

We are delighted to welcome you to our new quarterly newsletter focusing on the global hot topics for advertising, media and consumer brand executives.

What a year 2020 was, with so much disruption across industries, including COVID-19, increased regulation, geopolitics, the surge to online, the consumer experience and, of course, Brexit.

To support you as you progress in 2021, we want to highlight some key trends, legislation updates and best practices from across the globe to protect and enhance your business. As we move through the year, we will deep dive into the issues facing the advertising, media and brands sectors.

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Asia Pacific

Understanding IP in China: Patent Law and Trade Agreements

In his continued blog series, [Dr. Paolo Beconcini](#) examines recent developments in Chinese IP law, together with their international causes and consequences.

In [a first post](#), he reviews some of the major changes to the Patent Law and assesses their likely impact on foreign businesses in China.

In [a second post](#), he reports on the Comprehensive Agreement on Investment between China and the EU, which establishes clear rules against the forced transfer of technology.

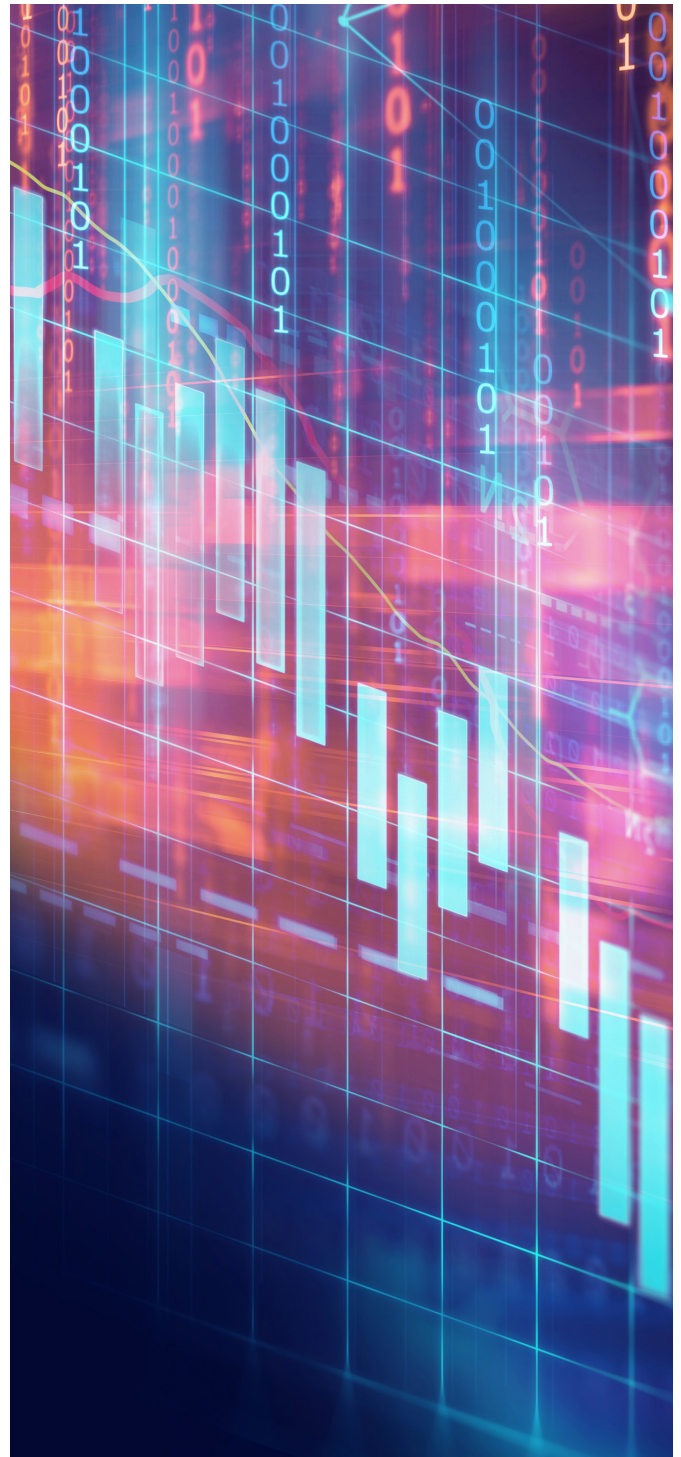
To find out more, contact [Paolo Beconcini](#).

Regional Comprehensive Economic Partnership Recap

The Regional Comprehensive Economic Partnership (RCEP) was signed on November 15, 2020, by 15 states in the Asia Pacific region. The RCEP amounts to almost 30% of global GDP and 30% of the world's population – China, Japan, South Korea, Australia, New Zealand and ASEAN. ASEAN consists of Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

The RCEP opens markets in each state to citizens of the other states, and obliges signatories to reduce or remove protections and support of local industry. It is expected to eliminate 90% of tariffs within 10 years of taking effect. Regulation of services opened to foreign investors is restricted, but competition and consumer protection laws are enhanced.

To find out more, access our [guide](#) or contact [Cameron Ford](#).





Europe

Digital Services Act and a Proposal for a Regulation on Digital Markets Act

On December 15, 2020, the European Commission published its long-awaited rules for digital markets. The announcement represents a watershed moment for Ursula von der Leyen's Commission, which has made so-called "technological sovereignty," or efforts to bolster the bloc's role in digital markets, a central piece of its legislative agenda, to ensure better consumer protection and a fairer, safer and reliable digital market. The new rules consist of a Proposal for a Regulation on Digital Services Act and a Proposal for a Regulation on Digital Markets Act.

The proposal for a Digital Services Act (DSA) will replace and expand the e-Commerce Directive 2000/31/EC and aims to harmonize the conditions that determine the responsibilities and liability regime for online intermediary services, notably large online platforms.

The proposal for a Digital Markets Act (DMA) introduces a new competition regime for online platforms acting as "gatekeepers" in digital markets.

To find out more, access our [comprehensive guide](#) or contact [Francesco Liberatore](#) or [Ann LaFrance](#).

Cloud Computing and Data Security: Meet GAIA-X

[GAIA-X](#) is an initiative that hopes to create a unified ecosystem of cloud and data services protected by European data laws.

On October 15, 2020, EU member state signatories [agreed](#) to work together toward a European cloud federation initiative to shape the next generation of secure, energy-efficient and interoperable cloud supply for Europe. The European Commission and the German Presidency of the Council of the European Union welcomed the political will expressed by 25 member states on the next generation cloud for Europe. This secure and competitive cloud offering is essential to provide the trustworthy data processing infrastructure and services that public administrations, businesses and citizens require in Europe.

Europe is pushing for more independence from cloud giants in the US and China with GAIA-X, which aims to create an ecosystem of cloud and data services protected by EU laws. We wrote about the impacts of GAIA-X in a recent publication.

To find out more, access our [full article](#) or contact [Francesco Liberatore](#).



UK

Updated "Buy Now, Pay Later" Guidance by the ASA

With online shopping at an all-time high, "buy now, pay later" (BNPL) options are becoming increasingly popular. BNPL is an option that enables customers to delay paying for goods or allows them to pay in instalments. The service typically bears interest, which consumers have to pay. It differs from hire purchase because with BNPL, the customer owns the goods on purchase. It is just that the due date for payment for the goods is delayed.

In 2019, the Financial Conduct Authority (FCA) stepped in to regulate BNPL practices through its Policy Statement (PS19/17). Indeed, on February 2, 2021, HM Treasury and the FCA announced that BNPL will be fully brought into financial services regulation. Timing is uncertain with parliamentary time at a premium and likely FCA consultation running alongside or after the legislation itself. You can find out more about BNPL and these regulations in our [previous blog post](#). Now, the Committee of Advertising Practice (CAP), part of sector regulator, the Advertising Standards Authority, has published guidance setting out the restrictions for advertising BNPL services, particularly when they are offered to consumers as part of the checkout process when buying online. The current guidance covers services that are not regulated by the FCA. This will change with the new legislation described above, but at present, these are services that:

- Charge no interest (although they may charge late payment fees)
- Allow consumers to defer payment by either charging the full amount after a set period or by allowing for payment in instalments

In keeping with calls to ensure that BNPL options are fair and transparent, the CAP guidance sets out advice relating to forms of marketing communications and the information to be provided during the online checkout process.

For more information on the new rules on marketing BNPL services and the BNPL product information during the online checkout process, please access our [blog post](#).

Please contact [Carlton Daniel](#), [Paul Anderson](#) or [Mathew Lewis](#) for any additional support.



Brexit Updated: Interim Deal Reached on EU-UK Data Transfers

On December 24, 2020, the UK and the EU finally agreed on the terms of a Brexit deal, including an interim solution to the issue of personal data transfers from the EU to the UK. This interim arrangement gives some much-needed breathing space to European organizations with UK affiliates or that use UK service providers, and renewed hope for an eventual adequacy decision from the European Commission covering transfers of personal data to the UK.

The interim solution agreed allows companies and organizations that transfer personal data from the EU to the UK to continue to do so, for up to six months, to give time for the European Commission to approve an adequacy decision in favor of the UK (under Article 36(3) of Directive (EU) 2016/680 and under Article 45(3) of Regulation (EU) 2016/679).

The relevant terms are set out in the [EU-UK Trade and Cooperation Agreement](#) (Agreement) in Article FINPROV.10A (starting at page 406 of the 1,246-page document), which is also summarized by the UK government [here](#). The key points to note are as follows:

- During the extension period, transfers of personal data from the EU to the UK will not be considered transfers to a “third country” (provided that the UK’s data protection law remains the same as it is as of December 31, 2020)
- The same applies to transfers from Norway, Liechtenstein and Iceland (the additional countries, which, with the EU, form the European Economic Area (EEA))
- The initial four-month extension period will end when adequacy is granted, or may be extended by two further months unless the UK or the EU objects
- If the UK amends its data protection legislation, or exercises certain designated powers without EU agreement during the extension period, the extension period will end

To find out more, access our [blog post](#) or contact [Andrea Ward](#).

CMA Study Confirms Algorithms Are No Longer Off Limits

The 2020 pandemic and related restrictions on retail businesses led to consumers redirecting their purchasing and spending to online sales, including, in particular, for branded goods. For example, in the EU and the UK, online sales reportedly grew by 30% to 40% after lockdown restrictions were introduced in March last year. This trend highlighted certain online sales practices that raised concerns for competition and

consumer protection authorities, namely, geo-blocking, resale price maintenance, price gauging and the use of pricing algorithms, among others. Some commentators questioned whether existing competition and consumer protection rules are well equipped to deal with such concerns. These questions spurred a rethink of the existing approach to enforcement on e-commerce. For example, the European Commission is revising its competition rules on vertical distribution agreements with a view to ensuring that the rules are fit for purpose in digital markets. The UK Competition and Markets Authority (CMA) has established a Data Unit studying new tools to tackle potentially anticompetitive uses of pricing algorithms. The Italian Competition Authority is investigating the terms and conditions of global leading providers of cloud computing services, focusing, in particular, on allegedly improper collection of user data for commercial purposes; undue influence on consumers; and failure to provide consumers with information on their right to withdraw from the contract and/or to access alternative dispute resolution – interestingly, the Italian Competition Authority’s approach seems to echo enhanced sector-specific consumer protection provisions contained in the EU Electronic Communications Code. As these examples illustrate, digital markets are on top of the agenda for competition and consumer protection authorities, and are likely to continue facing increasing scrutiny in 2021. In particular, the issue of how “pricing algorithms can reduce competition and harm consumers” is the subject of a [new study by the CMA, published on January 19, 2021](#).

To find out more, contact [Francesco Liberatore](#).

UK’s First Injunction Secured under Trade Secrets Regulations

US company Celgard, LLC has secured an interim injunction against its rival, Chinese company Shenzhen Senior Technology Material Co Ltd (Senior), that prevents Senior from importing or supplying its battery accessory products into the UK. The court found there was a likelihood that Senior had misused Celgard’s confidential information and trade secrets, and that the UK was the most appropriate forum to try the dispute. This is the first injunction under the relatively new UK Trade Secrets Regulations 2018, based on the EU Trade Secrets Directive. The judgment, which has now been confirmed on appeal to the Court of Appeal, contains a number of helpful clarifications on the approach that the UK courts will take to the protection of confidential information, particularly on a cross-border basis.

To find out more, access our [blog post](#) or contact [Carlton Daniel](#).



US

What Was Old Is New Again in IP Litigation – Thanks to Suspected Russian State-sponsored Hack

Top technology trends in the legal profession for 2021 are likely to include artificial intelligence, blockchain and cryptocurrencies, autonomous vehicles, digital health and court filings on paper. Following a recent widespread cybersecurity breach, the US federal courts are prohibiting electronic filing of highly confidential documents. Parties must file such documents on paper or as electronic files on a secure electronic device.

In mid-December, the Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency (CISA) issued an emergency directive disclosing a cyberattack to the networks of local, state and federal agencies, as well as private companies. According to CISA, malicious actors exploited SolarWinds' Orion® product source code to hack into these networks. (SolarWinds describes Orion as a "powerful, scalable infrastructure monitoring and management platform designed to simplify IT administration for on-premises, hybrid, and software as a service (SaaS) environments in a single pane of glass.") Earlier this week, US intelligence agencies – including the FBI, NSA and the Office of the Director of National Intelligence – stated that the attack was "likely Russian in origin." In response to the cyberattack, the US courts suspended all national and local use of SolarWinds' Orion.

Although new and advanced technologies are likely to dominate the legal profession in 2021, some best practices that avoid technology may emerge to ensure protection of client confidential information. So it is with paper: what was old is new again.

To find out more, access our [blog post](#) or contact [David Prueter](#) or [David Elkins](#).

US Trademark Modernization Act Provides New Relief to Trademark Owners

False claims of use and fake specimens of use have bedeviled the US Patent and Trademark Office (USPTO) and legitimate trademark owners for many years. The Trademark Modernization Act of 2020 (TMA) – part of the COVID-19 relief legislative package signed by President Trump on December 27, 2020 – provides significant relief for trademark owners' efforts to combat that fraud. As noted in a [separate post](#), that omnibus legislative package provides relief to copyright owners by establishing a small claims tribunal system for copyright infringements. On the trademark front, the legislation makes it easier for trademark registrants to obtain injunctive relief and provides new mechanisms for challenging trademark applications and registrations on non-use grounds. These new procedures are intended to provide additional ways to combat fraudulent trademark applications and registrations.

To find out more, access our [blog post](#) or contact [Deborah Lodge](#).

FTC Settles Allegations of Deceptive Practices by Photo Storage App Provider

The Federal Trade Commission (FTC) recently announced a proposed settlement with a developer of a photo storage app that allegedly deceived consumers in violation of the prohibition on unfair or deceptive acts and practices found in §5(a) of the Federal Trade Commission Act. As part of the proposed [settlement](#), the developer, Everalbum, Inc. (Everalbum), agreed to certain injunctive relief.

Everalbum offered an app called "Ever" that allowed users to upload photos and videos from their mobile devices, computers or social media accounts to be stored and organized using a cloud-based storage service. The FTC alleged that in February 2017, Everalbum launched a new feature in the Ever app, called "Friends," that used facial recognition technology to group users' photos by the faces of the people who appear in them and allowed users to "tag" people by name. Everalbum allegedly enabled facial recognition by default for all users when it launched the Friends feature.

To find out more, access our [blog post](#) or contact [Glenn A. Brown](#).





Sustainable Business

• Shining a Lens on Environmental, Social and Governance

Environmental, social and governance (ESG) factors play an important part in determining a company’s long-term financial performance. How companies approach social responsibility and sustainability issues is not just of reputational importance, but is also becoming increasingly material against the UN Sustainable Development Goals (SDGs) as society looks to “build back better” in an uncertain post-COVID-19 world.

Learn more on [stakeholder pressures and how we can provide support](#), or contact [Caroline Noblet](#) to find out more about how we can support your business with ESG-related issues.

• Compliance Pressures 2021

In 2021, the call for greater corporate transparency on ESG issues will only amplify as ESG factors prove themselves not just to be non-financial considerations, but also material drivers of financial performance and business resilience. Pressure will continue to come, not just to ensure legal compliance, but also from customers, the workforce, supply chains, society, investors and shareholders. The power of social media is also a factor to be considered where there is a failure to live up to the values and focus of ESG measures. Good corporate behaviors will be vital. In addition, the increasingly complex regulatory regime has increased the exposure faced by businesses. This is particularly acute, as the regulatory scrutiny extends to actions of third parties acting on your behalf across the supply chain.

Customers	Workforce	Supply Chain	Society	Shareholders
Delivering fair competition, reliable, trustworthy digital ecosystems and transparency around products and services.	Diversity and inclusion, employee wellbeing, upskilling and retraining, and fair executive remuneration.	Developing partnership models, providing a fair chance for new market entrants and adhering to human rights across the supply chain.	Demonstrating support to communities and people’s wellbeing, paying a fair share of taxes, validating ethical use of data and stewardship of the environment.	Continuous innovation, sustained investments and sustainable shareholder returns.

The consequences of inadequate compliance programmes are very real, including unlimited fines, loss of operating licences and damage to reputation and revenues. Businesses require a well-designed and well-implemented compliance programme to mitigate this risk and to detect/address systemic weaknesses.

Access our [quick checklist](#) to assess your compliance against a number of risk factors or contact [Jonathan Chibafa](#) to discuss further.

• Podcast: Leading a Business Through a Pandemic With Rajiv Sharma, CEO of Coats

In the first of our Taking the Lead podcast series, Rajiv Sharma, group chief executive of Coats, talks to Matthew Kirk, international affairs advisor, about leading the business through the COVID-19 pandemic. He explores the steps taken by the company this year to support its employees, their families and local communities; how it overcame the technological challenges of communicating in a time of crisis; the importance of a robust risk management and governance framework in maintaining business continuity; and the impact of the company’s culture and values on employee engagement during difficult times.

The podcast can be accessed [here](#).

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Sustainable Business



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