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**Н. Н. Гриднева, Н. А. Тулякова**

# **BUSINESS LAW**

*Учебное пособие  
по английскому языку  
для индивидуального чтения*



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Рецензенты:

к. ф. н., старший преподаватель кафедры иностранных языков НИУ ВШЭ — Санкт-Петербург *В. В. Меняйло*;

к. ф. н., доцент кафедры прикладной лингвистики РГПУ им. А. И. Герцена *М. Л. Малаховская*

Составители:

к. ф. н., доцент кафедры иностранных языков НИУ ВШЭ — Санкт-Петербург *Н. Н. Гриднева*;

к. ф. н., доцент кафедры иностранных языков НИУ ВШЭ — Санкт-Петербург *Н. А. Тулякова*

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Настоящее пособие для индивидуального чтения по английскому языку предназначено для студентов юридических факультетов и посвящено разделу Business Law (Деловое право). Пособие состоит из научных, научно-популярных, публицистических текстов и текстов документов, заданий на проверку их понимания, закрепление новой лексики, развитие языковых умений и навыков. Цель пособия — расширить профессиональный словарный запас студентов, а также совершенствовать умение работы с текстом и академические навыки.

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## FOREWORD

The book is intended for undergraduate students in law. Its main objective is developing reading skills, both ESP (English for specific purposes) skills, which are necessary for the students' future professional activity, and EAP (English for academic purposes) skills, which are vital for their research work and presenting its result.

The book covers the main issues connected with Business Law. It contains texts for individual reading and tasks aimed, apart from improving reading skills, at expanding professional vocabulary, developing study and academic writing skills.

The texts can be chosen either by the teacher or by the student, according to their aims and interests. The reading material is adapted from the original British and American texts of different genres — analytical articles, legal advice, statements, communications. They contain a wide range of professional vocabulary and touch upon some topic issues which can be used for further group discussion.

The texts are divided into several parts, so that the comprehension of each one can be easily checked. Each part of the texts is accompanied by several tasks, and the last one is followed by the tasks related to the whole text.

The book is mainly to be used for individual work. The teacher may recommend the book as the source for the texts for home reading. It will be easy for a student to select the texts, as the number of characters is indicated in each case. It is essential that the more uncomfortable a student is about a particular topic, the more eagerly they should choose the corresponding text, as it will allow them to deepen their knowledge and improve their skills. The students are supposed to read the texts, process the information and learn the lexis individually. However, the texts and the questions raised in them may be discussed in class, which will let the students revise the words and phrases once again.

## Text 1. DISCRIMINATION

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(adapted from the article *Discrimination* by Andrew Altman in *Stanford Encyclopedia of Philosophy*. URL: <http://plato.stanford.edu/archives/spr2011/entries/discrimination/>. Last accessed 30.04.2012)

**Read the text (30 000 characters) paying attention to the words and phrases in bold.**

### PART I

Discrimination is prohibited by six of the **core international human rights documents**. The **vast majority** of the world's states have **constitutional or statutory provisions outlawing discrimination**. And most philosophical, political, and legal discussions of discrimination proceed on the premise that discrimination is morally wrong and, in a wide range of cases, ought to be legally prohibited. However, co-existing with this impressive global consensus are many contested questions, suggesting that there is less agreement about discrimination than initially meets the eye.

#### *The Concept of Discrimination*

What is discrimination? More specifically, what does it mean to discriminate *against* some person or group of persons? It is best to approach this question in stages, beginning with an answer that is **a first approximation** and then introducing additions, qualifications, and refinements as further questions **come into view**.

#### *A First Approximation*

In his review of the international treaties that outlaw discrimination, Wouter Vandenhoele finds that “there is no universally accepted definition of discrimination”. In fact, the core human rights documents fail to define discrimination at all, simply providing non-exhaustive lists of

the grounds on which discrimination is to be prohibited. Thus, **the International Covenant on Civil and Political Rights** declares that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” And **the European Convention for the Protection of Human Rights** declares, “**The enjoyment of the rights and freedoms set forth** in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” (Article 14). Left unaddressed is the question of what discrimination itself is.

Any viable account of what discrimination is will regard it as consisting of actions, practices, or policies that are — in some appropriate sense — based on the (perceived) social group to which those discriminated against belong. Moreover, the relevant groups must be “**socially salient**,” as Kasper Lippert-Rasmussen puts it, i.e., they must be groups that are “important to the structure of social interactions across a wide range of social contexts.” Thus, groups based on race, religion and gender qualify as potential grounds of discrimination in any modern society, but groups based on the musical or culinary tastes of persons would typically not so qualify.

Discrimination against persons, then, is necessarily oriented toward them based on their membership in a certain type of social group. But it is also necessary that the discriminatory conduct **impose some kind of disadvantage or harm on the persons** at whom it is directed.

Discrimination is inherently comparative, and what counts in the comparison is not how well or poorly a person (or group) is treated on some absolute scale, but rather how well she is treated relative to some other person.

As a reasonable first approximation, we can say that discrimination consists of acts, practices, or policies that impose **a relative disadvantage on persons** based on their membership in a salient social group. But notice that this account does not make discrimination morally wrong as a conceptual matter. The **imposition** of a relative disadvantage might, or might not, be wrongful. In the next section, we will see how the idea of moral wrongfulness can be introduced to form a moralized concept of discrimination.

### *The Moralized Concept*

The concept of discrimination is inherently normative to the extent that the idea of disadvantage is a normative one. But it does not follow from this point that discrimination is, by definition, morally wrong. At the same time, many — or even most — uses of the term ‘discrimination’ in contemporary political and legal discussions do employ the term in a moralized sense. David Wasserman is using this moralized sense, when he writes that “to claim that someone discriminates is to challenge her for justification; to call discrimination ‘wrongful’ is merely to add emphasis to a **morally-laden term.**” We can, in fact, distinguish a moralized from a non-moralized concept of discrimination. The moralized concept picks out acts, practices or policies insofar as they *wrongfully* impose a relative disadvantage on persons based on their membership in a **salient social group** of a suitable sort. The non-moralized concept simply dispenses with the adverb ‘wrongfully.’

Accordingly, the sentence ‘Discrimination is wrong’ can be either a tautology (if ‘discrimination’ is used in its moralized sense) or a substantive moral judgment (if ‘discrimination’ is used in its non-moralized sense). And if one wanted to **condemn** as wrong a certain act or practice, then one could call it ‘discrimination’ (in the moralized sense) and leave it at that, or one could call it ‘discrimination’ (in the non-moralized sense) and then add that it was wrongful. In contexts where the **justifiability** of an act or practice is under discussion and disagreement, the moralized concept of discrimination is typically the key one used, and the disagreement is over whether the concept applies to the act. Because of its role in such discussion and disagreement, the remainder of this article will be concerned with the moralized concept of discrimination, unless it is explicitly indicated otherwise.

There is an additional point that needs to be made in connection with the wrongfulness of discrimination in its moralized sense. It is not simply that such discrimination is wrongful as a conceptual matter. The wrongfulness of **the discrimination is tied to the fact** that the **discriminatory act** is based on the victim’s membership in a salient social group. An act that imposes a relative disadvantage or **deprivation** might be wrong for a variety of reasons; for example, the act might violate a promise that the agent has made. The act counts as discrimination, though, only insofar as its wrongfulness derives from a connection of the act to the membership in a certain group(s) of the person detrimentally affected by the act. Accordingly,



we can refine the first-approximation account of discrimination and say that the *moralized* concept of discrimination is properly applied to acts, practices or policies that meet two conditions: a) they wrongfully impose a relative disadvantage or deprivation on persons based on their membership in some salient social group, and b) the wrongfulness rests (in part) on the fact that the imposition of the disadvantage is on account of the group membership of the victims.

**I. Answer the questions using the information from the article.**

1. Define the term ‘discrimination.’ Is discrimination, by definition, morally wrong?
2. What is a discriminatory act based on?
3. How can the first-approximation account of discrimination be refined?
4. What does the International Covenant on Civil and Political Rights declare concerning discrimination?
5. What is mentioned in connection with discrimination in the European Convention for the Protection of Human Rights?
6. In what aspect can discrimination against persons be called a relative notion?
7. Is the imposition of a relative disadvantage always treated as wrongful?
8. What is the difference between a moralized and a non-moralized concept of discrimination?

**II. Fill in gaps with the necessary words to restore the sentences. Put the words in the correct form.**

*Outlaw set forth discriminatory conduct enjoyment socially salient viable account wrongfulness comparative imposition*

1. Six of the major international human rights documents \_\_\_\_\_ discrimination.
2. The \_\_\_\_\_ of the rights and freedoms \_\_\_\_\_ the European Convention for the Protection of Human Rights shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin etc.
3. Any \_\_\_\_\_ of what discrimination is will regard it as consisting of actions, practices, or policies that are — in some appropriate

sense — based on the social group to which those discriminated against belong. Moreover, the relevant groups must be \_\_\_\_\_.

4. The \_\_\_\_\_ of a relative disadvantage might, or might not, be wrongful.
5. The \_\_\_\_\_ of the discrimination is tied to the fact that the discriminatory act is based on the victim’s membership in a salient social group.
6. Discrimination is inherently \_\_\_\_\_.
7. It is necessary that the \_\_\_\_\_ impose some kind of disadvantage or harm on the persons at whom it is directed.

**III. Match the words (1–6) with their definitions (a–f).**

- |                        |   |
|------------------------|---|
| 1) statutory provision | a) a legal agreement in which someone promises to pay a person or organization an amount of money regularly |
| 2) covenant            | b) to give someone a severe punishment after deciding they are guilty of a crime                            |
| 3) justifiable         | c) the introduction of something such as a rule, punishment, tax, etc                                       |
| 4) imposition          | d) acceptable because done for good reasons (about actions, decision, etc)                                  |
| 5) condemn             | e) the lack of something that you need in order to be healthy, comfortable, or happy                        |
| 6) deprivation         | f) a condition in an agreement or law   |

**PART II**

*Types of Discrimination (in its Moralized Sense)*

Legal thinkers and legal systems have distinguished among a **bewildering array of types of discrimination**: direct and indirect, **disparate treatment and disparate impact**, intentional and institutional, individual and structural. It is not easy to make sense of the morass of categories and distinctions. The best place to start is with direct discrimination.

**A.** .....

Consider the following, clear instance of **direct discrimination**. In 2002, several men of **Roma (“gypsy”) descent** entered a bar in a Romanian town

and were refused service. The bar employee explained his conduct by pointing out to them a sign saying, “We do not serve Roma.” The Romanian **tribunal deciding the case ruled that** the Roma men had been the victims of unlawful direct discrimination. The bar’s policy, as formulated in its sign, explicitly and intentionally picked out the Roma **qua** Roma for disadvantageous treatment. It is those two features — explicitness and intention — that characterize direct discrimination. More precisely, acts of direct discrimination are ones which the agent performs with the aim of imposing a disadvantage on persons for being members of some salient social group. In the Roma case, the bartender and bar owner aimed to exclude Roma for being Roma, and so both the owner’s policy and the bartender’s maxim of action explicitly referred to the exclusion of Roma.

In some cases, a discriminator will **adopt a policy** that, on its face, makes no explicit reference to the group that he or she aims to disadvantage. Instead, the policy employs some **facially-neutral surrogate** that, when applied, accomplishes the discriminator’s hidden aim. For example, during the Jim Crow era, southern states used literacy tests for the purpose of excluding African-Americans from the franchise. Because African-Americans were denied adequate educational opportunities and because the tests were applied in a racially-biased manner, virtually all of the persons disqualified by the tests were African-Americans, and, in any given jurisdiction, the vast majority of African-American adults seeking to vote were disqualified. The point of the literacy tests was precisely such **racial exclusion**, even though the testing policy made **no explicit reference to race**.

**Notwithstanding** the absence of an explicit reference to race in the literacy tests themselves, their use was a case of direct discrimination. The reason is that the persons who formulated, voted for, and implemented the tests acted on maxims that *did* make explicit reference to race. Their **maxim** was something along the lines of: ‘In order to exclude African-Americans from the franchise and do so in a way that appears consistent with the U.S. Constitution, I will favor a legal policy that is racially-neutral on its face but in practice excludes most African-Americans and leaves whites unaffected.’ As with the Roma case, there are agents whose aim is to disadvantage persons for belonging to a certain social group.

**Accordingly**, direct discrimination *is* intentional discrimination. Without the intent to disadvantage persons based on their race, sex, religion and so on, there is no direct discrimination; with such an intent to disadvantage, there is direct discrimination (in the moralized sense), as long as

imposing the disadvantage on the basis in question is wrong. In American legal doctrine, the more opaque term, ‘**disparate treatment,**’ is used to refer to this type of discrimination, although courts will often simply talk of intentional discrimination.

It might be thought that one big problem with the concept of direct discrimination is that **it makes no room for** unconscious discrimination. It is **plausible** to think that in many societies, **unconscious prejudice** is a factor in a significant range of discriminatory behavior, and **a viable understanding** of the concept of discrimination must be able to accommodate the possibility. In fact, there is growing evidence that unconscious discrimination exists. But it is a mistake to assume that direct discrimination must be conscious discrimination. As Amy Wax has argued, the mistake rests on a **conflation** of the intentional-unintentional distinction with the quite distinct conscious-unconscious distinction. Intentions and aims can be unconscious. Thus, an agent might engage in direct discrimination without any consciousness of the fact that she is aiming to disadvantage persons on account of their group membership.

**B.** .....

In contrast to the Roma and the literacy cases are those in which acts or policies are *not* aimed — explicitly or **surreptitiously**, consciously or unconsciously — at persons for being members of a certain social group. Yet, the acts or policies have the effect of disproportionately disadvantaging the members of a particular group. According to many thinkers and legal systems, such acts can, in some circumstances, count as a form of discrimination, **viz.**, “indirect discrimination” or, in the language of American doctrine, “disparate impact” discrimination. Thus, **the European Court of Human Rights (ECHR)** has held that “when a general policy or measure has disproportionately prejudicial effects on a particular group, it is not excluded that this may be considered as discriminatory **notwithstanding that** it is not specifically aimed or directed at that group.” Indirect discrimination is different from the direct form in that the relevant agents do not aim to disadvantage persons for being members of a certain group.

It is important to note that the ECHR says that policies with disproportionate effects *may* be discriminatory even if that is not the aim of the policies. So what criterion determines when a policy with disproportionately worse effects on a certain group actually counts as indirect discrimination? There is no agreed upon answer.

The ECHR has **laid down the following criterion**: a policy with disproportionate effects counts as indirect discrimination “if it does not **pursue a legitimate aim** or if there is not a reasonable relation of proportionality between means and aim.” Swedish law contains a different criterion: a policy with disproportionate effects is not discriminatory if and only if it “can be motivated by a legitimate aim and the means are appropriate and necessary to achieve the aim.” **The Human Rights Committee of the United Nations** has judged that a policy with disproportionate effects is discriminatory “if it is not based on objective and reasonable criteria.” Under **the British Race Relations Act**, such a policy is discriminatory if the policymaker “cannot show [the policy] to be justifiable irrespective of the <...> race <...> of the person to whom it is applied.” And in its interpretation of **the Civil Rights Act of 1964**, **the U.S. Supreme Court** has held that, in judging whether the employment policies of private businesses are (indirectly) discriminatory, “if an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.” Despite the differences, **these criteria have a common thought behind them**: a disproportionately disadvantageous impact on the members of certain salient social groups must not be written off as morally or legally irrelevant or dismissed as mere accident, but rather **stands in need of justification**. In other words, the impact must not be treated as wholly **inconsequential**, as if it were equivalent, for example, to a disproportionate impact on persons with long toe nails. Toe-nail group impact would require no justification, because it would simply be an accidental and morally inconsequential feature of the act, at least in all actual societies. **In contrast**, the thought behind the idea of indirect discrimination is that, if an act has a disproportionately disadvantageous impact on persons belonging to certain types of salient social groups, then the act is morally wrong and legally prohibited if it cannot **meet some suitable standard of justification**.

To illustrate the idea of indirect discrimination, we can turn to the U.S. Supreme Court case, *Griggs v. Duke Power* (1971). A company in North Carolina used a written test to determine promotions. The use of the test had the result that almost all black employees failed to qualify for the promotions. The company was not accused of intentional (direct) discrimination, **i.e.**, there was no claim that race was a consideration that the company **took into account** in deciding to use the written test. But the court found that the test did not measure skills essential for the jobs in

question and that the state of North Carolina had a long history of deliberately discriminating against blacks by, among other things, providing grossly inferior education to them. The state had only very recently begun **to rectify that situation. In ruling for the black plaintiffs, the court reasoned that** the policy of using the test was racially discriminatory, because of the test’s disproportionate racial impact combined with the fact that it was not necessary to use the test to determine who was best qualified for promotion.

**C.** .....

In many cases, acts of discrimination are attributed to collective agents, rather than to natural persons **acting in their individual capacities. Accordingly,** corporations, universities, government agencies, religious bodies, and other collective agents can act in discriminatory ways. This kind of discrimination can be called “organizational,” and it cuts across the direct-indirect distinction. **Confusion sometimes arises when it is mistakenly believed that** organizations cannot have intentions and that only indirect discrimination is possible for them. As collective agents, organizations do have intentions, and those intentions are a function of who the officially authorized agents of the institution are and what they are trying to do when they act as their **official powers enable them.** Suppose that the Board of Trustees of a university votes to adopt an admissions policy that (implicitly or explicitly) excludes Jews, and the trustees vote that way precisely because they believe that Jews are **inherently** more dishonest and greedy than other people. In such a case, *the university* is deliberately excluding Jews and is guilty of direct discrimination. Individual trustees acting in their private capacity might **engage in** other forms of discriminatory conduct; for example, they might refuse to join clubs that have Jewish members. Such a refusal would not count as organizational discrimination. But any discriminatory acts attributable to individual board members **in virtue of** some official power that they hold would count as organizational discrimination.

Structural discrimination — sometimes called “institutional” — should be distinguished from organizational: the structural form concerns the rules that constitute and regulate the major sectors of life such as family relations, property ownership and exchange, political powers and responsibilities, and so on. It is true that when such rules are discriminatory, they are often — though not always — the deliberate product of some collective

or individual agent, such as a legislative body or executive official. In such cases, the agents are guilty of direct discrimination. But the idea of structural discrimination is an effort **to capture a wrong distinct from** direct discrimination. Thus, Fred Pincus writes that “the key element in structural discrimination is not the intent but the effect of **keeping minority groups in a subordinate position.**” What Pincus and others have in mind can be explained in the following way.

When the rules of a society’s major institutions consistently **produce disproportionately disadvantageous outcomes** for the members of certain salient social groups and the production of such outcomes is unjust, then there is structural discrimination against the members of the groups in question, apart from any direct discrimination in which the collective or individual agents of the society might engage. This account does not mean that, **empirically speaking**, structural discrimination **stands free of** direct discrimination. **It is highly unlikely that** the consistent production of unjust and disproportionately disadvantageous effects would be a chance occurrence. Rather, it is (almost) always the case that, at some point(s) in the history of a society in which there is structural discrimination, important collective agents, such as governmental ones, intentionally created rules with the aim of disadvantaging the members of the groups in question. It is also likely that some collective and individual agents continue to engage in direct discrimination in such a society. But by **invoking the idea** of structural discrimination and attributing the discrimination to the rules of a society’s major institutions, we are pointing to a form of discrimination that is conceptually distinct from the direct discrimination engaged in by collective or individual agents. Thus understood, structural discrimination is, as a conceptual matter, necessarily indirect, although, as empirical matter, direct discrimination is (almost) always part of the story of how structural discrimination came to be and continues to exist.

Also note that the idea of structural discrimination does not presuppose that, whenever the rules of society’s major institutions consistently produce disproportionately disadvantageous results for a salient group such as women or racial minorities, structural discrimination thereby exists. Because our concern is with the moralized concept of discrimination, one might think that disproportionate outcomes, by themselves, **entail** that an injustice has been done to the members of the salient group in question and that structural discrimination **thereby** exists against the group. However,

on a moralized concept of structural discrimination, the injustice condition is distinct from the disproportionate outcome condition. Whether a disproportionate outcome is sufficient for concluding that there is an injustice against the members of the group is a substantive moral question. **Some thinkers might claim that** the answer is affirmative, and such a claim **is consistent with** the moralized concept of structural discrimination. However, the claim is not presupposed by the moralized **concept, which incorporates** only the conceptual thesis that a pattern of disproportionate disadvantage falling on the members of certain salient groups does not count as structural discrimination unless the pattern **violates sound principles of distributive justice.**

**I. Match the headings (1–3) with the paragraphs (A–C).**

1. Organizational, Institutional, and Structural Discrimination.
2. Indirect Discrimination.
3. Direct Discrimination.

**II. Answer the following questions.**

1. What kinds of discrimination are mentioned in the text?
2. What example of direct discrimination is given in the text?
3. According to the text, which alternative term is used in the American legal doctrine to refer to intentional discrimination?
4. Can one treat direct discrimination and conscious discrimination as equal?
5. What are the characteristics of ‘disparate impact’ discrimination?
6. What kind of discrimination is called ‘organizational’?
7. What is the difference, if any, between structural and institutional discrimination?
8. What is the core essence of structural discrimination?

**III. Translate and learn the following names of official legal documents and bodies.**

1. The European Court of Human Rights (ECHR).
2. The International Covenant on Civil and Political Rights.
3. The European Convention for the Protection of Human Right.
4. The Human Rights Committee of the United Nations.
5. The British Race Relations Act.
6. The Civil Rights Act of 1964.



## PART III

### *Challenging the Concept of Indirect Discrimination*

The distinction between direct and indirect discrimination plays a central role in contemporary thinking about discrimination. However, some thinkers hold that talking about indirect discrimination is confused and misguided. For these thinkers, direct discrimination is the only genuine form of discrimination. Examining their challenge to the very concept of indirect discrimination is **crucial** in developing a philosophical account of what discrimination is.

#### *Is Indirect Discrimination Really Discrimination?*

Iris Young argues that the concept of discrimination should be limited to “intentional and explicitly formulated policies of exclusion or preference.” She holds that conceiving of discrimination in terms of the consequences or impact of an act, rather than **in terms of** its intent, “confuses issues” by conflating discrimination with **oppression**. Discrimination is a matter of the intentional conduct of particular agents. Oppression is a matter of **the outcomes routinely generated by** “the structural and institutional framework” of society.

Matt Cavanagh **holds a position similar to** Young’s, writing that persons “who are concerned primarily with how things like race and sex show up in the overall distributions [of jobs] have no business saying that their position has anything to do with discrimination. It is not discrimination they object to, but its effects; and these effects can equally be **brought about** by other causes.” For example, the disproportionate exclusion of certain ethnic groups from the ranks of professional violinist could be the result of discrimination against those groups, but it also might be an effect of the fact that there is a lower proportion of persons from those groups who have perfect pitch than the proportion found in other ethnic groups.

The arguments of Cavanagh and Young **raise a question that is not easy to answer**, viz., why can indirect and direct discrimination be legitimately considered as two subcategories of one and the same concept? In other words, what do the two supposed forms of discrimination really have in common that make them forms of the same type of moral wrong? Direct discrimination is essentially a matter of the reasons and aims that guide the act or policy of a particular agent, while indirect discrimination is not about such reasons and aims. Even **conceding** that acts or policies of each type can be wrong, it is

unclear that the two types are each species of one and the same kind of moral wrong, i.e., the wrong of discrimination. And if cases of direct discrimination are paradigmatic examples of discrimination, then **a serious question arises** as to whether the concept of discrimination properly applies to the policies, rules, and acts that are characterized as “indirect” discrimination.

Moreover, there is a crucial ambiguity in how discrimination is understood that **lends itself to** conflating direct discrimination with the phenomena picked out by ‘indirect discrimination.’ Direct discrimination involves the imposition of disadvantages “based on” or “on account of” or “because of” membership in some salient social group. Yet, these phrases can refer either to a) the reasons that guide the acts of agents or to b) factors that do not guide agents but do help explain why the disadvantageous outcomes of certain acts and policies **fall disproportionately on certain salient groups**. In the Roma case, the disadvantage was “because of” ethnicity in the former sense: the ethnicity of the Roma was a consideration that guided the acts of the bar owner and bartender. In the Griggs case, the disadvantage was “because of race” in the latter sense: race did not guide the acts of the company but neither was it an accident that the disadvantages of the written test fell disproportionately on blacks. Rather, race, **in conjunction with** the historical facts about North Carolina’s educational policies, explained why the disadvantage fell disproportionately on black employees.

The thought that the policy of the company in Griggs is a kind of discrimination, viz., indirect discrimination, seems to **trade on** the ambiguity in the meanings of the **locutions** ‘based on,’ ‘because of,’ ‘on account of,’ and so on. The state of North Carolina’s policy of **racial segregation** in education imposed disadvantages based on/because of/on account of race, in one sense of those terms. The company’s policy of using a written test imposed disadvantages based on/because of/on account of race, in a different sense. Even conceding that both the state and the company wronged blacks on the basis of their race, **it appears that** the two cases present two different kinds of wrong.

However, one can reasonably argue, **to the contrary**, that the two wrongs are not different in kind, because they are both instances of wrongs done to persons in which membership in some salient social group explains why the wrongful disadvantages fell on the individuals in question. In order to understand why the persons in the Roma case were thrown out of the bar, it is necessary to understand that their identity as Roma was the key practical reason guiding the actions of the bartender. In order to understand why the

employees in the Griggs case were unable to get promotions, it is necessary to understand that their identity as blacks was a key factor explaining why they failed to achieve high enough scores on the company's written test. The types of explanation operate at different levels. In the Roma case, the explanation works at the retail level of particular agents, explaining why individual Roma were harmed by appealing to the practical reasons of the bartender. **By contrast**, in the Griggs case, the explanation involves considerations at the wholesale level of general social facts, explaining racially disproportionate exam outcomes by appealing to factors about a population's access to educational opportunities, factors that did not play a role in the practical reasoning of the company. But in each case, the appropriate explanation for why certain individuals were disadvantaged concerned their group membership. Additionally, for both forms of discrimination, the wrongfulness of the discriminatory act or policy derived from the connection between the disadvantages and the salient-group membership of the persons who were disadvantaged.

Still, one might argue that the concept of indirect discrimination is problematic because its use mistakenly presupposes that the wrongfulness of discrimination can lie ultimately in its *effects* on social groups. Certainly, bad effects can be brought about by discriminatory processes, but, the argument claims, the wrongfulness lies in what brings about the effects, i.e., in the unfairness or injustice of those acts or policies that generate the effects, and does not lie in the effects themselves. Cavanagh seems to have this argument in mind when he writes that people who characterize an act or policy as discriminatory on the basis of its effects are really objecting to the effects and that "these effects can equally be brought about by other causes."

### *Conclusion*

The concept of discrimination provides an explicit way of thinking about a certain kind of wrong that can be found in virtually every society and era. The wrong involves a group-based structure that works in combination with relative **deprivations** built around the structure. The deprivations are wrongful because they treat persons as having a degraded moral status, but also because the deprivations tend to make members of the group in question **vulnerable to domination** and oppression at the hands of those who occupy positions of relative advantage. It is true that there has been confusion attending the concept of discrimination, and there will long be debates about the best way to understand and apply it. However, the

concept of discrimination has proved to be a useful one, at the national and international levels, for representing in thought and **combating in action** a kind of wrong that is **deeply entrenched in human social relations**.

**I. Answer the following questions.**

1. Is indirect discrimination really discrimination? Give grounds for your answer.
2. How is oppression different from discrimination?
3. Why can indirect and direct discrimination be legitimately considered as two subcategories of one and the same concept?
4. Why might one think that the concept of indirect discrimination is problematic?

**II. Define whether the following statements are true (T) or false (F).  
Correct the wrong ones.**

1. The only genuine form of discrimination is direct discrimination.
2. Discrimination takes place only in case of intentional conduct of particular people.
3. If it is a matter of the outcomes routinely generated by “the structural and institutional framework” of society we call it oppression.
4. The disproportionate representation of certain ethnic groups in some professions is definitely the result of discrimination against those groups.
5. In its essence direct discrimination is not a matter of the aims and reasons that guide the act or policy of a particular agent, while indirect discrimination is about such reasons and aims.
6. Direct discrimination involves the imposition of disadvantages because of membership in some salient social group.
7. The concept of indirect discrimination is problematic because its use mistakenly presupposes that the wrongfulness of discrimination cannot lie ultimately in its *effects* on social groups.
8. At the international level, the concept of discrimination has proved to be useless.

**III. Translate and learn the following words and phrases.**

**A.**

- 1) first approximation
- 2) constitutional provisions

- 3) relative disadvantage on sb
- 4) impose harm on the persons
- 5) bewildering array
- 6) morally-laden term
- 7) salient social group
- 8) adopt a policy
- 9) facially-neutral surrogate
- 10) it makes no room for sth
- 11) disparate treatment
- 12) unconscious prejudice
- 13) viable understanding
- 14) pursue a legitimate aim
- 15) act in one's individual capacities
- 16) stand in need of justification
- 17) meet some suitable standard of justification
- 18) rectify the situation
- 19) in virtue of sth
- 20) empirically speaking
- 21) stand free of sth
- 22) invoke the idea
- 23) be (in)consistent with sth
- 24) lend oneself to sth
- 25) in conjunction with sth
- 26) trade on sth
- 27) be vulnerable to domination
- 28) be deeply entrenched in human social relations

**B.**

- 1) порицать/ осуждать
- 2) возможность оправдать/ законность/ оправданность
- 3) дискриминационная практика
- 4) лишение/ утрата
- 5) в роли/ поскольку
- 6) правдоподобный/ вероятный
- 7) соединение/ сплав
- 8) тайно/ негласно/ незаметно
- 9) несмотря на то что...
- 10) официальные полномочия предоставляют возможность...

- 11) по своему существу/ в своей основе/ от природы/ по определению
- 12) маловероятно, что...
- 13) вовлекать/ повлечь за собой/ охватывать/ включать в себя
- 14) в силу этого/ таким образом/ посредством этого/ благодаря чему
- 15) многие мыслители утверждают, что... (3 variants)
- 16) понятие, включающее в себя...
- 17) нарушать принципы
- 18) решающий/ ключевой/ значимый/ крайне важный
- 19) в переводе на.../ относительно/ касательно/ на предмет чего-либо/ в категориях/ на языке/ в единицах/ в виде...
- 20) угнетение/ притеснение/ подавление/ угнетенное состояние
- 21) осуществлять/ вызывать/ быть причиной/ спровоцировать/ приводить (к чему-либо)
- 22) уступать/ допускать (возможность, правильность чего-либо)/ уступить
- 23) оборот речи/ выражение/ идиома
- 24) расовая сегрегация
- 25) а именно/ очевидно/ ясно
- 26) попадать во внимание

#### **IV. Restore the context the following excerpts are used in.**

- 1) disparate treatment and disparate impact
- 2) of Roma ("gypsy") descent
- 3) tribunal deciding the case ruled that...
- 4) laid down the following criterion
- 5) these criteria have a common thought behind them
- 6) in ruling for the black plaintiffs
- 7) the court reasoned that...
- 8) confusion sometimes arises when it is mistakenly believed that...
- 9) keeping minority groups in a subordinate position
- 10) the outcomes routinely generated by...
- 11) holds a position similar to...
- 12) raise a question that is not easy to answer
- 13) a serious question arises
- 14) fall disproportionately on certain salient groups
- 15) produce disproportionately disadvantageous outcomes

#### **V. Summarize each part of the text.**

## Text 2. COMPETITION

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Read the texts (30 000 characters) paying attention to the words in bold.

### PART I

#### The Basics of the Competition Law. Introduction

(adapted from the guide *Competition Law — the Basics*. URL: <http://www.out-law.com/page-5811>. Last accessed 12.03.2012)

Failure **to comply with** UK or EU competition law can have very serious consequences. **Firms involved in anti-competitive behaviour** may **find their agreements to be unenforceable** and risk being fined up to 10 % of group global turnover for particularly damaging behaviour as well as exposing themselves to possible damages actions from customers. Furthermore, individuals could also find themselves facing **director disqualification orders** or even **criminal sanctions for serious breaches of competition law**.

As such, any business (whatever its legal status, size and sector) needs to be aware of competition law, firstly so that it can **meet its obligations** (and in doing so, **avoid the penalties** mentioned above), but also so it can **assert its own rights** and protect its position in the marketplace.

In the UK two sets of competition rules apply in parallel. Anti-competitive behaviour which may affect trade within the UK is specifically prohibited by Chapters I and II of the Competition Act 1998 and the Enterprise Act 2002. Where the effect of anti-competitive behaviour **extends beyond** the UK to other EU-member states, it is prohibited by Articles 101 and 102 of **the Treaty on the Functioning of the European Union (TFEU)**.

UK and EU competition law prohibit two main types of anti-competitive activity:

- anti-competitive agreements (under the Chapter I and Article 101 prohibitions); and
- abuse of dominant market position (under the Chapter II / Article 102 prohibitions).

#### Anti-Competitive Agreements (Chapter I / Article 101)

Both UK and EU competition law prohibit agreements, arrangements and **concerted business practices** which **appreciably** prevent, restrict or **distort** competition (or have the intention of so doing) and which affect trade in the UK or the EU respectively.

#### *Consequences of Breach*

**Contravention** of Chapter I or Article 101 can have serious consequences for a company:

- firms engaged in activities which breach these provisions can face fines of up to 10 % of group global turnover;
- provisions in agreements which breach Chapter I or Article 101 are **void** and unenforceable (which may lead to the entire agreement being unenforceable);
- firms in breach of Article 101 or Chapter I also leave themselves exposed to actions for damages from customers and competitors who can show they have been harmed by the anti-competitive behaviour; and
- breach of Chapter I can result in individuals being disqualified from being a company director and lead to criminal sanctions.

#### *Types of Agreement Caught*

Whether an arrangement is anti-competitive is assessed on the basis of its objective, or its effect on competition, rather than its wording or form. This means that verbal and informal ‘gentlemen’s agreement’ (are) is equally capable of being found to be anti-competitive as formal, written agreements.

Examples of the types of arrangement which are generally prohibited under Chapter I and Article 101 include:

- agreements which directly or indirectly **fix purchase or selling prices**, or any other trading condition (for example, discounts or **rebates**, etc);
- agreements which limit or control production, markets, technical development or investment (for example, **setting quotas** or levels of output);



- agreements which **share markets or sources of supply**; and
- agreements which **apply dissimilar conditions to similar transactions, placing other trading parties at a disadvantage**.

### *Cartels*

Cartel behaviour between competitors is the most serious form of anti-competitive behaviour under Chapter I or Article 101 and **carries the highest penalties**. A **‘hardcore’ cartel** is one which involves price-fixing, market sharing, **bid rigging** or limiting the supply or production of goods or services. Individuals prosecuted for a cartel may be liable to imprisonment of up to five years and/or the imposition of unlimited fines.

### *Exemptions*

The fact that an agreement is restrictive of competition does not mean that it is automatically prohibited (unless it is a hardcore cartel, see above). It may be that an agreement which appears to fall within the prohibitions under Article 101 or Chapter I is excluded or exempted from the provisions of the competition rules. For example, an agreement which would otherwise be caught by Article 101 may be assumed to be harmless where the parties to it have market shares sufficiently low that there can be no real effect on trade between member states. The same principle is considered to apply, by analogy, to agreements otherwise caught by Chapter I.

Other agreements which may have a real effect on trade within the EU may, nonetheless, be exempted under a **‘block exemption’** — a group exemption, which automatically exempts agreements falling within its terms. Different block exemptions may apply depending on the nature of the agreement or the market sector concerned. Each **sets out certain criteria** (for example, relating to the market share of the parties and the types of restriction contained within the agreement) which must be met in order for an agreement to be block exempted.

Even if an agreement does not **fit squarely** within a block exemption, it is still not automatically unlawful or unenforceable. An agreement may be individually exempted on the grounds that its restrictions of competition are **outweighed** by its beneficial effects. For example, an agreement between two pharmaceutical companies to develop a new drug is likely to be subject to the Chapter I or Article 101 prohibition, as the two companies working together can be seen to reduce the number of products being produced, by preventing each company from working on independent projects. Howev-

er, the benefits for consumers resulting from such co-operation (i.e. more investment, leading to better drugs which reach the market faster), may be considered sufficient **to off-set** any anti-competitive effects.

*Abuse of a Dominant Market Position  
(Chapter II / Article 102 prohibition)*

Both UK and EU competition law prohibit businesses with significant market shares unfairly exploiting their strong market positions.

*Consequences of Breach*

**Contravention** of Article 102 or Chapter II can have serious consequences for a company:

- firms engaged in activities which breach these provisions can face fines of up to 10 % of group global turnover;
- conduct in breach of Article 102 or Chapter II can **be stopped by court injunction**;
- firms in breach of Article 102 or Chapter II also leave themselves exposed to actions from third parties who can show they have suffered loss as a result of the anti-competitive behaviour; and
- breach of Chapter II can result in individuals being disqualified from being a company director.

*Type of Behaviour Caught*

**To be in a position of dominance**, a business must have the ability to act independently of its customers, competitors and consumers. Establishing if a company is dominant requires a complex assessment of a number of elements but, as a general rule, if a business has a 50 % market share there is a presumption that it is dominant. However, dominance has been found to exist where market share is as low as 40 %.

Article 102 requires dominance in a substantial part of the European Union, but there is no requirement under Chapter II that a dominant position must be held in a substantial part of the UK, meaning that, in theory at least, dominance could be considered to exist in a fairly small area of the UK.

However, having a dominant position does not in itself breach competition law. It is the abuse of that position that is prohibited. Examples of behaviour that could amount to an abuse by a business of its dominant position include:

- imposing unfair trading terms, such as exclusivity;
- excessive, **predatory** or discriminatory pricing;
- refusal to supply or provide access to essential facilities; and
- **tying** (i.e. **stipulating** that a buyer wishing to purchase one product must also purchase all or some of his requirements for a second product).

### *Exemptions*

There is no equivalent to the exemption for anti-competitive agreements, whereby a firm's conduct may be **exonerated** because of some compensating benefit. However, a dominant company may be able to show that it has **objective justification** for otherwise abusive behaviour in certain circumstances. For example, a company may refuse to supply to a particular customer based on its poor **credit rating**, which would amount to the protection of legitimate business interests and not, therefore, to abusive conduct under Chapter II or Article 102. It would only be when such behaviour goes beyond what is necessary to protect the business' interests that this would amount to abuse.

### *Enforcement of Competition Law*

UK competition authorities and courts are empowered to apply and enforce the entirety of Articles 101 and 102 of the TFEU, in addition to their existing powers to enforce the Competition Act 1998. **The Office of Fair Trading (OFT)** is the principal competition law enforcement authority in the UK, though there are a number of sectoral regulatory authorities with similar powers to enforce competition laws in their respective sectors (for example, **OFGEM** for the electricity sector and **OFWAT** for the water sector).

The UK competition authorities have significant powers to investigate suspected anti-competitive behaviour (including entering and searching business and private premises with a warrant) and **to impose significant fines on** businesses found to have **infringed competition law**. Criminal sanctions are also possible for the most serious breaches of competition law.

The risks associated with being a party to an anti-competitive agreement or abusing a dominant position are serious. In addition to the consequences already highlighted in this article (substantial fines for both businesses and individuals, void and unenforceable agreements, damages actions and criminal sanctions), a further **key deterrent for** businesses is **the major disruption and damage to a company's reputation** which would

arise from lengthy investigations or subsequent litigation from customers, competitors and consumers.

### *Achieving Compliance*

In view of the severe consequences of non-compliance, we recommend that businesses should regularly review whether the company's practices and agreements comply with competition law. For any company (and especially any company with a significant share of the markets in which it is active), it is vitally important to promote an understanding amongst employees as to what type of behaviour is and is not permissible under competition law.

One practical way to promote an understanding of competition law amongst employees is for a company to devise and actively implement a competition compliance policy that is **specifically tailored to that company**. Not only does this **minimise the risk** of being non-compliant in the first place, but if a company is investigated for anti-competitive behaviour, evidence of a competition compliance policy may be taken into account by the OFT and European Commission and could lead to a reduction in fine.

#### **I. Say whether the statements are true (T) or false (F). Correct the false ones.**

1. Companies that follow anti-competitive policy may face the situation when their contracts are unenforceable.
2. Only big corporations should be aware of competition law.
3. Two sets of competition rules are applied in parallel in the UK.
4. Anti-competitive behaviour which may affect trade within the UK is prohibited by the Competition Act 1998 and the Enterprise Act 2002.
5. Only UK, and not EU competition law prohibits agreements and business practices which prevent, restrict or distort competition.
6. An arrangement is considered to be anti-competitive on the grounds of its objective, or its effect on competition.
7. Examples of the arrangement which is generally prohibited are agreements which share markets or sources of supply.
8. Individuals prosecuted for a cartel may be liable to life imprisonment and/or the imposition of unlimited fines.
9. Both UK and the competition law prohibit businesses with significant market shares unfairly exploiting their strong market positions.

10. To be in a dominating position, a company must have the ability to act independently of its customers, competitors and consumers.

11. In addition to their existing powers to enforce the Competition Act 1998 UK competition authorities and courts are empowered to apply and enforce Articles 101 and 102 of the TFEU.

12. The Office of Fair Trading is the chief competition law enforcement authority in the EU.

13. For any business, especially small and newly-established, it is vitally important to promote an understanding amongst employees as to what type of behaviour is and is not permissible under competition law.

**II. Match the English words and phrases (1–16) with their corresponding Russian equivalents (a–p).**

- |                                     |   |
|-------------------------------------|---|
| 1) exempt                           | a) нарушение (закона, права)  |
| 2) comply with sth                  | b) соответствовать, соблюдать   |
| 3) void and unenforceable agreement | требования  |
| 4) meet an obligation               | c) занимать лидирующую позицию  |
| 5) avoid penalties                  | d) избежать наказаний   |
| 6) assert rights                    | e) облагать штрафами  |
| 7) contravention                    | f) нарушать антимонопольное право                                       |
| 8) set quotas                       | g) выполнить обязательство  |
| 9) cartel                           | h) соглашение, лишённое силы и не могущее быть приведённым в исполнение |
| 10) carry penalties                 | i) лицо, пользующееся привилегиями, льготами                            |
| 11) bid rigging                     | j) артель   |
| 12) be in a position of dominance   | k) учитывать права  |
| 13) the Office of Fair Trading      | l) устанавливать квоты  |
| 14) impose fines on sb              | m) Антимонопольное управление Великобритании                            |
| 15) infringe competition law        | n) влечь за собой наказание   |
| 16) key deterrent for sth           | o) мошенничество при торгах   |
|                                     | p) основной сдерживающий фактор   |

**III. Using the lexis of the text give a detailed retelling of it.**

## PART II

### Competition Law and Shopping Centres

(adapted from the guide *Shopping Centres and Competition Law*. URL: <http://www.out-law.com/en/topics/property/corporate-occupiers/shopping-centres-and-competition-law/>. Last accessed 20.01.2012)

In 2011 the Office of Fair Trading (OFT) issued a decision reviewing the acquisition of the Trafford Centre Group by Capital Shopping Centres (CSC) under the UK's **merger control rules**. The Trafford Centre Group operates an out-of-town shopping centre on the outskirts of Manchester. The merger was ultimately approved in July 2011, but only after a very detailed review. This guide considers the approach that the OFT took in this case, which will be relevant to any future mergers between operators of retail parks or shopping centres in the UK.

#### *When will Shopping Centre Acquisitions Be Subject to the UK Merger Control Regime?*

The UK merger control regime is set out in the Enterprise Act 2002. The Act states that a “relevant merger situation” exists where:

- two or more enterprises cease to be distinct; and either
- following the merger, the combined enterprise will create or strengthen a share of supply or purchase of 25 % or more in relation to any type of goods or services in the UK or a substantial part of the UK; or
- the enterprise being taken over has a turnover in the UK of more than £70 million.

The Act defines an ‘enterprise’ as “activities, or part of the activities, of a business” which would include a company owning or operating a shopping centre. The acquisition of the Trafford Centre Group amounted to a relevant merger situation because it had a turnover in 2009 of £87.8 million and because, after the merger, CSC would account for 30 % of the retail space in shopping centres in Greater Manchester.

Where a relevant merger situation does exist, the parties can **voluntarily notify the transaction to the OFT for approval**. The OFT can also **proactively** investigate a relevant merger situation that is completed by the parties without having been pre-notified to the OFT, as appears to have been

the case in relation to the acquisition of the Trafford Centre Group. The creation of a joint venture can also amount to a relevant merger situation if at least two of the enterprises combined in the joint venture have a UK turnover exceeding £70 million.

*What Approach will the OFT Take to Shopping Centre Mergers?*

The OFT will assess a relevant merger situation by considering whether there has been a “substantial lessening of competition” in a relevant market. The first step of this assessment involves identifying the product and geographical markets on which the transaction will have effects. The second step is to **ascertain** whether the transaction may give rise to a substantial lessening of competition on those markets.

**Geographic market:** in the CSC case, the OFT did not reach a **definitive view** on what was the relevant geographic market but instead reviewed the transaction using both a broad and a narrow geographic approach.

In the broad approach, the OFT reviewed the transaction within an area which was 60 minutes driving time from the Trafford Centre — which coincided with the North West region. In the narrow approach, the OFT reviewed the impact of the transaction within a smaller area which consisted of just the Greater Manchester region.

Although the OFT ultimately did not have to decide which was the correct approach in the CSC case, it is significant that the OFT evaluated the transaction on the basis of the smaller, Greater Manchester, ‘market.’ In future shopping centre acquisitions, the parties should consider whether there is a risk that the OFT could adopt an approach to geographic market definition that is equally narrow or even narrower.

**Product market:** in the CSC case, the OFT assessed the impact of the merger on both tenants and shoppers. From the tenants’ perspective the OFT tried to establish whether the Trafford Centre and the Arndale Centre, which was already owned by CSC, were **targeted** at such different customer groups that they should be considered to belong to separate product markets. This process involved an analysis of the types of customers visiting the two shopping centres.

From the shoppers’ perspective, the OFT considered whether the merging centres would be considered as equivalent shopping destinations — whether in terms of location, types of shops or overall shopping experience — or whether they would be considered so different as to belong to different product markets.

**The OFT's analysis in the CSC case:** in its appraisal, the main question for the OFT was to establish how closely the Trafford Centre and the Arndale Centre competed with each other. In undertaking the 'close competitor' analysis the OFT sought the views of retailer tenants and reviewed the parties' internal documents. The OFT also considered how likely it was in practice, given the distances between the shopping centres involved, that shoppers would visit both centres on the same shopping trip.

The OFT ultimately concluded that the two shopping centres were not close competitors, and that in fact the Arndale Centre considered its closest competitors to be other shops in Manchester City Centre.

### *What Happens if an Acquisition is not Cleared by the OFT?*

If the OFT considers that a merger may be expected to result in a substantial lessening of competition in the UK (SLC), it is under a statutory duty to refer that merger to the Competition Commission. The Competition Commission will then **conduct an in-depth investigation**, lasting at least 24 weeks, into the merger.

If the Competition Commission decides that a transaction may be expected to result in an SLC it will consider whether any remedies could be adopted to **mitigate** or remove that SLC. Its usual approach is to require that the acquiring party gets rid of that part of the target's business which gives rise to the SLC. In some cases the Competition Commission may be willing to accept behavioural remedies — for example, regulating the terms on which the merged entity carried on business — if that would be an effective means of removing the SLC.

It is also possible for merging entities to try and negotiate comparable undertakings at the OFT stage of the investigation, if the OFT has reached the view that a merger may give rise to an SLC, in order to avoid a reference to the CC.

### *Hold Separates*

If a merger that may give rise to material competition issues is completed without having **obtained prior OFT clearance**, but later comes to the OFT's attention, there is the risk that the OFT may require so-called '**hold separates**' from the purchaser. These prevent the purchaser taking any further steps to integrate the acquired business into its existing operations until the OFT has reached a decision on whether the merger should



be referred to the CC. While the hold separates are in force, the acquired business must be run entirely independently of the purchaser.

In practice, it would be commercially very inconvenient for a purchaser to complete an acquisition and then be unexpectedly faced with the need to provide hold separates which could last for some time. The OFT has up to four months from the date of a transaction's completion or the public announcement of that transaction, whichever is the later, in which to decide whether to refer a merger to the Competition Commission for an in-depth investigation. If a completed merger was referred to the Commission hold separates would then apply during the period of its investigation, which could last up to a further 32 weeks.

### *Lessons from the CSC Merger*

The CSC case clearly indicates that merger control is an issue to be considered carefully, and at an early stage, when **assessing the feasibility of a merger between companies** that own or operate shopping centres. When reviewing such a merger the OFT will **scrutinise in detail** how closely the shopping centres involved compete with each other, both for **retailer tenants** and for shoppers. The OFT's review may well focus on the merger's effects over a comparatively narrow geographic area.

The CSC case may have particular importance for mergers between shopping centres that have a similar customer focus and which are located in areas with relatively poor transport links. The case is also a reminder that merging parties need to be careful what is said in their internal documents and in documents prepared by external advisers about a merger and its potential impact on customers and the market generally, unless the **documents are covered by legal privilege**. These documents may be reviewed by the competition authorities.

#### **I. Find the English equivalents to the following Russian words and phrases.**

- 1) правила контроля за сделками присоединения
- 2) добровольно осведомлять кого-л. о сделке
- 3) предусмотрительно, заранее
- 4) выяснять, убеждаться, удостовериться, устанавливать
- 5) окончательная/ отличительная/ решительная точка зрения
- 6) запланированный, направленный
- 7) детально изучать
- 8) временный владелец магазина розничной торговли

- 9) правовой иммунитет, привилегия по закону, юридическая привилегия
- 10) проводить глубокое исследование
- 11) получить освобождение от пошлин

## **II. Paraphrase the following sentences.**

1. In 2011 the Office of Fair Trading (OFT) issued a decision reviewing the acquisition of the Trafford Centre Group by Capital Shopping Centres (CSC) under the UK's merger control rules.

2. Where a relevant merger situation does exist, the parties can voluntarily notify the transaction to the OFT for approval.

3. The OFT can also proactively investigate a relevant merger situation that is completed by the parties without having been pre-notified to the OFT, as appears to have been the case in relation to the acquisition of the Trafford Centre Group.

4. From the tenants' perspective the OFT tried to establish whether the Trafford Centre and the Arndale Centre, which was already owned by CSC, were targeted at such different customer groups that they should be considered to belong to separate product markets.

5. If the Competition Commission decides that a transaction may be expected to result in an SLC it will consider whether any remedies could be adopted to mitigate or remove that SLC.

6. It is also possible for merging entities to try and negotiate comparable undertakings at the OFT stage of the investigation, if the OFT has reached the view that a merger may give rise to an SLC, in order to avoid a reference to the CC.

7. In practice, it would be commercially very inconvenient for a purchaser to complete an acquisition and then be unexpectedly faced with the need to provide hold separates which could last for some time.

8. The case is also a reminder that merging parties need to be careful what is said in their internal documents and in documents prepared by external advisers about a merger and its potential impact on customers and the market generally, unless the documents are covered by legal privilege.

## **III. Find the sentences which are false and correct them. Find the proof in the text.**

1. Where a relevant merger situation does exist, the parties can voluntarily notify the transaction to the OFT for approval.

2. If the OFT considers that a merger may be expected to result in a substantial lessening of competition in the UK, it is under a statutory duty to refer that merger to the Competition Commission.

3. If a merger that may give rise to material competition issues is completed without having obtained prior OFT clearance, but later comes to the OFT's attention, there is the risk that the OFT may require so-called 'hold separates' from the purchaser.

4. While the hold separates are in force, the acquired business must be run entirely independently of the seller.

**IV. Make up a plan of this part of the text and reproduce it in detail. Try and use new lexis.**

### PART III

#### How Businesses can Comply with Competition Laws

(adapted from the guides *OFT Publishes Guide on How Businesses Can Comply with Competition Laws*. URL: <http://www.out-law.com/page-12031>. Last accessed 21.01.2012 and *OFT Proposes Increasing Maximum Fine for Anti-Competitive Behaviour*. URL: <http://www.out-law.com/en/articles/2011/october/oft-proposes-increasing-maximum-fine-for-anti-competitive-behaviour/>. Last accessed 21.01.2012)

UK businesses should identify and change behaviour that may be deemed to be anti-competitive, according to statement by the Office of Fair Trading (OFT).

Senior management should take responsibility for ensuring that firms do not operate anti-competitive practices, the OFT said in new guidance on how businesses can comply with UK competition laws. Work processes that managers should **monitor** include how employees interact with competitors, if they have access to rivals' price or business plans, and whether the company has agreements with competitors that could allow unlawful practices to develop.

Managers should **rank the seriousness of risks** and consider assessing employees who operate in high-risk areas, the guide said. "These may include employees who are likely to have contact with competitors and **employees in sales and marketing roles**; whilst **employees in some back-**

**office functions** may be classified as low risk,” the OFT competition law compliance guide said.

As the OFT declared, Managers should introduce new policies, ways of working and training to reduce the chance of unlawful anti-competitive activity happening. The measures could include training employees in competition law, **logging employee contact** with competitors and establishing a confidential self-policing system to allow employees **to flag up concerns** about anti-competitive practices. According to the OfT, Businesses should review their processes for identifying and counteracting anti-competitive risks. Firms should admit to any anti-competitive practices they uncover as it may reduce the level of financial penalties they would be subjected to.

The OFT guidance identified examples of anti-competitive activity that breaks the law. The OFT stated that charging prices for products that do not cover costs, changing the price for goods to similar customers without justification and refusing to supply existing customers are all examples of businesses abusing a dominant position in a market. “Anticompetitive conduct which exploits consumers or tends to have an exclusionary effect on competitors is likely to constitute an abuse,” the OFT mentioned in its guidance. “It is important to consider the likely effect of the conduct on customers and on the process of competition when determining whether it would amount to an abuse.”

Businesses should withdraw from cartels and other anti-competitive agreements, such as collaborating with rivals **to drive supplier prices down**, or entering into contracts that give retailers the exclusive rights to sell goods or services for more than five years.

The office stated that said it was issuing its guidance to better **raise awareness** of how businesses could comply with UK competition laws. A recent OFT-commissioned survey of more than 2000 businesses found that only a quarter of the firms questioned said they knew at least a fair amount about the requirements of the laws. “Compliance with competition law is essential to ensuring that markets work well for consumers,” John Fingleton, OFT chief executive, said in a statement. “We recognise that most businesses want to comply with the law and are keen to help them avoid breaching the law in the first place, supporting this by taking strong enforcement action against those who do not comply. Businesses have told us that competition law is far higher up the business agenda than even five years ago, and this has been confirmed in our survey. The guidance documents published are intended to support businesses and company direc-

tors by providing practical guidance on the steps they can take in order to comply with competition law.”

The OFT enforces compliance with competition laws in the UK. Businesses can be fined up to 10 % of their global turnover and individuals can be jailed for up to five years for serious anti-competitive offences.

### *Increasing Maximum Fine for Anti-Competitive Behaviour*

Companies that act anti-competitively should face greater maximum fines, the Office of Fair Trading (OFT) has said 31 Oct 2011. The UK’s competition regulator wants to issue fines of up to 30 % of the “relevant turnover” companies make from their infringing behaviour in a year. Currently the OFT can issue fines up to 10 % of that relevant turnover.

Under current procedures the OFT calculates a maximum starting fine a company faces based on the “turnover of the undertaking in the relevant product market and relevant geographic market affected by the infringement in the undertaking’s last business year,” according to its current guidance on penalties. The regulator can adjust the level of fine it first proposes to issue depending on the length of time the infringement has taken place for and other factors, including “**aggravating and mitigating factors**”, providing that the final amount does not exceed 10 % of the company’s relevant turnover.

The OFT said that increasing **the maximum penalty threshold** to 30 % of relevant turnover would help “reflect the gravity and seriousness of the range of competition infringements”; help deter breaches of the law, and **be more in line with** the level of fines that other European competition regulators issue. “A maximum of 10 per cent is not large enough in absolute terms to capture the potential overcharge resulting from some types of infringement, in particular cartels and serious abuses of a dominant position,” the OFT stated in its consultation proposals to increase the maximum penalty it can issue. “Compared to a higher maximum starting point, 10 per cent may not provide sufficient scope to distinguish properly between the relative seriousness of different types of infringement and may not be high enough to contribute to achieving deterrent penalties. The OFT is therefore proposing to increase the maximum percentage rate that can be used at the starting point from 10 to 30 per cent of relevant turnover.”

Under the UK’s Competition Act companies are generally prohibited from establishing agreements with other UK trading firms that “have as their object or effect the prevention, restriction or distortion of competi-

tion within the United Kingdom.” Under the Act organisations are also generally prohibited from engaging in activity that amounts to an abuse of a dominant market position. The OFT said that whilst it “notes that a higher maximum starting point will result in higher penalties” it would “consider carefully whether the resulting penalty is disproportionate or excessive having regard to the undertaking’s size and financial position and other **relevant circumstances** of the case” and reduce the penalty if necessary “to ensure that a fair and proportionate penalty is imposed.”

When adjusting fines for infringements the OFT has also proposed that infringements lasting for less than a year be “rounded up” to a year for the basis of setting fines, the regulator said. In exceptional circumstances the OFT said it wants to be able to adjust the level of fines to big companies “where the undertaking had a very large turnover beyond its relevant turnover or where there was good evidence that it had made gains from the infringement greater than the level of the penalty calculated [after making adjustments for the period of time the infringement lasted for and] where an undertaking had zero or very low relevant turnover in the year before the infringement ended or in **bidding markets** where the relevant turnover did not reflect the likely true impact of the infringement”.

The OFT’s proposals would involve it assessing whether fines are proportionate overall during the adjustments stage. It wants to be able **to make any adjustments** on that basis after assessing whether there are changes to the level of fine to be issued based on “aggravating and mitigating factors.” Companies that persist in delaying OFT investigations could face higher financial penalties under the OFT’s new plans. “As regards persistent delay, the OFT considers that, although there may sometimes be good reasons why a party is unable **to meet a deadline**, where a party does this in an unreasonable fashion, and persistently over the lifetime of a case, it would be appropriate to treat this as an aggravating factor. The possibility of increasing the penalty in this way is clearly without prejudice to a party’s rights of defence,” the OFT said.

The OFT has also proposed measures that would allow it to issue fines double the value of previously issued penalties to companies for each repetition of a prior offence. They suggest that “penalties will be increased by up to 100 per cent for each prior same or a similar infringement by an undertaking where the OFT or another European competition authority has found an infringement of the [Competition Act] or corresponding European Union provisions in the preceding 15 years.”

Companies that show “evidence of adequate steps having been taken in relation to achieving a **clear and unambiguous commitment** to competition law throughout the organisation — together with appropriate competition law risk identification, risk assessment, risk mitigation and risk review” may have their fines reduced, the OFT said.

In separate draft proposals the OFT announced new “**leniency**” **measures** in which ‘whistleblowing’ companies can escape or reduce the punishment they would face for owning up to the infringing activity. Those applying for leniency would have to admit they have participated in “cartel activity” and offer “complete and continuous cooperation” to an OFT investigation, the regulator said. “Under the existing guidance, leniency applicants must already have a ‘genuine intention to confess’ and at the stage of signing a leniency agreement, the applicant formally accepts that the reported activity amounted to an infringement,” the OFT said in its leniency guidance. “Accordingly, this is not a substantive change to the policy, but is designed to avoid confusion and uncertainty on the issue of whether an undertaking must admit they have breached the law in order to benefit from leniency,” it said.

The OFT said its proposed new guidance on leniency and penalties were “critical tools in encouraging greater compliance with competition law.” “The proposed revisions to our penalty guidance are designed to give us access to a greater range of fines, in order to better reflect the seriousness of the infringements and deter anti-competitive activities, whilst ensuring that penalties are fair and proportionate,” John Fingleton, chief executive of the OFT, said in a statement. “Our leniency guidance is designed to support an active programme of cartel enforcement, ensuring that the UK economy is protected from the harm that results from anti-competitive cartel behaviour.”

### **I. Translate the following Russian words and phrases into English.**

- 1) наблюдать, следить, контролировать, проверять
- 2) определить серьезность рисков
- 3) работники отдела продаж и закупок
- 4) конторские функции; выказать беспокойство
- 5) привлечь внимание к проблемам
- 6) сбивать цены
- 7) повысить осведомленность, информировать общественность
- 8) усугубляющие/отягчающие и смягчающие факторы

- 9) оценить возможность слияния компаний
- 10) более соответствовать чему-либо
- 11) значимые обстоятельства
- 12) делать поправки
- 13) уложиться в срок
- 14) ясное и однозначное решение
- 15) снисходительные меры

## II. Correct the false statements.

1. Senior management of the company should take responsibility for ensuring that their firm does not operate anti-competitive practices.

2. According to the OFT, to reduce the chance of unlawful anti-competitive activity happening managers should introduce new policies, ways of working and training.

3. Refusing to supply existing customers is an example of a business abusing a dominant position in a market.

4. In separate draft proposals the OFT announced new 'leniency' measures in which 'whistleblowing' companies can escape or reduce the punishment they would face for owning up to the infringing activity.

5. Companies that hasten OFT investigations could face higher financial penalties under the OFT's new plans.

6. The OFT has also proposed measures that would allow it to issue fines three times more the value of previously issued penalties to companies for each repetition of a prior offence.

## III. Match the English words and phrases (1–7) with their corresponding Russian equivalents (a–g).

- |                                      |   |
|--------------------------------------|---|
| 1) conduct an in-depth investigation | a) проводить всестороннее расследование |
| 2) without prejudice                 | b) смягчать                             |
| 3) mitigate                          | c) высший по закону предел наказания    |
| 4) infringement                      | d) рынок тендеров                       |
| 5) maximum penalty                   | e) ясный и понятный                     |
| 6) bidding market                    | f) нарушение                            |
| 7) clear and unambiguous             | g) без ограничения / ущерба             |

## IV. Give a summary of the text. Remember to use the new lexis.



## Text 3. BRAND NAMES

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(adapted from the guide *Choosing and Protecting Your Brand*. URL: <http://www.out-law.com/page-5541>. Last accessed 28.01.2012 and article *Reforming Trademark Law to Reflect the Internet Economy*. URL: <http://www.registeringatrademark.com/reforming-trademark-law.shtml>. Last accessed 28.01.2012)

**Read the text (31,000 characters) paying attention to the words and phrases in bold.**

### PART I

#### Your Brand: Choosing and Protecting

##### A. ....

Anyone launching a product or service, whether on-line or off-line, will put a lot of thought into what to offer and how to go about offering it. In particular, most businesses **invest a lot of time and money in creating** a brand which will appeal to consumers and set its products or services apart from competitors. For this reason, a business will not want anyone else **pretending to be associated with it and piggy-backing on its reputation**.

The brand of a business is an example of intellectual property, and can be one of the most **valuable assets** of the on-line business. As an example, when the infamous boo.com **went into liquidation**, the most sought after assets of the business were the domain name and trade marks; in other words, the boo.com brand. It is therefore important to a business **to secure the rights** in its brand.

##### B. ....

Before **settling on a brand**, you should carry out some research to ensure that no one else is already using the proposed brand. Searching through an internet search engine and on the Companies House web site will be a good

starting point to determine whether another business is trading under the name or using the brand.

Protecting your own rights is important, but it is equally important to ensure that you do not **infringe the rights** of other people. You should therefore check that someone has not already registered your chosen brand name as a trade mark. A basic search can be carried out on the Intellectual Property Office (IPO) web site, or Trade Mark Agents can **carry out a more detailed trade mark clearance search for you**.

A combination of the above searches will be the most useful approach: **the trade mark clearance search** will identify whether the same or a similar brand has already been registered, whilst the internet searches may identify unregistered trade marks which are being used by other companies.

**C.** .....

The strongest form of protection for a brand is a registered trade mark. Basically, trade marks identify the products or services of traders, to enable consumers to distinguish between the products and services of different traders. You will often see a brand with the letters ‘TM’ after it; this is to identify a trade mark of the business. There is nothing to stop you putting ‘TM’ after your business name or brand, to show that you are **asserting rights in it as a trade mark**. However, the symbol ® denotes a registered trade mark and it is an offence to use this symbol with a trade mark which has not been registered.

If a trade mark is registered, special rules apply which simplify the way in which it can be protected. Unregistered trade marks can also be protected, however, it is much cheaper and easier for a business to enforce its rights in a registered trade mark than in an unregistered trade mark. For this reason, businesses should consider **obtaining registered trade marks** to protect their brands. Most countries have their own systems for trade mark protection and registration. There are also European and international systems of protection.

**D.** .....

To obtain a registered trade mark in the UK, an application must be made to the UK Trade Marks Registry at the IPO. In order to qualify for trade mark protection, the mark must **meet certain criteria** and must not **conflict with prior rights**, e.g. **pending or registered trade marks**.

Many companies look to register their company name or their **domain name** as their trade mark. For example, both amazon.com and lastminute.com have been registered as trade marks. Having the company name or domain name does not mean that the name will automatically qualify for registration nor that you have an automatic right to register the name as a trade mark, as another company may already have a registered trade mark for that name.

For registration, a trade mark must be capable of:

- being represented graphically; and
- distinguishing the goods or services of one business from those of another, and must not be descriptive.

**To pass the first requirement** is fairly simple. A brand containing words, designs, letters, numerals, even **jingles** or sounds will satisfy this test. To pass the second requirement is more difficult. This is particularly true for on-line businesses, as many brands on the internet are chosen by their owners for descriptive reasons. A brand which is not descriptive of your goods and services will be easier to register, as it is more likely to distinguish your goods and services from the goods and services of other businesses.

When registering a trade mark, you must select one or more classes within which you want protection. There are 45 different classes to choose from: 34 for goods and 11 for services. For example, most software products fall within Class 9, whilst paper and printed materials form Class 16. If you **operate a web site**, you would choose your class or classes according to the goods or services it offers. Class 42 is a general services class in which many web site operators register.

**E.** .....

**Following submission of the application**, the Examiner looks at whether there are any prior conflicting pending or registered marks. If none are found, the application is advertised in the Trade Marks Journal. Publication in the Trade Marks Journal marks the start of a two-month period during which third parties may make observations on its acceptance or oppose the registration if they have good reason to do so. **This period can be extended to three months** by anyone who is considering opposing the application. For example, another company may be concerned that your application is for a trade mark which is very similar to its registered trade mark, and that the public would confuse the two. If **no oppositions are**

**filed**, the trade mark will **automatically proceed to an electronic queue** to become registered.

It usually takes about 6 months to obtain a UK trade mark if the Examiner raises no objections and third parties do not oppose the application. Applications that are opposed can take an additional six months to complete, depending on the nature of the opposition. Once a **registered trade mark is granted**, the owner **has a statutory monopoly to prevent unauthorised use** of the same or a similar mark in respect of the goods and services for which the mark has been registered. Trade mark registrations are valid for ten years and are **renewable** for further ten-year periods **thereafter**.

**F.** .....

Your trade mark may be infringed if another business uses the same or a similar mark **in the course of trade** in relation to goods and services identical or similar to those for which your mark is registered. If either the mark or the goods or services in question are only similar, the owner of the mark must **satisfy an additional criterion**: that the public are likely to confuse the goods and services of the **alleged infringer** with the goods and services of the owner of the trade mark. This requirement can be difficult to satisfy. The class system is important because it allows **concurrent use of a mark**. A good example is the brand Apple: the computer manufacturer and the record label of the same name can exist independently because they each focus on different markets.

If you think that someone is infringing your registered trade mark, you need to be very careful about how you approach the other party, to ensure that you are not seen to be **making an unjustified or groundless threat**. Ideally, legal advice should be sought before you take any action, as making an allegation of trade mark infringement could result in the other party having a right of action against you for unjustified threats.

**I. Match the headings (1–6) with the parts of the text (A–F).**

1. Procedure
2. Trade Mark Infringement
3. Establishing and Protecting a Brand
4. Overview
5. Trade Marks. Choosing a Brand
6. How to Get a Registered Trade Mark in the UK

## II. Correct the statements where they are wrong.

1. A business brand is an example of intellectual property.
2. Before registering a brand, it is quite enough to choose the name for the business.
3. To protect your own rights is important, as well as to ensure that you do not infringe the rights of others.
4. The trade mark clearance annuls the registered brand.
5. The easiest way of enhancing brand-awareness is a registered trade mark.
6. The symbol ® denotes a registered trade mark and it is allowed to use this symbol with a trade mark which has not been registered.
7. If a trade mark is not yet registered, special rules apply which simplify the way in which it can be protected.
8. To obtain a registered trade mark in the EU, an application must be made to the UK Trade Marks Registry at the IPO.
9. Many companies look to register their company name or their domain name as their trade mark.
10. To register a trade mark, you must select one or more classes within which you want protection.
11. Publication in the Business Marks Journal marks the start of a five-month period during which third parties may make observations on its acceptance or oppose the registration if they have good reason to do so.
12. It usually takes about four months to obtain a UK trade mark if the Examiner raises no objections and third parties do not oppose the application.
13. The computer manufacturer Apple and the record label of the same name cannot exist independently because they each focus on different markets.

## III. Fill in the gaps with the appropriate words/ word combinations.

*Trade mark to offer clearance search intellectual property valuable assets infringe the rights to ensure trade a statutory monopoly unjustified to qualify for meet operate to protect registered launching submission*

1. Anyone \_\_\_\_\_ a product or service, whether on-line or off-line, will put a lot of thought into what \_\_\_\_\_ and how to go about offering it.
2. The brand of a business is an example of \_\_\_\_\_, and can be one of the most \_\_\_\_\_ of the on-line business.

3. Protecting your own rights is important, but it is equally important \_\_\_\_\_ that you do not \_\_\_\_\_ of other people.
4. The trade mark \_\_\_\_\_ will identify whether the same or a similar brand has already been registered.
5. Businesses should consider obtaining registered \_\_\_\_\_ marks \_\_\_\_\_ their brands.
6. In order \_\_\_\_\_ trade mark protection, the mark must \_\_\_\_\_ certain criteria and must not conflict with prior rights, e.g. pending or registered trade marks.
7. If you \_\_\_\_\_ a web site, you would choose your class or classes according to the goods or services it offers.
8. Following \_\_\_\_\_ of the application, the Examiner looks at whether there are any prior conflicting pending or registered marks.
9. Once a registered trade mark is granted, the owner has \_\_\_\_\_ to prevent unauthorised use of the same or a similar mark in respect of the goods and services for which the mark has been \_\_\_\_\_.
10. If you think that someone is infringing your registered \_\_\_\_\_, you need to be very careful about how you approach the other party, to ensure that you are not seen to be making a/an \_\_\_\_\_ or groundless threat.

## PART II

### A. ....

One form of trade mark misuse which has taken place on the internet is through the **abuse of meta tags**. A meta tag is basically HTML coding that contains information about the content that the user sees, as opposed to the actual content which the user sees on screen. The most common use of the meta tag is to provide information about the site for the benefit of some search engines, by including keywords to be used by these search engines. In this way, meta tags can be used to attract traffic to a web site.

On the other hand, some web site owners have used meta tags **to divert traffic away** from other sites (usually competitor sites) by unlawfully using other parties' trade marks or brand names in the meta tags for their own web sites. Such abuse has resulted in court actions for trade mark infringement. The owners of the Playboy brand took action against other businesses which included the word 'Playboy' in their meta

tags. Playboy was successful in its argument that these businesses were hoping that a search for ‘Playboy’ would lead a user to their site instead and that this amounted to trade mark infringement, despite the meta tag being hidden. A case in the UK, which concerned the trade mark “REED,” found that the unauthorised use of trade marks in meta tags will not automatically amount to trade mark infringement. This is due to the fact that there is “invisible” use of the trade marks (invisible as far as internet users are concerned) and there is still a need to show that the use of the trade mark **creates confusion between the brands** in the mind of the public.

**B.** .....

Many businesses trading on the internet will be keen to protect their brands on a European level. The Community Trade Mark (CTM) gives brand protection throughout the countries of the European Union. A CTM will only be granted if there is no third party opposition based upon pre-existing national rights in any member state. Where the application is successful, the CTM application can **be converted into** a series of conventional national trade marks in the countries in which there are no objections. The CTM provides **a cost-effective way of providing protection** in a number of European countries, but anyone considering applying for a CTM should be aware that it takes a long time to obtain, usually between and 18 months.

**C.** .....

The Madrid Protocol system may also be of interest to businesses trading on the internet, as it provides an international system of protection. The Madrid system applies amongst those countries which are **signatories** to the Madrid Protocol, and an application under this system is only available to those who are nationals of or are **domiciled** in one of the countries covered by the Protocol. It has been **embraced** by over 70 countries, including China, Japan, Russia and the US. The European Community as whole only became a member on 1st October 2004, although most of the countries had been individual members prior to that. The Madrid system allows an applicant who has filed a home application to make a further application covering one or more of the Protocol countries based on the home application. The national trade mark Registries of the countries of interest have a period of 12 or 18 months (depending

on the country) in which to raise objections to the granting of the international registration covering their territory. Applications under this system tend to be cheaper than making individual applications in each country of interest.

The Paris Convention and the WTO Agreement provide further benefits. Under these international Conventions, you can file a trade mark application in the UK and then have six-months within which to apply for the same trade mark abroad and rely on the UK **filing date**. This means that the foreign application is effectively **back-dated** to your UK application, giving you priority over anyone who has applied to register the mark during that time. It also allows a business to **spread out the costs** of trade mark registration.

If you have foreign registrations, watch out for **bogus letters** from organisations inviting you to register in “official” registers or publications in return for payment of an annual subscription. A number of warnings have been issued by **the UK Intellectual Property Office** and **World Intellectual Property Organization (WIPO)** about such companies.

**D.** .....

If a business does not have a registered trade mark or is unable to obtain a registered trade mark (e.g. if the name is too descriptive to qualify for trade mark registration) the law of **passing off** may protect a brand. It is a law which aims to protect both consumers and other businesses from the effect of **confusion on their goodwill in trade**.

Passing off will only protect a brand if the owner of the brand can demonstrate that:

- it has established goodwill and reputation in the brand;
- that another undertaking is using a brand which is similar to or the same as the owner’s brand;
- that, by doing so, it may cause the public to be confused into thinking that it is associated with the business of the owner of the brand; and;
- that it causes actual damage to the business or goodwill of the brand owner.

It is generally not very easy **to prove passing off**, particularly because anyone bringing a passing off action usually has to gather together survey evidence to demonstrate the possibility of confusion or actual confusion. It can be very difficult **to obtain survey evidence** and it is usually very expensive to do so.



**E.** .....

A further way to protect your brand is through registered design rights. Registering your product design gives you a monopoly in it and allows you to stop others from making, selling or using a product which incorporates your design or to which your design has been applied.

As with trade mark rights, registered design rights can be used to protect a 2D image. However, registering the image as a design will give you a monopoly in the application of the image to products, whereas a registered trade mark will only give you a monopoly in respect of the same or a similar mark in respect of the same or similar goods and services. For this reason, some businesses have chosen to register their logo for both trade mark and design right protection, as a further layer of brand protection. As an example, easyGroup has registered “easy.com” as a trade mark and has also registered its orange and white “easy.com” logo as a registered design for use with clothing and travel goods amongst other things.

In order to qualify for registration, the design must:

- be new; and
- have individual character, which means that the overall impression of the design must differ from previous designs.

One advantage of trade mark registration is that the registration can last indefinitely, whereas registered design rights can only last for a maximum of 25 years.

**F.** .....

Domain names are unique names that identify internet sites. They usually consist of two parts. The first part generally **comprises** the name of the enterprise or organisation or the brand associated with the enterprise or organisation (e.g. out-law). The second part of the name usually identifies the name and sometimes a country (e.g. .co.uk or .com). A domain name is not an intellectual property right known to UK law. There is no cause of action in UK courts for “domain name infringement.”

However, as can be seen from cases decided on **cybersquatting** UK courts have been willing to use the laws of passing off and trade marks to **tackle** domain name infringement. It is therefore always advisable to include all brands and any variations of such brands in domain name registrations.

Recently directors at **the Internet Corporation for Assigned Names and Numbers (ICANN)**, which **oversees** the identification of websites, voted to increase the number of generic ‘top-level’ domain name endings from

the current 22. Top-level domains refer to how the suffixes of addresses are rooted and include familiar address endings such as .com, .org and .net. They do not include country-level domain suffixes such as .uk. ICANN have agreed to no longer operate such a closed list. As of 12 January 2012, all **barriers will be removed** and business will be able to purchase any suffix they choose in any language. For example Google would be able to purchase the “google” address. This presents an avenue by which to get around cybersquatters who may have **commandeered** domain names at an earlier stage and generally will be extremely useful to businesses who were slow **to involve themselves with** the internet and therefore lost out on their domain name of choice.

The application process for new domain names will only be open for 60 days. Thereafter, it will be closed for three years. Businesses must act quickly if they wish to take advantage of this branding opportunity. Moreover application will cost £114 000 and applicant businesses will have to show they have **robust intellectual property protection systems** in place.

**G.** .....

There are various web sites which offer domain name registration services. However, the **allocation** of all top level domain names (such as .com, .org and .net) is the responsibility of ICANN.

If a dispute arises in relation to a domain name, it is possible to refer such a dispute to a dispute resolution procedure. ICANN has given powers to the WIPO and other bodies **to operate a dispute resolution system** for transferring domain names, one of the aims being **to curb cybersquatting**.

**I. Match the headings (1–7) with the parts of the text (A–G).**

1. Meta Tags
2. European Protection
3. International Protection
4. Passing off
5. Registered Design Rights
6. Domain Names
7. Domain Name Disputes

**II. Correct the statements if they are wrong.**

1. Making an allegation of trade mark infringement could result in the other party having a right of action against you for unjustified threats.

2. The Community Trade Mark (CTM) gives brand protection throughout the world.

3. Registering your product design does not give you a monopoly in it but allows you to stop others from selling a product which incorporates your design or to which your design has been applied.

4. Registering a trade mark will give you a monopoly in the application of the image to products, whereas registering the image as a design will only give you a monopoly in respect of the same or a similar mark in respect of the same or similar goods and services.

5. One advantage of trade mark registration is that the registration can last fifty years, whereas registered design rights can only last for a maximum of twenty-five years.

6. A domain name is not an intellectual property right known to UK law.

### **III. Match the beginnings of the sentences (1–10) with their endings (a–j).**

1. On the other hand, some web site owners have used meta tags to divert traffic away from other sites (usually competitor sites)...

2. This is due to the fact that there is “invisible” use of the trade marks...

3. Where the application is successful, the CTM application can be converted into...

4. The CTM provides a cost-effective way of providing protection in a number of European countries, but anyone considering applying for a CTM should be aware...

5. This means that the foreign application is effectively back-dated to your UK application, giving you priority...

6. A number of warnings have been issued by the UK Intellectual Property Office and...

7. It is a law which aims to protect both consumers and other businesses...

8. It can be very difficult to obtain survey evidence...

9. This presents an avenue by which to get around cybersquatters who may have commandeered domain names at an earlier stage and generally will be extremely useful to businesses...

10. ICANN has given powers to the WIPO and other bodies to operate a dispute resolution system...

- a) ...and it is usually very expensive to do so;
- b) ...over anyone who has applied to register the mark during that time;
- c) ...that it takes a long time to obtain, usually between and 18 months;
- d) ...by unlawfully using other parties' trade marks or brand names in the meta tags for their own web sites;
- e) ...for transferring domain names, one of the aims being to curb cybersquatting;
- f) ...from the effect of confusion on their goodwill in trade;
- g) ...World Intellectual Property Organization (WIPO) about such companies;
- h) ...who were slow to involve themselves with the internet and therefore lost out on their domain name of choice;
- i) ...a series of conventional national trade marks in the countries in which there are no objections;
- j) ...(invisible as far as internet users are concerned) and there is still a need to show that the use of the trade mark creates confusion between the brands in the mind of the public.

#### IV. Summarize Part II of the text.

### PART III

#### *Cybersquatting*

Cybersquatting is the practice of registering a domain name in bad faith, knowing that someone else will want the name and often with the intention of holding another company to **ransom**. Whilst disputes over domain names are usually taken to a dispute resolution panel such as the **World Intellectual Property Organization**, some companies have **opted** to take the cybersquatters to court and have been successful in actions for both passing off and trade mark infringement.

A well known example of this was a case in England where companies including Marks and Spencer, BT, Sainsburys, Virgin and Ladbrokes all found their domain names had been previously registered by *One In A Million Limited*, a cybersquatting business. *One In A Million* was attempting to **withhold domain names** that were similar to the registered trade marks of these companies. The trade mark owners succeeded in persuading the court to order *One In A Million* to **hand over the domain names** on grounds

of passing off and trade mark infringement. Similar circumstances arose in a Scottish case, where *Scottish Widows* was successful in a court action against a cybersquatter for registering the names “scottish-widows.com,” “scottish-widows.co.uk” and “scottish-widows.tm.” More recently, FIFA won its case in the US against a company which had registered “Copa-Mundial.com” and “CopaDoMundo.com” in breach of FIFA’s rights in its “World Cup” trade marks.

Following these cases, if your brand is part of your domain name, your domain name may be protected by the laws of trade marks or passing off in the UK. This has dealt with the most **flagrant incidences** of cybersquatting, however, the practice still exists with cybersquatters simply disguising their practices better or even deliberately setting the ransom demanded slightly below the cost of bringing a passing off action. In the US, legislation has been passed to deal with this issue, namely **the Anticybersquatting Consumer Protection Act and the Trademark Cyberpiracy Prevention Act**.

### *Typosquatting*

Typosquatters register domain names that are nearly identical to the actual domain names used by other businesses. The slight differences between the domain names are intended to catch internet users who make typographical or punctuation errors when entering a domain name. A case in the US in 1999 saw an example of this when a securities firm with the domain name painewebber.com took action against a site with the domain name wwwpainewebber.com, a name only distinguishable by the exclusion of a dot. The typosquatter’s name linked the user to a site displaying pornography. There have also been successful actions in the US against one of the most **prolific typosquatters** in recent times, John Zuccarini, who at one point had registered over 5000 “misspelled” domain names (which included the names of famous people) in order to **divert traffic from legitimate sites**.

### *Concurrent Use*

It is a very different situation where another company has simply beaten you to registration of the domain name and does have a right to legitimately use the domain name because of their own company name or trade mark. The way in which the company registration and trade mark registration systems operate means that a number of companies may have the same name.

Prince plc, an IT consultancy in the UK, was threatened by Prince Sporting Group Inc. in the US for having registered the domain name 'prince.com.' The sports company had a registered trade mark in the UK for the name, but the IT company had been in business for some 14 years. Complex actions were brought in both the US and UK in the fight for the name. After much expense, the parties agreed to direct visitors to each other's site if the visitor arrived at the wrong site. That said, the UK company still uses the 'prince.com' domain name and the actions did not resolve whether infringement of a trade mark actually took place.

**As a rule of thumb**, if your name does not infringe a trade mark in the off-line world, it is unlikely to infringe a trade mark in the on-line world.

### *On-Going Protection*

Creating and registering a brand is not the end of the story when it comes to brand protection, and you will have to continue to protect your rights in both your registered and unregistered brands. If you are an organisation, someone should be given responsibility for renewing all trade name and domain name registrations, so that these are not allowed to **lapse** and are potentially lost. You should also ensure that your brands are used consistently, in order to enforce them in the mind of consumers and to build up your rights in unregistered trade marks. This may involve **raising internal awareness** and producing brand guidelines to let people know how the brands should be used, e.g. should a trade mark be a particular size, **font** and colour, and should the ® or ™ symbol be used?

It should also be remembered that rights can be acquired and lost under contract. If you are intending to allow other companies to use your name or trade marks, your rights should be properly protected in a licensing agreement. If you are **commissioning** an external agency to create any branding for you, you must ensure that all of the rights are transferred to you in writing, to allow you to fully exploit the brand.

As well as protecting existing rights, a business needs to ensure that intellectual property rights are being identified at an early stage, to allow a decision to be taken on whether these can and should be protected by registration.

### *Conclusion*

As there is still little international **harmonisation of the laws** that protect brands, the rights and remedies available will largely depend on the

particular country or countries involved. Businesses should consider which markets are important to them and make sure that the rights in their brands are effectively protected in those markets. It may seem expensive at the time, but it is worth doing in the long run. The internet is a powerful advertising medium and often the brand is the single most important piece of intellectual property owned by a business — and one which is well worth protecting.

### **I. Correct the statements where they are wrong.**

1. Typosquatting is the practice of registering a domain name in bad faith, knowing that someone else will want the name and often with the intention of holding another company to ransom.

2. Cybersquatters register domain names that are nearly identical to the actual domain names used by other businesses.

3. The way in which the company registration and trade mark registration systems operate means that a number of companies may have the same name.

4. If your name infringes a trade mark in the off-line world, it is unlikely to infringe a trade mark in the on-line world.

5. If you intend to allow other companies to use your name or trade marks, your rights should be properly protected in a licensing agreement.

### **II. Make up phrases matching the beginnings (1–25) with their endings (a–y).**

- |                          |                       |
|--------------------------|-----------------------|
| 1) to go into            | a) barriers           |
| 2) to secure             | b) between the brands |
| 3) to infringe           | c) certain criteria   |
| 4) the trade mark        | d) search             |
| 5) to obtain             | e) cybersquatting     |
| 6) to pass the first     | f) domain names       |
| 7) to meet               | g) groundless threat  |
| 8) pending or registered | h) internal awareness |
| 9) to conflict with      | i) liquidation        |
| 10) to follow submission | j) monopoly           |
| 11) to grant a /an       | k) of the application |
| 12) to have a statutory  | l) passing off        |
| 13) to prevent           | m) prior rights       |

- |                               |                                |
|-------------------------------|--------------------------------|
| 14) to make an unjustified or | n) property protection systems |
| 15) to automatically proceed  | o) providing protection        |
| 16) to prove                  | p) registered trade mark       |
| 17) to obtain                 | q) registered trade marks      |
| 18) to remove                 | r) requirement                 |
| 19) robust intellectual       | s) resolution system           |
| 20) to operate a dispute      | t) survey evidence             |
| 21) to curb                   | u) the rights                  |
| 22) to withhold               | v) the rights                  |
| 23) to raise                  | w) to an electronic queue      |
| 24) to create confusion       | x) trade marks                 |
| 25) a cost-effective way of   | y) unauthorised use            |

### III. Insert the correct prepositions.

1. He invested a lot of time and money \_\_\_\_\_ this risky business.
2. The company won't have anybody pretend to be associated \_\_\_\_\_ it and piggy-back \_\_\_\_\_ its reputation.
3. Let him carry \_\_\_\_\_ a more detailed trade mark clearance search \_\_\_\_\_ you.
4. \_\_\_\_\_ the course \_\_\_\_\_ trade you need to be sure that nobody else is using your trademark.
5. This case may be considered to be a concurrent use \_\_\_\_\_ a mark.
6. This type of loan will allow you to spread \_\_\_\_\_ the costs and not pay back all at once.
7. The situation may cause a confusion \_\_\_\_\_ their goodwill \_\_\_\_\_ trade.
7. They will hand \_\_\_\_\_ the domain names in the nearest future.
8. Passing \_\_\_\_\_ means that some company deliberately misleads customers regarding the manufacturer.
9. It is intended to divert traffic \_\_\_\_\_ legitimate sites.
10. There is urgent need of harmonisation \_\_\_\_\_ the laws.

### IV. Retell Part III. Try to use as many new words and word combinations as possible.



## PART IV

### *Reforming Trademark Law to Reflect the Internet Economy*

The protections granted under intellectual property law **were originated first and foremost** to advance the cause of science and thereby society. This goal was explicitly codified in Article I of the United States Constitution, stating that to “promote the progress of science and the useful arts,” Congress may **grant “authors and inventors the exclusive right** to their respective writings and discoveries.”

Only as a secondary and indirect result were intellectual property rights protected to reward businesses and inventors. However, **the soaring value of intellectual property** has resulted in businesses **becoming increasingly zealous and litigious** in guarding their intellectual property. This has ironically resulted in intellectual property law, and the rights it grants, **becoming more of a hindrance than a spur to societal and scientific advancement.**

While true in all areas of intellectual property, this is particularly the case in trademark law. Yet trademark law has **deviated from** its origins of societal advancement and consumer protection and has now **become an impediment to the formation of new businesses** and ideas. Trademark law should be reformed **to coincide with** new marketplace realities and changed consumer perceptions caused by the advent of the Internet.

Anglo-American trademark law originated in the middle ages as a preventative means to deter the “palming off” of goods upon unsuspecting consumers. As early as the thirteenth century, statutes were passed in England designed to protect the public by preventing the sale of goods that **counterfeited the insignia of the medieval guilds**, which used **quality control measures**. Over the centuries, trademarks have become increasingly valuable corporate assets. For example, the trademark “COCA-COLA” was recently estimated to have a value of over seventy billion dollars.

The great value of a company’s trademarks has resulted in companies using litigation, or **the threat of litigation**, in order to protect their trademarks. Consequently, a large body of trademark law and precedent has developed which lays out the many factors courts should turn to when considering a case of trademark infringement. Much of the case law that courts still rely upon was formulated several decades ago and is no longer **reflective of** the rapid changes undergone in the marketplace and in consumers’ perceptions in the Internet economy.

For example, when determining whether a trademark should be registered, the United States Patent and Trademark Office (“USPTO”) still relies heavily upon **the seminal case** of *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357 (1973). This case, decided by the United States Court of Customs and Patent Appeals, set forth a multi-factor test that courts and the USPTO use to examine whether a likelihood of consumer confusion, and consequently trademark infringement, exists.

In the almost thirty years since this case was decided, **several revolutionary transformations ushered in** by the Internet have changed the way consumers view trademarks and how trademarks function. New guidelines that reflect these **changes desperately need to be implemented**, again making trademark law an **impetus** and not an obstacle for societal growth.

The greatest change has been the **exponential increase in** the number of trademarks over time. In 1960, the USPTO received approximately 18 000 applications for trademarks, with this figure increasing to 42,000 by 1982. By 2000, the USPTO received nearly 300 000 trademark applications. See USPTO Annual Reports. However, these large increases only hint at the level of increased trademark usage, for courts have held that Internet domain names can both act as and **carry the same liability** as other trademarks. By September 2001, over 24 million domain names that end in .com had been registered. The number of domain names will continue to **proliferate** with the recent opening of new top level domains including .aero, .biz, .coop, .info, .museum, .name, and .pro, and the expanded use of the over 200 country codes such as .uk (United Kingdom) and .fr (France).

This exponential growth in the number of trademarks and domain names has made consumers increasingly **aware of subtle distinctions between trademarks**. This lessens the likelihood that consumers will find two similar trademarks or domain names to be **confusingly similar**. Instead, consumers now view trademarks, and particularly domain names, as analogous to phone numbers. For like a phone number where one wrong digit will result in a different person being contacted, small differences in domain names will lead to a different domain name and company. As an example, consumers now realize that typing in [www.homes.com](http://www.homes.com) will take them to a different company than typing in [www.ehomes.com](http://www.ehomes.com).

The courts, using precedents established before the explosive growth in the number of trademarks and domain names, have not mirrored consumers’ increasing sophistication and ability to distinguish subtle differences in trademarks. As a result, courts are granting current trademark owners too

much protection and thereby **impeding the formation of other trademarks** that can coexist in the marketplace without consumer confusion occurring. Except for very strong trademarks or **obvious attempts at trademark infringement**, courts should only find a likelihood of consumer confusion when the marks are identical or very nearly so. This would again root trademark law in its origins of protecting consumers and not businesses.

Courts should further limit their findings of trademark infringement to identical or nearly identical trademarks because the new marketplace no longer allows for many of the factors that once lessened the likelihood of infringement. For example, trademark infringement could only occur if two marks competed in the same geographical territory. If the same trademark was used to market a similar product by one company in California and another company in New York, no consumer confusion and consequent trademark infringement would result because the trademarks were used in different marketplaces. Now, the Internet makes all domain names and any other trademarks posted on the web to be accessible by over six billion consumers. Should one trademark owner be able to prevent businesses around the globe from using any similar variations of the trademark? Such a result would hurt consumers through less competition and greater litigation, but is allowed under current precedents in trademark law.

Additionally, the Internet has also negated another factor that previously lessened the possibility of trademark infringement, the channels of trade that a product is being marketed. For example, if a trademark were used to market two similar products, but one product was **distributed to large wholesalers** and the other product to **high-end retailers**, then there would be little likelihood that consumer confusion will result. However, many courts, including the influential 9<sup>th</sup> Circuit Court of Appeals, have held that all trademarks used on the Internet are considered to be in the same channel of trade regardless of what consumer group the product is marketed to.

Thus, the worldwide nature of the Internet coupled with courts' holding that marketing on the Internet is only one channel of trade, has increased the likelihood of a court finding trademark infringement more so than in the past. This greater protection for trademarks has paradoxically come at a time when **savvy consumers** require less protection than ever.

Trademark law should be reformed to better reflect new marketplace realities and changed consumer perceptions as discussed throughout this article. Until then, trademark law will ironically continue to run counter to its origins of societal advancement and consumer protection.

### **I. Paraphrase the following sentences.**

1. The protections granted under intellectual property law were originated first and foremost to advance the cause of science and thereby society.

2. However, the soaring value of intellectual property has resulted in businesses becoming increasingly zealous and litigious in guarding their intellectual property.

3. Anglo-American trademark law originated in the middle ages as a preventative means to deter the “palming off” of goods upon unsuspecting consumers.

4. Much of the case law that courts still rely upon was formulated several decades ago and is no longer reflective of the rapid changes undergone in the marketplace and in consumers’ perceptions in the Internet economy.

5. The greatest change has been the exponential increase in the number of trademarks over time.

6. By September 2001, over 24 million domain names that end in .com had been registered.

7. Consumers now view trademarks, and particularly domain names, as analogous to phone numbers.

8. The courts, using precedents established before the explosive growth in the number of trademarks and domain names, have not mirrored consumers’ increasing sophistication and ability to distinguish subtle differences in trademarks.

9. Except for very strong trademarks or obvious attempts at trademark infringement, courts should only find a likelihood of consumer confusion when the marks are identical or very nearly so.

10. Trademark infringement could only occur if two marks competed in the same geographical territory.

11. Many courts, including the influential 9<sup>th</sup> Circuit Court of Appeals, have held that all trademarks used on the Internet are considered to be in the same channel of trade regardless of what consumer group the product is marketed to.

### **II. Match the Russian phrases (1–10) with their English equivalents (a–j).**

- 1) нести одинаковую ответственность
- 2) служить препятствием в становлении нового бизнеса
- 3) угроза судебной тяжбы
- 4) искушенные потребители

- 5) возрастающая ценность интеллектуальной собственности
  - 6) быть осведомленным о тонкой разнице между торговыми марками
  - 7) предоставлять эксклюзивное право
  - 8) профилактическое средство
  - 9) революционные преобразования
  - 10) эксклюзивные розничные торговцы
- 
- a) the soaring value of intellectual property
  - b) become an impediment to the formation of new businesses
  - c) a preventative means
  - d) the threat of litigation
  - e) revolutionary transformations
  - f) carry the same liability
  - g) be aware of subtle distinctions between trademarks
  - h) high-end retailers
  - i) savvy consumers
  - j) grant the exclusive right

**III. Write out key words/phrases and topic sentences and with their help give a detailed retelling of the text.**

## Text 4. LANDOWNERSHIP

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(adapted from the series of articles *Renting and Leasehold*. URL: [http://england.shelter.org.uk/get\\_advice/renting\\_and\\_leasehold/leaseholders\\_rights/](http://england.shelter.org.uk/get_advice/renting_and_leasehold/leaseholders_rights/). Last accessed 02.02.2012)

**Read the text (28 000 characters) paying attention to the words and phrases in bold.**

### PART I

#### Leasehold Law: an Overview

##### A. ....

The lease is a **legal contract between the freeholder and the leaseholder**. It explains the rights and responsibilities both you and the freeholder have and will normally explain:

- how much **ground rent** you have to pay and when;
- how any **service charges** are calculated (and how they are paid);
- whether service charges and/or ground rent can be increased and, if so, how;
- what repairs you are responsible for;
- how repairs to the structure and shared areas of the building are arranged and paid for;
- who is responsible for arranging (and paying for) buildings insurance;
- whether you have to get the freeholder's permission if you want to rent out your home or make alterations.

This information may be useful if you have a disagreement with the freeholder. Every lease is different, so it's important to check what it says. If you don't have a copy, you can get one from the solicitor who did the legal work when you bought your home and/or from the freeholder. **Get advice in person** if there is anything in your lease that you don't understand or isn't clear. If either you or the freeholder doesn't keep to the

conditions of the lease, the other may be able to take legal action and/or seek compensation.

Is it important to check the lease before buying? Yes. If you are buying a leasehold property and there is a problem with the lease, it should be sorted out before contracts are exchanged. This might mean that the seller has to extend the lease, or sort out a dispute about repairs with the freeholder (or other leaseholders in the building). This could delay the sale but may be easier than dealing with the problems after you move in.

Leases are usually written in legal language and need to be carefully examined by a solicitor (or licensed conveyancer) before you buy. This should ensure there are no unreasonable conditions about how the property is managed.

**B.** .....

The lease gives you the right to live in your home for a certain amount of time. The length of a lease can vary but usually starts at 99 years and can be as much as 999 years. The time left will reduce as the years go by and will eventually run out. For example, you may have 75 years left on a 99 year lease. The lease can be bought and sold at any time but it may be difficult to find a buyer if there are less than 60 or 70 years left to run. It's usually possible to extend the lease but this can be expensive.

**C.** .....

Leaseholders normally have to pay charges to the freeholder or to a property company acting on her/his behalf (a managing agent). Charges vary from one property to another and can be very expensive. Charges may include ground rent for the land on which the property is built;

- service charges for repairs, cleaning and maintenance;
- a proportion of the buildings insurance taken out by the freeholder;
- a contribution to a **'sinking fund'** to cover the cost of major repair works.

If what your lease says about repairs, maintenance, insurance or service charges is unfair or doesn't make clear what responsibilities you have, get advice.

**D.** .....

The freeholder owns the land on which your home is built and has the right to collect ground rent and service charges from any leaseholders in the building. The freeholder could be an individual, a private company, a **council** or a **housing association**. The freeholder may live in the same

building but this is unusual. Many leaseholders have no direct contact with the freeholder and deal with a managing agent instead. However, all leaseholders have the right to know:

- the name of their freeholder;
- an address in England or Wales where s/he can be contacted.

You may need this information if you want to take action against your freeholder because you think the charges you have to pay are too high or if you want to extend your lease.

**E.** .....

A leaseholder is entitled to know the name and address of their freeholder. If the freeholder or managing agent **withholds this information**, they may be committing a criminal offence. Every time the freeholder sends service charge bills they must provide a name and UK contact address. If the bills come from a managing agent, you can ask them for your freeholder’s contact details. If you are not provided with this information, you don’t have to **fulfil some of the obligations** under the lease — for example, the payment of ground rent or service charges (you should **keep this money aside**, however, because those charges will become due once the information is provided).

If you are still having difficulties getting your freeholder’s contact details you could try:

- contacting the **Land Registry**. You can do this online by filling in a form and paying a small fee;
- applying to the county court for an order appointing a manager of the freehold. If this happens a **Leasehold Valuation Tribunal (LVT)** will decide the terms.

**F.** .....

The freeholder can sell the freehold (sometimes called ‘**selling the ground rent**’) if s/he wants to. However, s/he normally has to offer the leaseholders in the building the opportunity to buy it first. Buying the freehold would give you more control over the management of your building but if it is sold to someone else your lease will remain basically the same, unless you agree to change it.

**G.** .....

It is very rare for a freeholder **to repossess a leasehold property**. Your freeholder can normally only evict you if all of the following points are met:



- you break one of the conditions of your lease (such as paying ground rent);
- your lease says it can be ended ('forfeited');
- the freeholder follows the correct procedure.

The freeholder has to give you formal written notice and **get a court order** before you can be evicted. Even if s/he can prove you broke your lease, you can ask the court **to stop the eviction**.

#### H. ....

If your lease has already run out, you may be able to negotiate a new one. It's better to do this if you can, but if it's not possible, you can probably stay in your home as an **assured tenant**. If you are in this situation, get advice immediately.

#### I. ....

If you are having problems with a freeholder or are not sure of your rights, you may be able to get help from the Leasehold Advisory Service, a solicitor or an advice centre in your area.

#### J. ....

**Commonhold** is a new type of ownership which gives leaseholders more rights.

Commonhold ownership means that people who buy new **purpose-built flats** will collectively own the freehold of their building. It also makes it easier for leaseholders of older properties to buy a share of the freehold;

- take over the management of their building;
- challenge service charges.

### *Service Charges*

#### K. ....

Service charges cover your share of the cost of maintaining the building you live in. Most leaseholders living in blocks of flats have to pay them because it is the only manageable way to share the costs of looking after the building. It is less common for leaseholders of **converted houses** to have service charges. They are normally paid annually but can sometimes be paid quarterly or half-yearly.

Service charges usually cover things like repairs, cleaning and **shared amenities** such as porters and communal gardens. They sometimes cover

buildings insurance as well, but you may have to pay for this separately. You normally have to pay a share of everything even if you don't use some of the services. For example, even if you live on the ground floor and never use the lift, you will probably still have to pay something towards its maintenance.

**L.** .....

If you are not sure what your service charges cover, check your lease.

It should say clearly:

- what services you have to pay for and when;
- how your freeholder can collect the charges;
- how service charges are calculated;
- how they are divided between you and any other leaseholders;
- whether there is a **sinking or reserve fund**.

Most leases have a section that covers general services not specifically mentioned in the lease (a '**sweeping-up clause**'). If your lease doesn't have this type of clause, you don't have to pay for anything that isn't specifically mentioned in the lease.

The amount you pay can vary from one year to the next ('**variable service charges**'). If you bought your home through the 'right to buy,' you can't be charged more than the estimate of service charges you were given when you bought your home (plus inflation) for the first five years.

If your lease doesn't give enough information about service charges or what it says isn't fair (for example, if it means your freeholder makes a profit), get advice. You may be able to **get a court order** to change it.

**I. After reading the text, think what parts of it (A–L) answer the questions (1–10).**

1. Who is the freeholder?
2. What is the lease?
3. What is commonhold?
4. What expenses do leaseholders have to pay?
5. What rights does the lease give to the tenant?
6. Where can the tenant get advice and help?
7. Can the freeholder sell the freehold?
8. Can the freeholder evict the tenant?
9. What if the lease runs out?
10. What are service charges for?

## II. Restore the missing parts in the following sentences.

1. The lease is a/an \_\_\_\_\_ between the \_\_\_\_\_ and the \_\_\_\_\_.
2. Every lease is \_\_\_\_\_, so it's important to check what it says.
3. If either you or the freeholder doesn't keep to the conditions of the lease, the other may be able to \_\_\_\_\_ and/or seek compensation.
4. If you are buying a leasehold property and there is a problem with the lease, it should be sorted out before \_\_\_\_\_.
5. The length of a lease can vary but usually starts at \_\_\_\_\_ years and can be as much as \_\_\_\_\_ years.
6. The lease can be bought and sold \_\_\_\_\_ but it may be difficult to find a buyer if there are less than \_\_\_\_\_ years left to run.
7. The \_\_\_\_\_ owns the land on which your home is built and has the right to collect ground rent and \_\_\_\_\_ from any leaseholders in the building.
8. The freeholder may live in the same building but this is \_\_\_\_\_.
9. The freeholder can sell the freehold (sometimes called \_\_\_\_\_) if s/he wants to.
10. If your lease has already run out, you may be able to \_\_\_\_\_ a new one. It's better to do this if you can, but if it's not possible, you can probably stay in your home as \_\_\_\_\_.
11. Commonhold ownership means that people who buy new purpose-built flats will \_\_\_\_\_ the freehold of their building.
12. \_\_\_\_\_ cover your share of the cost of maintaining the building you live in.
13. Service charges usually cover things like \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ such as porters and communal gardens. They sometimes cover \_\_\_\_\_ as well, but you may have to pay for this separately.
14. Most leases have a section that covers general services not specifically mentioned in the lease (a/an \_\_\_\_\_).

## III. Match the Russian phrases (1–13) with their equivalents in English (a–m).

- 1) плата за аренду земельного участка
- 2) расходы на техническое обслуживание
- 3) получить личную консультацию
- 4) обмениваться контрактами
- 5) фонд погашения (долга)
- 6) жилищно-строительное товарищество

- 7) выполнять обязанности
  - 8) земельный кадастр
  - 9) арендованное имущество
  - 10) конфискованный, оштрафованный, утраченный (о праве)
  - 11) выселение, лишение собственности, экспроприация, лишение имущества (по суду), возвращение себе имущества по суду; лишение владения на законном основании
  - 12) бытовые удобства
  - 13) съемщик, жилец, владелец недвижимости
- 
- a) fulfil obligations
  - b) leasehold property
  - c) Land Registry
  - d) sinking fund
  - e) amenities
  - f) ground rent
  - g) tenant
  - h) exchange contracts
  - i) forfeited
  - j) service charges
  - k) eviction
  - l) housing association
  - m) get advice in person

## PART II

### *What is a Sinking or Reserve Fund?*

Many leaseholders have to pay towards the costs of major repairs that may be needed in future into a 'sinking fund' or a 'reserve fund' **on top of** their regular service charges. This is often a **precaution** to pay for things like replacing a roof or repairing a lift if there is an emergency. You normally have to pay over a period of years. If you sell your home before the money has been spent on repairs, you are unlikely to get it back.

You only have to pay into a sinking or reserve fund if your lease says you have to. If you want to set one up, get advice. You will need a formal agreement with the freeholder and all the other leaseholders.

### *Can I be Charged for Things that I Didn't Agree to?*

Your freeholder has to consult you if s/he is going to carry out expensive work. This usually includes:

- any work that will cost more than £250 per flat, or
- any services (such as gardening or cleaning) that will cost more than £100 per flat.

The freeholder has to give you copies of at least two estimates for the work and at least one of them has to be from someone who isn't connected to the freeholder. You have the right to comment on what is being proposed and can suggest alternative contractors. The freeholder can only go ahead before you have had time to comment if the repairs needed are **urgent and essential**. If you are not properly consulted, get advice. You may not have to pay for the work.

### *How can Service Charges be Challenged?*

If you are not happy with the services you pay for, you can write to the freeholder explaining the problems. You may be able to negotiate a lower price or a better service. If the freeholder disagrees or refuses to do anything to improve the situation, a Leasehold Valuation Tribunal (LVT) can decide whether or not the services you receive are reasonable.

### *The Services are Poor*

In some cases, leaseholders are charged for services that are provided very badly or not at all. For example, you may be paying for weekly cleaning but the building is not cleaned regularly. In very extreme cases, an LVT may decide to appoint someone else to manage the building properly. The freeholder would still own the property but someone else would manage the services provided.

### *The Charges are Too High*

You **are entitled to** a written breakdown of your service charges to check whether the costs are reasonable. Your freeholder is entitled to add a small management charge but cannot make a profit. You have the right to inspect and take copies of accounts, **receipts** and any other relevant documents. If the freeholder doesn't provide this information it's a criminal offence and the council can prosecute her/him.

### *What Happens if I Don't Pay the Service Charge?*

If you don't pay the service charge, the freeholder can take you to court. In theory you could lose your home but this is rare and doesn't happen automatically. The freeholder has to follow special procedures ('**forfeiture proceedings**') and get a court order. If s/he tries to evict you without one, it may be a criminal offence. If your freeholder has threatened to **repossess** your home because you haven't paid your service charge, get advice from a **Shelter advice centre** or Citizens Advice immediately.

### *Ground Rent*

Ground rent is a fee you have to pay to the freeholder as a condition of your lease. It is usually a small amount (such as £100 or £200 a year). Some leaseholders don't have to pay any money at all in ground rent but most leases will still mention it. This is sometimes called a '**peppercorn rent**.'

Information about how to pay your ground rent should be included in your lease. Check to see what it says about:

- the amount of ground rent you have to pay;
- when it has to be paid (usually once a year);
- who it should be paid to (this could be the freeholder or a managing agent).

### *When do I have to Pay the Ground Rent?*

You are not legally liable to pay the ground rent unless the freeholder has formally demanded it. The demand will normally be posted or delivered to you at the address of the house or flat, unless you have already asked the freeholder to send ground rent demands to an alternative address.

The demand must be written and must include certain information to be valid:

- your name;
- the period that the demand covers;
- how much you have to pay;
- the name and address of the freeholder (and, if you are to make payments to a managing agent, their name and address);
- the date on which ground rent is due (or, if the demand is sent after the due date that's specified in your lease, the date on which you should have paid it).

The exact wording of the demand is set out in regulations — an adviser may be able to check whether any demands you receive **comply**. The demand must be sent with ‘Notes for Leaseholders,’ which inform you of your rights and responsibilities. The due date specified in the formal demand cannot fall before the ground rent would have been due under the lease. It should be at least 30 days (and no more than 60) after you receive the demand. You are not necessarily entitled to a receipt, so always **keep proof of payment** (such as receipts or bank statements).

### *What Happens if I don’t Pay It?*

The freeholder cannot take any legal action against you for ground rent arrears unless s/he has already:

- sent a formal demand in the correct format (see above);
- given the correct amount of notice (30 to 60 days), and
- you have not responded by the due date.

If you don’t pay your ground rent the freeholder can take you to court. It is most likely that s/he will try **to recover the arrears through the small claims court**.

In theory, the freeholder could take forfeiture action against you, which could ultimately lead to you losing your home. Forfeiture is similar to **re-possession** but it is extremely rare. The freeholder can only start forfeiture proceedings if:

- you owe £350 or more in ground rent (or a combination of ground rent, services charges and administration charges);
- you have been in arrears for three years or more.

If the freeholder does start forfeiture proceedings, special legal procedures must be followed. If they’re not, the freeholder may be guilty of an illegal eviction, which is a criminal offence.

#### The Freeholder is Taking Me to Court — What can I Do?

If possible, try to pay off what you owe before the court hearing. Otherwise, you will probably have to pay the freeholder’s legal costs (and your own) on top of the ground rent. When you pay what you owe, the legal action will automatically stop (this is called ‘relief from forfeiture’), and your lease will continue as before.

If you can’t afford to pay before the hearing, you will normally be given at least four weeks to do so. If the court orders you to pay and you don’t do so in time, the freeholder can ask the bailiffs to evict you. If you are in

this situation you may be able to ask the court **to delay the eviction** but you need to take action quickly.

### *Can the Ground Rent be Increased?*

The ground rent can normally only be increased if:

- you sell the property, or
- you agree to the increase, or
- the lease says the ground rent can be increased.

Most leases say the ground rent can be increased after a certain number of years. If this is the case, it should also give information about how often this can be done (for example, once every five years) and how much notice the freeholder has to give you. Check to see what your lease says.

#### **I. Restore the missing parts in the following sentences.**

1. Your freeholder has to \_\_\_\_\_ if s/he is going to carry out expensive work.
2. Ground rent is a fee you have to pay to the freeholder as a/an \_\_\_\_\_.
3. Some leaseholders don't have to pay any money at all in ground rent but \_\_\_\_\_.
4. You are not necessarily entitled to a receipt, so always keep proof of \_\_\_\_\_ (such as \_\_\_\_\_ or \_\_\_\_\_).
5. If you don't pay your ground rent the freeholder can \_\_\_\_\_.
6. Most leases say the ground rent can be increased after \_\_\_\_\_.

#### **II. Answer the following questions.**

1. What do we call a sinking fund?
2. Should you pay for things, like expensive work or services, done by your freeholder without your prior notice or agreement to that?
3. How can you challenge service charges?
4. What can be done if the charges are too high and the services are poor?
5. How do you understand the term 'ground rent'?
6. When should the ground rent be paid?
7. What happens if it's not paid?
8. What can be done if the freeholder is taking the tenant to court?
9. Is it possible for the ground rent to be increased?



### III. Reproduce Part II. Make use of the following lexis.

Precaution, to be entitled to, accounts, receipts, forfeiture proceedings, a Shelter advice centre, ‘peppercorn rent,’ to comply with, to keep proof of payment, to recover the arrears, repossession, to delay the eviction.

## PART III

### *What are the Benefits of Buying the Freehold?*

Being a freeholder is more secure than being a leaseholder. Buying the freehold may make it easier to sell your home and will probably increase its value. This is because:

- freeholders have more control over the management of their homes
- most freeholders don’t have to pay ground rent
- freeholders can normally only be evicted if they don’t **pay the mortgage** or other **secured loans**.

### *Do I Have the Right to Buy the Freehold?*

You can probably buy the freehold if:

- your lease covers the whole house — not just an individual flat or maisonette;
- the lease was granted to the original leaseholder for at least 21 years;
- you have owned the lease to your home for at least two years (it is no longer necessary to have lived in the property during that time).
- However, you may be excluded from buying the freehold if:
  - the freeholder is a charitable housing trust;
  - the public has the right of access to your property;
  - the freehold includes adjoining property (such as farm land);
  - you have a business lease (although there are some exceptions);
  - you bought your **home through a shared ownership scheme** and have not yet bought the remaining shares in your home.

### *How does the Process Work?*

Buying the freehold (enfranchisement) can be a very complicated process. The basic steps are explained below. This is only an introduction to the procedure you will have to follow. You will probably need a solicitor to do the legal work. More information is available from the Leasehold Advisory

Service. You may also be able to get help from a Shelter advice centre or Citizens Advice in your area.

### *Step 1: Making an Offer*

The first step is to inform the freeholder that you want buy the freehold (the ‘initial notice’). The notice is a legal document and has to contain:

- your name and address;
- details of the property;
- the price you propose to pay (you can get a valuation to work this out);
- a deadline for the freeholder’s response (you must allow at least two months).

Once the initial notice has been given, you become responsible for the freeholder’s legal costs. You have to pay them even if the sale falls though.

### *Step 2: the Freeholder’s Response*

The freeholder has to send you a reply (‘counter notice’) within two months, saying whether you have the right to buy the freehold. S/he can only refuse if:

- s/he needs the property for her/himself or a member of her/his family;
- s/he is going to **demolish or redevelop the property**.

In either case, the freeholder has to get a court order to get you to leave and will have to pay you compensation. If you are in this situation, get advice. If the freeholder refuses for any other reason you can apply for a court order to force her/him to sell you the freehold. You have to do this within two months from the date you receive the counter notice.

### *Step 3: Negotiation*

If the freeholder’s counter notice says s/he agrees that you can buy the freehold, there is usually a period of negotiation before the sale goes ahead. Most freeholders suggest changes to the conditions of the sale, which may include a higher price. Once the conditions of the sale have been agreed, you have to sign a formal legal contract within two months.

### *How Much will It Cost?*

Sadly, there is no easy way to work out how much you might have to pay for the freehold. You will need to get a valuation to work out approximately how much the freeholder will expect. It is almost impossible to work out a fixed price, so most valuers will give you a high and low price. The final

price should be somewhere in between but you may still have to negotiate. You'll also have to pay all the solicitors' and surveyors' fees legal costs (for both yourself and the freeholder), which can be expensive.

Buying the freehold is only an option if you can afford it. It is usually more expensive than extending your lease and can be more complicated. Depending on your circumstances, extending your lease may be a better option, so you should get advice before making a decision.

### *Buying a Share of the Freehold*

Not all flat owners have the right to buy a share of the freehold. There are rules about who qualifies and which properties are eligible. Your lease must have originally been granted for at least 21 years or contain a special clause which says that it can be renewed indefinitely. It is no longer necessary to have lived in the property for a specific amount of time. However, even if this is the case, you may not be eligible if:

- you have a business lease;
- you have a lease on more than two flats in the building;
- the freeholder is a charitable housing trust, the National Trust, the Crown or the Church of England.

There are a few other exclusions. For example, if your flat is in a house that was converted by the freeholder and s/he (or an adult member of her/his immediate family) has lived in one of the flats for at least the last 12 months, the leaseholders probably can't buy the freehold.

### *Does My Building Qualify?*

There are also rules about the types of buildings that can be bought. Your building will probably qualify if:

- it is self-contained and contains two or more flats, and
- at least two-thirds of the flats are owned by leaseholders;
- no more than 25 per cent of the building is used for business purposes.

In most cases, the leaseholders who buy the freehold must own at least half of the total number of flats in the building. If there are enough leaseholders in the building but some of them don't want to take part, they don't have to.

### *How does the Process Work?*

**Collective enfranchisement** can be a very complicated process. The basic steps are explained below. This is only an introduction to the pro-

cedure you will have to follow and you will need a solicitor to do the legal work.

### *Step 1: Find out How the Building is Owned and Managed*

This will help you work out whether you can buy the freehold and who will be involved in the process. You should be able to get all the details from whoever collects your ground rent. Later on, you will need to deal with all the other leaseholders in the building, the freeholder and the managing agent, if there is one.

### *Step 2: Contact the Other Leaseholders*

Inform all the other leaseholders in the building that you are interested in buying the freehold and invite all of them to take part. You can say which leaseholders have already agreed to buy a share and give an estimate of the costs involved.

### *Step 3: Set up a Company to Buy the Freehold*

You need to have a formal legal agreement with the other leaseholders. This is normally done by setting up a company to buy the freehold **on behalf of** the group. You also need to agree how you will manage and maintain the building after the sale and how you will share the costs involved. You may also need **to hire a surveyor** to value the freehold to get an idea of how much it is likely to cost.

### *Step 4: Contact the Freeholder*

You have to give written notice to the freeholder, saying that you want to buy the freehold. You have to say how much you propose to pay and give details of all the leases involved. You also have to give a deadline for the freeholder's response, which must be at least two months from the date of your notice. Once you give this written notice, the company representing the leaseholders becomes responsible for all the freeholder's legal expenses. You will have to pay them even if the sale falls through.

### *Step 5: the Freeholder's Response*

The freeholder's reply should say whether s/he agrees that you have the right to buy the freehold. S/he can only refuse to sell it in certain circumstances. However, the process usually involves a lot of negotiation. The freeholder may not agree with the price you have offered and may

insist that you agree to other conditions for the sale. For example, if your building is in an estate, the freeholder may only allow the sale if you agree to use the same maintenance scheme as the rest of the estate. If you can't agree the conditions of the sale (or the price), get advice. You may be able to take the freeholder to a leasehold valuation tribunal.

### *Step 6: Complete the Sale*

Once the price and other conditions of the sale are agreed, neither side can pull out. You have to complete the sale within two months. After the sale, the company representing the group owns the freehold and is responsible for managing and insuring the building. It will be able to collect service charges for repairs and improvements and can grant new leases, often at a **peppercorn rent**.

If you decide not to buy (for example, because you can't afford it) you have to tell the freeholder within one month of the price being set. If you pull out, you can't reapply for three years and will still have to pay all the legal costs. You may also have to pay compensation if the freeholder loses money because of your claim.

### *How Much will it Cost?*

Unfortunately, there is no easy way to work out how much you might have to pay for the freehold. You will need to get a valuation to get an idea. It is almost impossible to work out a fixed price, so most valuers will give you a high and low price. The final price should be somewhere in between, but you will have to negotiate. It may be worth getting a valuation before you give written notice to the freeholder if you are not sure whether you will be able to afford it. If you think the price the freeholder is asking is too high, a leasehold valuation tribunal can decide whether the price is fair. You will also have to pay all the legal costs involved — for both yourself and the freeholder. This will include solicitors' and surveyors' fees.

Buying the freehold is only an option if you can afford it. It is usually more expensive than extending your lease and can be more complicated. Depending on your circumstances, extending your lease may be a better option, so you should get advice before making a decision.

### *Sale of the Freehold to a Non-Resident*

Buying the freehold is only an option if you can afford it. The freeholder has to tell you the price s/he is prepared to accept and any other conditions

of the sale. If you think the price is too high, you cannot **force her/him to reduce it** and s/he can sell the freehold to someone else within 12 months. However, it can't be sold to anyone else for a better price (or with better conditions) than you were offered. If s/he wants to do this, s/he has to offer it to you first on the same terms.

### *What can I do if the Sale is Already Underway?*

It is usually a criminal offence to sell the freehold to someone else without giving you the chance to buy it first. If this happens, you have to act quickly if you want to take action. Get advice immediately to find out whether you can:

- stop the sale and enforce your '**right of first refusal**';
- buy the freehold from the new freeholder (you have to do this within four months of finding out that it has been sold).

If the sale goes ahead, you will have a new freeholder. Your lease will continue as before unless you agree to change it.

### **I. Restore the missing parts in the following sentences.**

1. Being a freeholder is more secure than \_\_\_\_\_.
2. If the freeholder's counter notice says s/he agrees that you can buy the freehold, there is usually a period of \_\_\_\_\_.
3. Not all \_\_\_\_\_ have the right to buy a share of the freehold. There are rules about who qualifies and which properties are eligible.
4. There are also rules about the types of buildings that can be bought. Your building will probably qualify if: \_\_\_\_\_, and \_\_\_\_\_, no more than 25 per cent of the building is used for business purposes.
5. Once the price and other conditions of the sale are agreed, neither side \_\_\_\_\_. You have to complete the sale within \_\_\_\_\_.
6. It is usually a criminal offence to sell the freehold to someone else without \_\_\_\_\_ first. If this happens, you have to act quickly if you want to take action.

### **II. Find the answers to the following questions in Part III of the Text.**

1. What are the advantages of buying the freehold?
2. Does everyone have the right to buy the freehold?
3. What is the process of buying a freehold (enfranchisement)? Is it expensive?
4. Who is eligible to buy a share of the freehold?

5. Which properties (buildings) are eligible to be bought as a share of the freehold?
6. How does the process of collective enfranchisement work? How much will it cost?
7. Can the freehold be sold to a non-resident? How is the price agreed?

### III. Match the beginnings of the phrases with their endings.

- |                          |                        |
|--------------------------|------------------------|
| 1) ground                | a) a surveyor          |
| 2) service               | b) advice centre       |
| 3) buildings             | c) alterations         |
| 4) to make               | d) amenities           |
| 5) sinking               | e) association         |
| 6) housing               | f) charges             |
| 7) to withhold           | g) charges             |
| 8) to fulfil             | h) clause              |
| 9) land                  | i) flats               |
| 10) leasehold            | j) fund                |
| 11) forfeited            | k) houses              |
| 12) to stop              | l) information         |
| 13) assured              | m) insurance           |
| 14) purpose-built        | n) Lease               |
| 15) to take over         | o) loans               |
| 16) converted            | p) obligations         |
| 17) shared               | q) payment             |
| 18) sweeping-up          | r) proceedings         |
| 19) variable service     | s) property            |
| 20) forfeiture           | t) refusal             |
| 21) a shelter            | u) Registry            |
| 22) peppercorn           | v) rent                |
| 23) secured              | w) rent                |
| 24) a charitable housing | x) tenant              |
| 25) adjoining            | y) the eviction        |
| 26) right of first       | z) the management      |
| 27) to hire              | aa) trust              |
| 28) to keep proof of     | bb) Valuation Tribunal |

### IV. Prepare a summary of the text.

## Text 5. INTELLECTUAL PROPERTY

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(adapted from the communication *Enhancing the Enforcement of Intellectual Property Rights in the Internal Market* from the Commission of the European Communities to the Council, the European Parliament and the European Economic and Social Committee.  
URL: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0467:FIN:EN:PDF>.  
Last accessed 27.01.2012)

**Read the text (24 000 characters) paying attention to the words and phrases in bold.**

### PART I

#### 1. ENFORCING INTELLECTUAL PROPERTY RIGHTS: TURNING A LONG-TERM COMMITMENT INTO ACTION

In today's knowledge-based society intellectual property rights (IPR) are **vital business assets**, encouraging innovation and creativity by ensuring **a fair return on investment**. IPR play an increasingly important role, fostering economic growth by protecting and enabling inventors, designers and artists to benefit from the commercial value of their creations. This results in an essential cycle of business development, knowledge and further innovation. Moreover, **trade marks** in particular can have a beneficial effect on consumers, in many cases signifying quality and a reassurance that the products and services they buy are legitimate, safe and reliable.

The EU is home to some of the largest and most successful businesses in the world, who consider IPR to be amongst their **most precious commercial possessions**. However, within the **Single Market** IPR are equally important to small and medium-sized enterprises (SMEs), who use them to protect their **intangible assets** and **to gain access** to vital 'start-up' finance and **venture capital**. It is essential that the European Union continues to support this environment through a high-standard intellectual property culture that protects and creates opportunities for vital European talent.



The growing value of IPR is an indicator of success. However, it also makes them attractive to counterfeiters and pirates, who are often well financed and have become organised, **highly skilled entrepreneurs operating on an industrial scale**. These **infringers make full use of advances in technology and trade**, adopting modern business models to control the production, distribution and sale of **illicit goods** across borders and continents. The internet is one such tool that is being used to drive a worldwide market in infringing products, which is **stifling innovation and threatening jobs**.

In Europe, counterfeiting and **piracy** have a dramatic and damaging effect on business and they have the potential to become even more problematical due to **the recent economic downturn** and **the growing range of fake products** being sold. While luxury goods, fashion, music and film products have traditionally been targeted, today counterfeiting and piracy affect a wider variety of **mass consumption** goods such as foodstuffs, cosmetics, hygiene products, spare parts for cars, toys and various types of technical or electrical equipment. This has resulted in risks to the health and safety of European citizens. In particular, the increase in fake medicines is **of growing concern**. The Commission has **implemented a legal framework** within the Single Market that provides the tools to enforce IPR in a fair, effective and proportionate way. The IPR Enforcement Directive is one of the **cornerstones** of this. It has **harmonised the laws** of Member States with regard to civil measures for the enforcement of all IPR and a proposal on criminal sanctions is currently under discussion in the Council.

**The EU Customs Regulation**, which allows for the **detention of goods** suspected of infringing IPR, is another pillar of the legal framework. The Commission is currently consulting Member States and stakeholders on how this Regulation can be further improved.

With a principal body of laws in place, the Commission now proposes **to supplement the regulatory framework** with complementary non-legislative measures, **in line with Competitiveness Council Resolution** of 25 September 2008 on a comprehensive European anti-counterfeiting and piracy-plan.

In this respect support for small and medium-sized enterprises (SMEs) is imperative. A survey carried out on behalf of the Commission in 2007 confirmed that infringements of IPR create major problems for European SMEs, many of which lack the resources and finances **to pursue infringers**. The Commission has therefore focused on increasing support in this

area, reflecting the strong emphasis being placed on IPR and knowledge management since the re-launch of the Lisbon Strategy in 2005. In April 2009, the final **report of the advisory expert group**, set up by the Commission, provided recommendations on the assistance required by SMEs. In line with the findings of the report, the Commission is continuing with a number of related projects to help SMEs integrate IPR into their innovation strategies and business plans.

At global level the Commission has developed a long-term strategy for the enforcement of IPR in third countries. In the framework of this strategy, a list of “priority countries” has been put together and this is regularly updated. Other major initiatives concern negotiations on an Anti-Counterfeiting Trade Agreement (ACTA) and an EU-China Action Plan to increase customs cooperation on protecting IPR. In addition to this, the Commission has launched its China IPR SME Helpdesk. This provides SMEs with the business tools they need to develop their IP rights and manage related risks.

Consolidating public and private sector partnerships is also imperative. In May 2008, a High Level Conference on Counterfeiting and Piracy was organised, together with Members of the European Parliament, to launch a **sustainable EU strategy** for a more participative approach. The Conference was followed by the Commission’s Industrial Property Rights Strategy for Europe and **the adoption of the Competitiveness Council Resolution** on a comprehensive European anti-counterfeiting and anti-piracy plan. The Council’s conclusions confirmed the need to make IPR enforcement work better within the Single Market by complementing legislation with a range of non-legislative measures. It also called on the Commission to continue to focus firmly on border controls in the form of an anti-counterfeiting customs plan for 2009-2012. This plan has been developed by the Commission **in conjunction with** the Member States.

## 2. UNDERSTANDING THE CHALLENGES AND REDUCING THE RISKS: AN EU COUNTERFEITING AND PIRACY OBSERVATORY

The broad facts about the widespread damage caused by infringements of IP rights are well documented. However, comprehensive information to help develop priorities and target enforcement more effectively, and thus

pave the way for better collaboration and **evidence-based policies**, has been more difficult to assemble.

In 2006, a report by the OECD reflected that one of the biggest challenges facing governments and business is getting reliable and up-to-date information on the extent of counterfeiting and piracy and the impact on our economies and society, including employment in Europe. Despite work carried out in some sectors to analyse the scope and scale of the problem the figures use different methods and sources, with the resulting lack of comparative data.

Moreover, a wide range of information is held by national enforcement bodies, European and national IP offices and **assorted professional business organisations**. This data is often difficult to assimilate. One of the more robust sources of information available is published by the Commission and is based on annual customs detentions at EU borders. However, border detentions only show part of the picture, since they only relate to goods entering or leaving the EU territory. It is necessary to widen the overall knowledge base to fully assess the economic and **societal implications of counterfeiting and piracy** and to understand why some products, sectors and geographical areas within the EU are more vulnerable than others. Comprehensive and comparable data will also help to establish agreed priorities and programmes, targets for enforcement and more focused consumer awareness campaigns.

To achieve this, the Competitiveness Council advocated the creation of the European Counterfeiting and Piracy Observatory as the principal EU instrument to ‘enable regular assessments, on the basis of the data which the public and private sectors wish to provide, of the extent of counterfeiting and piracy and a more precise analysis of these phenomena.’

## **2.1. Supporting IPR Enforcement through Comprehensive Information and Sharing of Best Practices**

The Commission is now establishing an Observatory to serve as the central resource for gathering, monitoring and reporting information and data related to all IPR infringements. However, the Observatory should play a much wider role, becoming the platform for representatives from national authorities and stakeholders to exchange ideas and expertise on best practices, **to develop joint enforcement strategies** and to make recommendations to policy-makers.

Ensuring that the Observatory becomes the pan-European source of knowledge and a central resource for stakeholders and public authorities engaged in IPR enforcement activities will require close collaboration between the Commission, the Member States and the private sector. The aim therefore is to involve public and private representatives from across the European Union and to bring them together in partnership with consumers to cultivate a broader understanding of the problems. This will **facilitate the development of practical solutions**, more focused awareness raising strategies and more collaborative action. An important deliverable would be a publicly available Annual Report, presented by the Commission and providing specific information on core work areas.

In particular, the Observatory will:

- improve the collection and use of independent, reliable information and data;
- develop a benchmark methodology for the collection, analysis and reporting of independent data relating to IPR infringements ensuring that the information is aggregated objectively and in a balanced manner;
- carry out detailed analyses and provide regular assessments of the economic and societal implications, including the impact on innovation, competitiveness and employment in Europe, the involvement of organised crime and risks to the health and safety of European citizens;
- use comprehensive data from public authorities and private organisations to assess the strengths and weaknesses of IPR enforcement throughout the Internal Market;
- provide regular and specific reports to identify vulnerabilities within the Internal Market to highlight the threats and challenges and to drive evidence-based enforcement strategies. The publicly available reports will provide a solid knowledge base, and will become central tools in setting priorities and measuring progress;
- promote and spread best practice amongst public authorities;
- identify and assess IPR enforcement coordination in the Member States;
- promote and spread best practice in particular through innovative and successful cooperation initiatives between different enforcement authorities as well as other relevant national authorities;
- identify and document enforcement training programmes carried out in different Member States and spread best practice;

- encourage that publicly funded projects fully respect intellectual property rights;
- foster public and private sector cooperation, in particular with respect to awareness-raising and the training of enforcement agencies;
- spread successful private sector strategies;
- identify and assess successful anti-counterfeiting and piracy strategies and action undertaken by the private sector and spread best practice;
- reach out to a wide range of stakeholders in the distribution chain, such as organisers of trade fairs, transport and logistics companies and payment service providers;
- encourage efforts to enhance the quality of intellectual property rights in order to enable effective enforcement;
- identify successful public awareness campaigns, develop strategies and initiatives and spread best practice throughout economic sectors and across national borders;
- explore how awareness and education about IPR can be promoted among young people;
- identify, report and propose solutions to key problems;
- assess and highlight problems in specific geographical areas and specific sectors and delivering recommendations to policy-makers, enforcement agencies and stakeholders.

## **2.2. Shaping the Observatory as a Platform for Stakeholders and Member States**

In its Resolution the Council suggested that the Observatory should be based on existing Commission structures, which should be light and flexible and, where necessary, make use of external expertise. Therefore, the Commission will provide the central administrative resource. However, Member States' representatives and stakeholders will play an integral part in the work of the Observatory and the achievement of its objectives.

Member States will be asked to appoint a national representative and the participation of stakeholders will need to reflect a broad range of European and national bodies, representing the different economic sectors most concerned by and most experienced in the fight against counterfeiting and piracy. European consumers also need to be properly represented and invited to play an active role. In this way the Observatory could help

consumers to become active and responsible partners. In addition, particular attention needs to be given to the representation of SMEs.

**I. Paraphrase the following sentences.**

1. IPR play an increasingly important role, fostering economic growth by protecting and enabling inventors, designers and artists to benefit from the commercial value of their creations.

2. However, within the Single Market IPR are equally important to small and medium-sized enterprises (SMEs), who use them to protect their intangible assets and to gain access to vital 'start-up' finance and venture capital.

3. The Internet is one such tool that is being used to drive a worldwide market in infringing products, which is stifling innovation and threatening jobs.

4. While luxury goods, fashion, music and film products have traditionally been targeted, today counterfeiting and piracy affect a wider variety of mass consumption goods such as foodstuffs, cosmetics, hygiene products, spare parts for cars, toys and various types of technical or electrical equipment.

5. With a principal body of laws in place, the Commission now proposes to supplement the regulatory framework with complementary non-legislative measures, in line with Competitiveness Council Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and piracy-plan.

6. In May 2008, a High Level Conference on Counterfeiting and Piracy was organised, together with Members of the European Parliament, to launch a sustainable EU strategy for a more participative approach.

7. In 2006, a report by the OECD reflected that one of the biggest challenges facing governments and business is getting reliable and up-to-date information on the extent of counterfeiting and piracy and the impact on our economies and society, including employment in Europe.

8. It is necessary to widen the overall knowledge base to fully assess the economic and societal implications of counterfeiting and piracy and to understand why some products, sectors and geographical areas within the EU are more vulnerable than others.

9. Ensuring that the Observatory becomes the pan-European source of knowledge and a central resource for stakeholders and public authorities

engaged in IPR enforcement activities will require close collaboration between the Commission, the Member States and the private sector.

10. In its Resolution the Council suggested that the Observatory should be based on existing Commission structures, which should be light and flexible and, where necessary, make use of external expertise.

## II. Correct the false statements.

1. Trade marks cannot have a negative effect on consumers, in many cases revealing quality and a reassurance that the products and services they buy are legitimate, safe and reliable.

2. The growing value of IPR is an indicator of failure.

3. In Europe, counterfeiting and piracy have a dramatic and damaging effect on politics and they have the potential to become even more problematical due to the long-term economic downturn and the growing range of fake products being sold.

4. The Commission has carried out a policy within the Single Market that provides the measures to enforce IPR in a fair, effective and proportionate way.

5. The EU Customs Regulation, which allows for the detention of offenders suspected of infringing IPR, is another pillar of the legal framework.

6. A survey carried out on behalf of the Commission in 2007 confirmed that infringements of IPR create petty problems for European SMEs, many of which lack the resources and finances to pursue infringers.

7. At global level the Commission has developed a short-term strategy for the enforcement of IPR in third countries.

8. One of the more robust sources of information available is published by the Commission and is based on annual customs detentions at EU borders.

9. The publicly available reports will provide a solid knowledge base, and will become additional tools in setting priorities and measuring progress.

## III. Match the English word combinations (1–18) with their Russian equivalents (a–r).

1) single market

a) представлять угрозу рабочим

2) intangible assets

местам

3) gain access to

b) единый рынок

- |   |   |
|---|---|
| 4) venture capital                      | с) массовое потребление                   |
| 5) highly skilled entrepreneurs         | д) обеспечить нормативно-правовую базу    |
| 6) illicit goods                        | е) дистрибьюторская сеть                  |
| 7) stifle innovation                    | ф) таможенное регулирование               |
| 8) threatening jobs                     | г) удержание товара                       |
| 9) recent economic downturn             | h) нематериальные активы                  |
| 10) mass consumption                    | і) недавний экономический спад            |
| 11) implement a legal framework         | ј) преследовать правонарушителей          |
| 12) Customs Regulation                  | к) получить доступ к чему-либо            |
| 13) detention of goods                  | l) продвигать лучшую практику             |
| 14) in line with Resolution             | m) предпринимательский капитал            |
| 15) pursue infringers                   | n) тормозить инновации                    |
| 16) report of the advisory expert group | о) в соответствии с резолюцией            |
| 17) promote and spread best practice    | р) высокопрофессиональные предприниматели |
| 18) distribution chain                  | q) незаконные товары                      |
|   | г) отчет экспертной группы                |

**IV. Translate the following words and phrases into Russian. Restore the context where they are used.**

- 1) make full use of advances in technology and trade
- 2) the growing range of fake products
- 3) of growing concern
- 4) cornerstones
- 5) harmonise the laws
- 6) supplement the regulatory framework
- 7) sustainable EU strategy
- 8) the adoption of the Competitiveness Council Resolution
- 9) in conjunction with
- 10) evidence-based policies
- 11) assorted professional business organisations
- 12) societal implications of counterfeiting and piracy
- 13) develop joint enforcement strategies
- 14) facilitate the development of practical solutions
- 15) benchmark
- 16) aggregated



- 17) vulnerabilities
- 18) through innovative and successful cooperation initiatives

## PART II

### 3. FOSTERING ADMINISTRATIVE COOPERATION ACROSS EUROPE

Administrative cooperation between different enforcement authorities needs to be improved to ensure consistent and efficient IPR enforcement across the Internal Market. Due to the international nature of IPR infringements, improving internal cross-frontier cooperation is not only a legislative obligation, it is a clear necessity, and while administrative cooperation already operates in the area of Customs it is clearly lacking in other areas and needs to be developed.

Greater administrative cooperation in the field of IPR enforcement should also be seen in the wider context of a partnership between the Commission and the Member States in implementing a **borderless internal market**. To this end, an efficient network of contact points across the European Union is essential to promote rapid exchanges of information on suspect products, manufacturing sites, distribution routes and **key sales points**. This will generate synergy, which in turn will help to coordinate national policies and **to provide mutual assistance**.

Developing better coordination is also necessary within Member States between those involved in the enforcement of IPR. To ensure more effective exchanges of information, national authorities must be in regular contact with each other and with relevant private sector bodies. Therefore, Member States are called upon to appoint National Coordinators with a firm mandate to synchronise IPR enforcement issues between their respective national enforcement agencies. These National Coordinators should be directly linked through a central system and should act as pivotal contact points for industry bodies, **liaising with** stakeholders and facilitating cross-frontier collaboration.

As the national centres of IPR expertise, National IP Offices have an important contribution to make. They could play a valuable role in building platforms and strategies to drive coordinated approaches and spreading best practices. This role could be extended to new functions such as

awareness-raising, specific support for SMEs and coordination. Other international IP focal points, such as the European Patent Office, may also wish to reach out with their expertise and best practices. Moreover, in respect of trade marks and designs, cooperation between the OHIM and the national offices could be further extended to cover EU cooperation and future enforcement programmes and action.

### **3.1. Increasing the Transparency of National Structures and Systems**

Transparency needs to be improved in respect of the national structures to provide support to stakeholders at cross-border levels, particularly SMEs. Following a comprehensive round of consultation, in which all Member States have participated and produced information, the Commission is currently analysing the structures that Member States have put in place to combat IPR infringements. This will result in a report that will map existing frameworks and strategies and provide best practice indicators. The report will be presented at meetings of stakeholders and Member States, in the context of the Observatory, in the second half of 2009.

### **3.2. Promoting cross-border cooperation through modern information-sharing tools**

Improving the exchange of up-to-date information to promote cross-border cooperation is a vital need. In its Resolution the Competitiveness Council called on the Commission to set up a network for rapid exchange of key information, drawing on national contact points and modern information-sharing tools.

To achieve this aim an electronic network for information sharing on IPR infringements in the Internal Market will need to be available to a wide range of national bodies, including different enforcement agencies and national IP offices. It will need to:

- support ‘real-time’ exchanges of information on goods and services infringing IPR in the internal market;
- allow the swift exchange of **alerts** concerning specific products, trends and potential threats, and
- provide facilities to **overcome language barriers** for national authorities.

Building on its experience with other Internal Market systems, such as the Internal Market Information Exchange system (IMI) and **the market**

**surveillance information exchange system (ICSMS)**, the Commission is currently analysing how a modern system could be designed to respond best to users' needs by way of an interface for essential information to be shared and exchanged and how it could build on existing networks, such as for example IMI.

#### 4. BUILDING COALITIONS: FACILITATING VOLUNTARY ARRANGEMENTS BETWEEN STAKEHOLDERS

##### 4.1. Focusing on Common Ground amongst Stakeholders

The fight against counterfeiting and piracy is not only of benefit to rights owners, it is also in the interest of other stakeholders, such as importers, trade fair organisers, retailers, including e-commerce platforms.

Counterfeiting and piracy severely damage trust and confidence in the trade of goods and services, in particular on the internet or across borders. For business this can result in the loss of opportunities. For consumers, counterfeiting could cause a reluctance to make the best use of new distribution channels, or to take advantage of bargains throughout the Internal Market.

Moreover, the wide variety of counterfeit goods which potentially affect the health and safety of any European citizen, such as fake pharmaceuticals, foodstuffs, cosmetics, hygiene products, electronic and technical equipment and spare parts for cars etc., demonstrate that **it is in the common interest of all concerned to work together** to fight this growing phenomenon.

Therefore, rights holders and other stakeholders should be encouraged to exploit the potential of collaborative approaches and to place more emphasis on joining forces to combat counterfeiting and piracy in the common interest, also taking advantage of possible alternatives to court proceedings for settling disputes.

##### 4.2. Combating IPR Infringements through Stakeholders' Dialogues

The focus on common interests should **allow voluntary arrangements** to be fostered between stakeholders and thus practical solutions to be found. Voluntary arrangements to combat counterfeiting and piracy on the ground can give stakeholders the flexibility to adapt quickly to new technological developments. Moreover, this approach empowers stakeholders themselves

to **work out optimal measures**, particularly technological solutions. Voluntary agreements can also be more easily extended beyond the European Union and become a foundation for best practice in the fight against counterfeiting and piracy at global level.

For voluntary arrangements to be agreed and implemented it is vital for stakeholders to engage in constructive dialogues, focusing on concrete problems and workable and practical solutions, which must be realistic, balanced, proportionate and fair for all concerned. Any voluntary **inter-industry solution** has to be compliant with the existing legal framework and should neither restrict in any way the fundamental rights of EU citizens, such as the freedom of expression and information, the right to privacy and the protection of personal data, nor **impinge on legislative negotiations** at EU level. The Commission offers to act as a facilitator for such stakeholder dialogues on concrete topics by inviting the parties to get together, by organising meetings, by providing the administrative and logistical support and by safeguarding, where necessary, a fair balance between all the different interests at stake, including the legitimate rights and expectations of EU citizens. The Commission will carefully monitor the development and functioning of voluntary arrangements and remains ready to consider alternative approaches, if needed in the future.

### 4.3. Tackling the Sale of Counterfeit Goods over the Internet

As a first example, the Commission has **launched a stakeholders' dialogue** on the sale of counterfeit goods over the internet. While the internet is not in itself the source of counterfeiting, it has nevertheless become an important vehicle for the sale of fake goods world-wide. Its global reach and accessibility, the possibility for traders to remain anonymous and for offers to be placed and withdrawn instantly has made it one of the most attractive tools for the sale of counterfeit goods. The enormous growth of the phenomenon makes this an area for priority action. It is also an area where voluntary arrangements would seem to be particularly promising, given the rapid progress of technological developments and the resulting need for practical technology-based solutions.

Brand owners and internet companies alike have recognised this and have committed themselves to developing a collaborative way forward. Consequently, the Commission has organised a structured dialogue between stakeholders **to facilitate mutual understanding** and to find solutions

that will be in the interests of all concerned. A series of meetings have already taken place to address specific issues relating to the sale of counterfeit goods over the internet. Further meetings have been scheduled before the end of the year, which could lead to a Memorandum of Understanding, dealing with issues such as prevention, identification and removal of infringing offers (e.g. Notice and Take-Down procedures) and sellers from internet platforms. However, if voluntary arrangements cannot be agreed, the Commission will need to consider legislative solutions, in particular in the context of the IPR Enforcement Directive.

## 5. CONCLUSIONS

By **providing incentives** to create, innovate and trade, intellectual property rights are one of the cornerstones of a competitive, wealth-generating, knowledge-based society. IPR infringements **cause widespread economic harm** and an increasing number of counterfeit products now **pose a real threat** to consumer health and safety. It is therefore in the interest of stakeholders and consumers alike to have a responsive enforcement system which is robust, proportionate and fair.

The Commission seeks to ensure this by complementing the existing regulatory framework with non-legislative measures to make for more collaborative and focused enforcement across the Internal Market, in particular by:

- supporting enforcement through an EU Counterfeiting and Piracy Observatory;

- fostering administrative cooperation throughout the Internal Market;
- facilitating voluntary arrangements between stakeholders.

The Commission is convinced that these measures will significantly strengthen the fight against counterfeiting and piracy, in the common interest of European citizens, business and the economy as a whole.

### I. Paraphrase the following sentences.

1. Due to the international nature of IPR infringements, improving internal cross-frontier cooperation is not only a legislative obligation, it is a clear necessity, and while administrative cooperation already operates in the area of Customs it is clearly lacking in other areas and needs to be developed.

2. Moreover, in respect of trade marks and designs, cooperation between the OHIM and the national offices could be further extended to cover EU cooperation and future enforcement programmes and action.

3. Transparency needs to be improved in respect of the national structures to provide support to stakeholders at cross-border levels, particularly SMEs.

4. Building on its experience with other Internal Market systems, such as the Internal Market Information Exchange system (IMI) and the market surveillance information exchange system (ICSMS), the Commission is currently analysing how a modern system could be designed to respond best to users' needs by way of an interface for essential information to be shared and exchanged and how it could build on existing networks, such as for example IMI.

5. The fight against counterfeiting and piracy is not only of benefit to rights owners, it is also in the interest of other stakeholders, such as importers, trade fair organisers, retailers, including e-commerce platforms.

6. For consumers, counterfeiting could cause a reluctance to make the best use of new distribution channels, or to take advantage of bargains throughout the Internal Market.

7. The focus on common interests should allow voluntary arrangements to be fostered between stakeholders and thus practical solutions to be found.

8. For voluntary arrangements to be agreed and implemented it is vital for stakeholders to engage in constructive dialogues, focusing on concrete problems and workable and practical solutions, which must be realistic, balanced, proportionate and fair for all concerned.

9. The Commission will carefully monitor the development and functioning of voluntary arrangements and remains ready to consider alternative approaches, if needed in the future.

While the internet is not in itself the source of counterfeiting, it has nevertheless become an important vehicle for the sale of fake goods world-wide.

10. IPR infringements cause widespread economic harm and an increasing number of counterfeit products now pose a real threat to consumer health and safety.

II. Fill in the gaps with the words and word combinations from the text.  
*ensure, impinge, on the internet, adapt, counterfeiting, liaising, growing, partnership, piracy, pivotal contact points, promote, facilitate,*

*enforcement authorities, implementing, vital, in the common interest, compliant, find*

1. Administrative cooperation between different \_\_\_\_\_ needs to be improved to \_\_\_\_\_ consistent and efficient IPR enforcement across the Internal Market.

2. Greater administrative cooperation in the field of IPR enforcement should also be seen in the wider context of a/an \_\_\_\_\_ between the Commission and the Member States in \_\_\_\_\_ a borderless internal market.

3. These National Coordinators should be directly linked through a central system and should act as \_\_\_\_\_ for industry bodies, \_\_\_\_\_ with stakeholders and facilitating cross-frontier collaboration.

4. Improving the exchange of up-to-date information to \_\_\_\_\_ cross-border cooperation is a/an \_\_\_\_\_ need.

5. Counterfeiting and \_\_\_\_\_ severely damage trust and confidence in the trade of goods and services, in particular \_\_\_\_\_ or across borders.

6. It is \_\_\_\_\_ of all concerned to work together to fight this \_\_\_\_\_ phenomenon.

7. Voluntary arrangements to combat \_\_\_\_\_ and piracy on the ground can give stakeholders the flexibility to \_\_\_\_\_ quickly to new technological developments.

8. Any voluntary inter-industry solution has to be \_\_\_\_\_ with the existing legal framework and should neither restrict in any way the fundamental rights of EU citizens, such as the freedom of expression and information, the right to privacy and the protection of personal data, nor \_\_\_\_\_ on legislative negotiations at EU level.

9. The Commission has organised a structured dialogue between stakeholders to \_\_\_\_\_ mutual understanding and to \_\_\_\_\_ solutions that will be in the interests of all concerned.

### **III. Translate into English.**

- 1) контроль над соблюдением прав интеллектуальной собственности
- 2) стимулировать административное сотрудничество
- 3) повышать прозрачность
- 4) строить коалиции
- 5) способствовать мировому соглашению
- 6) бороться с нарушениями прав интеллектуальной собственности

- 7) отдача с инвестиций
- 8) успехи в технологии и торговле
- 9) выводы отчета
- 10) справляться со смежными рисками
- 11) политика, основанная на фактах
- 12) сравнивать данные
- 13) инициатива сотрудничества
- 14) обеспечить взаимопомощь
- 15) система обмена информации по изучению рынка
- 16) выработать оптимальные меры
- 17) обеспечить поощрения
- 18) представлять реальную угрозу

**IV. Retell the text using the words and phrases in bold.**



## Text 6. FRAUD IN FINANCE

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*(adapted from the article Corporate & Financial Fraud by F.W. Rustmann, Jr. URL: <http://www.ctcintl.com/Corporate%20&%20Financial%20Fraud.htm>. Last accessed 10.01.2012)*

**Read the text (32 000 characters) paying attention to the words and phrases in bold. Think of appropriate headings for the paragraphs A–K.**

### PART I

There are two ways in which companies can improve their financial **bottom line** — by either making more money in the form of increased profits or by saving money by cutting costs. Losses due to fraud and theft and the resulting **litigation** can come as a devastating and often unexpected blow to a company. These costs can often be avoided or at least minimized by doing some good old-fashioned research before taking any decisions.

**A.** .....

Fraud can be found in a variety of areas and it is definitely on the rise:

- individuals can acquire false identities with new names and **credentials**;
- corporations that claim to have strong **track records** can actually be **front companies** or “**executive offices**” without real employees;
- **venture capitalists** can pretend to be able to provide needed financing while, in reality, they are actually promoting “advance fee schemes” which only bilk companies out of large chunks of money.

It is possible for **unscrupulous** individuals to hurt companies owing to failure to **conduct** a thorough due diligence **investigation**. Their actions, even if they are caught in the end, can leave a company in ruins.

One of the recent examples involved a struggling telecommunications company that was approached by an investor. As there were few strings attached to the offered money, the company accepted the offer of a **cash infu-**

sion without bothering to **check out** the investor. However, while the investor at first offered the money with very few strings attached — one-third of the **voting stock** and a percentage of the **return** — the relationship between the company and the investor began to change rapidly. The investor became increasingly interested in the company and got access to a significant amount of **proprietary information** on the **running** of the company, including **financial records**. He later used this information and access to transfer stock out of the name of the company president and into his own name. The investor then used his fraudulently acquired stock to launch a hostile **takeover** of the company. When he had control of the company, he **took it into bankruptcy**. After several months of **costly litigation**, in spite of the evidence of fraud, the company’s president was forced to settle with the thief to the tune of \$3 million to get his company back. Although the president now has **regained control** of his company, it cost him not only the money that he was forced to pay the investor plus an additional \$3 million in **legal fees**.

**B.** .....

Another example: a **start-up company** that **sought financing** met with several **venture capitalists**. Three of the firms were well-known and **well-established**, but the fourth was a young company staffed by individuals who had **worked for** the more established companies, who, however, did not yet have a **track-record** of their own. The start-up was attracted to the young capital firm because this firm agreed to better **terms** than the established **competitors** and because they liked the idea of working with another young firm. At first the **capital firm** requested \$5000 in **application fees** from the start-up, explaining that it was a customary part of conducting business and that the **up-front money** would be “rolled in” to the amount provided to the start-up. This should have been recognized as the first warning sign that something was **amiss**. The young venture capital firm went on asking for more application fees, **processing fees** and “**due diligence**” **costs**, always providing documentation from the bank or other investors indicating the deal was close to **closing**. The start-up also funded several European trips for the principals of the capital venture firm to visit prospective sources of funding. After the start-up paid almost \$50 000 in advance fees and expenses, the venture capital firm disappeared from sight. Its phones were disconnected, its offices were vacated, and its apartments were empty. It later turned out that none of the individuals in the venture capital firm had any significant financing experience. They had simply **fabricated** their

experience with the well-established firms and **gambled** (correctly) that no one would check. None of the money ever went toward **raising capital**, and all documentation concerning the search for funding was **forged**. The financial loss (and wasted time and energy chasing the non-existing funding) almost destroyed the small company; the principles were forced to **take second mortgages** on their homes to keep the company alive.

Generally, if a **potential lender** asks for up-front money for any reason, it must be an advance fee scheme. **Legitimate lenders** and brokers are very likely to **charge for** their services, but these fees are collected when the **loan** is delivered — at the closing — not in advance as up-front money. Targets for advance fee **swindlers** are usually individuals and companies that have had difficulty obtaining a loan through normal sources. These **con artists** usually offer a “guaranteed” loan, usually from a large, well-known lending institution, for a fee paid in advance. The fee is usually a percentage of the **gross loan amount**. The percentage usually runs around 5 percent for loans up to \$1 million, with a decreasing percentage as the size of the loan goes up.

The first question to ask the loan broker is why it is impossible for you deal directly with the **lending institution**, which supposedly will fund the loan. The answer will always be “no” for one reason or another. You may be told:

- that the broker has a special relationship with the lender and if you try to contact them directly it will kill the deal;
- that the broker will simply refuse to **divulge** the lender’s name, **citing confidentiality** as the reason.

The second question you should ask is for a list of other **satisfied loan recipients**. In this case the swindler will:

- refuse to supply a list;
- provide you with a **phony** list of individuals who will **vouch for** him.

The bottom line is this: if you are asked for money up front to **secure a loan** and there is a certain degree of urgency and secrecy surrounding the **transaction**, you better **watch out**. The moment the swindler has your money he will either disappear or **keep you on the string**, often asking for more and more money and giving more and more excuses why the loan is being delayed, while he **bilks** others like yourself.

### C. ....

The explosive growth in the number of those individuals who are anxious to increase their wealth by investing their extra money with **high-return brokers** has opened the floodgates for financial fraud. Those with

knowledge of financial markets have found that it is relatively easy to set up fake investment opportunities and recruit investors into them. They use **financial lingo**, **false revenues**, and create documentation “proving” their high returns. The documentation and other evidence is often so convincing that not only the inexperienced or uninformed investor is fooled, but even the savvy and knowledgeable investor can be taken in. These latter individuals often become inadvertently instrumental in **perpetrating** the **scams**, because once they are brought in — often after they have conducted their own inadequate **due diligence** — they lend additional **credibility** to the swindlers perpetrating the fraud.

In spite of the **sophisticated** methods these **charlatans** employ, a professional due diligence almost always uncovers clues that point to fraud. At least, it may show that the investment is much riskier than originally thought or portrayed. The only way to protect investment is through professional, objective due diligence.

The huge amounts of money involved make these scams seem unreal. Some, like the well-publicized one involving Martin Frankel, receive extensive media coverage, whereas others remain basically secret. Many people who have been **defrauded** do not report their losses to authorities because they are embarrassed over being taken in and believe the loss reflects badly on them. Rather than blaming the individual who set up the scam, they blame themselves for being “stupid.” In fact, the scams are often so well planned and so well documented with forgeries, that there is almost no way for the potential investor to **verify** whether the investment is real without thorough professional assistance.

In most cases, the individual **behind the fraud** is charming, has excellent references, is not **overly pushy** and sometimes suggests the investment is exclusive. He or she may even encourage a potential investigator to do his own investigation (obviously hoping that they will not, or if they do, that the investigation will be **superficial** and will only cover the **references** which are provided by the con man). And if the potential investor actually does discover irregularities, the con artist will happily explain them away, and will probably suggest that they should not invest if they are uncomfortable. One individual who lost heavily, confessed: “He made me feel badly for doubting him. He repeatedly told me that maybe this kind of investment wasn’t for me, that maybe I should look at safer, lower-return options, since I was so concerned about some of the items I had uncovered. Of course, that made me want to invest even more.”

**I. Explain the following words and phrases.**

- 1) a front company
- 2) a high-return broker
- 3) a lending institution
- 4) an advance fee swindler
- 5) raising capital
- 6) a track-record
- 7) financial records
- 8) an executive office
- 9) a hostile takeover of a company
- 10) voting stock

**PART II****D. ....**

The above-mentioned Martin Frankel has gained international attention. The **sheer amount** of money he stole was initially estimated **at close** to \$3 billion. He was famous for his extravagant lifestyle. He then fled the country and led investigators on a **merry chase**.

Mr. Frankel ran a huge scam where he was supposed to invest money for several **insurance companies**, the Vatican and several major **insurance regulation agencies**, among others. He successfully ran the scam for more than seven years by creating **bogus statements** to investors showing profits while he secretly **moved the money off-shore** into his own personal accounts, and to support his **lavish** lifestyle. Mr. Frankel did not lose the money by trading it — he never invested it in anything but his own bank accounts. Those who invested with Mr. Frankel were stunned when they learned he had defrauded them. They universally described him as a smart, charming, funny man. According to their words, he was never pushy, and always provided whatever documents they needed **on demand**.

Still, as is often the case, there were clear signs that Mr. Frankel was not as **squeaky clean** as he appeared. In 1991 he had been accused of defrauding investors and was ordered by the court to pay \$975 000 **in restitution**. Then, in 1992, he lost his **stockbroker's** license and was banned from the securities industry by the SEC after investors had accused him of fraud. Mr. Frankel's most recent scam also had several **red flags**. The company he used was not registered or licensed, and the "**corporate address**" was

Mr. Frankel’s home. Moreover, he was spending large amounts of money on exceptionally high-priced luxury items, which far **exceeded his declared income**. Although Mr. Frankel frequently used **aliases** in his new scam to **obfuscate** and distance himself from his previous record, there were various **clues**, including identical **social security numbers**, linking the aliases to Mr. Frankel. One who was conned by Mr. Frankel believed he should have seen the signals, but, as he put it, “Sad to say, I was blinded by greed.”

**E.** .....

Stephen Smith was arrested in 1999 in Florida for running a slick “**ponzi**” investment scam. While he was purportedly recruiting new investors for an oil-well project, there was no oil-well project and he was actually taking the money for himself. Using some of the money obtained from the new investors he paid dividends to older investors. Mr. Smith had only been perpetrating the scam for a few months, when he had already managed to convince several individuals in the Houston area of Texas to invest several hundred thousand dollars in his oil-well scheme. One investor noted that Mr. Smith was highly convincing, and invited him to visit the wells himself. The investor did, and Mr. Smith took him on a helicopter ride of the wells and showed him **immaculate** records of their production and profits. The investor, who said he personally liked Mr. Smith very much after meeting him, was stunned to find out he did not own any of the wells and did not invest any money into any projects at all. Of course, all of the records that the investor was shown were forgeries. Investors into Mr. Smith’s recent scam also could have saved themselves a lot of money if they had done some very basic research before the fact rather than waiting until after the damage had been done to check out Mr. Smith.

The after-the-fact investigation revealed that Mr. Smith had been arrested ten years earlier, in 1989, for running a similar ponzi scheme in his native Florida. He was sentenced to 15 years in prison after being found guilty of 19 charges of grand theft for using fraudulent financial information to obtain loans and **lines of credit**, one **count of racketeering**, two counts of organized fraud, 122 counts of the sale of unregistered securities, and 122 counts of communications fraud. In that scam, Mr. Smith defrauded approximately 700 investors out of \$125 million. One of the individuals he convinced to invest in his scam was his own grandmother. When he was arrested in 1989, Mr. Smith had several properties in four states valued at around \$1.6 million. He also had \$39 million in insurance policies, seven

bank accounts totalling well over \$2 million, jewellery, two Mercedes automobiles, four boats, six other vehicles (including three Aston Martins) and a Rockwell International Sabreline jet plane. Additionally, he refused to cooperate with the receiver assigned to the case, although more than \$15 million from this scam was never accounted for. Although he admitted to having offshore bank accounts in Bermuda and the Middle East, these leads were apparently never thoroughly researched, and the \$15 million remains out there someplace, accessible only to Mr. Smith.

He was released after serving only four years, but was strictly prohibited from engaging in any financial consulting activities. However, he was not able to resist doing it all over again, and he is now back in the **slammer**.

#### F. ....

Financial fraud is **rampant** and the kinds of cases are only limited by the imaginations of the **tricksters**. Charlatans often operate internationally, to make it more difficult for US authorities to catch them, and to make the investment itself seem more attractive. In one of the recent cases, an individual was **coaxed into** investing with an Argentinean broker who claimed to be affiliated with a well-known US bank and **brokerage firm**. A friend of the individual had been the recipient of several years of excellent returns from the broker, and this success encouraged the new investor to jump at the opportunity. But before giving the Argentinean broker any money, the investor decided to check him out. He visited the broker in Argentina, dined with him, visited his home and office, met his wife and kids and dog, and even met the broker's partner inside the bank where the partner claimed he worked. Unfortunately, the bank meeting consisted of a handshake in the lobby and then off to a local restaurant for lunch. The investor never saw the banker's office, and indeed he had no affiliation whatsoever with the bank. He had merely adopted an alias identical to the name of a real official of the bank. Convinced that the operation was legitimate, the investor returned to the US and began wiring money to the broker. Over the next two years he sent a total of \$5.5 million to the broker and received **bi-weekly statements** on the **letterhead** of the legitimate bank, and was in continual contact with the broker. The broker and the investor became close friends and the investor recommended him to a number of his friends and family, including his mother.

Two years later, when the original \$5.5 million investment had purportedly reached over \$11 million, the investor received an anonymous letter

tipping him off that the broker was a **scam artist** and advising him to pull whatever money he could out of the fund immediately. The investor immediately hired an investigator who quickly discovered that the broker and his partner had no connection to the legitimate brokerage firm or the bank, neither was licensed to trade anything, and all of the statements the investor had received were forgeries. Having not invested any of the money, the broker had stolen it all and sent it to his own offshore bank accounts. And, during the entire six years he ran the scam, his lifestyle in Buenos Aires remained low-key and modest. He probably won't even go to jail for his offenses, given the cost of prosecuting crimes such as these in Argentina. If he doesn't, the scam artist will have ample time to spend the money he has stashed away — almost \$10 million from these two investors alone. None of the money was returned when the investor requested it; the only thing the investor received was three months of promises and excuses, then silence.

In another similar case, a Brazilian **entrepreneur** promised extremely high returns for a “select group of investors” on a secret project. The potential investor checked the broker's references and received enough information on the project to convince him it was a “**once in a lifetime chance**” and that it would succeed. Before proceeding, however, this smart investor contracted for a professional due diligence on the entrepreneur and his group. He sincerely believed the due diligence would be **rote** and would not show any problems, but wasn't going to take any chances. He was surprised and disappointed to learn the entrepreneur was not licensed to trade in securities, his firm was not registered, and he had previously been arrested for similar instances of investment fraud.

The list of examples is endless. It is really amazing how so many people will **bicker** and **bargain** and comparison shop for small personal items like cameras, furniture, clothing and the like, but when it comes to spending millions of dollars on get-rich-quick investments they can be so willing to take a tip and send their life **savings** to **unscrupulous** tricksters.

### **I. Decide if the following statements are true (T) or false (F).**

1. People are more careful when investing money than when buying things.
2. Fraudsters are often charming and attractive people.
3. Martin Frankel lived a very modest life.
4. Mr Frankel used many aliases.
5. Frankel made cash infusions into risky businesses.



6. The Argentinian broker made the investor recommend him to his mother.
7. Stephen Smith ran a pyramid scheme.
8. When asked to show the oil wells, Mr Smith invented a cunning excuse.
9. It was quite difficult to understand Smith was a scam artist.
10. Much of Smith's money has not been found.

### PART III

#### G. ....

Financial fraud is definitely on the rise. For every individual who is detained, there are many others who have never been caught or who have only recently started operating their schemes. The scams are **lucrative** and easier to **contrive** today if we take into account the ease at which fraudulent documents can be created on a personal computer, enticing more and more criminals to enter the realm of financial fraud.

There is no way to identify a fraud from simply meeting with the principals. They are often extremely intelligent, charming, and personable. They have the ability to manufacture extensive references and **stellar credentials**. Moreover, they can show loads of documentation to **attest** to the value of their project or strategy, and will show potential investors whatever they require to convince them to invest their money in the scam.

The best way to protect yourself from fraudulent financial scams is to conduct a professional due diligence on the individuals and companies involved before sending in any money. Unless you are sure you are dealing directly with an established, reputable firm, failure to investigate up front could mean the loss of your entire investment.

#### H. ....

In addition to the financial cost of fraud, there often is also a reputational cost to the person or company that is **victimized**. A damaged reputation is often at least as devastating as financial loss, and it can sometimes be more difficult to recover than money. The following are but a few examples of how reputations have been hurt by fraud.

A high-tech company hired a vice president who came highly recommended and appeared to have strong credentials. Approximately six months after he was hired, the vice president announced that he had **ne-**

**gotiated** a large sale of computer equipment to a Japanese company and an exclusive partnership arrangement with a highly reputable European company. To produce the number of items required by the Japanese, the vice president rushed production and ordered workers to skip steps, resulting in a sub-standard product with several built-in glitches. The Japanese returned the defective products and issued scathing statements about the company. At the same time, the European company announced it had no knowledge of a partnership and distanced itself from the high-tech company. Because of the poor quality of the sale to the Japanese, the company lost many of its existing contracts and had to file for bankruptcy protection. The company’s reputation was further damaged by a federal investigation into stock manipulation due to the European partnership press announcement which had stimulated the company’s stock to rise dramatically. Although the other executives in the company were found innocent of all charges, the top three company leaders suffered so much damage to their reputations that they have not been able to find employment elsewhere in the industry or to obtain funding to start another company. Their association with shoddy workmanship and stock manipulation as a result of the vice president’s actions will never be erased.

In another case, a cleaning company won the contract to clean the offices of a computer company that had several government contracts. When the computer company received a telephone call from the FBI saying someone had attempted to access a secure government site from the computer company offices, the company promised to investigate the matter. The subsequent investigation revealed that a member of the cleaning crew had “hacked” into a relatively insecure company site, which contained a list of passwords for access to government sites. The hacker then attempted to use the passwords to reach into classified sites. Although the hacker apparently never actually gained access to any classified data, and it was unclear whether he was doing it for fun — just to see if he could do it — or actually targeting classified documents, the breach of security resulted in the computer company losing its government contract, and being told “off the record” that it will not be considered for any future government contracts. In the view of the US government, the responsibility for maintaining proper security from its end of the operation rested squarely with the computer company.

**I. ....**

Apart from monetary and reputational losses, another cost that is difficult to measure is the cost of lost opportunity. For example, a US utility

company learned that the Government of Mexico was looking for a US partner. The deal seemed perfect for the US utility company, but the utility had very little experience dealing with Mexico. Recognizing this weakness, the company hired a Mexican consultant whose resume included ties to the Mexican ruling party and a high-ranking position in the state-owned utility company. The consultant was paid a good salary and was promised a **sizable bonus** if the US utility won the contract. After six months of intense negotiations, the Mexican government decided to partner with another US company. Although disappointed at losing the contract, the US utility company believed their consultant had negotiated **in good faith** and to the best of his ability. The company believed that the Government of Mexico simply made the decision to hire another company that offered them a better deal. Only several months later did the US utility company learn the Government of Mexico had never even considered them because Mexico had never actually received a written proposal from the US utility. The company then ran a background investigation on the consultant and found that he had lied about his credentials and did not have the access he claimed to have. He was a complete charlatan. The consultant had provided written reports and other extensive documentation that made the company believe he was actively pursuing their interests, but he was actually using the trips as paid vacations and had taken the salary without conducting any business for the utility. Despite these sizable financial costs, the chief executive of the US utility believes the largest cost to the company was the lost opportunity of winning the lucrative contract with Mexico.

#### J. ....

Another growing area of fraud occurs on a more personal level. According to the Privacy Rights Clearing House, **identity theft** is becoming a significant problem, particularly in the US. **Identity thieves** obtain personal information on unsuspecting individuals, and then — using fake **drivers' licenses**, credit cards, and checks — they pose as those individuals to withdraw money from their bank accounts or to purchase items on credit that they never pay for. The individuals whose identities the criminals use are often left with ruined credit, large **debts**, and no way to recover their stolen money. In one recent case, two San Francisco men stole \$5 million using forged documentation. Authorities arrested the men, but have only recovered approximately \$78,000. In another case, a convicted arsonist and murderer used the identity of the attorney who prosecuted him to hide from the authorities.

There are also numerous cases where individuals use another identity — or make up details to make themselves more interesting — which they use in relationships. For example, a woman who had been involved with a man for several years became distraught when he suddenly disappeared. She spent months trying to contact his friends and attempting to track him through his apartment and employment with no luck. In desperation she hired an investigator who found out that the man had simply decided to end the relationship. He had been married throughout their entire relationship, and was living only a few miles from the apartment he and the woman had used for their meetings. The apartment had been rented by the man in alias and only used for his extramarital trysts.

**K.** .....

The above stories are not something unusual. Similar incidents occur every day. The companies and individuals who fall into the swindler's traps are usually not naïve or stupid. Most are well-seasoned, experienced business people who never thought they could be fooled. As one executive noted, his instincts had built him an empire, and had never been wrong before; he had a perfect track record until his assistant embezzled more than \$100,000 in a few months. He believes he was lucky to catch her before she did more damage. While instincts can be right 99 % of the time, the one time they are wrong there can be disastrous consequences.

A professional due diligence investigation provides a **business assessment** of a company. This includes a history of the company, its operations, litigation, financial strength, reputation, profiles of **key officers**, and an **overall** assessment of the **viability** of the company. A **background investigation** provides a similar **dossier** on an individual. It includes the individual's personal history, employment, **civil and criminal traces**, **pending litigation**, employment history, personal and professional reputation, financial **snapshot**, property, liens, judgments, bankruptcies, and assessments of character.

**I. Answer the questions.**

1. What losses, apart from financial, can a company risk? Which of them do you think are the most serious?
2. Which reasons for identity theft can you name? Is identity theft used only in business?
3. How do fraudsters make so many people believe them? Is it due to their personal qualities, professional skills and abilities, or both?

4. How can a potential investor prevent a fraud? Do you think tips given in the article would help?

5. Compare fraud in your country with the situation described in the article.

**II. Fill in the gaps with the most appropriate word to make the correct collocations. The first letter is given.**

1. The **b** \_\_\_\_\_ line is that we have to make a decision today.
2. Buyers will bargain hard to **c** \_\_\_\_\_ the cost of the house they want.
3. He has a proven **t** \_\_\_\_\_ record in marketing.
4. We'll pay you half up **f** \_\_\_\_\_ and the other half when you've finished the job.
5. I'd like to **w** \_\_\_\_\_ £250 please.
6. You shouldn't take anything she says at **f** \_\_\_\_\_ value.
7. **V** \_\_\_\_\_ capital is money that is invested in a new company to help it develop, which may involve a lot of risk.
8. The thief used a false **i** \_\_\_\_\_.
9. He asked her to marry him but she **t** \_\_\_\_\_ him down.

**III. Match the beginnings of the sentences (1–10) with their endings (a–j).**

1. People tend to be careful while purchasing small things \_\_\_\_\_.
2. The schemes that swindlers use in fraudulent schemes \_\_\_\_\_.
3. When a scammer encourages a prospective victim to do an investigation \_\_\_\_\_.
4. The less pushy the con artist is \_\_\_\_\_.
5. Although many fraudsters are put behind bars, \_\_\_\_\_.
6. Everybody has access to computers and other equipments, \_\_\_\_\_.
7. Only if you are sure that you are collaborating with a reputable firm \_\_\_\_\_.
8. Even if a company does not lose much through cooperating with fraudsters, \_\_\_\_\_.
9. If there had been no money involved \_\_\_\_\_.
10. To become more well-off you can either spend less \_\_\_\_\_.

- a) ...may you easily trust them.
- b) ...the more likely the investor will invest.
- c) ...they are almost sure it will not take place.

- d) ...this association may destroy its reputation completely.
- e) ...but they are not so careful when they make big decisions.
- f) ...I would have eagerly believed you.
- g) ...often occur in our everyday life, for example, in relationships.
- h) ...or you can earn more.
- i) ...which gives opportunities for forging documents.
- j) ...they are tempted by the life of crime once they are released.

**IV. In the text find the words or expressions that denote the following.**

- 1) a collection of documents that contain information about a company;
- 2) a collection of documents that contain information about a person;
- 3) a dishonest way of selling investments, in which the money paid by new investors is used to pay interest and other money to owed to existing investors. When new investment brings less than the money owed, new investors lose their money;
- 4) a false official document that shows that you are qualified to drive;
- 5) a letter written by sb who knows you, giving information about your character and abilities, especially to a new employer;
- 6) a person who regularly cheats others;
- 7) a scam which involves pre-payment;
- 8) documents such as letters that prove that you are who you claim to be, and can therefore be trusted;
- 9) money needed to start a new business;
- 10) the crime of using someone's name and/or personal information to obtain that person's money, buy things using their bank account etc.;
- 11) the activity of secretly getting important financial or manufacturing information or secrets about another company by using spies;
- 12) the opinion that people have about what sb/sth is like, based on what has happened in the past;
- 13) a sign used to warn people of danger;
- 14) a false or different name, especially one that is used by a criminal;
- 15) a person who makes money by starting or running businesses, especially when this involves taking financial risks.

**V. Reread the text. Divide the information into topic and illustrative. Make a brief summary avoiding irrelevant facts and details. Make sure you use your own words. Use the appropriate connectors where necessary.**

## Text 7. MODERN TRENDS IN MONEY LAUNDERING

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*(adapted from the article Money Laundering Trends by Emery Kobor.  
URL: [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usab5505.pdf](http://www.justice.gov/usao/eousa/foia_reading_room/usab5505.pdf). Last accessed 11.02.2012)*

**Read the text (25,000 characters) paying attention to the words and phrases in bold.**

### PART I

#### Introduction

Combating **money laundering** is a massive and evolving **challenge** which requires a clear and thorough understanding of the various **trends and techniques** being used by criminals to **launder** their **illicit funds**. These trends range from well established techniques for **integrating dirty money into the financial system** to modern innovations that exploit **global payment networks**, as well as the Internet. New and innovative methods for **electronic cross-border funds transfer** are emerging globally. These new **payment tools** include extensions of established **payment systems**, and new payment methods that are substantially different from traditional transactions. New payment methods raise concerns about money laundering and terrorist financing because criminals can adjust quickly to exploit new opportunities that often allow **anonymous high value transactions** with little or no **paper trail** or **legal accountability**.

**A.** .....

In the United States, only banks and other depository financial institutions are allowed to **hold financial deposits** and **provide direct access** to those deposits through the use of **paper checks** and various **bank-to-bank electronic payment networks**. Although **Money Services Businesses (MSBs)** offer an alternative to banks for many financial services, they have to use

a depository financial institution to hold their deposits, **clear checks**, and **settle transactions**. Once illicit funds are in a bank, the money can be transferred quickly from account to account, leading to a tangled web of transactions that make it difficult to trace the path or identify the **ultimate owner** of the money. Criminals open both **consumer and business accounts** to move **illicit cash** into the banking system. One technique to avoid a **Current Transaction Report (CTR)** being filed is to use “smurfs,” — students, travelers, or other **accomplices** — to open accounts in a number of banks, then “structure” cash deposits into the accounts by keeping each deposit **below the \$10,000 CTR threshold**. The money launderer will periodically draw down the accounts, transferring funds to other accounts or **money laundering vehicles, domestically and offshore**.

Bank accounts opened in the name of a business or other **legal entity** can be useful to **disguise** the **beneficial owner** of the account and the true nature of the funds that move through the account. **Retail businesses** that ring up cash transactions and make **nightly deposits** can be used as a front to disguise illicit cash added to the day’s deposit. Bank accounts held by **shell companies** and **trusts** often do not require the **disclosure** of beneficial ownership and can mask illicit money movement as **trade or investment transactions**.

**B.** .....

In spite of rapid developments in **banking technology**, domestic bank payment networks around the world generally do not connect with one another. To move money across borders, a U.S. bank often has to hold an account with a bank overseas, a relationship known as **correspondent banking**. When a U.S. bank customer wants to send a **cross-border wire transfer**, the bank transfers funds from the correspondent account it holds in the **recipient country**.

**Correspondent accounts** and “**payable through**” accounts create opportunities to use a U.S. or foreign bank without the bank always knowing the true payment originator. A “payable through” account at a U.S. bank involves a foreign bank holding a **checking account** at the U.S. institution. The foreign bank can **issue** checks to its customers, allowing them to make payments from the U.S. account. A variation on the “payable through” account is “**nesting**,” in which foreign banks open correspondent accounts at U.S. banks, but then **solicit** other foreign banks to use the account. This results in an exponential increase in the number of indi-



viduals with access to a single account at a U.S. banking institution. As cross-border wire transfers come under increased scrutiny and regulation, criminals are using paper checks, **money orders**, and **cashier's checks**, as an effective alternative. These more traditional payment instruments take longer to clear when traveling outside the United States, but often receive less scrutiny.

Money launderers can transfer large dollar amounts by writing a number of checks or buying a number of money orders at various U.S. locations, with each payment below the CTR reporting threshold. The **dollar-denominated payments** are mailed or transported to accomplices overseas who deposit the checks and money orders in foreign bank accounts. Because these are dollar-denominated payments, the foreign banks that receive them have to send them back to the United States for deposit in their U.S. correspondent accounts. Some banks handle as many as five to seven million checks a day. **Processing** is done as efficiently as possible, making it difficult to aggregate related payments or scrutinize individual payments for evidence of money laundering.

### I. Match the two parts of the collocations.

- |              |                                    |
|--------------|------------------------------------|
| 1) clear     | a) the account                     |
| 2) draw down | b) funds from the account          |
| 3) hold      | c) money across the border         |
| 4) identify  | d) an account                      |
| 5) integrate | e) checks                          |
| 6) move      | f) the money owner                 |
| 7) open      | g) a transaction                   |
| 8) provide   | h) money into the financial system |
| 9) settle    | i) direct access                   |
| 10) transfer | j) financial deposits              |

### II. Fill in the gaps with the expressions above. The meaning is given in brackets.

- Private clients are asked to make an initial deposit of at least \$5000 to \_\_\_\_\_ (start a new account at a financial institution).
- The fraud was possible because the con artist received the money before the bank \_\_\_\_\_ (send the money to another bank to pay the check).
- The bank cannot \_\_\_\_\_ (give details of) to the customer's personal information.

- 4. In case of money laundering, fraudsters try to make it difficult to \_\_\_\_\_ (know who the money belongs to).
- 5. The con men \_\_\_\_\_ (move the illicit funds into legal ones) with the help of casinos.
- 6. Smuggling is a popular way to \_\_\_\_\_ (bring money to a different country).
- 7. The banking system of this country depends on how many people \_\_\_\_\_ (keep money on their accounts) in the banks.
- 8. You should check the customer's ID before you \_\_\_\_\_ (finish the deal).
- 9. The customer can \_\_\_\_\_ (get cash from their account) in any part of the world.
- 10. Internet banking allows clients to \_\_\_\_\_ (move money to a different account) without leaving the house.

## PART II

### C. ....

MSBs provide an alternative to the banking system, offering a full range of financial products and services without the same level of regulation and supervision imposed on banks and other depository financial institutions. Under the Bank Secrecy Act, MSBs include the following:

- **currency exchangers;**
- **check cashers;**
- issuers of **traveler's checks**, money orders, or **stored value;**
- sellers or **redeemers** of traveler's checks, money orders, or stored value;
- **money transmitters.**

Unlike banks, which are obligated to verify customer identification at account opening, MSBs do not hold customer accounts and are currently obligated, under federal law, to verify and record customer identification only when selling \$3,000 or more of money orders or travelers' checks, or conducting a money transfer of \$3000 or more. Most MSBs are required to report suspicious activity, however, excluded from that requirement are check cashers and sellers and redeemers of stored value.

Many MSBs, including the vast majority of money transmitters in the United States, operate through a system of agents. Agents are not required to register with the **Financial Crimes Enforcement Network**, but

are required to establish **anti-money laundering** (AML) programs and to comply with certain record keeping and reporting requirements.

### *1. Currency Exchangers*

Currency exchangers, also referred to as **currency dealers**, **money exchangers**, *casas de cambio*, exchange bank notes of one country for that of another. Less than ten states currently regulate this activity, which makes it the least regulated MSB category. *Casas de cambio* are currency exchange houses specializing in Latin American currencies. In the United States, more than 1000 *casas de cambio* are located along the border from California to Texas. Some *casas de cambio* exist primarily for money laundering. They take in illicit cash from many clients and then deposit the money under the name of the exchange house. Seized documents in raids conducted by the Venezuelan *Guardia Nacional* in the state of Tachiria revealed that a number of *casas de cambio* were laundering drug proceeds from the United States and routing them through Venezuela to Colombia to avoid the relatively **high tariff on U.S. currency** in Colombia. Many of the *casas de cambio* involved in the money laundering process have access to U.S. dollar checking accounts through correspondent accounts held by major banks in Venezuela.

### *2. Check Cashers*

Money launderers use check-cashing businesses to cash checks that were written to small businesses, but which the launderer **purchased** with illicit cash. Small businesses benefit by receiving immediate cash, avoiding **fees**, passing on the risk of bad checks, and potentially **evading income taxes**. Money launderers sometimes purchase check-cashing businesses outright so that checks can be deposited directly into the launderer's bank account. The lack of record keeping or suspicious activity report (SAR) filing requirements may hinder law enforcement attempts to trace **illicit proceeds** through this channel.

### *3. Money Orders*

Money orders are attractive to money launderers because they can be issued in large dollar denominations, are less bulky than cash, and are issued anonymously for amounts under \$3000. A common money laundering technique is to structure multiple money order purchases just under the \$3,000 customer-identification threshold. It is estimated that more

than 830 million money orders, worth more than \$100 billion, are issued annually, with 80 % issued by the U.S. Postal Service, Western Union, and MoneyGram International. The remainder are issued by small regional companies. Money order issuers, other than USPS, rely largely on licensed agents, rather than employees. While the **parent firm** is responsible for activity across their agent network, it is not required to review individual SARs, and some firms specifically discourage their agents from submitting SARs to the parent firm. Western Union and MoneyGram agents issue more than 50 % of all money orders in the United States, yet filed only 1 % of the SARs from October 1, 2002 through December, 31, 2004 that involved money orders and money laundering. During the same period USPS, which issues approximately one-quarter of all money orders in the United States, filed 93 % of the SARs related to money laundering via money orders.

#### *4. Stored Value*

Stored value, or **prepaid cards**, operate within either an “open” or “closed” system. Open system cards can be used to make purchases from **merchants** or to get cash at **ATMs** that connect to the global payment networks, specifically those operated by Visa and MasterCard. Open system card programs, although issued through banks and other depository institutions, generally do not require a bank account or face-to-face **verification** of the **cardholder**'s identity. Funds can be prepaid by one person, with someone else in another country **accessing the cash** via ATM. **Open system prepaid cards** typically can have additional funds added on an ongoing basis. There are no regulatory guidelines that address customer identification, record keeping, or reporting requirements, regarding open system prepaid card accounts.

**Closed system cards** can only be used to buy goods or services from the merchant or service provider issuing the card. Examples of closed system cards include store-specific retail gift cards and mass transit system cards. These cards may be limited to the initial value posted to the card or may allow the card holder to add value. The **target markets** for prepaid cards include teenagers, people without bank accounts, adults unable to qualify for a credit card, and immigrants sending cash to family outside the United States. Depending on the safeguards employed by the card-issuing bank and its support network, open system prepaid cards may provide an anonymous way to store, transport, and access, illicit cash globally. Closed

system cards, primarily store gift cards, present more limited opportunities and a correspondingly lower risk as a means to move monetary value out of the country. Nevertheless, federal law enforcement agencies report both categories of stored value cards are used as alternatives to **smuggling** physical cash.

### *5. Money Transmitters*

The volume and **accessibility** of money transmitters makes them attractive vehicles to money launderers. Western Union runs the largest nonbank money transmitter network, with more than 245 000 agent locations in 195 countries and territories. Money transmitters are obligated to verify and record customer identification only when sending a wire of more than \$3,000. To evade that threshold, customers can divide up their funds transfers among several wires and several different money transmitters. **Online payment services**, including dealers in digital precious metals, are another option for cross-border funds transfers. These **intermediaries** operate via the Internet and **facilitate** funds transfers for individuals and businesses by using a variety of payment methods. The form of payment a service provider accepts and uses to pay out to recipients varies by service provider. Those willing to accept and pay out using anonymous forms of payment (cash, money orders, nonbank wires, and some prepaid cards) create a potential money laundering threat. U.S. citizens can access payment services online that are based outside of the United States and transfer funds either electronically or by mail. Some online payment services exist to facilitate transactions for **online gambling** and adult content that U.S.-based money transmitters typically will not service. Online payment services that offer immediate final settlement with no recourse are often used for illegal transactions and are popular with **fraudulent investment schemes**.

#### **I. What or who do the following statements refer to?**

1. They help to transfer funds abroad.
2. They can be used by people without bank accounts to pay for goods without using cash.
3. They sell foreign money.
4. They are sold by banks, sent through the post and exchanged for money.
5. They allow people to pay with cards on the Internet.

6. They exchange traveler’s checks for money.
7. They are bought from a bank and cashed for local currency in another country.

### PART III

#### D. ....

As high-volume cash businesses, **casinos** are **susceptible to** money laundering, as well as many other financial crimes, and were the first nonblank **financial institutions** required to develop AML compliance programs. In addition to gaming, casinos offer a variety of financial services including credit, funds transfers, check cashing, and currency exchange. **Tribal casinos** are moving rapidly from relative obscurity within the U.S. casino industry to a position of prominence. Collectively, tribal casinos took in \$18.5 billion in **revenue** in 2004 — twice the amount generated by Nevada casinos. There are 567 federally recognized American Indian tribes (half are in Alaska), with gaming facilities in twenty-eight states. Money laundering schemes involving casinos usually start with the purchase of **casino chips** using illicit cash. The chips then can be used in the following ways:

- cashed in for a casino check or wire transfer for deposit into a bank account;
- used as a form of currency for goods and services, particularly illegal narcotics, so that others ultimately cash in the chips;
- used for gambling in the hope of generating certifiable winnings.

While criminals will structure transactions at banks and MSBs to avoid transaction records or reports that draw attention to them, they use casinos for the opposite purpose. Having a CTR filed on a **casino payout** has the effect of making the money appear **legitimate**. Criminals also use casinos to launder **counterfeit money**, as well as large currency notes that would be **conspicuous** and difficult to use elsewhere, and which may be marked by **undercover law enforcement officers**.

#### E. ....

Increasingly effective AML policies and procedures at U.S. financial institutions may be responsible for money launderers moving illicit cash out of the country to jurisdictions with **lax or complicit financial institutions**, or to fund criminal enterprises. **Smugglers** conceal cash in aircraft,

boats, vehicles, commercial shipments, express packages, on their person, and in their luggage. Cash associated with illicit narcotics typically flows out of the United States across the southwest border into Mexico, retracing the route that illegal drugs follow when entering the United States. The cash may stay in Mexico, continue on to a number of other countries, or head back into the United States as a deposit by a bank or *casa de cambio*. Illicit funds leaving the United States also flow into Canada, which also is a source of illegal narcotics. Cash can be smuggled out of the United States through the 317 official land, sea, and air ports of entry, and any number of unofficial routes along the Canadian and Mexican borders. In addition to individuals carrying cash over the border, or hiding it in vehicles, it can be hidden in any of the thousands of shipping containers involved in commercial trade with the top two U.S. trading partners (Mexico and Canada). The extent to which cash smuggled out of the United States is derived from criminal activity other than the sale of illegal drugs is not known. Other cash-intensive sources of illicit income include **alien smuggling, bribery, contraband smuggling, extortion, fraud, illegal gambling, kidnapping, prostitution, and tax evasion.**

F. ....

In a 1998 report, the United Nations noted that “the principal forms of abuse of secrecy have shifted from individual bank accounts to corporate bank accounts and then to trust and other corporate forms...”. Legal entities, such as shell companies and trusts, can use bearer shares and nominee shareholders and directors to hide ownership and mask financial transactions. Legal jurisdictions, whether states within the United States or entities elsewhere, that offer strict secrecy laws, lax regulatory and supervisory regimes, and corporate registries that safeguard anonymity, are obvious targets for money launderers. Quite many U.S. states offer company registrations with secrecy features — such as minimal information requirements and limited oversight — that rival those offered by offshore financial centers. Delaware, Nevada, and Wyoming, are often cited as the most accommodating jurisdictions in the United States for the organization of these legal entities. Intermediaries, called **nominee incorporation services**, establish U.S. shell companies and bank accounts on behalf of foreign clients. By hiring a firm to serve as an intermediary, the true owners of a shell company, or other legal entity, may avoid disclosing their identities in state corporate filings and in the documentation used to open corporate bank

accounts. Several options are available in the formation of legal entities that allow beneficial owners even greater anonymity. Bearer shares are **negotiable instruments** that **accord ownership** of a company to the person who possesses the share certificate. Bearer share certificates do not contain the name of the shareholder and are not registered, with the possible exception of their serial numbers. Accordingly, these shares provide for a high level of anonymity and are easily negotiable. Nominee shareholders can be used in privately-held companies as stand-ins to shield beneficial ownership information. Where nominee shareholders are allowed, the usefulness of the shareholder register is undermined because the shareholder of record may not be the ultimate beneficial owner. Similarly, nominee directors and companies serving as directors of a legal entity may conceal who really controls the company. Trusts separate legal ownership from beneficial ownership and are useful when **assets** are given to minors or individuals who are incapacitated. The trust creator transfers legal ownership of the assets to a trustee, which can be an individual or a corporation. The trustee manages the assets on behalf of the beneficiary, based on the terms of the trust deed. Although trusts have many **legitimate applications**, they can also be **misused**. Trusts enjoy a greater degree of privacy and autonomy than other corporate vehicles, as virtually all jurisdictions recognizing trusts do not require registration or central registries and there are few **authorities** charged with overseeing trusts. In most jurisdictions, no disclosure of the identity of the beneficiary or the creator of the trust is made to authorities.

**G.** .....

Money launderers use fraudulent foreign trade transactions as a way to provide cover for, and **legitimize**, funds transfers using illicit proceeds. **Trade-based** money laundering encompasses a variety of schemes that involve **overinvoicing and underinvoicing, double invoicing**, and misclassification of the goods shipped. The most common method of trade-based money laundering in the Western Hemisphere is the Black Market Peso Exchange (BMPE), which is responsible for moving an estimated \$5 billion worth of drug proceeds per year from the United States to Colombia. The scheme allows drug traffickers to exchange their illicit dollars in the United States for clean pesos in Colombia, without physically moving funds from one country to the other. **Money brokers** act as intermediaries between the drug traffickers in the United States who hold dollars, but want pesos, and Colombian businessmen who hold pesos, but want dollars to purchase goods



for import. The money brokers buy the illicit dollars in the United States and enlist smurfs to buy money orders or deposit the cash in U.S. bank accounts. The money is then used to purchase U.S. products which are exported to Colombia and elsewhere. The Colombian importers complete the money laundering cycle by paying the money broker for the U.S. merchandise with pesos, which are transferred to the drug dealers. Access to U.S. dollars is regulated by the Colombian government. Before pesos can be exchanged for dollars, the importer has to demonstrate that government import permits have been obtained, thereby insuring that the applicable Colombian duties and taxes will be collected. Colombian businesses bypass the **government levies** by dealing with BMPE brokers. A similar scheme to evade Colombian taxes involves *reintegro*, which means “**reintegrate papers.**” When goods are exported from Colombia, the shipper must obtain official documents that clear the goods for export and allow payment to be received into the shipper’s bank account. After the initial use of the export documents, these papers are often sold for others to use, creating an opportunity to repatriate drug proceeds disguised as payments for exports. In addition to the import and export of conventional goods, precious gems and metals can be used as an alternative to cash to transfer value across borders. Like gold and other precious metals, diamonds are attractive to money launderers because they are easily concealed and transported, and because they are mined in remote areas of the world and are virtually untraceable to their original source. Even when diamonds are transported openly, it is relatively easy to mislabel their value for money laundering purposes.

#### H. ....

**Life, health, and accident insurance**, generate more than half a trillion dollars in **premiums** and contract revenue annually for U.S. insurers. Much of this revenue stream actually comes from the sale of **annuities**, contracts that guarantee a fixed or variable payment over a given period of time. While whole and term life insurance policies remain an important part of the business, insurance agents and brokers are now often investment advisers selling a variety of financial products. The expansion from insurance policies to investment products has substantially increased the money laundering threat posed by the insurance industry. Life insurance policies that can be cashed in are an inviting money laundering vehicle because criminals are able to put “dirty” money in and take “**clean**” money out in the form of an insurance company check. An alternative money laundering

vehicle is to purchase life insurance with illegal proceeds and then borrow against the policy. Similarly, annuity contracts allow a money launderer to exchange illicit funds for an immediate or deferred “clean” **income stream**. These vulnerabilities generally do not exist in products offered by property and casualty insurers, or by title or health insurers. Money launderers exploit the fact that insurance products are often sold by independent brokers and agents who do not work directly for the insurance companies. These intermediaries may have little know-how or **incentive** to screen clients or question payment methods. In some cases, agents take advantage of their intermediary status to **collude with criminals** against insurers to perpetrate fraud or facilitate money laundering.

### Conclusion

The United States has a robust and aggressive AML program. As it becomes more difficult to move illicit funds using a particular money laundering method, there is a clear migration to other channels. The Financial Action Task Force recognized the effectiveness of the United States AML enforcement regime in its Report on the Third Mutual Evaluation of the United States, adopted in June 2006. The Report’s summary states: “The U.S. authorities are committed to **identifying, disrupting, and dismantling** money laundering and terrorist financing networks. They seek to combat money laundering and terrorist financing on all fronts, including by aggressively pursuing financial investigations. These efforts have produced impressive results in terms of prosecutions, convictions, seizures, asset freezing, confiscation and regulatory enforcement actions.”

### I. Fill in the gaps with the italicized words.

*Chips, insurance, bribery, payouts, annuities, premiums, counterfeit, assets, nominees, incentives*

1. They have put most of their saving into \_\_\_\_\_ contracts to provide income when they stop working.
2. Some insurance companies offer small sum policies, with monthly or annual \_\_\_\_\_.
3. Her \_\_\_\_\_ include shares in the company and a house in France.
4. Last year about \$50 million in \_\_\_\_\_ notes were seized, compared with \$80 billion in genuine notes produced.
5. The insurance company lost a lot of money due to the \_\_\_\_\_ caused by many fires.
6. Instead of money, \_\_\_\_\_ are frequently used in gambling.

7. There are special tax \_\_\_\_\_ for first-time home buyers to encourage people purchase estates.
8. Life \_\_\_\_\_ pays out money when someone dies.
9. What is there to prevent a taxpayer from putting his shares in the name of \_\_\_\_\_?
10. The International Chamber of Commerce has had rules against \_\_\_\_\_ and racket extortion since 1977.

## II. Fill in the gaps (A–H) with the headings (1–8).

1. Banks and Other Depository Financial Institutions
2. Bulk Cash Smuggling
3. Casinos
4. Correspondent Banking
5. Life Insurance and Investments
6. Money Services Businesses
7. Shell Companies and Trusts
8. Trade-Based Money Laundering

## III. Match the words with their definitions.

- |                 |  |
|-----------------|--|
| 1) beneficial   | a) a piece of business that is done between people, especially an act of buying or selling   |
| 2) deposit      | b) a sum of money paid or expected to be paid  |
| 3) fraud        | c) a sum of money that is paid into a bank account   |
| 4) illicit      | d) an arrangement in which a company collects premiums from a person or organization and in return agrees to pay them a sum of money if they are involved in an accident, have something stolen, or cause harm or injury to others |
| 5) insurance    | e) an extra amount of money that has to be paid, especially as a tax to the government   |
| 6) invoicing    | f) improving a situation; having a helpful or useful effect  |
| 7) launder      | g) not allowed by the law  |
| 8) levy         | h) preparing a document sent by a seller to a customer with details of goods or services that have been provided, their price, and the payment date  |
| 9) payment      |  |
| 10) transaction |  |

- i) the crime of cheating sb in order to get money or goods illegally
- j) to move money that has been obtained illegally into foreign bank accounts or legal businesses so that it is difficult for people to know where the money came from

**IV. Fill in the gaps with the words from the exercise above. Change the form where necessary.**

1. We should spend the money on something that will \_\_\_\_\_ everyone.
2. If a/an \_\_\_\_\_ failed, the industry organization would pay 90 % of all claims.
3. Inflation often kept market interest rates above the level that \_\_\_\_\_ institutions were allowed to pay.
4. The insurance company's profits fell 13 % because of big \_\_\_\_\_ related to a series of hurricanes.
5. It is difficult to estimate the exact number of \_\_\_\_\_ insurance claims.
6. The company's liabilities include accounts \_\_\_\_\_ totaling \$5 million.
7. He gained the access to the computer \_\_\_\_\_ and thus broke the law.
8. The government is going to \_\_\_\_\_ a tax on excess company profits.
9. A good negotiator knows the price at which he is prepared to \_\_\_\_\_.
10. He was sentenced to three years in prison for \_\_\_\_\_.

**V. Explain the meaning of the following.**

- 1) bearer share
- 2) corresponding
- 3) intermediary
- 4) money laundering vehicle
- 5) money transmitter
- 6) nesting
- 7) payment tool

- 8) reintegrate papers
- 9) send a wire
- 10) smurf
- 11) structure a cash deposit

**VI. What do these contractions stand for: SAR, AML, FINCEN, MSB?**

**VII. Using the information from the text, fill in the gaps with the most appropriate words.**

Financial (1) \_\_\_\_\_ can be depository, e.g. (2) \_\_\_\_\_, and (3) \_\_\_\_\_, e.g. a casino.

(4) \_\_\_\_\_ fall into bank, corporate, individual, corresponding, consumer, (5) \_\_\_\_\_, (6) \_\_\_\_\_.

Among payment networks there are (7) \_\_\_\_\_, (8) \_\_\_\_\_, (9) \_\_\_\_\_.

Examples of financial (10) \_\_\_\_\_ are bribery, smuggling, tax (11) \_\_\_\_\_.

(12) \_\_\_\_\_ are funds transfer, (13) \_\_\_\_\_ exchange, (14) \_\_\_\_\_, (15) \_\_\_\_\_.

Stored \_\_\_\_\_ (16), or (17) \_\_\_\_\_, can be used in forms of (18) \_\_\_\_\_ cards, (19) \_\_\_\_\_ cards, (20) \_\_\_\_\_.

(21) \_\_\_\_\_, (22) \_\_\_\_\_, (23) \_\_\_\_\_, (24) \_\_\_\_\_ are called paying instruments.

Assets freezing and (25) \_\_\_\_\_ are devices for (26) \_\_\_\_\_.

The most common examples of intermediaries are (27) \_\_\_\_\_ and (28) \_\_\_\_\_.

(29) \_\_\_\_\_ are represented by money transmitters, currency (30) \_\_\_\_\_, and (31) \_\_\_\_\_.

Retail businesses, shell (32) \_\_\_\_\_, (33) \_\_\_\_\_ are all legal (34) \_\_\_\_\_.

## Text 8. FRAUD IN TELECOMMUNICATION AND ITS PREVENTION

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*(adapted from the article Telecommunication Fraud Management by Stephen Brown. URL: [http://waveroad.ca/ressources/Whitepaper\\_SB\\_Janvier2005.pdf](http://waveroad.ca/ressources/Whitepaper_SB_Janvier2005.pdf). Last accessed 25.01.2012)*

**Read the text (33,000 characters) paying attention to the words and phrases in bold.**

### PART I

**Telecommunication fraud** is any kind of **intentional** and successful employment of any **deception, cunning, collusion, artifice**, used to **circumvent, cheat, or deceive** another person, whereby that person acts upon it to the **loss of his property** and to his **legal injury**. Telecom fraud involves the theft of services or deliberate **abuse of voice and data networks**. Furthermore, it is accepted that in these cases the **perpetrator's** intention is to completely avoid or at least **reduce the charges** that would legitimately have been charged for the services used. On occasion, **this avoidance** of call charges will be achieved through the use of deception in order to fool **billing** and **customer care** systems into **invoicing the wrong party**.

Fraud is different from **revenue leakage**. Revenue leakage is characterized by the loss of revenues resulting from operational or **technical loopholes** where the resulting losses are sometimes recoverable and generally detected through **audits** or similar procedures. Fraud is characterized with theft by deception, with evidence of **intent** where the resulting losses are often not **recoverable** and may be detected by analysis of calling patterns.

Telecommunications is an attractive target for fraudsters. The Communications Fraud Control Association conducted a survey and determined that \$35–\$40 billion in losses **is due to** telecom fraud worldwide. It has been estimated the fraud problem is worth between \$12 billion and \$55 billion per year globally. In Africa alone, carriers write off 700 million a year to fraud.

That is expected to increase now that more than 30 million Africans have access to cell phones, giving criminals a huge wireless market to **infiltrate**. While many large operators have developed **sturdy** ways to combat fraud, others have not. It was concluded that perhaps only about 10 % of operators worldwide have set in place sensible and effective fraud strategies.

There is a pressure to deal effectively with crime. Indeed, it declines in the market coupled with huge **debt burden**. The **shareholders** pressure to protect the revenues they are generating. Also, companies are losing up to 15 % of their total annual revenue. Losses are attributed to other issues such as interconnect **discrepancies** and **data corruption**, some companies lose up to 30 % of total revenue. Globally, telecommunication fraud is a bigger business than international drug trafficking, with operators losing \$55 billion a year. It is the single biggest cause of revenue loss for operators, costing them between 3 % and 5 % of their annual revenue.

Revenue losses due to fraud are approximately equal to revenue leakage within the systems and procedures of a company. Properly designed Revenue Assurance procedures extract data at every step of **the revenue-earning chain**, subjecting it to a rigorous integrity check. The traditional time-based and cost-based approaches of processing cases of fraud alone are rapidly becoming obsolete. They must be enhanced by methods of detecting fraud from multiple intelligence sources: services, content, broadband devices, service quality reports, etc.

### *The Evolution of Fraud*

With the evolution of technology, traditional types of fraud such as **counterfeit**/stolen cards and altered checks, **pyramid schemes**, **chain letters** and **investment swindles** have been replaced by more **sophisticated** systems. The telecom industry was hit from as early as the year 1900. The following lines describe the evolution of fraud over the years:

- 1900: operator services;
- 1950: **teeing in**;
- 1970: **payphone ‘tapping’**;
- 1980: **meter tampering, black box, red box**;
- 1990: **3rd party billing, calling card, tumbling ESN, cloning, ghosting** and PBX DISA;
- 2002: **subscription, roaming, IMEI cloning, free phone, call forward, pre-paid, PRS, CDR, suppression, magic phones, social engineering, voice mail hacking**.

The common fraud techniques are call selling with a motive on revenue for organized crime, subscription with a purpose to avoid payment for individual, activations with a motive on **subsidy** theft for internal, PBX hacking with an objective on dial through for organized crime, pre-paid top up with a motive to avoid payment for individual and roaming with an intent on revenue for individual. The subscription fraud (40,8 %), roaming fraud (16,3 %), **internal fraud** (8,2 %) and pre-paid (9,5 %) are the most important in terms of losses by number of incidences. The internal fraud (40,3 %), roaming fraud (11,4 %), pre-paid (10,8 %), subscription (11,6 %) and **premium** (13,1 %) are the most important in terms of losses by values.

The main issues for the future are the increase in number of access methods (voice and data), the additional payments (the handset becomes a credit card), the improved identity techniques (possible biometrics), the internal fraud (increased access to key systems), the increased transaction **repudiation** (as per credit card sector), the money laundering (new regulatory requirements) and the need to use specialist Neural Network based FMS.

The size of telecom market makes it very attractive to fraudsters mainly because of the increased number of business transactions and the increased usage of **distribution networks** such as Internet, IP networks, LAN's, VPN over public networks, **wireless networks** and distributed computing and **grid networking**. Traditional telecom fraudsters will be joined by individuals from the Finance, IT and IP **'hacking' fraternities**, sophisticated fraudsters will focus on content and conventional fraudsters continue to focus on voice.

**Mergers and acquisitions** play a major role in the fraud evolution arena. Indeed, acquisitions pushed up the price of its **stock**, providing the **currency** for further acquisitions which made investors happier and on and on. With a high **stock price** with respect to **earnings**, WorldCom acquired companies with lower price earnings multiples and because of simple math automatically increase its per-share earnings. After the deals, WorldCom subtracted millions and sometimes billions from its profits as a "write-down" of the value of certain assets acquired. Included in this charge were future company quarterly expenses. It resulted in bigger losses in the current quarter but smaller ones in future quarters.

The fraud management becomes more and more important as the new methods of access become available such as cable networks, wireless networks, DSL, Satellite, metropolitan optical networks running Ethernet,



broadband wireless systems (radio, microwave, or infrared). The new network access services support the convergence of voice and data networks into an all-packet-switched network that interconnects with the older PSTN for backward **compatibility**. This is the so-called New Public Network. The concept is to improve the quality of service on the Internet to support voice and other real time traffic with the same.

Because the methods of access are becoming more and more important, it is essential to build new billing systems and processes that **bill** various types of transport, access, transactions and content as well as time and distance. Processes that take into account **pre-mediation**, permitting users to perform secure **authenticated authorizations**. **Pricing** that dynamically changes based upon quality of service changes, **third party charges** and **competitor's pricing**. And knowing the huge increase in data generated by users such as transaction volume, content carried transaction, text message, data, voice, payment, alerts and emails, the need for fraud management is there and needs to be improved as the telecommunications market grows.

The main benefits for fraudsters are the **evasion** of payment for service; the Service Level Agreement violations meaning that the fraudster does not deliver contents of the agreed quality; the improper use of service content, resources or procedures including e.g. use of services in a unintended way and unauthorized use of resources, such as networks; the **sabotage** of service. And the way they do it is using a service without paying (such as “promises” to make payment, **phoney** personal identities, phoney equipment identities, stolen identities, **unauthorized entry**, **faulty tracking**, **tapping**, **line surfing**, ghosting) and call selling to others (such as “Be Your Own Bell”), selling phoney equipment, selling bogus prepaid cards, selling “tapped” access, selling “line” surfing (i.e. PBX access), selling stolen credit cards, stolen identities and equipment, selling “know how,” selling accounting fraud (eliminating the records)).

### I. Match the words with their definitions.

- |                |   |
|----------------|---|
| 1) artifice    | a) a difference between two or more things that should be the same  |
| 2) cheat       | b) a person who commits a crime or does sth that is wrong or evil   |
| 3) circumvent  | c) enter or make sb enter a place or an organization secretly, especially in order to get information that can be used against it |
| 4) collusion   |   |
| 5) cunning     |   |
| 6) discrepancy |   |
| 7) evasion     |   |

- |                |  |
|----------------|--|
| 8) infiltrate  | d) find a way of avoiding a difficulty or a rule   |
| 9) perpetrator | e) secret agreement especially in order to do sth dishonest or to trick people   |
| 10) sabotage   | f) the ability to achieve sth by tricking or cheating other people in a clever way   |
|                | g) the act of avoiding sb or of avoiding sth that you are supposed to do   |
|                | h) the act of doing deliberate damage to equipment, transport, machines, etc. to prevent an enemy from using them, or to protest about sth |
|                | i) the clever use of tricks to cheat sb  |
|                | j) trick sb or make them believe sth which is not true   |

**II. Fill in the gaps with the words from the exercise above. Change the form if necessary.**

1. She's been charged with tax \_\_\_\_\_.
2. The police arrested the \_\_\_\_\_ of the crime.
3. The police were corrupt and were operating in \_\_\_\_\_ with the drug dealers.
4. They found a way of \_\_\_\_\_ the law.
5. She used low \_\_\_\_\_ to get what she wanted.
6. It took energy and \_\_\_\_\_ just to survive.
7. She is accused of attempting to \_\_\_\_\_ the taxman.
8. Police investigating the train derailment have not ruled out \_\_\_\_\_.
9. What are the reasons for the \_\_\_\_\_ between girls' and boys' performance in school?
10. The CIA agents successfully \_\_\_\_\_ into the terrorist organizations.

## PART II

### *Subscription Fraud*

Subscription fraud is the most prevalent since with a stolen or **manufactured identity**, there is no need for a fraudster to tackle a digital network's **encryption** or authentication systems. It's **low tech** with less chance of detection. Subscription fraud is one of the fraudster's preferred methods for digital roaming fraud.

The **modus operandi** of a subscription fraudster is posing as a credit worthy person or a company, the fraudster can gain access to any network, anywhere — 1G, 2G or 3G. Typically the first step for fraudsters is to use subscription fraud to gain access to the home network. This way they appear on the network as a **valid subscriber** accepted by the digital network and authentication system. Often fraudsters work with **corrupt dealers** or internal groups within the service provider in order to create the subscriber accounts. They obtain roaming privileges, for example by posing as a small company or by behaving as a good paying customer for a period of time (known as a “**sleeper**”). The fraudster then roams to a foreign network and generates a high volume of lengthy calls **in quick succession**, usually on multiple handsets.

To recognize it, the carriers are learning the patterns of subscription fraud, including the common indicator of a **billing address** change within the first 15 to 30 days of opening an account. If a new user deviates substantially from the average new user and uses services for an excessive amount, a flag is raised. Certain services are more prone to subscription fraud such as third party sales like resale of long distance, roaming and international Call back.

The most common techniques to minimize impact and loss are threshold based analysis, inference rules analysis (i.e. **callback scams**), profile based analysis (habitual user profiles) and neural networks.

The main vendor tools for eliminating subscription fraud are:

- Credit Worthiness Checking Software;
- Cross Checks to External databases;
- biometric information about the subscriber (the most compelling of all biometrics in the telephony world is, of course, the voice);
- “ProFile” an intercarrier database of accounts-receivable, write-offs and service shut-offs that provides on-line prescreening of potentially fraudulent applicants. Helps identify applicants with a history of bad debt;
- “InSight”, a customer database that carriers scan for previously qualified applicants to **eliminate** the re-qualification process.

### *Internal Fraud*

Internal fraud represents 8,2 % of incidences but generates 40,3 % of value lost which is equal in value of the following four types of fraud combined: roaming (11,4 %), pre-paid (10,8 %), subscription (11,6 %) and premium (13,2 %). The motivation for such a fraud is caused by companies

not prosecuting **shady management accounting** practices, unrealistic performance targets, few **checks and balances**, and **disgruntled employees**.

The methods to highlight internal losses are the following:

Computer assisted audit techniques enable investigators to obtain a quick overview of business operations, develop an understanding of the relationships among various data elements, and easily drill down into the details of specific areas of interest.

The use of digital analysis techniques such as Benford's Law. Frank Benford, a physicist at GE discovered that in just about any given set of numerical data, numbers occur as the first or second digit at a predictable rate. For example, "1" will appear as the first digit 31 % of the time, but "9" will appear first only 5 %. Benford tested lists of numbers from many different sources accounting ledgers, geographic data, even magazine articles — and found that the same probability persisted. In 2002, Darrell Dorrell, a principal at accounting firm Financial Forensics in Lake Oswego, Ore., used a computer program to apply Benford's Law to more than 21,000 payroll records of a health-care company accused of defrauding investors. He found that the number "0" turned up as the second digit in the payroll records twice as often as it should have, and "5" showed up 60 % more often than would be expected. With that information, plus lots more evidence from other tests, he reported to the company's receiver that the records "appear to be contrived."

- Review records for the existence of duplicate transactions, missing transactions, and other anomalies:
  - a) Comparing employee addresses with **vendor addresses** to identify employees who are also vendors;
  - b) Searching for **duplicate check numbers** to find photocopies of company checks;
  - c) Scanning **vendor lists** to find those with post office boxes for addresses. Further follow-up to ensure they represent legitimate vendors;
  - d) Analyzing the sequence of all transactions to identify missing checks or invoices;
  - e) Identifying all vendor companies that have more than one vendor code or more than one mailing address. Such listings may represent "phantom" vendors;
  - f) Finding several vendors with the same mailing address. These records also may signal phantom vendors;

- g) Assuming that each employee in the organization receives only one paycheck per pay period. Search for duplicate records in a single pay period;
- h) If the assumption is correct, the existence of employees receiving two or more **paychecks** may indicate fraud;
- i) If the assumption is invalid — some employees may receive a separate check for **overtime** in addition to their regular pay, for instance — the auditor can then form a revised hypothesis that each employee should receive only one paycheck for regular hours per pay period.
- Conflict Checkers:
  - a) look for relationships between potential new **hires** and business units, with an eye to uncovering conflicts of interest or illegal activity;
  - b) The latest systems will **scroll through** payment information looking for suppliers that aren't listed in any online commercial database — a possible sign that they aren't legit;
  - c) or that operate from addresses that have been associated with fraud in the past.

Effective methods for **mitigating risks** need to be implemented. Actions such as utilizing well trained auditors, improvement of hiring practices and background checks, prosecuting when caught, no single point of failure and effective training for employees that handle cash will minimize the risks. Conducting internal investigations is also a solution to minimize risks. The purpose of internal investigation is to gather sufficient facts to lead to a conviction. It consists of deciding whether it is **convert** or **overt**. Team members require complete independence from the operational teams and need not to be chosen from the development team. Finally, computer assisted tools are essential for such investigation.

### *Partnership Fraud*

**Resellers (wholesalers)** may **represent a risk** because of limited **assets** with which to support recovery actions. Partners can misrepresent their transactions. They often have significant access to OSS/BSS systems or how your business works. Outsourcing creates opportunities for fraud. Distributors may have access to **authentication activation codes**, they can create phoney customer accounts, misrepresent sales volumes, etc.

Therefore, the need to effectively manage relationships is absolutely necessary and requires appropriate actions with the following:

Operators and Commercial Dealers should:

- a) interconnect agreements;
- b) cooperate with your partners on identifying fraudsters;
- c) use similar fraud prevention technologies such as authentication.

Third Party Providers (Outsourced Logistics providers such as tower and BSS installations; content providers; resellers that are running high numbers of “never-pay” accounts) should:

- a) periodically **conduct proficiency tests**;
- b) contractually determine who owns the risks;
- c) share what you know — offer assistance.

### *Fixed Network Fraud*

Fixed networks are evolving and becoming more and more attractive for fraudsters. Improvements such as migration from **circuit switched to packet switched**, High Speed Digital Access (ADSL, Cable, Broadband satellite), Soft switches rather than hardware switches, the emphasis switching to content rather than carriage, extending access to the SS7 signalling and supervision networks to Operators and partners, and changes in numbering plans provide fraudsters with new media and new opportunities to increase their presence. The most common types of fraud affecting fixed telco lines are line surfing, ghosting, subscription, slamming and cramming, PRF, call selling, PBX hacking and activation (internal fraud). The less common are prepaid and social engineering fraud.

Subscription fraud is where a fraudster gains access to a service, usually by using false identity details. It also relates to circumventing credit checks upon subscription. In some cases, a firm or individual will pay their first month of service before increasing their call volumes through call selling for one or two months and then leaving town without paying the bill.

Physical attacks on networks are Payphones, tapped lines, customer premises — PBXes, vandalism in manhole, outside plant terminals, ISP servers — denial of service attacks, ISDN lines.

Premium Rate Service (PRS) fraud is perpetrated by setting up a “legitimate” high tariff PRS in another country and then creating calls **at the expense of** the originating telco. In some cases, office cleaners have been organized to **dial** these numbers, and leave phones off the hook all night. Also known as “cramming” in the United States, it is tricking someone into accepting 9xx charges on someone’s bill. Premium rate SMS (ring

tones, clip art, micro payments) and Premium rate WAP (information services) are also known as fraud risks.

There is also a threat of SS7 attacks where the no. 1 concern is denial-of-service attacks. There are limited mitigation tools which consist in basic SS7 surveillance tools and expanded firewall functionality. It is not designed for encryption. The attacks aimed at SCPs, STPs, SSPs. It impacts local number portability, LIDB (billing data, collect calls, PINs, etc).

The mitigating method for eliminating such frauds are installing FMS systems, fraud management organizations, **internal auditors**, **revenue assurance checks**, better hiring practices, **correlation checks**, **traffic monitors** and updated OXX/BSS systems.

**I. Fill in the gaps with one word to form the correct collocations. The first letters are given.**

1. To phone somebody, you must pick up the receiver and **d** \_\_\_\_\_ the number.
2. Do not leave the phone off the **h** \_\_\_\_\_ as you can be defrauded.
3. Some companies **c** \_\_\_\_\_ proficiency tests in order to maintain the good level of employees' work.
4. There are many cases when third **p** \_\_\_\_\_ are involved.
5. Banks should not have access to authentication activation **c** \_\_\_\_\_.
6. One vice-president is accountable for several strategic **b** \_\_\_\_\_ units.
7. The system of checks and **b** \_\_\_\_\_ can prevent fraud.
8. She has won the award for the third year in **s** \_\_\_\_\_ — 1995, 1996, 1997.
9. The modus **o** \_\_\_\_\_ of the fraudster was very sophisticated.
10. The statement will be sent to your billing **a** \_\_\_\_\_.

### PART III

#### *Mobile Network Fraud*

The security of mobile networks is more of a concern than wire networks. Physically accessing the network is easier than with wired. Authentication and **privacy** (via **encryption**) are issues. Both **voice and computer traffic** suffer from security concerns. As the industry migrate from 2G to 3G networks, all traffic becomes packets of information carrying voice,

data or video. The use of **rogue** base stations and rogue wireless access points are real threats.

Encryption plays a major role for operators and handset/SIM. In the case of the operators, UMTS security standards based upon 802.11i (secure encryption) at access point or base station and SSL (Internet traffic), IP Sec for VPN tunnelling is used. For handset manufacturers, SIM cards are responsible for authentication and secure storage of authentication keys. All transactions in GSM **terminals** have been secured thanks to the SIM using symmetric and public-key algorithms. Transactions will be secured under WAP version 1.2 using the public-key-based WAP-identity-module functions, likely to reside in a SIM in most WAP handsets. Security could also be achieved by shutting down phones. They are built with chipsets like the Xilinx chip. Once phone is reported stolen, the phone company sends new data to the handset, that turns the chip into a block between the keypad and the rest of the phone, preventing further use. This makes the handset **unusable**; even if the thief changes the SIM (subscriber identity module) card, the **reconfigured chip** continues to prevent use of the keypad. The same technology can be used to re-activate the phone if and when it is returned to its owner.

Network security needs to change since “SSL provides one level of encryption of the traffic but not strong authentication.” In other words, the data will be **encrypted** but there is no guarantee who is sending the data. SSL will be replaced by another Internet security standard called transport layer security, which is backwards **compatible** with SSL but uses stronger **encryption protocols**. Migration to 802.11i from WEP based encryption will take place. Public Key System for multiple merchant transactions is also a key to security. Indeed, rather than using the same key for both the encryption and **decryption** of data, each customer is given two keys — a private key that he does not share with anyone and a public key.

We are currently observing a rise in mobile phone related theft. Indeed, in the UK, cell phone thefts have nearly **tripled** since 1995, with mobile phones targeted in about 28 % of all robberies. UK **officials** are considering legislation that would force phone networks to institute antitheft measures. Also, there is rising theft amongst children and a variety of new featured phones makes them more attractive.

Cloning, **tumbling** and other ways of compromising mobile networks and handsets are affecting security in mobile networks. Cell phone cloning is copying the identity of one mobile telephone to another mobile tel-



ephone. Cloning requires access to ESN (Electronic Serial Number) and MIN (Mobile Identification Number) pairs. In tumbling, you pretend to be from another cellular carrier. Next, you modify your mobile telephone to generate a random ESN and a random MIN from an Area Code of this carrier for each call; Subscription fraud; Stealing the handset and changing the SIM card.

The best ways to reduce mobile network fraud are: installing FMS systems to alert, block and analyse traffic; implementing authentication and **RF finger print technology**; installing phone theft disabling technology; installing encryption to prevent **sniffing** of ESN and MIN; implementing better anti-subscription fraud practices; and introducing Public Keys technology.

### *Prepaid Fraud*

There are many ways for fraudsters to exploit prepaid services:

- using lost or stolen credit cards or **bounced checks**;
- internal engineers can access and **alter** billing-activation systems;
- stealing cards, PIN numbers and recharge codes at production and support sites;
- scan for data from legitimate phones and duplicate the information onto stolen devices. These prepaid phones appear legitimate but steal minutes from an honest customer;
- call support lines and claim their calls were not connected or replenishment cards are faulty;
- simultaneous refills with the same HRN;
- guessing HRN's.
- Operators can curtail these methods in many ways.
- beefing up company security and carefully watch employees;
- point of Sale Activation system for card activation at the time of purchase. Stolen cards without activation have no value, and access, PIN, and replenishment codes are generated upon sale;
- requiring wire transfers for large orders, avoiding credit card and bank check scams;
- sending inactive cards that are activated only when funds clear to the carrier account;
- installing Pre-paid FMS systems with logs and alerts.

Also prepaid users need to be regulated in teaching them how to spot abuses and in requiring them to charge the card within a specific period

of time. Activation at point of sale and limit where they can recharge (i.e. within country only) is also a way to prevent fraud.

However, there are risks associated with recharge methods. There are four types of prepaid systems widely in use. These are:

- a) 'Advice of Charge' based system;
- b) 'Hot Billing' based system;
- c) 'Service Node' based system;
- d) 'Wireless Intelligent Network' based system.

In SIM based communication from MSC is not encrypted. Credit information is stored in the SIM, it is not very difficult to modify the same illegally. Hot Billing Systems have "last call" issues whereby the last call can overrun the limit on the voucher. Service Node and Intelligent Network based systems don't generate logs.

In order to minimize the impact of prepaid fraud, the vendor community is developing techniques such as **Real time billing and rating systems**, combining pre-paid and **post paid systems** into one, generation of logs for changes made to IN based systems; activation at point of sale systems; migration to IN based systems.

### *Roaming Fraud*

Roaming subscribers make calls on another network as visitors. Call charges are routed via TAP files to the subscriber's home network. This fraud is similar to subscription fraud in that the perpetrator has no intention to pay for services used. The time delay of high call rate identification and notification to home network when roaming on another network is exploited by fraudsters. It is prevalent among customers who get new service and immediately thereafter use service as a roamer on another network. Roaming fraud causes severe loss to telcos. According to Global Fraud Loss Survey 2003, fraud losses are typically 4 % of revenues. For mobile service providers, approximately 25 % of their total fraud is roaming fraud. Losses per handset range from \$100 per handset if real time record checking is in place to \$10 000 with High Usage Record systems and \$50 000 per handset for carriers that rely on clearing house data.

Criminals use different fraud methods:

- Subscription fraud is one of the fraudster's preferred methods for digital roaming fraud. The delay in the home provider receiving roamer call data can be anywhere from one to several days;

- Stealing mobile phones belonging to roamers, usually in vacation destinations. Often the victim does not report the theft until several days later when they've returned home;
- Cloning: As service providers began to prevent them on their network, the problem migrated to roaming partner networks;
- Flaws in the authentication algorithms used by the SIM card in GSM mobile networks. Fraudsters are now cloning SIM cards like they use to do with the cloning of ESN/MIN numbers.

The GSM Association is making major efforts to minimize the impact of roaming fraud. It has developed a **security accreditation scheme**, designed to minimize the one-to-one security audits carried out by operators on suppliers. It has also created IREG's Permanent Reference Documents relate to roaming tests between operators. These documents are an essential reference resource for the Association's membership — a library of case studies, principal, technical theory and informed prognosis. IREG also serves as a forum at which operators can share the experiences and expertise that contributes to efficient problem solving.

Vendor community is currently working on techniques to prevent or minimize the impact of roaming fraud such as clearinghouse, High Usage Record and Roamer CDR Exchange. Clearinghouse provides information such as individual call details, individual call charges and billing specific data. High Usage Record provides information such as call summary for subscribers that exceed threshold and approximate charges. Roamer Exchange provides information such as individual call details and fraud specific data.

### *Content and Value Added Services Fraud*

Content risks and **liabilities** are far greater than the costs of the call. It takes on the financial liability by agreeing to bill subscribers for retail purchases or receive payments for value-added content. Also, there is a great number of partners involved, often simultaneously during the same session. Therefore, some systems cannot bill for some services. Copyright laws differ regionally and from country to country. Finally, paying for the call even if the **content provider** isn't paid.

Content theft relates to file swapping networks for music and video; copying, sharing of software; ripping CDs and DVD; adult content freely available via the Internet; photocopying books, manuals and other copy-

righted materials. There are many ways to manage the risk. Credit Card fraud is rampant on the Internet so treat content payments made with credit cards accordingly. Also withhold a percentage of each transaction in order to settle or cover bad debt. Another way is to limit the value of transactions that can occur using micro-payment services. E-identity is used throughout the banking, finance, retail and travel industry sectors, and is said to be consistently detecting 90 % of fraudulent online credit card transactions. And finally, uses services that improve “**card not present**” transactions.

Therefore, to minimize the impact, the payment mechanisms should be operator bills for content, micropayment services using the handset, third party payment houses, i.e. PayPal and Credit Card companies.

Other solutions could be used to minimize the fraud. Watermarking permits the content owner to identify his content and its origins. Encryption prevents intercepted content from being used or resold without the key. Digital Rights Management permits only the purchaser of the Content to view it and prevents copies being made.

In order to maintain revenue streams through, secure delivery channels and WIB-enabled services are used. Secure Delivery Channels uses USIM (Universal Subscriber Identity Module) card solutions which manage important security functions, ensure authorised access and manage different applications residing in the USIM. WIB enabled services leverage SMS-based technology plus SIM toolkit that enables the SIM card to drive the handset interface, using the Wireless Internet Gateway. The gateway opens up a secure channel (utilising GSM 03.48 security) to the WIB on the SIM.

### *Data Mining Applied to Fraud Detection and Prevention*

Data Warehouse Data Modelling is a tool that provides the following information:

- ensuring all customers are entered into the billing system;
- ensuring the quality of the data;
- ensuring all billable calls are being billed;
- examining major contributors to revenue, profits and losses;
- reconciliation of revenue with other sources of data from accounting to the network as well as any inventory.

Data Mining is an information extraction activity whose goal is to discover hidden facts contained in databases. Using a combination of machine

learning, statistical analysis, modeling techniques and database technology, data mining finds patterns and subtle relationships in data and infers rules that allow the prediction of future results. Typical applications include market segmentation, customer profiling, fraud detection, evaluation of retail promotions, and credit risk analysis. Data Mining could be applied to fraud detection and prevention by looking for patterns and relationships between various data sources, by helping prioritizing your investigations and expenditures with regard to revenue losses, by spotting organized crime rings operating in your territory and by identifying internal fraud.

**I. Decide who or what the following statements refer to.**

1. They clone SIM cards.
2. They make sure all clients are entered into the billing system.
3. They are routed via TAP files to the subscriber's home network.
4. They are thrice as much now as in 1995.
5. They are in charge of authentication and secure storage of authentication keys.
6. They are working out legislation that would make phone networks implement antitheft measures.
7. They seem legal but steal minutes from a law-abiding customer.
8. They do not generate logs.
9. They have "last call" issues whereby the last call can overrun the limit on the voucher.
10. They make calls on another network as visitors.

**II. Match the words with their definitions.**

- |                 |  |
|-----------------|--|
| 1) access       | a) a company that sells a particular product   |
| 2) bogus        | b) a system of sending and receiving signals   |
| 3) content      | c) not real or true, and trying to trick people  |
| 4) encryption   | d) not yet received but given money for  |
| 5) phoney       | e) pretending to be real or genuine  |
| 6) prepaid      | f) putting information into a special code, especially in order to prevent people from looking |
| 7) revenue      | at it without authority  |
| 8) subscription | g) the act of people paying money for sth to be done   |
| 9) vendor       | h) the information or other material contained on a website, etc.                              |
| 10) wireless    |  |

- i) the money that an organization receives from its business
- j) the opportunity or right to use sth or to see sb/sth

**III. Fill in the gaps with the words from the previous exercise. Change the form where necessary.**

1. The company's annual \_\_\_\_\_ rose by 30 %.
2. She spoke with a/an \_\_\_\_\_ Russian accent.
3. \_\_\_\_\_ social workers have been preying on old people living alone.
4. We have problems with our online \_\_\_\_\_ providers.
5. We \_\_\_\_\_ to several sports channels.
6. These documents are not \_\_\_\_\_ to the public.
7. Fraudsters nowadays actively target at \_\_\_\_\_ communication users.
8. Because most businesses don't \_\_\_\_\_ backup data, the information was theirs for the taking.
9. This company is one of leading software \_\_\_\_\_.
10. Don't \_\_\_\_\_ for vacations that carry heavy penalty if cancelled.

**IV. Fill in the table below.**

No	Name of scam	Description	Frequency (if stated)	Losses (if stated)	Prevention methods

## Text 9. CYBERSPACE FRAUD

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(adapted from the statement *Consumer Protection in Cyberspace: Combating Fraud on the Internet* by Eileen Harrington, Associate Director in the Bureau of Consumer Protection at the Federal Trade Commission. URL: <http://www.ftc.gov/os/1998/06/test.623.htm>. Last accessed 22.01.2012)

Read the text (30,000 characters) paying attention to the words and phrases in bold.

### PART I

#### Background

##### *A. FTC Law Enforcement Authority*

The Federal Trade Commission aims to promote the efficient functioning of the **marketplace** by seeking to protect consumers from **unfair** or **deceptive** acts or practices and to promote **vigorous competition**. The Commission's responsibilities are far-reaching. Its primary **legislative mandate** is to enforce the Federal Trade Commission Act, which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting **commerce**. With the exception of certain industries, this **statute** provides the Commission with broad law enforcement authority over virtually every sector in our economy. Commerce on the Internet falls within the broad sweep of this **statutory mandate**.

##### *B. Fraud on the Internet*

The **advent** of the Internet — with its new methods of communicating through web sites, electronic mail, **news groups**, **chat rooms**, electronic **bulletin boards**, and commercial **online services** — is an historical development much like the introduction of television or, a few generations earlier, the telephone. Like these earlier technologies, the Internet presents consum-

ers with an exciting new means for them to **purchase** both **innovative** and traditional goods and services faster and at lower prices, to communicate more effectively, and to tap into rich sources of information that were previously difficult to access and that now can be used to make better-informed purchasing decisions.

The Internet's promise of **substantial** consumer benefits is, however, coupled with the potential for **fraud** and **deception**. **Fraud operators** are always **opportunists** and are among the first to appreciate the potential of a new technology. This phenomenon was illustrated by the advent, flourishing, and near-**demise** of **pay-per-call technology**, or 900-number technology, as a **commercial medium** during the last decade. 900-number technology was the first interactive technology — and still is the only interactive technology offering nearly universal access because all that is needed is a telephone. This technology has huge **potential** as an **alternative payment system**, since every telephone could serve as a **payment terminal**, and no **credit cards**, **debit cards**, or **checks** are needed. In 1991, there were \$6 billion in pay-per-call transactions. But fraud operators moved in to exploit the technology, and the industry was slow to respond to this challenge. As a result, the 900-number industry's reputation became **tarnished** by fraud and **abuse**, and sales **plummeted** to \$300 million annually. In 1992, **pursuant** to Congressional mandate, the FTC and the FCC **promulgated** rules to regulate the 900-number industry to ensure that consumers would receive price and other material information before **incurring costs**, and have the right to dispute **allegedly** incorrect or **unauthorized charges**. Annual sales began to climb again, reaching \$450 million in 1995. The 900-number industry now seems poised to attract a higher volume of legitimate commerce because consumers can use 900-numbers with greater confidence.

Some of the same features that made pay-per-call technology a **tempting field** for **fraud artists** in the 1980ies — low **start-up costs** and the potential for big profits — exist on the Internet today. Indeed, a **scam artist** can now buy a powerful computer and modem for less than \$1000, and for \$30 a month or less, can establish and maintain a site on the World Wide Web to **solicit** consumers anywhere on the globe. There is nothing new about most types of Internet fraud the Commission has seen to date. What is new — and striking — is the size of the potential market and the relative ease, low cost, and speed with which a scam can be perpetrated.

If the Internet is to avoid a fate similar to that of 900-number technology, the Commission believes it is important to address Internet fraud now,



before it **discourages** new consumers **from** going online and chokes off the impressive commercial growth now in progress and potential for innovation on the Internet. According to some industry analysts, total Internet business will climb from \$2.6 billion in 1996 to \$220 billion by 2001. Much of this trade likely will involve **business-to-business transactions**. However, the **online consumer market** also is growing **at an explosive rate**. In 1997 alone, the number of adults on the Internet in the U.S. grew by 32 %, from 46,8 million to 62 million. Of those people, approximately 10 million had actually purchased a product or service online. Perhaps most telling, analysts estimate that Internet advertising — which totaled approximately \$301 million in 1996 — will reach \$7,7 billion by the year 2002.

### *C. The Commission's Approach to Internet Fraud*

If this trend and all the benefits that it **implies** are to continue, consumers must feel confident that the Internet is safe from fraud. Nothing is more likely to **undermine** their confidence than exploitation by scam artists using this new technology as yet another means to **defraud** consumers. Therefore, the Commission is concerned about fraud on the Internet and has taken strong action to combat it.

The Commission began to examine the potential for consumer protection problems on the Internet proactively, before online consumer transactions became common. In the fall of 1995, the Commission **held public hearings** to explore business and consumer **issues** arising from technological innovation and increasing globalization. Over 200 **company executives, business representatives, legal scholars, consumer advocates, and state and federal officials** presented **testimony**. A two-volume report was published summarizing the hearings. It reflects principles that many participants **urged** the Commission to consider when addressing the Internet and other technologies in the new Information Age.

Consumer protection is most effective when businesses, government, and consumer groups all play a role. Meaningful consumer protection takes:

- coordinated **law enforcement** against fraud and deception;
- private initiatives and public/private partnerships;
- **consumer education** through the combined efforts of government, business, and consumer groups.

Applying these principles, the Commission **has taken the offensive against fraud** on the Internet through a **three-pronged strategy** that em-

phasizes targeted law enforcement action, complemented by education of consumers and new Internet **entrepreneurs**, both of whom may be **venturing into cyberspace** for the first time. In all aspects of this strategy, but particularly in the Commission's consumer and business education efforts, the Commission has sought to form new partnerships with private industry and other government agencies, and the Commission has tried to turn new technologies to our advantage.

**I. Answer the questions using the information given above.**

1. What is the FTC? What is its main objective?
2. Do you know of any institutions in your country that aim to defend people from fraud on the Internet?
3. What makes the Internet so attractive for fraudsters?
4. What was the first interactive scam technology? How did it work? Is it still active?
5. Why is the FTC concerned about cyberspace fraud?
6. What action can be taken to protect consumers from being defrauded?

**II. Match the words with their definitions.**

- |                   |   |
|-------------------|---|
| 1) bulletin board | a) a board for putting notices on   |
| 2) demise         | b) a formal rule of an organization or institution  |
| 3) incur          | c) a person who makes use of an opportunity, especially to get an advantage for yourself                                |
| 4) mandate        | d) a piece of equipment, usually consisting of a keyboard and a screen that joins the user to a central computer system |
| 5) opportunist    | e) commit a crime or do sth wrong or evil   |
| 6) perpetrate     | f) fall suddenly and quickly from a high level or position  |
| 7) plummet        | g) have obligation to pay costs   |
| 8) statute        | h) recommend sth strongly   |
| 9) terminal       | i) the end or failure of an institution, an idea, a company, etc  |
| 10) urge          | j) an official order given to sb to perform a particular task   |

**III. Fill in the gaps with the words from the exercise above. Change the form where necessary.**

1. There is much violence \_\_\_\_\_ against women and children.
2. The bank had no \_\_\_\_\_ to honour the cheque.
3. Under the \_\_\_\_\_ of the university they had no power to dismiss him.
4. Share prices \_\_\_\_\_ to an all-time low.
5. You risk \_\_\_\_\_ bank charges if you exceed your overdraft limit.
6. The situation is dangerous and the UN is \_\_\_\_\_ caution.
7. 80 % of burglaries are committed by casual \_\_\_\_\_.
8. A message was pinned to the \_\_\_\_\_.
9. The bank has \_\_\_\_\_ all over the country.
10. We are now witnessing the scandalous \_\_\_\_\_ of the company.

## PART II

### Aggressive Law Enforcement

First and foremost, the Federal Trade Commission is a civil law enforcement agency that has many tools to combat fraud and deception. The Commission can issue **administrative complaints** and **conduct administrative adjudications** that may result in the issuance of **cease** and **desist** orders against practices found to be unfair or deceptive. Further, in cases of fraud and other serious **misconduct**, the Commission has **statutory authority to file suit** directly in federal district court to obtain **preliminary and permanent injunctive relief**, **redress** for injured consumers, or **disgorgement of ill-gotten gains**. The Commission also may seek the assistance of the Department of Justice in filing **criminal contempt proceedings** against persons who **violate court orders** issued at the behest of the Commission, or in filing criminal actions in **egregious fraud cases**.

The Commission has brought over 35 law enforcement actions against defendants whose alleged **illegal practices** used or involved the Internet. Several of these cases involved alleged deceptive advertising and **billing practices** of commercial online service providers. Most of the Commission's law enforcement actions, however, have involved old-fashioned scams dressed up in high-tech garb.

### *A. Pyramid Schemes*

The Commission has brought several cases to stop **alleged pyramid schemes** that recruit victims through the web. In the Commission's largest Internet pyramid case to date, *FTC v. Fortuna Alliance*, the defendants allegedly promised consumers that, for a payment of \$250, they would receive profits of over \$5,000 per month. The program **spawned** numerous web sites on the Internet and appealed to victims all around the globe seeking to get rich quickly for little effort. Yet sheer mathematics dictated that 95 % of the consumers who joined the program could never make more than they paid in. The Commission obtained a temporary restraining order **halting** the unlawful practices and **freezing the assets** of the individuals who developed and operated the Fortuna program. The court order also required the defendants to **repatriate** the assets they had **deposited overseas**. In February 1997, the defendants **stipulated** to a permanent **injunction** that prohibited their alleged pyramid program and provided for redress to consumers who **requested refunds**. The **defendants** subsequently balked at paying many consumers, and the Commission filed two separate contempt motions. On June 5, 1998, the court issued a contempt order against the defendants, prohibiting them from promoting any marketing or investment program until they had paid \$2 million, plus **interest**, owed to consumers.

Another alleged Internet pyramid scheme targeted in a recent Commission law enforcement action was Credit Development International. The scheme was **propelled** by allegedly false promises that those who joined CDI would receive an unsecured Visa or MasterCard credit card with a \$5,000 limit and a low interest rate, as well as the opportunity to receive monthly income of \$18,000 or more. The Commission filed its complaint on October 29, 1997, and on October 31, the court granted a **temporary restraining order**, appointed a receiver to oversee the corporate defendants, and froze both the corporate and individual defendants' assets. After a hearing, on November 20, 1997, the court issued a preliminary injunction against the defendants. The Commission's staff estimates that over 30 000 consumers collectively may have lost 3 to 4 million dollars in this alleged scam. This matter is still **in litigation**.

### *B. Unsolicited Commercial E-mail or "Spam"*

The Commission's investigators discovered the Credit Development International scam as part of an ongoing effort to monitor "spam" — also known less colloquially as unsolicited commercial e-mail ("UCE") — on

the Internet. One theme sounded in the Commission's recent privacy hearings was that an ever-increasing volume of UCE strains the capacity of online service providers and threatens the development of the Internet as a **conduit** for commerce. For example, America Online has reported that it currently handles 60 million electronic messages per day, up from 5 million messages per day only 18 months ago. Moreover, America Online estimates that UCE comprises as much as one-third of its e-mail traffic.

Beyond the sheer volume and potential annoyance of UCE, many UCE messages may be **misleading** or deceptive. Alleged scams like Fortuna and Credit Development International generate huge quantities of UCE, because e-mail is unparalleled as a means of cultivating a "**downline**" — additional recruits to a pyramid — for virtually no cost and little effort. The same attributes make UCE attractive to other types of scams as a means to solicit millions of consumers for little cost. The Commission has taken action against junk e-mailers engaged in fraudulent business opportunities and **credit repair schemes** as well, and additional investigations are underway.

### *C. Online Auctions*

One growing problem on the Internet is the failure of some sellers to **deliver merchandise** that consumers have purchased. This is especially troublesome for consumers who participate in popular **person-to-person online auctions**. In *FTC v. Hare*, the Commission brought suit to stop a seller who advertised personal computers on different auction sites. He took as much as \$1,450 each from "successful **bidders**" across the country but failed to send any computers or refunds. The Commission obtained an injunction against his activity and a freeze on his assets. More recently, Commission staff have engaged several major person-to-person online auction houses in discussions about how they could protect consumers generally and help ensure the delivery of merchandise by sellers.

### *D. Schemes Unique to the Internet*

Although most Internet fraud is fairly traditional, the Commission has taken action against one scheme that uniquely and ingeniously exploited what can be done on the Internet and *only* on the Internet. The case *FTC v. Audiotex Connection, Inc.*, presented a scheme that allegedly "hijacked" consumers' computer modems by **surreptitiously** disconnecting them from their local Internet Service Provider (such as America Online)

and **reconnecting** them to the Internet through a high-priced international modem connection, purportedly going to Moldova but actually **terminating** in Canada. On various Internet sites, the defendants offered access to free computer images through a special “viewer” program. If a consumer downloaded and activated the viewer software, the alleged hijacking automatically **ensued**, and an international long-distance call (and the charges for it) continued until the consumer turned off the computer — even if he or she left defendants’ sites and moved elsewhere on the Internet, or left the Internet entirely to use a different computer program.

Commission staff were first **alerted** to the *Audiotex* scheme by security experts at AT&T. The United States Secret Service assisted staff in ascertaining how this “**Trojan horse**” viewer software worked, and AT&T lent further assistance in tracing the software back to specific web sites. With this help, the Commission’s staff completed its investigation, filed a complaint, and obtained an *ex parte* temporary restraining order and asset freeze against the defendants within just 31 days of learning about the alleged scam. The lawsuit was recently resolved by entry of a stipulated permanent injunction against the main defendants named in the Commission’s complaint and the **issuance** of a virtually identical administrative order against additional parties found to have played a role in the alleged scam. Under the two orders, the defendants and administrative respondents are **barred from** engaging in the alleged unlawful practices, and over 38,000 consumers should **receive full redress** worth an estimated \$2.74 million.

### *E. Consumer Sentinel*

When taking action against online fraud, the Commission often draws upon the power of new technology. To this end, the Commission has launched Consumer **Sentinel**, the first binational, multi-state computerized consumer fraud database that uses the Internet to provide secure access to consumer complaints for over 150 law enforcement organizations across the U.S. and Canada. Consumer Sentinel contains over 110,000 complaints, including 23,000 complaints added just since March 1998. These complaints concern telemarketing and direct mail problems, as well as Internet fraud.

#### **I. Answer the questions.**

1. Which main types of cyberspace fraud are outlined in the text? How do fraudsters perpetrate those scams?

2. Which of them are considered to be more traditional and which more sophisticated?

3. Which measures are taken by FTC to spot and combat them?

**II. Write the words or expressions defined below. The first letters are indicated.**

1) the act of preparing and sending bills to customers **B**

2) an official order given by a court which demands that sth must or must not be done **I**

3) to stop happening or existing **C**

4) a thing of value, especially property, that a person or company owns, which can be used or sold to pay debts **A**

5) the extra money that you pay back when you borrow money or that you receive when you invest money **I**

6) an official order given by a judge which demands that sth must or must not be done, which does not require a trial in court but only lasts for a limited period of time **RO**

7) a person, an organization or a country that is used to pass things or information to other people or places **C**

8) payment, etc. that you should get for sth wrong that has happened to you or harm that you have suffered **R**

9) a computer program that seems to be helpful but that is, in fact, designed to destroy data, etc. **TH**

10) a person, organization, etc., whose job is to guard sth **S**

## **PART III**

### **Consumer Education**

#### *A. Web Sites*

The Commission has gone online to reach Internet users. Since April 1995, the Commission has used its web site at “www.ftc.gov” to make instantly available to consumers a rich and continuously updated body of advice and information. The Commission receives approximately 95 000 “hits” per day on this home page. In May 1998 alone, FTC.GOV received over 3 million hits from thousands of visitors.

In constructing its web site, the Commission has put a **premium** on making it not only **comprehensive**, but also user-friendly. FTC.GOV contains a search engine that allows consumers to pull up information by typing in a few key words. The site also contains a special section called *ConsumerLine* that provides news **releases**, **consumer alerts**, and online versions of all of the Commission's consumer and business education publications. Last month the Commission added an online complaint form to FTC.GOV, enabling consumers to file a complaint quickly and easily over the Internet. Their information can be rapidly downloaded into the Consumer Sentinel database and made available to law enforcement across the country.

Building on the success of the Federal Trade Commission's home page, the Commission's staff conceived the "U.S. Consumer Gateway" at [www.consumer.gov](http://www.consumer.gov). This site combines information from over 25 different federal partners, including the Securities and Exchange Commission ("SEC"), the U.S. Consumer Product Safety Commission ("CPSC") the Food and Drug Administration ("FDA"), and the National Highway Traffic Safety Administration ("NHTSA"). The U.S. Consumer Gateway provides the public with "one-stop shopping" for federal information on a broad spectrum of consumer issues, ranging from auto recalls to drug safety to investor alerts. Since early February 1998, the site has received over 1.8 million hits from 88 000 visitors.

### B. "Teaser" Pages

Extending a hand to consumers at their most vulnerable point — when they are surfing in areas of the Internet likely to be rife with fraud and deception — the staff of the Commission has posted several "**teaser**" **web sites**. The "Ultimate Prosperity Page" is one example advertising a fake deceptive business opportunity. The "Ultimate Prosperity Page" uses "buzz words" and promises of easy money common to many such scams. When the consumer clicks from the "Ultimate Prosperity Page" to the next page in the series, he or she finds glowing testimonials from **fictitious persons** who purportedly have achieved fabulous success through the business opportunity — again mirroring the typical **get-rich-quick** business **opportunity scam**. Clicking through to the third and final page in the series, however, brings the consumer to a sobering warning: "If you responded to an ad like this, you could get scammed." The warning page gives advice on how to avoid fraudulent business opportunities and provides a hyper-text link



back to FTC.GOV, where consumers can learn more about investing in franchises or business opportunities.

There are now ten other teaser sites, posted by the Commission's staff, that mimic pyramid schemes, **scholarship scams**, deceptive travel programs, false weight-loss claims, and fraudulent **vending opportunities** — all **perennial frauds** that have been practiced on consumers for years through direct mail, telemarketing, and other means, and are now enjoying new life on the Internet. The Commission's staff has registered each "teaser" site with major search engines and indexing services on the Internet. Thus, consumers may encounter the site when they are perhaps most receptive, just when they may be about to become ensnared in a fraud by responding to a plausible but untrue come-on. Private online service companies have worked with the Commission's staff to highlight various teaser pages and have billed some as the "new" or "cool" site of the week.

### *C. Online Forums and Public Service Announcements*

In another effort to use new technology to reach the public, the staff of the Commission partnered with the North American Securities Administrators Association and held a real time online forum on the Internet in April 1997. Over 100 consumers participated, **posing questions** to, and receiving instantaneous responses from, state and federal experts about how to invest wisely in new **business ventures** or **franchises**. The Commission posted the transcript of this "chat" session on its web site so that other consumers could access it and benefit from the exchange.

The Commission has actively sought Internet companies and trade groups to join with us as partners in disseminating consumer protection information to consumers online. As a result, the Interactive Services Association, a leading online trade association, and companies such as AT&T, NetCom, America Online, Circuit City, Compaq, Micron, Borders, and American Express have helped circulate public service announcements over the Internet, cautioning consumers to avoid particular scams and "hot linking" consumers to the Commission's web site where they can find "Cybershopping" guides, "safe surfing" tips, and other helpful information.

## **I. Choose the meaning in which the words are used in the text.**

### *1. Scholarship is*

- a) an amount of money given to sb by an organization to help pay for their education;

- b) the serious study of an academic subject and the knowledge and methods involved.
- 2. *Perennial* means
  - a) living for two years or more;
  - b) continuing for a very long time, or happening again and again.
- 3. *Comprehensive* denotes
  - a) including all, or almost all, the items, details, facts, information, etc., that may be concerned;
  - b) designed for students of all abilities in the same school.
- 4. *Alert* designates
  - a) a situation in which people are watching for danger and ready to deal with it;
  - b) a warning of danger or of a problem.
- 5. *Premium* is
  - a) an amount of money that you pay once or regularly for an insurance policy;
  - b) an extra payment added to the basic rate.

## II. Answer the questions.

1. What does “consumer education” mean? Whom is it targeted at?
2. What technologies does consumer education involve?
3. Do you think consumer education is an effective means of combating fraud in cyberspace? Why?
4. Have you or someone you know been defrauded in cyberspace? If yes, give the details.
5. Is fraud a civil or a criminal offence? Which sentence, in your opinion, can lessen the amount of fraud cases?

## PART IV

### Business Education

#### *A. Surf Days*

At the forefront of its business education efforts, the Commission has conducted nine different “**Surf Days**” aimed at providing information to new **entrepreneurs** who may unwittingly violate the law. The first Surf Day was conducted in December 1996 and focused on pyramid schemes that

had begun to **proliferate** on the Internet. Commission attorneys and investigators enlisted the assistance of the SEC, the U.S. Postal Inspection Service, the Federal Communications Commission, and 70 state and local law enforcement officials from 24 states. This nationwide *ad hoc* task force surfed the Internet one morning, and in three hours, found over 500 web sites or newsgroup messages promoting **apparent** pyramid schemes. The Commission's staff e-mailed a warning message to the individuals or companies that had posted these **solicitations**, explaining that pyramid schemes violate federal and state law and providing a link back to FTC.GOV for more information. In **conjunction** with the New York Attorney General's Office and the Interactive Service Association, the Commission announced the results of Internet Pyramid Surf Day at a televised press conference held during the Internet World '96 convention in New York City. A month later, the Commission's investigative staff checked on the status of web sites or newsgroups identified as likely pyramids during Surf Day and found that a substantial number had disappeared or been improved. The Commission has employed this technique several times since, conducting additional Surf Days focused on Internet web sites or newsgroup messages that promoted potentially problematic business opportunities, **credit repair schemes**, and "**miracle cure**" health products.

The Commission has now taken its Surf Day concept to the private sector, the global law enforcement community, and sister agencies as well. In August 1997, the Coupon Information Center, a private trade association, and its members from the national merchandising community joined Commission staff in surfing for fraudulent opportunities that promoted **coupon** certificate booklets. Then on October 16, 1997, the Commission helped coordinate the first "International Internet Surf Day." Agencies from 24 countries joined this effort and targeted "get-rich-quick" schemes on the Internet. Australia's Competition and Consumer Commission oversaw the world-wide effort while the FTC led the U.S. team consisting of the SEC, the Commodities Futures Trading Commission ("CFTC") and 23 state agencies.

In November 1997, the Commission used the Surf Day concept to help the Department of Housing and Urban Development ("HUD") target unscrupulous "HUD Tracers." These "tracers" **track down** consumers to whom HUD may owe a refund for FHA **mortgage insurance**. Consumers can claim their **refund** for free by contacting HUD directly; however, unscrupulous "tracers" may falsely claim that refunds cannot

be secured without their assistance (and they may charge up to 30 % in commissions), may falsely claim an **affiliation** with the government, and may falsely represent to other entrepreneurs how much money they can make as “HUD tracers.” The HUD Tracer Surf Day not only helped to generate publicity to inform consumers about HUD’s refund program, but it also helped eliminate many potentially deceptive solicitations from the Internet. A month after sending out warning messages, the Commission’s staff checked on suspect tracer sites and found that 70 % had shut down entirely or removed questionable claims about earnings potential or their affiliation to HUD.

In early February, the Commission announced yet another innovative use of the Surf Day concept, this time targeting deceptive UCE messages. Commission staff conducted a “fall harvest” by surfing the Commission’s large database of UCE solicitations, topic by topic, and identifying over 1000 individuals or companies potentially responsible for misleading e-mail solicitations, for example, for pyramid or other get-rich-quick schemes. Ironically, most of these UCE messages did not allow any reply by e-mail, due to **inaccurate** or deceptive “sender” information, so in January through the U.S. Postal system the Commission sent out letters warning the sources of the UCE that their messages may be in violation of the law.

### *B. Outreach to Internet Businesses*

Our messages to businesses on the Internet are **straightforward** — *e.g.*, don’t lie or make misleading statements; don’t make product or earnings claims that you can’t support; don’t mislead consumers with unrealistic **testimonials**. The difficulty lies in finding a way to get these basic messages to new entrepreneurs who may have no prior business or advertising experience. Surf Days help us overcome this hurdle, but we also reach out to the business community in other ways. Commission staff have prepared continuing legal education (“CLE”) materials for lawyers who **counsel** new Internet businesses. In addition, the Commission has developed a business guide for Internet entrepreneurs, already available online and soon to be printed under the title “Advertising and Marketing on the Internet: The Rules of the Road.” The Commission is going directly to the computer industry for help as well. Last July, Commission representatives met with Silicon Valley executives at Stanford University’s Technology and Business Strategy Summit ’97, and asked them to lend us their contacts and market-

ing expertise in order to reach new Internet entrepreneurs and consumers. This type of **outreach** has resulted in invitations to speak at several national Internet conventions and local business conferences about how basic legal principles apply online. Our outreach also has resulted in educational partnerships with new trade organizations such as the Internet Service Providers Consortium, a national association of small and medium-sized access providers.

## Planning for the Future

Currently, the Commission receives approximately 100 to 200 Internet-related complaints per month. Many of these complaints are **forwarded** to us by the National Fraud Information Center, with which the Commission works closely. The Commission has seen an increase in complaints over the last year, but fortunately online problems seem to be growing at a slower pace than the Internet marketplace itself. At the moment, **complaints about** Internet fraud remain a small **fraction** of the number of complaints the Commission receives about more traditional problems concerning credit cards or telemarketing. However, the Commission expects that as the Internet marketplace grows, reports about consumer fraud also will continue to grow.

The potential for fraud is likely to be **fueled** by easy online access that exists for legitimate and fraudulent businesses alike. Also, it is likely that many first-time entrepreneurs, because of their lack of marketing experience or knowledge of their obligations under basic consumer protection principles, will unwittingly engage in Internet practices that violate the law. Finally, keeping up with the introduction and application of new technologies will prove **daunting**. The growing problem of “spam” already threatens to outstrip our resources. The Commission currently receives between 1000 and 1500 pieces of UCE per day, forwarded by disgruntled consumers and others — far more than we can read or analyze on an individual basis and a volume that strains the capacity of the agency’s computers.

To combat online fraud, the Commission will continue to use the Internet itself as a tool to improve and **enhance** our investigations. The Commission’s staff all have Internet access, and scores of attorneys, paralegals, and investigators in our Bureau of Consumer Protection have received intermediate or advanced training on use of the Internet to combat fraud.

Looking into the future, we anticipate that traditional types of deception — including pyramid schemes, **bogus business opportunities**, and

failures to deliver promised goods or services — will continue to top our list of Internet problems. The Commission will continue to be **vigilant** in monitoring the Internet for new schemes that ingeniously exploit the new technology, like the “Trojan horse” software scheme challenged in the *Audiotex Connection* case. Fighting fraud over the Internet is clearly a formidable task for the FTC’s limited available resources. The Commission will do all it can, however, to curb this threat to the continued growth of the Internet and the benefits the Internet can bring consumers through speed, efficiency, convenience, and information never before available.

The Commission recognizes that it is now a critical juncture in the development of electronic commerce. Although an explosion in online shopping and advertising has been seen, fraud and deception may **deter** consumers from acquiring a greater **confidence** in the Internet as a place to transact business. The Commission will continue its efforts to fight fraud and deception on line by **implementing** a comprehensive strategy that combines traditional law enforcement with aggressive consumer and business education.

### **I. Answer the questions.**

1. What are Surf days? When did they start? What are they aimed at?
2. How does the Commission help customers and entrepreneurs?
3. What does the FTC expect in the field of cyberspace fraud in the future?
4. In your opinion, what kin of education is required for people who work for the FTC?

### **II. Choose the correct variant.**

1. A pilot must remain *vigilant* / *daunting* at all times.
2. This is an opportunity to *exploit* / *enhance* the reputation of the company.
3. We are going to *deter* / *implement* the new marketing policy next month.
4. Only a small *fraction* / *bogus* of a bank’s total deposits will be withdrawn at any one time.
5. *Mortgage* / *outreach* is the activity of an organization that provides a service or advice to people in the community, especially those who cannot or are unlikely to come to an office, a hospital, etc. for help.

6. It is again some *wonderful / miracle* cure.
7. He was arrested because of his political *affiliation / testimonials*.
8. Books and articles on the subject have *forwarded / proliferated* over the last year.
9. He is writing about the *solicitation / injunction* of money for election funds.
10. All the maps we had were wildly *straightforward / inaccurate*.

**III. Cross out the odd words. Explain your answer.**

1. Scheme, scam, bogus, misconduct
2. Counsel, advice, tip, ensue
3. Injunction, disgorgement, adjudication
4. Deceptive, fraudulent, egregious, fake
5. Grow, plummet, increase, proliferate
6. Inaccurate, fictitious, unscrupulous, unfair
7. Incur, purchase, acquire, transact
8. Halt, cease, stop, deter
9. Advertise, advent, bill, circulate
10. Charge, interest, cost, price

**IV. Decide if the following statements refer to customers (C), fraudsters (F), or the Federal Trade Commission (FTC). Sometimes two sides are involved. Tick those places in the text which prove your viewpoint.**

1. They create web-sites giving inaccurate information.
2. They use the help of the Department of Justice.
3. They download and activate some software.
4. They asked questions about money investment.
5. They removed deceptive claims from some sites.
6. They fill in complaints.
7. They make transactions.
8. They bring law-enforcement actions.
9. They fail to deliver goods.
10. They redress money.

**V. Insert the correct prepositions where necessary.**

1. You can purchase a lot of goods \_\_\_\_\_ the Internet.
2. The bank manager tried to discourage him \_\_\_\_\_ applying for a loan.

3. The company accuses its Vice-President is going to take an action \_\_\_\_\_ him.
4. Be careful while reading advertisements \_\_\_\_\_ web-sites.
5. The high price of the service could deter people \_\_\_\_\_ seeking advice.
6. This is the first time the company has ventured \_\_\_\_\_ movie production.
7. The new contracts have undermined the confidence of employees \_\_\_\_\_ their future.
8. The company has been \_\_\_\_\_ litigation with its previous auditors for a full year.
9. The number of reported crimes is increasing \_\_\_\_\_ an alarming rate.
10. There are many complaints \_\_\_\_\_ poor service.

**VI. Find the topic sentences in the text. Paraphrasing them and using different means of connection, write a brief summary of the text (about 50 words).**



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Н. Н. ГРИДНЕВА  
Н. А. ТУЛЯКОВА

## **BUSINESS LAW**

Ответственный за выпуск *О. Александрова*  
Редактор, корректор *Ю. Бармина*  
Верстка *И. Третьяковой*

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Тел./факс: (812) 786-58-95



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