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Advertising, Media and Brands

Global Hot Topics for Advertising, Media and Consumer Brands Executives

June 2025

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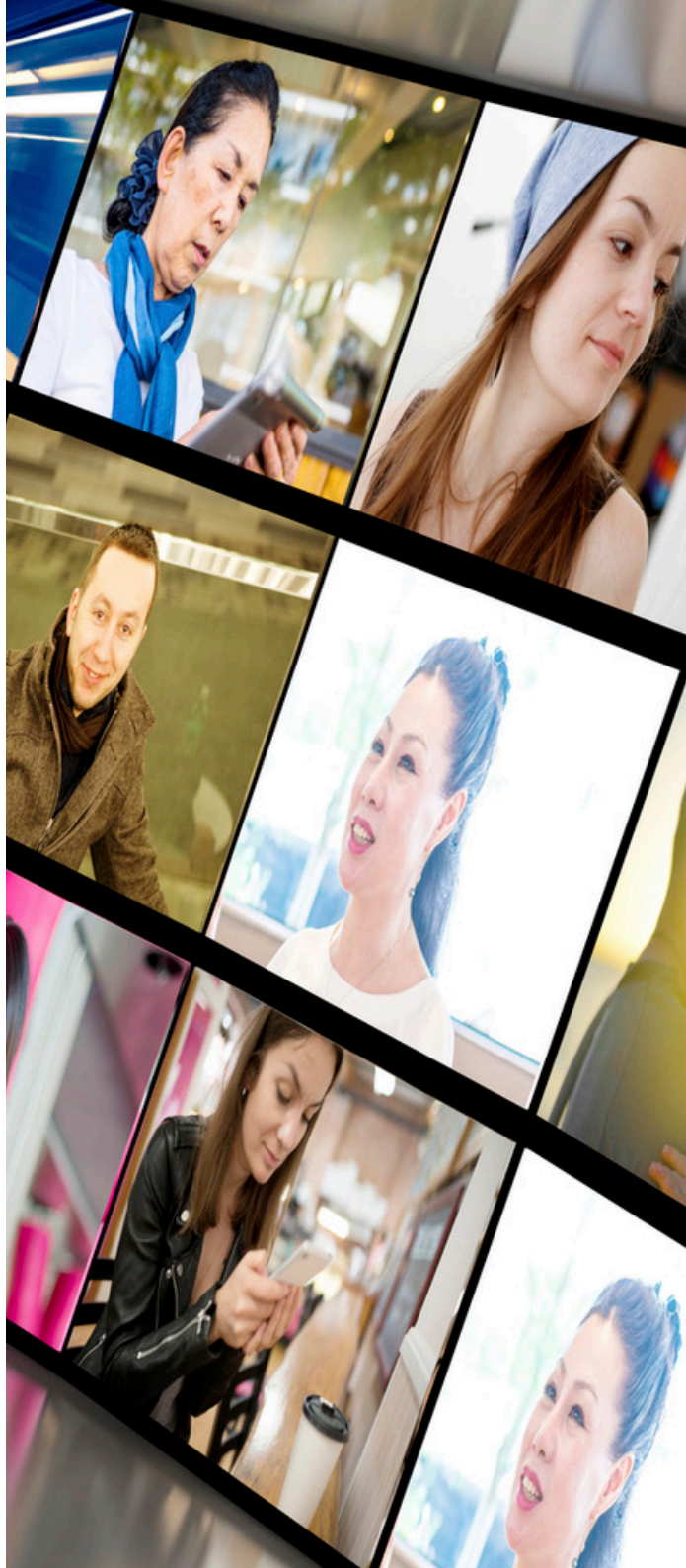

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UK Government Consults on Copyright and Artificial Intelligence (AI)

The UK government's consultation on potential changes to UK copyright legislation in light of the training of AI models closed on 25 February 2025.

The consultation outlined four options under consideration ranging from doing nothing and leaving the current law in its uncertain state through to "opt-in" or "opt-out" models for copyright holders, which could result in use of their material without explicit consent and/or the development of collective licensing bodies for AI training similar to those that already exist for the public playing of music.

Circa 11,000 responses to this consultation have been received and indications are that those are unlikely to represent any consensus from copyright holders that is favorable to AI developers given a well-coordinated campaign against such an approach by high-profile artists including Kate Bush and Paul McCartney.

On the opposite side, several high-profile AI companies have indicated that they consider the government's preferred "opt-out" option to be unworkable in practice and that more freedom should be allowed for them to use for AI training material which is freely available online.

In response the government has said it is carefully considering all responses and will continue to engage with tech companies, creative industries and Parliament to inform its approach and that no changes will be made until it is confident it has a practical plan that delivers on each of its objectives.

As such, despite the government's stated position that UK copyright law should not continue in its current uncertain state, a workable solution acceptable to all stakeholders still feels like it is some way off.

Please see the full article here and for further information, please contact Carlton Daniel, Mike Llewellyn, Paul Jinks and Richard Armitage.

Cider in the Supreme Court?

In 2024, the English High Court found that a discount retailer's packaging for its cider range did not infringe Thatchers' packaging, under section 10(2)(b) or section 10(3) of the Trade Marks Act 1994, nor constitute passing off.

Thatchers appealed the High Court's decision to the Court of Appeal in respect of the section 10(3) finding only. A person infringes this section if they use a sign that is similar (or identical) to a trademark with a reputation, and such use takes unfair advantage of, or is detrimental to the distinctive character of the trademark (i.e. it "rides on the coattails" of the trademark's unique character).

At the High Court, the judge held that while Thatchers' trademark had a reputation, the discount retailer's sign did not take unfair advantage of, and only had a "low degree of similarity" to, Thatchers' trademark. The Court of Appeal disagreed noting that the discount retailer had intended to remind consumers of Thatchers' trademark with its cider range packaging "closely" resembling the trademark. The discount retailer had subsequently infringed section 10(3).

The discount retailer applied for permission to appeal the Court of Appeal's decision to the final UK court of appeal, the Supreme Court. Our understanding is that the Supreme Court has just rejected the appeal and denied the defendant the opportunity for the court to consider these tricky issues. As such, in good news for brand owners, the Court of Appeal decision stands: this case will impact rights holders that are looking to protect their brands, as well as brands or supermarkets that create lookalikes.

For any further information or assistance with brand protection in the UK, please contact Carlton Daniel and Dannielle Jones.

Ch-ch-ch-ch-changes… for the UK Competition and Markets Authority

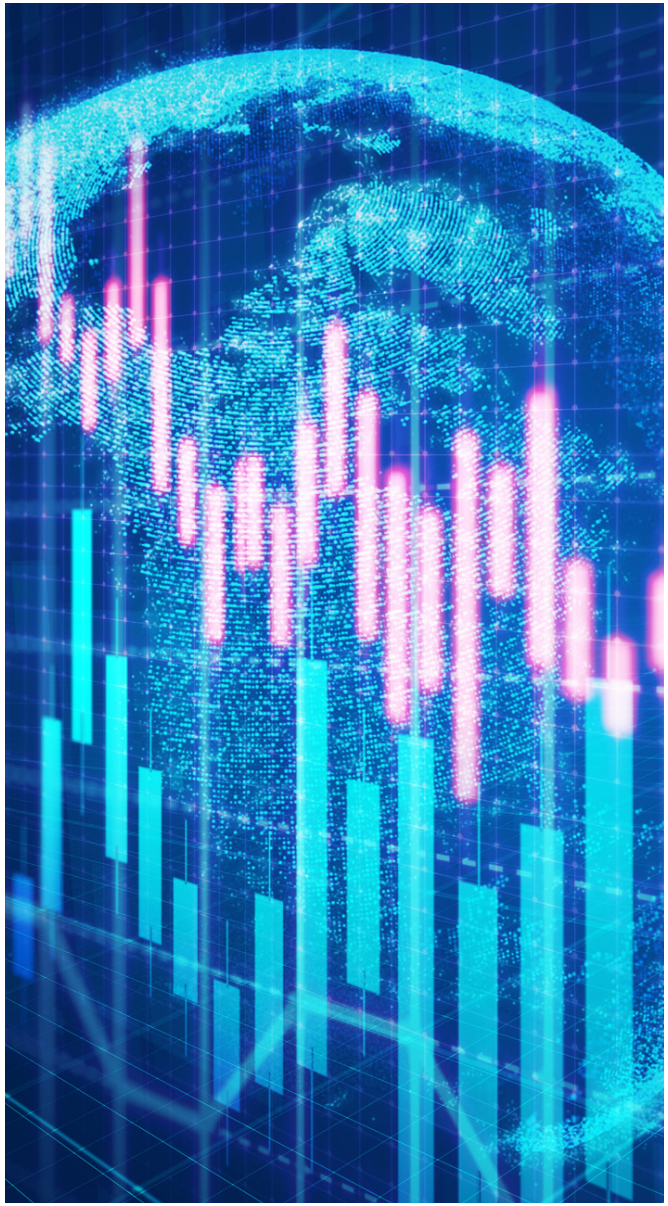
The first quarter of 2025 brought a host of significant updates to the UK's Competition and Markets Authority (CMA), including:

1. The commencement date of most sections of the Digital Markets, Competition and Consumers Act (DMCCA) passed with updated guidance being published.
2. A review of the competition concurrency arrangements was published.
3. Three Strategic Market Status (SMS) designations under the DMCCA were launched.
4. A new interim chairperson of the CMA was appointed.
5. A "call for evidence" for the review of the CMA's approach to merger remedies was launched.

As a reflection of the UK government's aims, the underlying theme of all these changes is a drive towards growth and need to enhance the UK as a hotspot for international investment. In the CMA's own words, the "new regime provides a unique opportunity to encourage the benefits of investment and innovation from the largest digital firms, while ensuring a level playing-field for the many start-ups and scale-ups across the UK tech sector."

It is difficult to predict the precise effect these changes will have for businesses and brands however it is essential to stay in the loop. We have discussed the key points and possible effects on business in our two blogs: Ch-ch-ch-ch-changes… for the UK Competition and Markets Authority and Ch-ch-ch-ch-changes… Part 2.

For further information and guidance, please contact Francesco Liberatore.



Data Protection as a Weapon of Choice for Reputation Management?

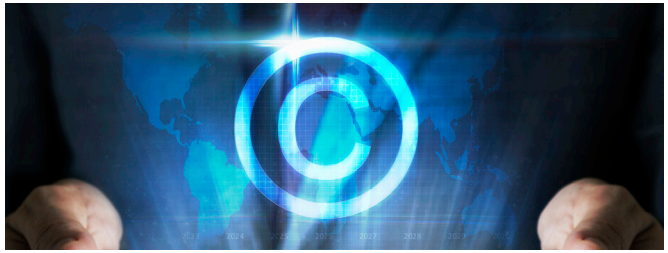
The overlapping of data protection claims, and defamation claims is not novel. A recent case has highlighted how interlinked these claims could be.

In *Pacini & Anor v Dow Jones & Co Inc [2024] EWHC 1709 (KB)*, a newspaper published two articles that included references to the claimants being part of a conspiracy to defraud a billionaire. Instead of bringing claims for defamation, the claimants alleged that the two articles were in breach of UK data protection laws and sought compensation under the UK General Data Protection Regulation (GDPR) and the Data Protection Act 2018.

The defendant brought an application for strike out that failed. The judgment for this application has left the door ajar for claimants to bring data breach claims for damage to reputation and indicated that it would be desirable for the English Court of Appeal to resolve the uncertainty around whether claimant can recover damages for reputational harm in non-defamation cases.

Businesses, especially those which publish personal data in a public forum, should be alive to the fact that there might now be an increase in claimants seeking to bring data protection claims for harm to reputation.

This article provides a more in-depth discussion of Pacini. For further information, please contact Victoria Leigh.



Ad Restrictions on High in Fat, Salt or Sugar (HFSS) Products in the UK to Now Take Effect on 5 January 2026, With Voluntary Compliance From Advertisers And Broadcasters From 1 October 2025

The UK Government has delayed the implementation of the Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2024 (Advertising Regulations), which were due to come into force on 1 October 2025, in order to explicitly exempt "pure brand" advertising from the Advertising Regulations. The Advertising Regulations will now come into force on 5 January 2026. However, despite this delay, advertisers and broadcasters have voluntarily committed to complying with the restrictions from 1 October 2025 (as originally planned).

In a letter addressed to the government, representatives from the advertising industry stated their commitment not to run ads for specific, identifiable less healthy food or drink products. The letter was signed by key advertising bodies, such as the Advertising Association, Incorporated Society of British Advertisers (ISBA), the Institute of Practitioners in advertising (IPA) and Internet Advertising Bureau (IAB). The letter was also signed by major media organizations and broadcasters, including Channel 4, ITV, Sky and Reach plc, along with the Food and Drink Federation.

The Advertising Regulations will impose new restrictions banning ads for "identifiable" food and drinks that are HFSS from being shown on TV before 9 p.m. in the UK, or at any time in online paid-for advertising. The aim of the Advertising Regulations is to restrict the advertising of HFSS foods to children and the restrictions will apply to businesses with 250 or more employees. The restrictions will be as follows:

- A 9 p.m. watershed for "identifiable" less healthy food and drink advertising on TV, which includes all on-demand program services
- Introducing a complete ban on paid-for less healthy food and drink advertising online, including non-Ofcom regulated on-demand program services

There is a two-stage test to determine which products fall within the remit of the regulations. This will offer businesses the chance to self- assess their products to understand whether certain advertisements will be impacted.

Businesses that do not comply with these regulations could face enforcement notices to rectify advertisements and monetary penalties if there has been a serious breach. Therefore, businesses do not have long to familiarize themselves with these changes and are urged to monitor the evolving Advertising Standard Authority (ASA) guidance to ensure that they keep up to date with the most recent developments.

For advice on ad compliance, whether in relation to HFSS products or more generally, please read our full article or contact Carlton Daniel, Nicola Smith or Natasha Maric.

Commercial Agents Regulations: Here to Stay

In February the UK government announced it had decided not to proceed with changes to the Commercial Agents (Council Directive) Regulations 1993 (Regulations) consulted on by the previous government (see consultation response here).

In Great Britain, the Regulations protect many types of agents who buy or sell goods (but not services) on the behalf/in the name of another and cannot be contracted out of during the term of an agency arrangement.

Proposals had been made to stop the Regulations applying to new agency arrangements however, the government has decided to maintain the status quo so the generally pro-agent Regulations will continue to apply.

As the Regulations do not apply to services most advertising agency arrangements will automatically fall outside of their remit however, the Regulations could potentially apply to arrangements where a client grants an agency the authority to purchase goods on the behalf of/in the name of the client (rather than in the agency's own name). Care should therefore be taken to understand the potential risks of the Regulations applying to such arrangements and to ensure appropriate written terms are agreed to address those to the extent possible.

For further information please read this article or contact Paul Jinks.

CMA Has Fake Reviews in its Sights

Building on new powers under the DMCCA, the CMA has published statutory guidance on the measures that businesses who publish consumer reviews are expected to have in place to protect against the risk of fake reviews.

Having secured undertakings from several high-profile publishers of consumer reviews to improve their measures the CMA is now conducting an initial sweep of review platforms more generally to identify those who need to do more to comply with these new requirements.

Please see our blog post here or contact Carlton Daniel, Paul Jinks and Ailin O'Flaherty for further information.

Consultation on Protected Marketing Terms for Automated Vehicles

Under the Automated Vehicles Act 2024, the Secretary of State for Transport has the power to protect certain terms, so they can only be used to market vehicles which have been authorized as being automated (self-driving) under that act.

A consultation has now opened seeking views as to what terms should be protected ("self-driving" and "driverless" etc.) and related issues with a response deadline of 1 September 2025. See details of this consultation here.

Please contact Paul Jinks for further information.

UK and EU

Supply Chain Transparency: Updates on UK and EU Provisions on Forced Labor and Modern Slavery

Forced labor and modern slavery have been the subject of renewed focus across the UK and EU in recent months.

While not changing the fundamental reporting requirements under the UK Modern Slavery Act, new guidance from the UK Home Office in March 2025 offers practical advice to businesses, and sets higher expectations on organizations for the contents of their modern slavery statements.

In the EU, the Forced Labor Regulation (or FLR) entered into force on 13 December 2024 and will apply to EU member states from 14 December 2027. It prohibits individuals and businesses from importing into, making available in or exporting from the EU any product made with forced labor. Details have also emerged of a settled investigation by the Italian Competition Authority highlighting the ways that issues relating to modern slavery can be subject to regulatory intervention.

For further information, read our full article or contact Hannah Laming, Francesco Liberatore, or Francesca Puttock.

EU

AI or Not AI? A French legal Perspective On "AI-Washing"

With AI becoming a buzz word, many businesses are tempted to claim that their technology includes AI. As we saw for "greenwashing", in some cases this could be seen as "AI-washing" and be prohibited under applicable law. This is what happened recently in the US: the Securities and Exchange Commission (SEC) settled charges against two investment advisers for making false and misleading statements about their use of AI.

Could this happen in France?

Under French law, deceptive advertising is prohibited if it misleads consumers about a product's characteristics or capabilities. Here, the characteristic is AI, but defining AI is not easy and the level of understanding will be different depending on whether the customer is an average customer or, for example, the IT department of a large business. To our knowledge, there is no French case law on this yet. No doubt, it will come soon, and French judges will need to assess whether a product includes AI or not. While the definition of AI under the EU AI Act may serve as a reference, French judges are not bound by it and there is currently no definition under French domestic law.

For further information you can read our full article, or contact Catherine Muyl or Marion Cavalier.

In the Spotlight: Territorial Supply Constraints

Territorial Supply Constraints (TSCs) refer to a range of practices used by brands and manufacturers that limit where retailers, wholesalers and distributors source their products – for example, preventing them from buying products from outside the country where they operate.

EU competition law does not outrightly prohibit TSCs, which are necessary in some situations and indeed can lead to lower prices for consumers. However, the European Commission has conducted several investigations into restrictions on cross-border trade and has taken enforcement action in notable cases. The European Commission adopted two decisions prohibiting TSCs enforced by consumer brands in 2024, imposing fines in both cases and the trend of increased enforcement is continuing. In March 2025, the Commission confirmed that it had conducted unannounced inspections (dawn raids) in the soft drink industry to investigate suspected restrictions on trade in goods between EU member states. TSCs are also increasingly subject to policy initiatives aimed at reducing barriers and increasing free trade.

We anticipate that TSCs will remain in focus in the short-to-medium term. Any changes to how TSCs are addressed – including a possible blanket ban, as endorsed by some EU member states – would have a significant impact on operators at all levels of the supply chain and in particular manufacturers of branded goods.

In this insightful article, Will Sparks, Oliver Geiss and Gerard McElwee explain (i) what TSCs are, (ii) how they are currently covered by EU competition law, (iii) what enforcement action the Commission has taken against them and (iv) possible future developments in this area.

The EU's New Packaging Regulation – What's Your Intellectual Property (IP) Got To Do With It?

In an increasingly environmentally conscious society, innovative packaging turns into a major brand asset. With the EU Packaging Regulation's entry into force on 9 February 2025, new requirements apply for the packaging's entire life cycle, imposing obligations on manufacturers and importers of products in the EU to reduce unnecessary packaging and packaging waste, as well as promote reusable and refillable packaging and recycling.

Given the rather broad definition of "packaging" (which includes items such as flower and plant pots for selling and transporting, clothes hangers sold with a clothing item and mascara brushes forming part of the container structure), there is hardly any consumer products manufacturer or importer not affected by the new law.

For an overview of the most important provisions IP owners need to be aware of, please refer to our new blog here or contact Dr. Sandra Muller.

Hamburg District Court Breaks New Ground With Judgment on the Use of Copyrights Material As AI Training Data

Breaking News from Germany! In an eagerly awaited judgment dated 27 September 2024, (case number 310 O 227/23) the Hamburg District Court dismissed the complaint by photographer Robert Kneschke asserting claims for copyright infringement against non-profit, Large-scale Artificial Intelligence Open Network, based on the use of his photograph in a data set for training AI image generators.

For an examination of this pioneering case on the interpretation of the statutory limitations for text and data mining under the German Copyright Act, which is now at the appeal stage, read our article or contact Dr. Sandra Muller.

Suppliers of Fragrances and Fragrance Ingredients Are Under Investigation by International Regulators for Suspected Anticompetitive Conduct

On 7 March 2023, the European Commission conducted dawn raids on four major fragrance manufacturers and a trade association in consultation with antitrust authorities in the US, the UK and Switzerland. Subsequently, antitrust authorities in the US, the UK, Switzerland and Mexico confirmed that they are also investigating these companies for suspected price-fixing collusion, as well as concerns that the companies under investigation prohibited their competitors from supplying certain customers and limited the production of certain fragrances.

The European Commission expressed concerns that the companies "may have violated EU antitrust rules that prohibit cartels and restrictive business practices", while the Swiss competition regulator, Comco, stated, "there are suspicions that [the investigated companies] have coordinated their pricing policy, prohibited their competitors from supplying certain customers and limited the production of certain fragrances."

According to the Financial Times, the four companies under investigation together control roughly 60% of the market, while the chemicals produced by the industry go into products from perfumes to toothpaste and detergents. In 2020, it was worth €39 billion globally, according to the most recent available data from Euromonitor.

The investigations are still ongoing, meaning that the companies have not been found guilty of anticompetitive behaviour.

For further information, please contact Tatiana Siakka.

US

US Copyright Office Releases Guidance on Protecting AI-generated Works: Prompts Alone Are Not Enough

Generative AI has revolutionized advertising and brand management with its ideation assistance and ability to streamline the creative process. However, using generative AI comes with risks, including that the finished work may not be protected under US copyright laws.

In January 2025, the US Copyright Office (Office) released a report concerning how it will analyze whether works that include generative AI are eligible for copyright protection. Notably, the Office emphasized the importance of human authorship and stated that it will apply existing US copyright law to AI-generated works. Copyright protection requires "sufficient human control over the expressive elements" of the work, and entering prompts into an AI model alone is not sufficient control.

A distinction was also made between using the generative AI tool for "assistance" versus using it to "stand in" for human creativity. Assistance with creation, such as using an AI tool to brainstorm ideas, should not prevent copyrightability of the overall work. However, copyright protection is less likely if the AI tool "stands in" for human creativity.

For further information, read our full article on our Privacy World blog or contact Joseph Grasser and Anna Fraser.

Direct Marketing in the US

Direct marketing, meaning communications directly between a buyer and seller, in the US is a powerful business tool because of its low cost of entry and potentially immediate consumer response to a direct marketing campaign, which often translates into real-time revenue growth. However, if used in an irresponsible way, it can cause substantial nuisance, cost and inconvenience to consumers and internet service providers, whose networks can be slowed down considerably by mass unsolicited email.

Direct marketing campaigns involve complicated legal issues arising from several statutes, regulations and voluntary codes of practice, the various provisions of which are not always consistent. Alan Friel and Kyle Dull, members of our Advertising, Media and Brands Group, cover the legal issues relevant to direct marketing by telephone, fax, email, text message and mail in practical law's direct marketing in the US. For further information, please see this overview published on Practical Law.

Are You Sending Marketing Text Messages to Consumers in the US?

We recently published a blog about a slew of class action complaints alleging that marketing text messages cannot be sent between the hours of 9 p.m. and 8 a.m. (Quiet Hours) unless the recipient provides prior express invitation or permission to receive such messages during Quiet Hours (Quiet Hour Claims).

Based on the plain language of the Telephone Consumer Protection Act (TCPA), we disagree with this argument because marketing text messages already require prior express written consent from the called party. However, there does exist an immediate risk to businesses as this particular law firm has been filing class action complaints in federal court without sending a demand letter. A petition has been filed the Federal Communications Commission (FCC) to address this application of Quiet Hours to marketing messages.

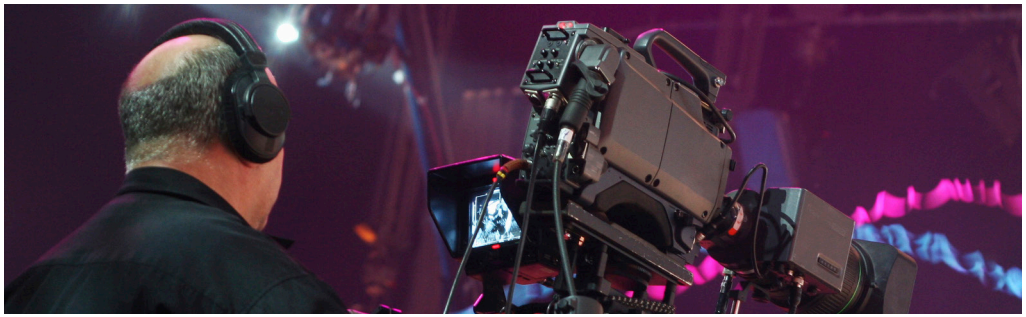
Read more from Kyle Dull and Paul Besozzi here.

No Infringement of Nonfiction Work by Makers of Tetris Film

The *Ackerman v. Pink* case poses the question: how much of a written history can be claimed as proprietary by the author of that history? It turns out, not very much. Author Daniel Ackerman sued various entities claiming that the film Tetris infringed his copyright in a book he wrote about the video game. Both works present factual accounts of the history of the Tetris video game.

The court focused its analysis on the factual differences between the two historical representations presented in the works. Judge Pol Failla compared the scenes in the books, on the one hand, to the portrayals in the film, on the other and ultimately ruled that the film did not copy Ackerman's expression. Although we stand by this outcome, we believe Judge Failla clouded the issue by highlighting these factual differences. Going forward, authors of historical events should not be required to change historical facts to avoid infringing on another's protected expression.

For further information, please read our blog post or contact Joseph Meckes.



Training AI Model Based on Copyrighted Data Is Not Fair Use as a Matter of Law

The recent case *Thomson Reuters v. Ross Intelligence* marked a decisive win for content creators in their battle against AI training tools. The issue in the case was whether Ross Intelligence directly infringed Thomson Reuters' copyrights. Ross Intelligence is an AI tool that copies case law headnotes to create "Bulk Memos". It then uses the memos to train its AI legal research tool.

Judge Bibas ruled as a matter of law that creating short summaries of law to train the AI tool infringes Thomson Reuters' copyrights. Case headnotes were sufficiently original and creative to be copyrightable, and the court found strong circumstantial evidence of infringement. In terms of the fair use argument presented, the court ruled that the copying was not fair use, finding it dispositive that the purpose of the AI-powered research tool was to compete with Thomson Reuters. Certain issues were left open for trial, but the outcome of this case could have far-reaching implications.

For a more in depth over please read this article. Please contact Joseph Meckes or Joseph Grasser for any further assistance.

Cancel Culture: New Requirements for Automatic Renewal and Other Negative Option Offers

2024 marked a year of significant reform for the regulation of customer contracts with "negative option" features in the US. For one, the Federal Trade Commission (FTC) released its final version of its "Rule Concerning Recurring Subscriptions and Other Negative Option Programs" (FTC Final Rule), which applies to any consumer or business-to-business contract with negative option features. The FTC Final Rule sets a national "floor" for the regulation of negative option customer contracts and expands the FTC's power over these features. Among other provisions, the FTC Final Rule prohibits the misrepresentation of a material fact and imposes mandatory disclosures. In addition, at the state level, Utah, Virgina and California updated their laws governing automatic renewals, adding additional consumer-protective obligations. The full rule is effective July 14, 2025, while the ban on misrepresentations is already in effect.

Once effective, the FTC Final Rule will pre-empt any state law regulating a negative option customer contract, except to the extent the state law provides more protection for the consumer. A comprehensive discussion of the new requirements is outlined in this blog post.

It remains to be seen if the FTC Final Rule will survive legal challenge or the change of guard at the FTC. In any case, the new regulations in this area bring the US consumer protective framework closer to the EU's framework governing customer contracts.

For further information, please contact Kyle Dull, Julia Jacobson, Alan Friel and Bartolomé Martín.

The First 100 Days of Trump 2.0

The flurry of executive orders issued shortly after President Trump's inauguration launched a new era for US brands and advertisers. Several federal rules issued during the final months of President Biden's term were paused on the first day of Trump 2.0 and subsequently unpaused during the first 100 days. We summarize some of the key issues below:

AI

President Trump rescinded issued a new executive order (EO) titled "Removing Barriers to American Leadership in Artificial Intelligence" (Trump EO). The Trump EO signals a significant shift away from the Biden administration's emphasis on oversight, risk mitigation and equity toward a framework centered on deregulation and the promotion of AI innovation as a means of maintaining US global dominance.

Read more here or contact Martin Mackowski, Wolfgang Maschek, Beth Goldstein, Julia Jacobson, Alan Friel, Matthew Kirk and Pablo Carrillo for more details.

Meanwhile, at the state level, the Colorado AI Act remains the most comprehensive state AI. Some Colorado state legislators proposed an amendment to address some of the concerns about the Colorado AI Act raised by Governor Polis, which did not pass before the end of the legislative sessions. Farther West, California Governor Newsome also urged the California Privacy Protection Agency to reconsider its draft automated decision-making technology (ADMT) regulations to leave AI regulation to the legislature to consider.

For further information, read more here or contact Alan Friel and Julia Jacobson.

Children's Online Privacy Protection Act (COPPA) Rule Amendments are Finally Final

The FTC finalized amendments to the Children's Online Privacy Protection Rule (COPPA Rule Amendments) on January 16, 2025. The COPPA Rule Amendments were submitted to, but not published in, the Federal Register prior to January 20, 2025. A few months later, almost one year after issuing its notice of proposed rulemaking, the FTC unanimously approved the COPPA Rule, which was published in the Federal Register on April 22, 2025 (Final COPPA Rule). The Final COPPA Rule is nearly the same as the January 16 version summarized here. Please contact Julia Jacobson for more information.

Some Positive News on Negative Options

On May 9, 2025, the FTC announced some welcome news for businesses that offer their goods and services on a subscription basis: the compliance date for the final version of its "Rule Concerning Recurring Subscriptions and Other Negative Option Programs" was deferred to July 14, 2025. Learn more about the FTC's Negative Option Rule here. Meanwhile, states continue to pass laws regulating negative option features. Massachusetts recently released rules governing negative option features related to sales targeted to or made with Massachusetts consumers.

Department of Justice's (DOJ's) Final Rule on Certain Data Transfers

EO 14117, issued on February 28, 2024, by President Biden, directed the DOJ and the Department of Homeland Security (DHS) to implement rules to restrict access by "countries of concern" to Americans' bulk sensitive personal data and US government-related data when the access is deemed to pose an unacceptable risk to the national security of the US.

The DOJ released its Final Rule titled Preventing Access to US Sensitive Personal Data and Government Related Data by Countries or Concern or Covered Persons on January 8, 2025 (DOJ Rule). It applies to US businesses when they allow "access" (broadly defined) to bulk sensitive personal data. In the DOJ Rule, sensitive personal data includes more types of personal data than similar terms under the US state consumer privacy laws. And, the "bulk" thresholds are not that bulky, e.g., precise geolocation data collected about or maintained on more than 1,000 US devices. The DOJ Rule does, however, have some helpful exemptions and exclusions.

Brands and advertisers with affiliates or vendors in China (including Hong Kong and Macau), Cuba, Iran, North Korea, Russia and Venezuela will need to assess these transactions to determine whether they are in scope. In particular, the DOJ Rule prohibits most "data brokerage" transactions (sale, licensing and similar transactions) of bulk sensitive personal data when the data recipient did not collect the data directly from the individuals to whom the bulk sensitive personal data relates. The prohibition on data brokerage applies even when individuals consent to the transfer.

Parts of the DOJ Rule went into effect on April 8, 2025 but, on April 11, 2025, the DOJ released "Implementation and Enforcement Policy through July 8, 2025" (Enforcement Policy) which includes a grace period for compliance with the parts of the DOJ Rule. That is, as long as US organization can demonstrate that it is engaging in good faith compliance efforts, the DOJ is unlikely to initiate civil enforcement for those parts of the DOJ Rule that were effective on April 8, 2025.

Stay tuned to the Privacy World blog for more on the DOJ Rule.

Asia-Pacific

AI and IP Legal Frameworks in the Asia-Pacific Region

With the emergence of AI technologies, governments are universally searching for ways to encourage and regulate AI development through existing intellectual property regimes and new legal frameworks. The Asia-Pacific (APAC) region is no exception.

As AI tools and applications become the new normal, regulators are drawing from existing IP regimes to answer critical questions. Can AI models be protected by existing legal frameworks within IP? Must copyright owners be human? Do AI models' training programs infringe on others' copyrights?

The APAC region has been seeing a range of responses to these issues. While some jurisdictions have taken a non-binding approach, relying on existing principles to guide AI regulation, others are drafting more AI-specific regulations.

The "Artificial Intelligence and Intellectual Property Legal Frameworks in the Asia-Pacific Region" blog post by Candice Kwok and Nicole Brenner (1) provides a brief overview of current patent and copyright laws in each APAC country as applied to AI issues and (2) explores certain key decisions and frameworks governing AI in this region.

Court Ruling in China on Personal Data Transfer by International Hotel Chain

China's Guangzhou Internet Court ruled against a French international hotel group for illegally transferring a Chinese customer's personal data abroad for marketing without obtaining separate consent. This case, reportedly the first judicial judgment on cross-border data transfers under China's Personal Information Protection Law (PIPL), clarified key legal interpretations.

The court deemed the hotel's data collection (e.g., name, contact details, address, nationality and bank card information) for reservations and loyalty programs legitimate and reasonable. Transfers to the booked hotel and its central system in France were justified as "necessary for the performance of contract" under PIPL Article 13, exempting them from consent requirements. However, sharing data with third parties for marketing lacked contractual necessity, necessitating "separate consent", which the hotel failed to secure.

Despite the violation, penalties were lenient: the hotel was ordered to delete the plaintiff's data, issue a private apology and cover legal expenses (CN¥20,000), far below the plaintiff's claimed losses.

This case underscores compliance with PIPL's consent rules for cross-border transfer, offering guidance for multinationals operating in China.

For more information please contact Lindsay Zhu and read her blog post here.

First Tranche of Reforms to Australian Privacy Law Passed with Amendments

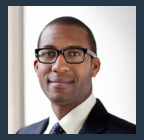
Australian privacy law is in the process of ongoing reform. In 2023, the Australian government published a report in respect of over 100 recommendations to improve Australia's privacy laws.

December 2024 marked the first tranche of those reforms coming into law. These new laws introduced a personal tort for invasion of privacy, implemented a "white-list" regime for overseas data transfers, will require entities to disclose automated decision making within privacy policies, as well as expanded enforcement and investigation options available to the Office of the Australian Information Commissioner.

This first stage of reform has not made major changes to the way in which businesses comply with Australian privacy law on a day-to-day basis, however further reform remains on the horizon.

For further information, please read this article or contact Connor McClymont.

Contacts



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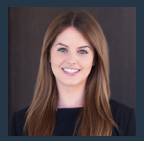

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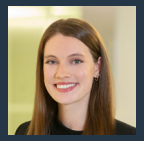

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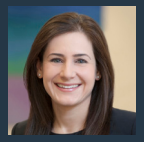

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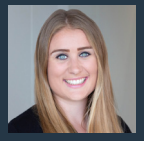

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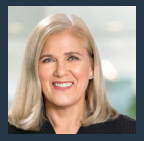

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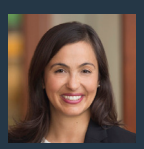

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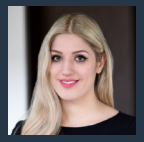

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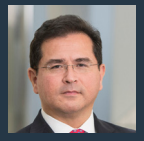

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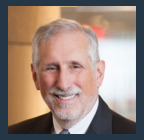

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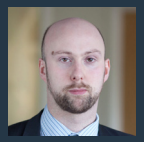

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