

BUSINESS BULLETIN

CHALLINORS

SOLICITORS

BLOGGERS ANONYMOUS

The High Court has ruled, albeit on the basis of an application for an interim injunction, that a blogger has no right to keep his identity secret particularly where the blogger is disclosing information which is confidential and appears to be put on a blog in breach of circumstances which would imply or import a confidentiality obligation.

The blogger in this case was a serving policeman whose blog set out details of his police work and his personal opinions on issues relating to the police force and the administration of justice. He had taken steps to preserve his anonymity, but a newspaper had tracked him down. He argued that because he had taken those steps he was entitled to keep his identity secret.

His application was rejected, and the court held that:

- Blogging is essentially a public and not a private activity; and
- In the particular circumstances, any right of privacy would be outweighed by the public interest in revealing that a particular police officer had been making and stating these opinions.

So, if you're going to blog, be aware that you may not be able, at the end of the day, to avoid responsibility, or liability, for what you say. This seems eminently fair, and the law on defamation remains unchanged.

RIGHTS INFRINGEMENT IN DIGITAL BUSINESS

DBIS, the Department for Business, Innovation and Skills (formerly DBERR, and before that DTI) together with DCMS – the Department for Culture, Media and Sport have together now introduced the final Digital Britain "action plan". The aim, as clients may be aware, is to address illicit peer-to-peer file sharing.

The report has not been welcomed with open arms by the so-called creative industries. There is no requirement to force an ISP to disconnect users who have been engaged in illegal file sharing, although they are likely to be forced to make

available information to enable infringers to be identified, and the matter is to be policed by a code of conduct with back stop powers for Ofcom, rather than direct and primary action by Ofcom or a similar body.

The report is inevitably lengthy and complex. If clients require further information please contact us.



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LEASES — LICENCE TO ASSIGN

**“Commercially,
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tends to favour
landlords ”**

Most clients will know that the average lease requires the landlord’s consent to be given if it is to be assigned, and usually that that consent is not to be unreasonably withheld in the case of a respectable and responsible assignee. Commercially, this phraseology tends to favour landlords – a lessee seeking to assign property to someone who wants to take it over, and that proposed purchaser himself, are unlikely to challenge landlords’ requirements which are not extreme.

In a recently reported case, however, the landlord tried to obtain from the proposed purchaser a guarantee which would extend beyond the obligations in the lease. The matter was in fact challenged and went to the Court of Appeal, who held that the requirement was in fact unreasonable, and could have been challenged under the Landlord & Tenant Act 1988, as well as under the contractual arrangements particular to the case.

CONTRACT CLAIMS

Where a party to a contract breaches it in such a way that it effectively repudiates the contract, the other party has the opportunity to elect to continue with the contract, or accept the repudiation and treat the contract as ended.

In a recent shipbuilding case, there was a clear repudiation of the contract following which there were enforceable contractual provisions requiring return of monies paid under the contract. In addition to that repayment, however, the claimant also sought damages for breach of contract and loss of bargain, and the court held that those claims could be sustained, irrespective of the fact that there was already a contractual remedy built into the documents.

The lesson is simple. Depending on which side of a contract you are on, you either insist that the contractual remedy is the sole and exclusive remedy following termination, or you make sure that it is not and any contractual payments are without prejudice to other claims.



This bulletin is only a general summary and obviously cannot deal with particular points in any detail. It should not therefore be relied on to that extent. If you have any point on which you would like us to give specific advice please contact one of the solicitors listed on the first page.