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AI regulation is coming. What do brands need to know?

As generative AI dominates the cultural conversation, both governments and tech leaders are calling for regulation. Fashion brands are weighing the risks and rewards.

BY MADELEINE SCHULZ

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Photo: Edward Berthelot/Getty Images

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The AI renaissance is here, and fashion is in on the action with brands from Prada to Adore Me experimenting with the technology. But, as more brands seek to integrate AI into their retail offerings, industry insiders and governments are calling for regulation.

Experts raise a number of questions and considerations amid the tech's rapid take-off, including data privacy concerns; intellectual property debates; the risk of manipulation when content lacks proper disclosure (and associated reputational risk for brands whose products and likeness are used without permission); and in-built algorithmic bias that often pervades output without human intervention. Lower-stakes, though still consequential, considerations for brands include debates about whether or not the tech is personable enough to replace human assistance and potential fallout from the mistakes AI is prone to make at this relatively early stage.

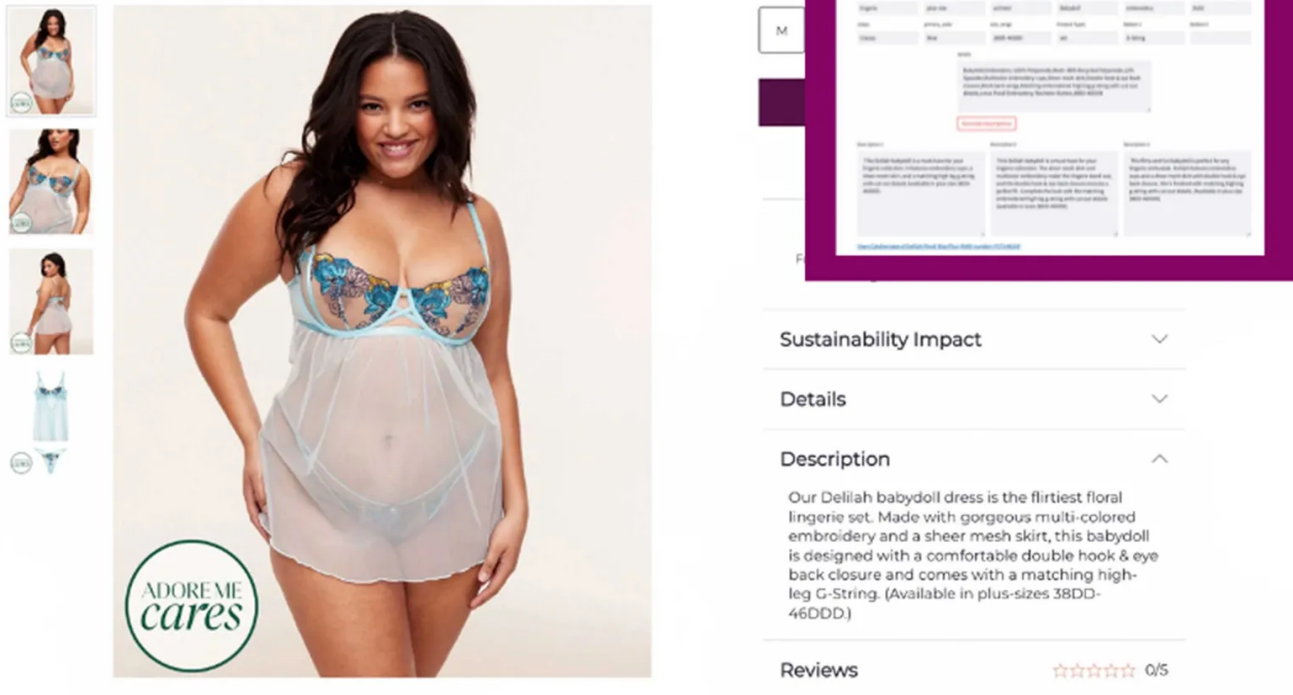
In March, two weeks after OpenAI released ChatGPT-4, tech leaders including Apple co-founder Steve Wozniak and Elon Musk, plus a host of more than 1,000 industry experts and other tech insiders, signed an open letter calling for AI labs to take a six-month pause on development until "safety protocols" can be developed. Microsoft founder Bill Gates pushed back; OpenAI CEO Sam Altman responded by telling the *Wall Street Journal* that ChatGPT-5 is not underway and that the signatories were "preaching to the choir".

Governments have also begun to step in, with countries including Italy, the US and the UK exploring regulation. The overarching attitude is one of caution. Governments are doing their due diligence, aware of the speed at which the tech and its adoption are developing with the low entry barrier thanks to tools like ChatGPT. Responses vary in stringency. Italy implemented an all-out temporary ban on ChatGPT in March while it investigated privacy concerns; the ban was lifted this week while regulatory investigations are ongoing. The UK is exploring areas of concern such as safety, fairness and governance while framing the strategy as "pro-innovation".

In the meantime, tech companies are experimenting with how to manage AI-generated content within their own walls. TikTok is reportedly developing AI-generated video disclosures in response to an increase in AI-generated videos and photos circulating on the platform, according to *The Information* (the question of disclosure came up in fashion recently when Jacquemus's digitally-generated video of Le Bambino bag-shaped buses shuttling around Paris went viral). TikTok did not respond to a request for comment.

Despite regulation and potential risks, the AI opportunity is booming. Interest has surged in recent months as generative AI — a version of the technology based in conversational and real-time interactions — has come to the fore (OpenAI opened ChatGPT to developers last month). Generative AI could add between \$150 billion and \$275 billion to the apparel, fashion and luxury sectors' operating profits, according to a McKinsey analysis. So far, fashion's AI use cases have been mostly relegated to improving digital clienteling and backend processes, though AI-created imagery and design has appeared on magazine covers and at AI Fashion Week, which invited designers to create AI looks for a chance to turn them into reality. Alongside Jacquemus, Prada, Valentino and others have used AI to create marketing campaigns of varying fantastical degrees.

Lingerie brand Adore Me has been using generative AI on the backend since April 2022. “Last autumn, I was doing presentations internally and trying to get everyone excited, and nobody was excited at all,” says VP of strategy Ranjan Roy. “Then comes ChatGPT and suddenly everyone is interested. Now we're in this phase where everyone's expectations are so high and I'm trying to bring people back down to earth: let's solve a real problem.”



An AI-generated product description on the Adore Me site. The box displays the proprietary AI tool used to generate the descriptions. Photo: Adore Me

With that level of interest comes industry watchdogs — at least in the case of AI. Regulators were slow to move on regulation for crypto and NFTs amid the similarly heightened hype. Now, they're scrambling to catch up as trust in Web3 tech plummets. Are regulators jumping on AI in hopes of avoiding past missteps?

JJ Shaw, managing associate at law firm Lewis Silkin, doesn't think so. While crypto and NFTs' main risk is financial (for those who invest without proper understanding and protection), AI is a technology being implemented into people's daily lives. "It poses greater risks to privacy rights and automated decision-making than it does finance — which regulators are seeking to address," Shaw says.

"There has been no regulatory conversation around technology for so long that it's almost being heightened at this moment," Roy adds. "Then you add the potential-end-of-humanity fears and it gets pushed a little further."

Global reactions

In March, Italy's data protection authority, the Garante, announced a temporary ban on ChatGPT while it investigated the tool over privacy concerns. The governing body cited worries including ChatGPT's lack of transparency and data inaccuracy, and gave OpenAI until 30 April to resolve its concerns. On Friday, 28 April, Italy lifted the ban after OpenAI made the changes Italy demanded, including agreeing to better inform users about how they're processing their data, giving users an option to opt out of data sharing. It also agreed to require users in Italy to share their date of birth, to limit users under the age of 13 and enforce parental advisory for users under 18.

The ban, while it was in effect, limited Italy-based brands' ability to experiment with generative AI. Valentino, for instance, recently launched an AI-powered virtual styling chat feature in partnership with AI chat platform GameOn. It doesn't use generative AI — in part because of the temporary ban, which GameOn's senior data scientist Stephanie Pulford views in a positive light. “[Italy’s] applying a little bit of friction now,” she says. “A little bit of stop to the growth, to make sure that new growth happens in a way that’s healthy for culture and for people.” Lingering scrutiny is expected to continue in Italy, which could shape brands' plans further.

In the US, the National Telecommunications and Information Administration (NTIA) put out a request for input on what policies should shape an AI accountability ecosystem. China is also drafting measures; the Cyberspace Administration of China (CAC) released a draft on managing generative AI services that would render providers responsible for the validity of data used to train generative AI tools.

The EU introduced the AI Act earlier this year, which adopts a more detailed, stringent and “risk-based” framework, Shaw says. Regulation is tiered, based on the risk posed by a given AI system. Some use cases — including those that use social scoring or subliminal techniques to exploit vulnerable people — are outright prohibited. Others are classified as “high-risk AI systems”, which will be subject to onerous compliance requirements including: risk management; the quality of data sets used to train the AI; performance-testing; record keeping; cybersecurity; effective human oversight of the AI; and registering with an EU database. Shaw expects that ChatGPT will fall into this class, as a “general purpose AI system”. There will also be tiered compliance for “moderate” and “limited risk” AI systems. The AI Act is expected to pass this year.

The UK is taking a more flexible and pro-innovation approach than most, says Shaw. Last month, it published its AI White Paper, which is likely to come into effect in the next 24 to 48 months. The goal is to “make the UK a science and technology superpower by 2030”. The paper centres around five guiding principles to inform the country’s AI regulation: safety, security, robustness; appropriate transparency and explainability; fairness; accountability and governance; and contestability and redress. These are intended to be “core principles” that guide the UK’s individual regulators’ generative AI regulation. It’s a unique approach, Shaw says, in that it seeks to strike a balance between protecting public interest and fostering innovation.

“The AI White Paper favours an agile approach, to adapt at the speed with which AI will inevitably evolve, with a strong focus on collecting evidence and learning from experience,” Shaw says. The government plans to hand over the reins to a host of different, context-specific regulators, as opposed to a single body. “All eyes will therefore be on the UK’s individual regulators to see how they regulate generative AI use in their sectors over the coming months and years,” Shaw says.

Brand considerations

Brands ought to keep watch on their home country’s regulation, but also on global developments, as their tech offerings are unlikely to stay within the confines of a physical border. For instance, Lewis Silkin’s Shaw recommends that British brands keep an eye on how the EU AI Act develops in tandem with the UK government’s white paper. “It is intended to have broad territorial scope and extend to ‘providers and users located outside the EU, if the output produced by the system is used within the EU’,” he says.

Copyright and IP infringement is another key consideration — one potentially heightened by the use of generative AI tools. These tools pull from existing data, so may well pull from the copyrighted and trademarked work of others without permission, according to Harvard Business Review. This is a touchpoint that, in time, will likely be subject to clearer guidelines — but until there’s a strong legal precedent, it’ll be decided on a case by case basis, according to McKinsey. So, for now, brands should be wary. Shaw also flags brands’ responsibility to tackle the issue of built-in bias. “The buck will always stop with the brand,” he says.

Brands should also bear in mind that AI can't be controlled the way they're used to. "There's been this rush to put AI in as many places as possible," GameOn's Pulford says. "But, it can jailbreak, or hallucinate — when a conversational AI bot says something that's not true but sounds good."

This element of control played a larger part in GameOn's decision not to use generative AI for the Valentino project than Italy's temporary ban. "When we work with a brand like Valentino, it's very protective of its brand, how it's shaped and how the customer experiences it," Pulford explains. Behind the scenes, the GameOn team discussed how the code for the stylist would impact how consumers experienced Valentino. Implementing generative AI would have meant giving up this control.

That said, that was "back then", Pulford says — back then being 17 March. In the AI space, things move quickly. "We might have made a totally different call today."

Roy's main recommendation for brands jumping in is to identify a simple problem that needs solving. For Adore Me, this was product descriptions. They're now developing models for email subject line-generation, and will continue to experiment internally.

"The hype cycle is almost pushing brands to think too big, the same way NFTs and crypto seemed to do, rather than focusing on [really specific business use cases]," Roy says. For now, brands should be working to prove out their AI use cases, showcase practical utility and build so that, down the line, as regulatory debates settle and the tech continues to improve, they can further integrate the technology into their business.

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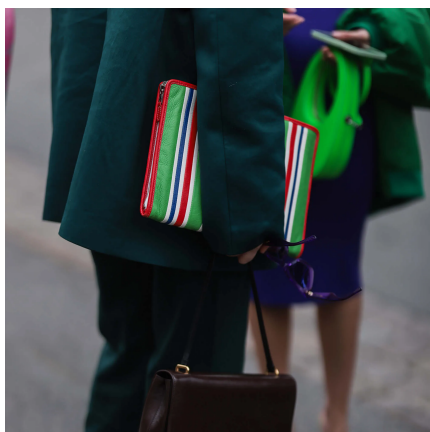
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