Wiggin's Weekly Update

For PPA Members

SPEED READ...

Technology	
UK Government urges businesses to take action as cost of cyber security breaches doubles.	Read more
Police Intellectual Property Crime Unit (PIPCU) says it has diverted more than 11 million views from illegal music and film sites.	Read more
Data Protection	
European Data Protection Supervisor meets with international civil liberties groups to discuss EU data protection reform.	Read more
Music	
Intellectual Property Enterprise Court finds settlement agreement regarding music producer's share of copyright in a song not void as an unconscionable bargain.	Read more
BPI survey shows British artists accounted for 13.7% share of global music album sales in 2014.	Read more
PRS for Music announces extension on consultation period for Tariff LP.	Read more
Publishing	

Wiggin's Weekly Update

For PPA Members

Advertising Standards Authority bans Yves Saint Laurent ad featuring model that appeared "unhealthily underweight".	Read more
High Court grants permanent injunction to restrain disclosure of private information.	Read more
Film & TV	
British Film Institute announces it is now able to accept "draft" applications for letters of comfort relating to Children's Television Tax Relief.	Read more
Computer Games	
Competition and Markets Authority refers three online games to Advertising Standards Authority to consider whether to launch investigations.	Read more
Advertising	
Committee for Advertising Practice publishes advice on ambush marketing in relation to sports events.	Read more

Technology

UK Government urges businesses to take action as cost of cyber security breaches doubles.

According to government research, undertaken to raise awareness of the growing cyber threat, the average cost of the most severe online security breaches for big businesses now starts at £1.46 million, up from £600,000 in 2014.

The Information Security Breaches Survey 2015 shows the rising costs of malicious software attacks and staff-related breaches illustrate the need for companies to take action.

Wiggin's Weekly Update
For PPA Members

For small and medium sized businesses, the most severe breaches cost can now reach as high as £310,800, up from £115,000 in 2014.

However, the Government says, more firms are taking action to tackle the cyber threat, with a third of organisations now using the Government's Ten Steps to Cyber Security guidance, up from a quarter in 2014. Further, nearly half (49%) of all organisations have achieved a Cyber Essentials badge to protect themselves from common internet threats, or plan to get one in the next year.

The research shows that:

- 90% of large organisations reported they had suffered an information security breach, while 74% of small and medium-sized businesses reported the same;
- for companies with more than 500 employees, the average cost of the most severe breach is now between £1.46 million and £3.14 million;
- for small and medium sized businesses, the average cost of the worst breach is between £75,000 and £310,800;
- attacks from outsiders have become a greater threat for both small and large businesses; and
- 75% of large businesses and 30% of small businesses suffered staff-related breaches.

The Government is urging businesses of all sizes to make use of the help and guidance available and take up the Cyber Essentials Scheme. To read the Government's press release in full and for a link to the research, click here.

Police Intellectual Property Crime Unit (PIPCU) says it has diverted more than 11 million views from illegal music and film sites.

In a press release announcing that PIPCU recently arrested a man on suspicion of selling card sharing satellite receivers providing viewers access to premium pay channels without subscription, the specialist national police unit also said that, since July last year, it has diverted more than 11 million views from illegal music and film sites to an official police page, warning the user that the website they are trying to access is currently under investigation by PIPCU. The page also includes signposts to safe and reliable websites that provide legitimate access to music, films and books, as well as a link to the PIPCU website so users can find out more information about the unit.

Head of PIPCU, Detective Chief Inspector Danny Medlycott, said: "*Our specialist team is the only police unit in the world dedicated to combatting intellectual property crime. Working closely with our partners and other law*

Wiggin's Weekly Update
For PPA Members

enforcement agencies, we are committed to tackling criminals who exploit other's intellectual property for their own greed and financial gain." To read PIPCU's press release in full, click here.

Data Protection

European Data Protection Supervisor meets with international civil liberties groups to discuss EU data protection reform.

The purpose of the meeting was to assist the EDPS in understanding the concerns of citizens when it comes to the proposed reforms.

Representatives from Privacy International, Code Red, BEUC, EDRI, Bits of Freedom and Access attended the meeting. The many topics discussed included purpose limitation, the rights of individuals and profiling, collective redress, privacy seals, sanctions and the e-Privacy Directive (2002/58/EC).

The office of the EDPS maintains regular contact with the three main EU institutions involved in the reform process and says that it is currently working to find a "*comprehensive but effective and workable text*" that will offer legal certainty for both businesses and individuals. The EDPS is assisting the institutions in finalising a text that is not too prescriptive and in which independent data protection authorities and the future European Data Protection Board will have confidence in interpreting and implementing.

Giovanni Buttarelli, EDPS, said: "*The EU Data Protection Reform is long overdue and continues to have my active support. My colleagues and I are committed to guiding the legislator to find the right solutions and ensure that key safeguards are not weakened in the search for political compromise. It is imperative that the reform increases and modernises standards of protection and makes existing and future safeguards more effective in the world of big data. Like civil liberties organisations, we believe that the reform must centre on the rights of the individual. We also believe that involving the general public in a text which is future-oriented, easy to understand, scalable, flexible and simple to implement is the only way forward*". The read the press release in full, click here.

Music

Intellectual Property Enterprise Court finds settlement agreement regarding music producer's share of copyright in a song not void as an unconscionable bargain.

The IPEC has found that a settlement agreement entered into by the second claimant, Julia Adamson, who used to be part of the band The Fall, and the defendant, Steven Sharples, a music producer/composer, in connection with the song *Touch Sensitive* was not void as an unconscionable bargain.

Wiggin's Weekly Update
For PPA Members

The song had been written by Julia Adamson (music) and Mark E Smith (lyrics) in 1998. At that time, the two band members agreed that the publishing or performing rights in the song should be split as to 33.34% to Mr Smith and 66.66% to Ms Adamson.

The song was performed live on the John Peel Show on 3 March 1998. Following the broadcast, further work was done on the song and Mr Sharples became involved. In evidence, Mr Sharples said that he carried out a good deal of work to both the lyrics and the music of the song and produced another version of it. The amended song was then produced, recorded and released on an album. Mr Sharples claimed that this constituted a new copyright work.

The album version of the song enjoyed substantial success. However, for various reasons, including a claim to a one-third share of the royalties made by Mr Sharples, the collecting society, PRS for Music, put the album version of the song into dispute and suspended all royalty payments.

In order to try and unlock the royalty payments, Ms Adamson and Mr Sharples entered into a settlement agreement, which provided that the album version of the song should be registered with the PRS/MCPS in the following shares: Mr Smith 33.34%; Ms Adamson 33.33%: and Mr Sharples 33.33%; and that income that had arisen following the suspension should be distributed to the three parties in those shares.

However, Minder Music Ltd, which was the music publishing company to which Mr Smith had assigned his publishing rights in the song, objected to the agreement and issued proceedings against Mr Sharples. Ms Adamson was subsequently joined as second claimant.

The main relief claimed by the claimants was:

i) a declaration that Minder Music owned a 33.34% of the copyright in the album version and that Ms Adamson owned 66.66% (or such share as the court shall determine);

ii) a declaration that no part of the copyright was or had been owned by Mr Sharples; and

iii) an inquiry as to damages.

Mr Sharples denied the claims on the basis of, *inter alia*, his alleged joint authorship of the album version of the song and/or his interest in the album version of the song by reason of the settlement agreement.

As regards the settlement agreement, Ms Adamson admitted having signed it, but denied being bound by it. The claimants' position was that the settlement agreement was void or voidable, and should be set aside as an unconscionable bargain because Mr Sharples knew that Ms Adamson was an impecunious single mother at the time on whom he had unfairly pressed a substantially disadvantageous settlement by taking half her share of the royalties.

Wiggin's Weekly Update
For PPA Members

The court disagreed, however, finding no evidence that Ms Adamson had been bullied into entering the agreement. Mr Sharples had not imposed objectionable terms on Ms Adamson in a morally reprehensible manner, nor had he taken advantage, still less an unconscionable advantage, of Ms Adamson's circumstances. Therefore, there were no grounds to set aside the agreement.

The court also examined Mr Sharples' claim to be a joint author of the album version of the song, finding that Mr Sharples' evidence of a significant contribution to the lyrics of the song was unreliable, but that he had made a "*small but significant original contribution to the composition of the music of the Album Version*" by composing and adding certain string sections to the work.

The court did not accept, however, that Mr Sharples' share of the copyright in the album version of the song would have been as great as one-third. In the court's view, his contribution would have been properly reflected by a 20% share of the copyright in the music of the album version.

Given that the court had found that the settlement agreement was valid, however, Mr Sharples could claim a 33.33% share in the song pursuant to its terms. *(Minder Music Ltd v Steven Sharples [2015] EWHC 1454 (IPEC) (20 May 2015) – to read the judgment in full, click here).*

BPI survey shows British artists accounted for 13.7% share of global music album sales in 2014.

BPI's global sales survey published in BPI's *Music Market 2015* yearbook, which is a comprehensive guide to the 2014 music year in numbers, revealed that just over one in every seven albums purchased around the world was from a UK act. This represents an improvement on the 13% share in 2013 and is the highest figure recorded since the BPI began collating the survey data from sources around the world.

According to the survey, the global retail value of British recorded music was estimated at around $2.75 billion in 2014. Further, British artists dominated in the UK with over half of all UK Official Chart album sales (53.5%) and enjoyed major share gains in key global markets, including the US, Canada, Australia, Italy and Sweden.

The survey also revealed that streaming doubled in 2014, while compilation album sales rose for a third successive year. The rate of decline in CD sales slowed, but vinyl enjoyed a 20-year high, reflecting, the BPI says, "*an emerging "multi-channel" dynamic*". To read the BPI's press release in full, click here.

PRS for Music announces extension on consultation period for Tariff LP.

Tariff LP is applied to ticketed live popular music events such as concerts and festivals. The tariff was originally set in 1988 and is 3% of gross box office receipts per event.

Wiggin's Weekly Update

For PPA Members

PRS for Music is consulting on Tariff LP, thereby conducting a comprehensive review across the live music industry to ensure that PRS for Music operates an appropriate tariff for its customers and members. Originally 8 June 2015, the deadline for responses to the consultation is now 30 September 2015.

The extension has been granted following the Concert Promoters' Association's (CPA) stated interest in conducting its own research in response to PRS for Music's consultation documentation which was announced on April 13. The extension will allow the CPA and other industry groups to respond comprehensively to the consultation. For further information, click here.

Publishing

Advertising Standards Authority bans Yves Saint Laurent ad featuring model that appeared "unhealthily underweight".

An ad in *Elle* magazine for the luxury French fashion brand featured a black and white photograph of a woman lying on the floor with her hands on her head. She had her eyes closed and was wearing a short black dress, a leather jacket and high heels.

A complainant, who believed the featured model appeared unhealthily thin, challenged whether the ad was irresponsible.

The ASA considered that the model's pose and the particular lighting effect in the ad drew particular focus to the model's chest, where her rib cage was visible and appeared prominent, and to her legs, where her thighs and knees appeared a similar width, and which looked very thin, particularly in light of her positioning and the contrast between the narrowness of her legs and her platform shoes. The ASA therefore considered that the model appeared unhealthily underweight in the image and concluded that the ad breached CAP Code rule 1.3 (Responsible advertising). To read ASA Adjudication on Yves Saint Laurent SAS (3 June 2015), click here.

High Court grants permanent injunction to restrain disclosure of private information.

The High Court has granted the claimant, BUQ, summary judgment in respect of his action for breach of confidence and misuse of private information on the part of the defendant, HRE, to whom BUQ had sent text messages and digital photographs relating to sexual activity or planned sexual activity between BUQ and others. The interim injunction, including an anonymity order, which BUQ had previously obtained prohibiting HRE from disclosing the information, therefore became permanent.

BUQ was the CEO of a substantial group of companies. HRE had been the managing director of one of the group's subsidiaries and reported to BUQ. In response to BUQ's claim, HRE had brought proceedings against BUQ in the Employment Tribunal (ET), claiming unfair dismissal, automatically unfair dismissal, detriments imposed for public interest disclosure (whistleblowing), sexual harassment and sex discrimination on the part of

Wiggin's Weekly Update
For PPA Members

BUQ, sexual orientation harassment, victimisation, unlawful deductions from pay and unpaid holiday pay. Those proceedings had been dismissed on the findings that BUQ had a reasonable expectation of privacy in respect of the information concerned and HRE had sought to blackmail BUQ, threatening to disclose the text messages and emails in question. The ET had also found that there had been no sexual harassment and sex discrimination on the part of BUQ.

The High Court found that the findings of the ET, which were binding on it, left HRE with no realistic prospect of successfully defending the claim on the merits. BUQ plainly had, and continued to enjoy, a reasonable expectation of privacy in respect of the information concerned and his Article 8 rights under the European Convention on Human Rights outweighed the Article 10 rights of HRE. Since HRE had been found to be a blackmailer, his Article 10 rights were limited. Further, because BUQ had been the victim of blackmail, his Article 8 rights had more weight.

There was no other compelling reason for a trial; therefore BUQ was entitled to summary judgment. Further, there was sufficient evidence of a risk of unlawful publication, the court said, which justified the grant of a permanent injunction. This, despite the existence of HRE's cross application to commit BUQ for perjury or contempt of court, which was to be decided at a later date. *(BUQ v HRE [2015] EWHC 1272 (QB) (7 May 2015) – to read the judgment in full, click here).*

Film & TV

British Film Institute announces it is now able to accept "draft" applications for letters of comfort relating to Children's Television Tax Relief.

The Chancellor in his Autumn Statement and in the 2015 Budget announced that legislation would be introduced to provide tax relief to the makers of children's television programmes.

The changes were introduced in s 30 of the Finance Act 2015, which amends Part 15A of the Corporation Tax 2009 to extend the tax relief available to children's television programmes. The relief will apply in relation to accounting periods beginning on or after 1 April 2015.

The relief will allow eligible companies engaged in the production of qualifying children's television programmes to claim an additional deduction in computing their taxable profits, and where that additional deduction results in a loss, to surrender those losses for a payable tax credit.

A children's television programme is defined to mean a programme which, at the point when television production activities begin, it is reasonable to expect that the persons who will make up the programme's primary audience will be under the age of 15. Children's television programmes, which are game or quiz shows, will also qualify for relief if the prize total does not exceed £1,000.

Wiggin's Weekly Update

For PPA Members

In order for a programme to be eligible for the children's television tax relief, it must be certified as a British programme by the Secretary of State for Culture, Media and Sport. The conditions which must be met for a programme to be certified as a British programme, known as the "cultural test", must be set down in regulations. Currently, the test is still in draft form.

Whilst legislation is still going through Parliament, the BFI says that applicants who were in principal photography on or after 1 April 2015 can apply for a letter of comfort. While the pre-approval letter of comfort cannot be used to submit a claim to HMRC, it offers assurance that, if the regulations are made as expected, the legal certificate will then be issued by the BFI on behalf of the Secretary of State once the legislation is complete. This will require applicants to re-submit their letter of comfort and application as a hard copy application, with a statutory declaration, and a certificate will be issued. For further information, click here.

Computer Games

Competition and Markets Authority refers three online games to Advertising Standards Authority to consider whether to launch investigations.

The CMA says that it is concerned that these games may breach the Advertising Codes and consumer law by directly encouraging children to buy, or ask their parents to buy, extra game features.

The referral results from the CMA's monitoring of the sector following the publication in January 2014 of the Office of Fair Trading's Principles for online and app-based games.

This action is part of the CMA's wider work to encourage the industry to address issues relating to how online and app-based games are advertised and paid for. The CMA has worked closely with the European Commission, the International Consumer Protection and Enforcement Network, and national consumer protection authorities around the world.

Nisha Arora, CMA Senior Director, said: "*75% of 10- to 15-year-olds in the UK play video games every day, so it's clear that they are a significant part of children's lives. We have seen some positive changes in business practices since we started looking at this sector. However, we are concerned that some games may directly encourage children to buy extra features during the game. We have therefore referred these games to the ASA to consider whether they breach the Advertising Codes*". To read the CMA's press release in full, click here.

Advertising

Committee for Advertising Practice publishes advice on ambush marketing in relation to sports events.

The advice has been published due to the commencement of the Womens' Football World Cup and the opening of the Rugby World Cup in September.

Wiggin's Weekly Update

For PPA Members

CAP reminds marketers that sponsors of sports events are given rights to reference the event in their marketing as official partners and for their brand to be used at the event itself. Ambush marketing is the term given to brands referencing events, either directly or indirectly, when the company has not paid to be a sponsor or an official partner. PR "stunts" are not covered by the CAP Code, but advertising based on them is.

The Code does not preclude people from referencing sporting events, but ads must not mislead consumers by implying that an official relationship exists when it does not, CAP says.

In addition to the general rules against misleading advertising, the Code prohibits ads from taking unfair advantage of a competitor's trade mark and requires that marketers hold evidence that endorsements are genuine.

Marketers should therefore take care when referencing sporting events to avoid complaints to the ASA being upheld. If there is any suggestion that there is an official affiliation when there is none, then the ASA is likely to consider such references as misleading and in breach of the Codes. As always, the ASA will take into account the overall impression of the copy including images, icons and symbols used.

CAP says that the line can be "*as fine as it gets*" when it comes to the difference between appropriately referring to an event generally and misleadingly claiming an affiliation. Including a reference to watching sport, including a generic image of footballs, or using sporting puns are unlikely to be problematic in isolation, but the advice is to take a step back to see what impression is being created by the copy overall. To read the advice in full, click here.