

Update

Copyright. Fashion photographers who attended Parisian fashion shows and sold the images without permission to a US company which published them online--lost their case on appeal to the European Court of Human Rights (ECHR). The photographers argued their use was protected as news reporting and that their Art. 10 rights (Freedom of Expression) were engaged. The French courts held that the fashion houses had rights in their fashion creations which were protected by copyright and the photographers were liable for infringement. On appeal, the ECHR found Art. 10 was engaged but the courts below had properly balanced the Art 10 rights with the property rights of the fashion houses (Art.1 of Protocol No.1 and 17(2)). The decision is the result of the wide *margin of appreciation* allowed to member states in performing the balancing act. It was also relevant that the speech in issue was commercial--not political or artistic--and the media's function as a watchdog of democracy was not engaged. The decision has not yet been translated into English. See *Ashby Donald v France* No. 36769/08

Adwords. After six years of litigation in Australia, on appeal, Google was found not liable for misleading and deceptive conduct in relation to its sponsored links as it was not their author. The court held ordinary reasonable users of Google search would have understood the representations conveyed by the sponsored links were those of the advertisers and Google did not adopt or endorse them. Google was no different from a newspaper carrying ads. Contrast this with the position in the EU where the Court of Justice of the European Union (CJEU) did not rule out the possibility that Google might be liable if its role was more than passive (Joined Cases C-236/08 and C-238/08 Google and Google France). See the press release. [http://www.hcourt.gov.au/assets/publications/judgment-summaries/2013/Google v ACCC PR - Final.pdf](http://www.hcourt.gov.au/assets/publications/judgment-summaries/2013/Google_v_ACCC_PR_-_Final.pdf)

Libel. The Defamation Bill is now awaiting the third reading in the Lords who passed an amendment last week providing for cost sanctions in litigation where regulated defendants refuse to submit to arbitration. It is not yet clear how such arbitration awards can be challenged. If the only route is judicial review, that would be a reason to avoid the procedure (despite the costs issues) given the high threshold for success in judicial review. Also worrying is the current draft on ISP liability, which requires detailed regulations to be introduced and approved by Parliament once the bill has been passed. Again, it is not at all clear what the final position will be. We understand that the government may have backed off the joint committee's proposals following lobbying from all sides.

Press Regulation. The government unveiled plans for a new press regulator, with the power to issue fines up to £1million, which would be overseen by a "Recognition Panel." The panel would be set up by Royal Charter, which creates a legal entity without the need for legislation. The panel would contain between four and eight people but no current or former editors (the discredited PCC was comprised mainly of editors together with some members of the public). No publication will apparently be forced to join the new regulatory scheme but the Government is proposing changes to the Defamation Bill which would penalize any printed news organization not signing up (by exemplary damages and costs even if they win a libel suit) and this may include “website[s] containing *news-related* material”.

The Cloud. We remain concerned about security and the cloud and note that EUobserver.com reports the Foreign Intelligence Amendments Act (FISAAA) grants the US government sweeping powers to collect foreign information stored in US Cloud computing providers without a warrant. See <http://euobserver.com/justice/118857>

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