should extend an order preserving the anonymity of the appellant to cover the publication of its judgment and other reports of the proceedings. The appellant had been subject to a control order, which had been modified by the Secretary of State to include a condition concerning his residence in a particular location. Proceedings were begun in respect of that modification and an order was made preserving the appellant's anonymity. Though the House had ultimately quashed the residence requirement, the appeal was by that time largely academic, the Secretary of State having revoked the control order and decided to deport the appellant on grounds of national security however, the appellant had appeal to the Special Immigration and Asylum Commission against the deportation order pending and an anonymity order was in force in those proceedings. Both the appellant and the Secretary of State were in favour of the continuation of the order. The appellant argued that should his identity be revealed there would be a risk that his Article 3 rights under the European Convention on Human Rights 1950 would be infringed. Though there had been some press interest in the appeal before the Special Immigration and Asylum Commission, the House had not invited submissions from the media and no media representatives had sought to intervene. The court said it accepted "that, at least as a general rule, an interim anonymity order will indeed be appropriate at that initial stage" but noted that it was "important, however, that such an order should not just be continued automatically, but that the need for the order in the particular circumstances should be reviewed at the earliest suitable opportunity". It also accepted the force in the appellant's submission that if he were revealed to be someone who had been subject to a control order and was subject to deportation proceedings for alleged matters relating to terrorism, then he would be at real risk not only of racist and other extremist abuse but also of physical violence. Further, the absence of any submissions on behalf of the media meant that the House was not aware of any special circumstances which might point to a particular public interest in publishing a report of the proceedings. In those circumstances, the public interest in

publishing a full report of the proceedings and a judgment identifying the appellant would not justify curtailing his respect for his private and family life, and would have to give way to the need to protect him from the risk of violence. (*Secretary of State for Home Department v AP (No 2) [2010] UKSC 26* - see <http://www.bailii.org/uk/cases/UKSC/2010/26.html> for the judgment).

Music

BPI Issues DCMA Take Down Notice to Google

The BPI has issued Google with a Digital Millennium Copyright Act (DCMA) take down notice in which it set out details of the numerous infringing links that it said are being made available via Google's search engine. In accordance with the terms of the notice the BPI has requested that the links detailed in the notice "be removed as soon as possible" as they directly linked to sound recordings owned by its members. Under the terms of section 512(d) of the DCMA, a safe-harbor exists for providers of "information location tools" if they "expeditiously" remove the material in question when they get complaints. (Commentators who have been active since the very recent ruling on the Google/Viacom/FAPL dispute (and see above for details) have already made the rather apt comment about how best to handle these situations -do nothing, but act immediately upon receipt of a take down notice...).

Publishing

Dublin High Court Refuses Injunction to Protect Convicted Rapist's Identity and Address

The High Court in Dublin has refused to grant an application for an injunction which would have banned the press from publishing pictures of the applicant and giving his address. The applicant was a convicted rapist and argued that since his release he had been unable to have a permanent home because newspapers kept publishing pictures of him and giving his address. He applied for the injunction pending the outcome of his action over alleged privacy breaches, which is expected to be heard in the autumn. The court said the applicant had not established that his rights outweighed the rights of the newspapers to freedom of expression, and the right of the public to discuss the issue of the release of sex offenders. Articles containing details of his known whereabouts "contribute significantly" to that debate and to the interest of the public in being able to identify people convicted of violent offences. Further, the applicant had produced no evidence of an assault or of any type of verbal or physical abuse, or that he had been threatened in any way. The court noted that all that had occurred was the applicant being asked to move on by various landlords and estate agents or, alternatively, had done so of his own volition. While acknowledging his right to privacy under both the Irish constitution and the European Convention on Human Rights - and that he might later succeed in proving there had been interference with it - the court said that it was not satisfied he had demonstrated "by proper evidence a convincing case that his privacy had been unjustifiably intruded upon".

Technology

Commissioner for Digital Agenda Warns ICANN Over Internet Governance

The Vice-President of the European Commission responsible for the Digital Agenda has given a speech at ICANN's 38th International Meeting calling for greater accountability in the governance of the Internet. Said it was important to "ensure that technical changes add to the Internet's value as a common public good, rather than accidentally detract from it" and that from the perspective of public authorities such as the Commission, it was their duty to advise ICANN about where the public interest actually lay. The Vice-President also noted in this context that when freedom of speech and human rights on the Internet were at stake, it was not just public authorities that have a role to play. Reference was also made in the speech to the importance of managing the expansion of the number of generic Top Level Domains as such additions were "probably irreversible". The point was made that steps need to be taken carefully, taking into consideration more than just immediate commercial interests. (*EC Press Release Speech/10/325, 21 June 2010*).

EDPS Calls for Further Improvements to EU/US Agreement for TFTP

Last week's Need to Know discussed the recent agreement between the European Commission and the US regarding the sharing of data for the purposes the Terrorist Financing Tracking Programme (TFTP), which will allow US authorities access to European based financial data managed by the Belgian company SWIFT in cases of anti-terrorism investigations aimed at preventing terrorism. Now, the European Data Protection Supervisor (EDPS) has issued an Opinion on the draft Agreement - while the EDPS welcomed the improvements that the latest draft has achieved such as the exclusion of data relating to the Single Euro Payments Area, a more limited definition of terrorism, and stronger guarantees on citizens' data protection rights a number of additional recommendations

were made to further improve data security. These included reducing the storage period for non-extracted data (ie data US law enforcement authorities have not accessed for terrorism-related investigations); entrusting the task to assess the requests of the US treasury to a public judicial authority, in line with the negotiating mandate and the current EU legal framework for data protection; and ensuring that the data protection rights conferred to citizens by the proposal are clearly stated and effectively enforceable, also in the US territory. EDPS said "other key elements" still needed to be improved "in order to meet the conditions of the EU legal framework for data protection". (EDPS Press Release EDPS/10/10; see http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2010/10-06-22_Opinion_TFTP_EN.pdf for the Opinion of the EDPS).

Consultations & Reports

Ofcom Discussion Document - Traffic Management and 'Net Neutrality' - <http://www.ofcom.org.uk/consult/condocs/net-neutrality/netneutrality.pdf> (Ofcom's discussion paper on the practice of internet traffic management, a technique used by network operators and internet service providers (ISPs) to stem or accelerate the flow of traffic over the web, is intended to open discussions about how its existing and future powers might be used to address traffic management concerns and what stance it should take on any potential anti-competitive discrimination - internet traffic management allows network operators and ISPs to handle traffic more efficiently, to prioritise traffic by type, to guarantee bandwidth or to block or degrade the quality of certain content, however, it has also led to concerns that network operators and ISPs could engage in anti-competitive behaviour and suppress the quality of content from provider services).