# Technology Update

MOORE BLATCH
solicitors

Winter 2014

## Welcome to the Moore Blatch Technology Update.

As usual, we've included articles on recent developments in technology and intellectual property law that we hope will be of interest to you.

All our articles are in the news section on our website (www.mooreblatch.com) in addition to being reproduced in this PDF.

If you have any comments or questions, please contact me on 023 8071 8078.

With kind regards,

Dorothy Agnew
Senior Solicitor

## Updates this month

**Latest technology law news**

- Retailers be aware
- Electronic signatures
- Proposed new laws to filter internet content
- New defamation laws bring protection for website operators
- Operators of meta search engines beware

## Retailers be aware

**Changes to distance selling regulations mean many online retailers will need to change their website and update their terms and conditions.**

**Key Changes**
The 3 key changes that businesses should take notice of are:

***1. 14 Day Cooling Off Period***
The timeframe for a consumer to withdraw from a sales contract without penalty is extended to a minimum of 14 calendar days. Businesses won't see too much of a change in practice, as the current period for distance sales is 7 working days. Online terms and conditions often include the 7 day cooling off period and as from 13 June 2014 this will no longer be lawful, so they will need to amend their terms accordingly.
Where a business fails to provide the relevant information on the consumer's right to cancel, this period is extended to 12 months (instead of the current 3 month period).

***2. Ban on Default Pre-Ticked Boxes***
When shopping online consumers often find that additional options during the purchase process are pre-ticked, such as the addition of insurance, which could cost them additional fees. Businesses will now need to obtain the consumer's express consent for these 'extras' and cannot use default pre-ticked boxes for additional payments any longer.
If a business uses pre-ticked boxes they will need to update their processes and their website.

***3. 30 Day Delivery Period***
Unless otherwise agreed a business will have to deliver goods within 30 days, rather than within a reasonable time, which is currently provided. It is recommended that delivery periods are dealt with in the relevant documentation and not left to be determined by law. Businesses that have longer delivery times but do not make this clear to consumers should update their contract documents.

**When?**
The EU Directive1 requires the UK to bring legislation into force to effect these changes by 13 June 2014. The government laid new consumer contracts regulations2 before parliament in December. These will make a number of changes to existing consumer legislation and amongst other things the new regulations deal with the 30 day delivery period, the 14 day cooling off period and the ban on pre-ticked boxes. The new regulations are due to come into force on 13 June 2014 and will supersede the current distance selling regulations3.

Although not yet in force, businesses should act now and consider what changes they will need to make to their terms and processes and plan for this, otherwise they could expose themselves to the risk of additional claims or longer cooling off periods if the right information is not provided at the right time.

1 2011/83/EU
2 Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013
3 Consumer Protection (Distance Selling) Regulations 2000 -

## Electronic signatures

**E-commerce plays a part in most people's everyday lives and, for those conducting their business electronically, can potentially provide real advantages in comparison to paper transactions. Electronic signatures arguably go hand in hand with e-commerce transactions, yet the use of electronic signatures is low in comparison.**

This article considers electronic signatures in general and considers why electronic signatures are not more widely used across a range of electronic transactions.

**What is an electronic signature?**
An electronic signature is not, as you might think, a picture of a handwritten signature. In fact, it is an electronic means of identifying a person or the authenticity of the contents of a document and includes, for example, your name at the end of an email or a PIN.

Its full legal meaning in England and Wales, as defined by the Electronic Communications Act 2000, is wide and includes anything in electronic form incorporated in, or associated with, an electronic communication or electronic data which purports to be so associated or incorporated for the purpose of establishing the authenticity or integrity of that communication or data.

It is also worth noting that the Act provides that electronic signatures are admissible as evidence in legal proceedings in England and Wales.

**How are they commonly used?**
The use of electronic signatures has been prevalent in the banking and finance world, where they have been utilised to eliminate paper based processes. This has had the advantage of allowing complex documents to be handled and signed online, leading to less mistakes and overall a more timely and efficient process.

**Other benefits**
Allowing businesses to carry out their transactions electronically has additional benefits to those experienced in the banking and finance industry. Arguably, using electronic signatures is not only faster and more accurate but cheaper and more secure than using a handwritten signature.

It has the clear advantage of being instantaneous and allowing information to move seamlessly from person to person, regardless of their physical location.

**So, why aren't electronic signatures more widely used?**
The European Union, which implemented the Electronic Signatures Directive as far back as 1993, has recently asked the same question. Their public consultation, carried out in 2011, identified the following reasons:

- A limited number of services requiring electronic signatures;
- A lack of user-friendliness;
- The limited EU cross-border inter-operability of electronic signatures;
- Costs; and
- A lack of legal certainty.

Additionally, a large majority of those consulted felt the current European legislative framework is far from satisfactory.

**What next?**
In light of the responses received, the EU has adopted a proposal intended to enhance trust in electronic transactions in the internal market, which includes a proposal for enhanced legislation on e-signatures.

Electronic signatures are also the focus of a new British Government team, the Government Digital Service, whose purpose is to ensure the Government offers world-class digital products. As part of this remit, the ID Assurance team are working to facilitate digital transactions between citizens and the government, which can only move electronic signatures to a more prominent position in the Government agenda.

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## Proposed new laws to filter internet content

**A new Online Safety Bill aims to reduce the ability for children and young people to access inappropriate material online.**

The Online Safety Bill, which is going through parliament at the moment, seeks to improve online safety in 3 ways:

- Requiring internet services providers and mobile phone operators to provide an internet service that excludes access to adult content;
- Requiring electronic device manufactures to provide a way of filtering internet content at the time of purchase; and
- Internet services providers and mobile phone operators would make information about online safety available and parents would be educated about online safety.

The bill was introduced as a private members bill and had its 2nd reading in the House of Lords on 6 December 2013; the committee stage (which is a line by line examination of the bill) has yet to be scheduled.

If this bill becomes law, electronic device manufacturers, internet services providers and mobile phone operators in particular will need to review their business processes and may have to make changes to comply with the new legislation.

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## New defamation laws bring protection for website operators

**New laws on defamation came into force on 1 January 2014 and are intended to rebalance the law on defamation to provide more effective protection for freedom of speech while at the same time making sure that people who have been defamed can protect their reputation.**

The new defence introduced by section 5 of the Defamation Act 2013 will be of particular interest to operators of websites hosting online forums, blog sites and other sites that host user generated content.

Where an action for defamation is brought against a website operator in respect of a statement posted on the operator's website, it is a defence for the operator to show that it was not the person who posted the statement on the website.
In order to rely on the section 5 defence the website operator must comply with strict procedures regarding the defence and these include strict timescales for responding to and dealing with a notice of complaint about a statement on the website.

Whilst compliance with these procedures is not mandatory website operators who do not comply with the procedures will be unable to benefit from the new defence
Website operators will no doubt welcome this protection against action brought about user generated content on their websites but they may find meeting the strict procedures for relying on the defence administratively burdensome.

Website operators who run online forums hosting user generated content should take steps now to put procedures in place for dealing with complaints and ensure that their website terms and conditions allow them to remove content where they receive a complaint about such content.

Contact Dorothy Agnew if you would like more information on dealing with complaints about defamatory material posted on websites.

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## Operators of meta search engines beware

**The European Court of Justice ("ECJ") has recently ruled that the use of a meta search engine can in certain cases amount to an infringement of a database right.**

The case before the ECJ concerned two car advertisement websites. The ECJ was asked to consider whether the Defendant's website, which did not have its own database, but operated a meta search engine which enabled users to search other car sales websites (to include that of the Claimant) had infringed the Claimant's database rights.

The ECJ ruled that it would be an infringement of the database right to use a meta search engine in these circumstances. It held that under Article 7 of the Database Directive (96/9/EC) an operator who makes available on the internet a dedicated meta search engine like that of the Defendant's re-utilises the whole or a substantial part of the contents of a protected database where the meta engine:

- provides the end user with a search form which essentially offers the same range of functionality as the search form on the database site;
- "translates" queries from end users into the search engine for the database site in "real time", so that all information on that database is searched through; and
- presents the results to the end user using the format of its website, grouping duplications together into a single block item in an order that reflects criteria comparable to those used by the search engine of the database site concerned for presenting the results.

Parties who offer databases free of charge but rely upon revenue from advertising may welcome this decision if it limits the number of hits being diverted away from their websites.

(Innoweb B.V v Wegener ICT Media B.V, Wegener Mediaventions B.V, Case C-202/12, 19 December 2013).

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