

BA Legal Report

October 2014

Banking & Payment Systems

[Retailers Welcome Historic Ruling To Curtail Excessive Card Fees Charged By Banks](#)

UK retailers have welcomed an historic court ruling to end the excessively high fees retailers pay banks to process card payments (known as interchange fees). The judgement by the European Court of Justice comprehensively and decisively supports retailers' decade-long campaign for a more competitive payments system and a reduction in unjustifiably high card fees, which cost UK businesses £1 billion a year. This ruling provides further support for on-going European regulatory developments to set a cap for interchange fees, for the benefit of businesses of all sizes and their customers.

Companies & Competition

[Philip Marsden speaks about competition enforcement in online markets](#)

Speech given by Competition and Markets Authority Deputy Chair Philip Marsden at the 11th Baltic Competition Conference in Vilnius with respect to how competition authorities should assess and address anti-competitive activity in online markets – covers consumer risks, competition risks, price floors and price channels, RPM, IMAP and online sales bans, price channels, price ceilings and platforms, preventing selective distributors from selling through platforms and exercising choice.

Copyright & Piracy

UK Government consultation on timing of repeal of section 52 of the Copyright, Designs and Patents Act

The Government has launched a consultation on the timing of the repeal of section 52 of the Copyright, Designs and Patents Act 1988 ("CDPA"). The effect of this change will be to bring some older works back into copyright. This will mainly affect artistic works over 25 years old that were industrially manufactured. The Government proposes that the repeal should take effect on 6 April 2018. The document is available on the Gov.uk website [here](#) and the consultation closes on 27 October 2014.

Orphan works licensing scheme: Publication of guidance on search for right holders in copyright works

The Government has published guidance on search for right holders in copyright work, to obtain permission to reproduce the work. If you want to use a copyright work you must (with a very limited number of exceptions) seek the permission of the creator or rights owner. This is often through gaining a licence to make use of the work. However where no rights owner can be found, this means that no licence can be issued - therefore making any use of the work unlawful. A copyright work is known as an "orphan work" where one or more right holder is unknown or cannot be located.

The UK government has powers (under the Enterprise and Regulatory Reform Act, 2013) to enable licensing of copyright works in the UK where the rights holder cannot be located. The EU has also agreed rules for cultural institutions to be able to digitise and display works on their websites when they cannot find the rights holder (under the European Directive on certain permitted uses of orphan works, 2012). The Government is introducing a scheme to license orphan works in the UK for both commercial and non-commercial use, alongside transposing the European Directive to allow digitisation of orphan works by cultural organisations.

The guides, published today, will be helpful if you decide to apply for a licence under the orphan works licensing scheme, which requires a thorough search to be completed. It includes details on the sources that applicants must consult and a non-exhaustive list of additional resources which might be helpful. It has been developed through working with professionals in the relevant sectors. Checklists to show that you have completed a diligent search have also been published, which may also be used in the application process.

These documents are divided into three broad areas of copyright works: Film and sound; literary works; still visual art. The search guidance documents and accompanying checklists are available on the Gov.uk website [here](#).

[EU Court: Libraries Can Digitize, But Not Distribute](#)

In a directive issued this week, a European Union court held that European libraries can digitize works in their collections but, without an explicit exception by a member state, are limited to displaying digitized works at dedicated reading terminals. The Court's decision is for clarification, and the case now goes back to the German court for a ruling in the case.

[Juncker Commission moves copyright enforcement](#)

Responsibility for Europe's copyright enforcement has been moved in Jean-Claude Juncker's new Commission, from its previous home in the Internal Market & Services Directorate General to DG Connect, the directorate for the digital economy. It is understood that the new DG Connect will now be renamed DG DES (Digital Economy and Society).

[EC's Oettinger vows copyright action](#)

The German politician nominated as the new digital economy and society Commissioner of the European Union (EU) has vowed to start work right away on drafting a new EU copyright law, calling existing legislation "out of date". The draft law would take into account the challenges posed by digital technology while balancing the interests of creators and consumers, he said. He said: "We will have to think about cultural and economic interests and take them all into account," adding that this would amount to "walking a tightrope" in policy terms.

[Book industry warns Harper competition review against scrapping parallel import restrictions](#)

Members of the Australian book industry have spoken out against the Harper competition review's recommendation the federal government re-visit moves to relax restrictions on parallel importing. While much of the public debate about the government's "[root and branch](#)" [competition review](#), chaired by economist Professor Ian Harper, has so far focused on the likely impact of competition law reform in sectors such as the grocery sector, any change to parallel import restrictions could be a game-changer for the book industry. Under current arrangements, Australian book publishers have 30 days to establish their copyright in a particular book by making it available in Australia, and if copyright is established in that timeframe, book retailers are restricted from importing more than a single copy from overseas suppliers. The arrangements, which were introduced in the early 1990s, also give publishers 90 days to resupply a title that goes out of stock.

[Anti-Piracy Police begin Targeting EBook Pirates](#)

After very publicly taking down a number of sites offering music, movies and TV shows without permission, City of London Police appear to have taken down their first ebook-related domain. OnRead is now under police investigation but according to its operators the site operated legally. That seems unlikely, however.

[Study Indicates College Textbook Piracy Is On The Rise, But Fails To Call Out Publishers For Skyrocketing Prices](#)

More college students are pirating textbooks, or so [a report seems to indicate even if the methodology seems a little less than solid](#). The group surveyed 1,600 students, 25 percent of whom said they or someone they knew illegally downloaded textbooks.

[Pirated Kindle Books May Hijack your Amazon Account](#)

It is estimated that up to 20% of e-book downloads stem from bit-torrent or pirate sites - there is a new online threat that is targeting Kindle owners to hijack Amazon accounts.

[News Corp executive labels Google a 'platform for piracy'](#)

A News Corp executive has described Google as a platform for piracy, claiming its 'shining vision' has been replaced by cynical management. News Corp has written to the European commission calling Google a "platform for piracy" and demanding action.

[Watermarks for e-books at HC US](#)

HarperCollins in the US is aiming to battle piracy with a new invisible watermark being applied to its e-books.

Employment

Shared Parental Leave

The new law on Shared Parental Leave will be introduced on 1 December (subject to Parliamentary approval). This means that parents whose children are due to be born or placed after 5th April 2015 will have access to a fully flexible system of parental leave. Eligible parents will be able to take up to 50 weeks of Shared Parental Leave (and receive up to 37 weeks of pay) in total, and can share it as they want, allowing them to take leave together or in alternating blocks. More at Acas: [here](#).

Some important considerations for employers will be:

- The extent to which they will want to check notifications, especially where an employee's partner works for another organisation;
- Whether or not to offer the statutory amount of shared parental pay or to upgrade to some form of occupational pay, especially where a higher rate of maternity pay is offered;
- The impact of introducing a new system into organisations which may have limited experience of operating maternity schemes;
- Updating policies in time for the birth of children due on or after 5 April 2015 - the regulations will be in force from 1 December 2014 to take account of early births.

Fee For Intervention

In early 2011 the Government set out its approach to reforming the health and safety system in Britain, including a proposal to shift the cost of health and safety regulation from the public purse to businesses that break health and safety laws. HSE now operates a Fee for Intervention (FFI) cost recovery scheme, which came into effect on 1 October 2012. Under The Health and Safety (Fees) Regulations 2012, those who break health and safety laws are liable for recovery of HSE's related costs, including inspection, investigation and taking enforcement action. More details on the HSE website [here](#). An independent review of FFI has now recommended that this system should be extended over the long term to include businesses and organisations currently covered by other enforcement regimes.

Environment & CSR

Carrier Bag Charges

Carrier bag regulations are proposed across the UK and Europe. A summary of progress is below:

- Wales: 5p charge introduced October 2011. Net proceeds donated by retailers to good causes. The draft Environment Bill (consulted on in late 2013) would enable the Welsh Ministers to extend the charge to reusable plastic bags, (if evidence shows that such charges are necessary).
- Northern Ireland: 5p charge introduced 8 April 2013. Retailers required to forward net proceeds to the NI Department of Environment. Extension of levy to reusable bags costing less than 20p from 19 January 2015.
- Scotland: 5p charge will be introduced on 20 October 2014. Net proceeds will be donated by retailers to good causes.
- England: 5p charge proposed for October 2015. Draft order to be laid in parliament in December 2014 for approval by March 2015. Net proceeds to good causes.
- Europe: Commission proposal published November 2013. Flexibility of original proposal lost in European Parliament vote in April 2014, European Council working group still to agree a position.

Loss Prevention

BRC Retail Crime Survey 2014

The annual survey collects important evidence about the impact of crime on retailers and their staff and the data underpins policy work to reduce retail crime and is considered valuable by key stakeholders, strengthening the BRC's voice and influence with policy makers. It also offers businesses a baseline for comparison in terms of losses from criminal activity against the sector norm. It is therefore vital that we receive as many full survey responses as possible. The questionnaire can be found at the following link:

http://www.brc.org.uk/survey_crime/. The final closing date for responses is **Friday 17 October**.

New Members of The National Retail Crime Steering Group

The National Retail Crime Steering Group (NRCSSG) is co-chaired by the Home Office Minister for Crime Prevention, Norman Baker, and the BRC. The Minister is keen to refresh and strengthen the membership of the Steering Group, so additional representatives from BRC retail member businesses will be appointed.

Property & Rates

BRC's Business Rates Campaign

Following publication of the BRC's Manifesto Milestones document earlier in the summer and the open letter in The Daily Telegraph (see below), the BRC have continued to engage closely with key officials (including in HM Treasury, BIS and CLG) to ensure that retailer priorities are well understood. Business rates will form a key element of the BRC's Autumn Statement submission.

[Business Unites To Call For Rate Reform](#)

Over 100 organisations - large and small - from the retail, manufacturing, property, hospitality and service industries called for political parties to commit to fundamental reform of the business rates system. The organisations all signed an open letter to the three main political party leaders that appeared in a full page advert in The Daily Telegraph. Waterstones, Foyles, WH Smith and The Booksellers Association were among the signatories calling for an overhaul of business rates.

[High street tax breaks have saved shops millions, says minister](#)

Around 300,000 small high street shops have benefited from new tax breaks, the government has claimed. Local councils can take up to £1,000 off business rates for shops, cafés restaurants and pubs as long as the retail property has a rateable value of £50,000 or less. High streets minister Penny Mordaunt said the discounts have been rolled out across the UK and saved small businesses £272m.

[Labour to commit to business rates cut worth more than £1bn](#)

The Labour Party will commit to a cut in business rates worth more than £1bn. This would involve reversing the inflation-linked increase scheduled for April 2015 and scrapping the planned increase in 2016. According to an analysis by the House of Commons Library, this would be worth £250m to businesses in 2015 and £540m in 2016.

Minister Responds on Local Works

The Local Works' campaign for local authorities is a proposal to allow the introduction of a levy on large retailers in their areas. The campaign asks local authorities to use a facility under the Sustainable Communities Act 2007 to propose an additional 8.5% local levy on business rates for large retail outlets in their areas. The power to allow such a levy rests with the CLG Secretary of State. During the course of the summer it was reported that a significant number of local authorities were pursuing such proposals. The BRC has recently received a letter from a CLG Minister confirming that "Ministers are of the view that imposing new, additional taxes on supermarkets will push up the price of food and the cost of living, hitting low-income families the hardest ... we believe that there are better ways to support small shops".

Future of Retail Property

The Future of Retail Project examines what retail property will look like and what its uses will be in the future. This project will underpin the BRC's future work with Government on policy affecting retail property. The focus of the project will be to outline a post 2020 vision for the future of retail property that will help shape the way policy is developed. Following the final content meeting the BRC will be seeking review and comments from retail members on the content and design of the final documents.

Taxation & VAT

[ECJ Decision \(K Oy\): VAT rate for non-printed books](#)

On 11 September 2014, the Court of Justice of the European Union (ECJ) gave its decision in K Oy (case C-219/13) regarding the question whether reduced rates for books published in paper form should equally be applied to books published on another physical medium, or whether different VAT rates can be justified. The Court has ruled that a selective application of the reduced VAT rates to printed books only is not justified unless the printed books meet different needs for consumers as compared to books published on another physical medium such as CDs, CD-ROMs or USB keys or made available on e-readers. The Court also finds that, to ascertain whether goods are liable to reduced or standard VAT rates, the average consumer in each Member State must be taken as a reference. If what matters for that consumer is essentially the similar content of all books, regardless of their physical support or characteristics, the selective application of a reduced VAT rate is not justified.

[ECJ: 'Member states can set different VAT for e-books'](#)

The European Court of Justice has said that EU member states are free to charge different rates of VAT on physical books and e-books, without necessarily breaching the EU concept of 'fiscal neutrality'. VAT Live [reported](#) that the case concerned "the delivery of books by paper vs. memory sticks and CDs". The ECJ ruled that "countries may use different rates for the same goods delivered through different channels" and that this did not "necessarily" breach the fiscal neutrality concept, which says that goods that are the same or similar must be treated the same for tax purposes to avoid distortion of competition.

[Report From The Norwegian Book Trade: Different VAT Scenarios](#)

Commissioned by the Norwegian book industry, Oslo Economics have investigated the consequences of change to technology neutral VAT rates on books. They were asked to look at different scenarios, one where the VAT rate is at zero per cent for both formats, and one where the rate is at 8 per cent.

[OECD unveils measures to combat multinational tax abuse](#)

The Organisation for Economic Co-operation and Development (OECD) has released new proposals to enable a crackdown on tax treaty abuse by multinational companies such as Amazon and Google. The Paris-based organisation has said the world's largest economies should impose a "country by country" reporting regime on multinational firms to increase the transparency of their corporate activities and prevent them from "treaty shopping" for good tax deals in other countries.

[Euro probe headed for Amazon's tax back door](#)

A 2003 Luxembourg tax ruling used by Amazon.com to structure its European affairs looks likely to become the subject of a European Commission probe, according to the *Financial Times*. The report suggests Luxembourg's decision to limit the amount of Amazonian profits it would tax may have constituted an unfair subsidy.

Collection and Management of Devolved Taxes in Wales

The Minister for Finance and Government Business, Jane Hutt, has launched a consultation that paves the way for new tax powers for Wales - the first piece of Welsh tax legislation since 1283. The White Paper sets out proposals to establish arrangements for the collection and management of devolved taxes in Wales and is the first of three consultations that will be undertaken concerning proposals for Welsh taxes. Consultations on proposals for Welsh taxes to replace Stamp Duty Land Tax and Landfill Tax will follow in Spring 2015. The consultation document notes that Non Domestic Rates will be fully devolved in April 2015. The consultation covers:

- Proposals to establish the Welsh Revenue Authority.
- Options for the efficient and effective collection of Welsh taxes.
- Actions to encourage tax compliance and tackle non-compliance, including tax avoidance.
- Arrangements for resolving tax disputes.

Comments must be submitted by **15 December 2014**, either via an online form - [respond using the online form](#) or email to: FinancialReformMailbox@wales.gsi.gov.uk.

Consultation White Paper: [White Paper \(File size: 595KB\)](#)