



LEWIS SILKIN

# Digital, Commerce & Creative:

A look at the 2024 legal landscape

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# Introduction

## Welcome to our 2024 Digital, Commerce & Creative Annual Report.

We're excited about the opportunities for 2024 and hope that you are too!

In the context of a slightly fragile geo-political and economic landscape, there remains the challenge of managing day-to-day operations, strategy and business planning, new product launches, and navigating an increasingly complex regulatory environment.

Our goal with our 2024 'DCC' Report is to support you in addressing those tasks at a strategic level by heightening awareness of the key legal, regulatory and business challenges that will need consideration for all those involved in the digital, technology and creative space. In this Report, we start by reflecting on the key developments from 2023, and then look ahead to 2024.

Key trends in 2023 for us and many of our clients included the deployment of generative AI tools, the increasing need for 'speed to market' and implementation of new business processes (all to drive transformational change), ESG values-driven procurement, and the creation and consolidation of first-party customer databases. All of which require enhanced juggling and reprioritisation for many teams, especially technology, finance and in-house legal teams – this, of course, is the nature of agile working!

Looking ahead, there is a surge of imminent legislative change in the UK, including the Online Safety Act 2023, Product Security and Telecommunications Infrastructure Act 2022 and Media Bill, as well as the Digital Markets, Competition and Consumers Bill and the Football Governance Bill. There is also the new Retained EU Law (Revocation and Reform) Act which aims to speed up the process of amending or replacing EU laws.

We are in no doubt that the pace of legal and technological change will continue to accelerate. This may feel daunting, but serves to highlight the importance of a laser-focused strategy and a clear vision, with happy teams having the right tools, time and processes to achieve the growth, change or other strategic objectives set by senior leadership teams.

I hope that you enjoy reading the Report, and we look forward to supporting you to fulfil your commercial goals and navigate the legal and regulatory landscape in 2024.



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# Digital

## Tech Developments 2023 Recap

As anticipated in [our tech predictions article last year](#), 2023 was a busy year for tech.

Technologically, of course, the buzzword of the year was AI and we have devoted [a whole section of this Report](#) to explore the possibilities, risks, and mitigating steps in deploying, AI technology.

We've seen the arrival of the EU Digital Services Act which will apply to all platforms from 17 February 2024 (hitherto, the rules have only applied to very large platforms and search engines from 25 August 2023) and which fundamentally redesigns the rules for platforms offering online content and services to consumers in the EU by setting a new accountability standard regarding illegal or potentially harmful online content. We've also seen the introduction of the EU Digital Markets Act which regulates the business conduct of so-called digital "gatekeepers" - the providers of the core platform services on which businesses depend to reach their customers. Finally, an agreement was reached between the European Parliament and Council on the Cyber Resilience Act which will "improve the level of cybersecurity of digital products to the benefit of consumers and businesses across the EU, as it introduces proportionate mandatory cybersecurity requirements for all hardware and software, ranging from baby monitors, smart watches and computer games to firewalls and routers".<sup>1</sup>

Commercially, we've seen:

- ▶ clients replacing individual legacy/out of support warehousing, order management, finance, operational and reporting systems with integrated, global cloud-based solutions
- ▶ employers investing in AI sandbox solutions and digital experience (DEX) solutions to help augment staff functions and productivity
- ▶ clients building and offering more 'superapps' and features with integrated messaging, commerce and payment solutions
- ▶ clients continuing to build and consolidate first party data warehouses (with a real focus on lawful processing and appropriate permissioning)
- ▶ cyber risk management rising up the board room agenda, with clients conducting increased cyber resilience testing, not least due to the risk of fines and adverse PR, with large/high end brands spending significant sums on second and third levels of protection
- ▶ clients working at the intersection between tech and creators/ talent – both targeting the world of creators as well as using creators and content for innovative monetisation
- ▶ innovative tech solutions being widely adopted in sport, from player analytics to virtual advertising

<sup>1</sup> [Political agreement on Cyber Resilience Act \(europa.eu\)](#)

## Tech Developments

In the world of video games, it was also a busy one. At the start of 2023, the ICO issued a series of recommendations to game developers to help ensure they protect children when playing their games and comply with data protection laws. Then, over the summer, Ukie published its long-awaited 'Industry Principles' surrounding the use of paid loot boxes in video games following years of debate and scrutiny by the UK Government ([you can read more here](#)). Finally, the UK Government ended the year by deciding that video games tax relief should be replaced by a new expenditure credit over the course of the next few years – [we've summarised the details here](#). Altogether, it was a challenging year for many in the video games industry, but 2023 saw the launch of some big titles and there is a positive outlook for 2024.

### Deepdive articles

#### Tech and cloud service providers

Cloud services are growing as businesses continue to migrate from on-premise to cloud services. According to Ofcom, the market for cloud infrastructure in the UK alone was worth £7-7.5 billion in 2022.<sup>2</sup>

On 17 October, the CMA published an issues statement setting out the proposed scope of its investigation into cloud services. This followed the referral of the market to the CMA by Ofcom in light of its market study. It raised concerns about the ability for UK businesses to switch (and use multiple) cloud suppliers and the prominence of certain key players in the market (AWS, Microsoft and Google), particularly considering the increasing importance of cloud services for banking, streaming, retailing, and communicating.

[Have a read of our article on the CMA's investigation.](#)

#### Tech and digital assets

In 2023, the Law Commission of England and Wales published its long-awaited recommendations for reform and development of the law relating to digital assets, including crypto-tokens.

Over the past 15 years, personal property law in England and Wales has proven sufficiently flexible to accommodate digital assets. However, the changes in technology mean that there is legal uncertainty and complexity. As a result, the UK Government asked the Law Commission to analyse the law of England and Wales to show how it can respond to this kind of emerging technology.

Take a look at [our thoughts on the Law Commission's recommendations](#).

You might also want to [read our article on the new rules for advertising cryptoassets](#).

#### Tech and the Digital Markets Act

The Digital Markets Act accompanies the Digital Services Act which, together, form the eagerly awaited EU Digital Services Act package which will radically reform the legal duties and responsibilities of digital service providers in the EU.

[Find out more about the Act in our quick guide.](#)

<sup>2</sup> [Cloud services market study final report \(ofcom.org.uk\)](#)

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## Tech Developments 2024 Overview

It has become somewhat of an annual tradition for us to look ahead at what the coming year might hold in the world of tech. 2024 is no different and you can [read our 2024 tech predictions article here](#).

However, if you're short on time, maybe you'd prefer a summary in rhyme...

In the realm of tech, let's take a peek,  
A lighthearted poem, predicting the tech peak  
In 2024 and beyond, here's what we foresee  
With a touch of law and a glimpse of glee.

In the land of gadgets, smart and sleek,  
Your toaster will chat, and your fridge will speak  
Robots as friends, with laughter they'll chime  
But beware, they might beat you at rhyme!

Flying vehicles, oh what a sight  
Traffic jams will be a thing of the past, alright!  
But be cautious when you walk under the skies  
Duck and cover, or those drones might surprise!

Augmented VR, another new dimension  
Explore worlds unknown, without apprehension  
But don't forget your goal in the digital haze  
Or you might find yourself in a virtual maze!

Holograms, a spectacle to adore  
Celebrities will perform right on your floor.  
But remember, they're just projections, you see,  
No autographs, just a flicker of glee!

While AI legal tools might drain the FD's kitty  
They're set to remove some drudgery, making life more pretty  
But they're sure to develop a mischievous streak,  
Playing pranks and ignoring legal nuance, oh what cheek!

In 2024, tech will surely amaze,  
With advancements that'll leave us in a daze.  
But amidst all the wonders, let's not forget,  
To cherish the moments that technology can't get.

So, embrace the future with laughter in tow,  
As tech continues to evolve and grow.  
With a rhyme and a chuckle, let's venture ahead,  
Into 2024 where tech, law and fun are truly wed!

# AI Developments 2023 Recap

The buzzword of the year: AI. In light of its profound rise in popularity in 2023, we asked the infamous ChatGPT to recap key AI developments in 2023 for us.

Here is what it said:

*In 2023, the UK continued to witness significant advancements in the field of artificial intelligence (AI), with both government initiatives and private sector innovations playing crucial roles in shaping the AI landscape within the country.*

- 1. Pro-Innovation Regulatory Approach: The UK government's "Pro-Innovation" regulatory approach, as outlined in its AI White Paper, remained a key driver of AI developments. The government aimed to create an environment that encouraged innovation by reducing bureaucratic barriers for AI companies. The "sandbox" concept, which allowed for controlled experimentation, was further developed to promote the growth of AI startups while maintaining ethical standards.*
- 2. Ethical AI: Ethical considerations remained a cornerstone of AI development in the UK. The government continued to emphasize transparency, fairness, and accountability in AI systems. Efforts to eliminate algorithmic bias and ensure responsible AI deployment were integral to the UK's approach. This emphasis on ethics was not only a regulatory requirement but also a way to build public trust in AI technologies.*
- 3. AI in Healthcare: AI's role in the healthcare sector continued to expand. AI-powered diagnostic tools, predictive analytics, and personalized medicine solutions were increasingly integrated into the healthcare ecosystem. These innovations improved patient care, streamlined healthcare processes, and contributed to better outcomes.*
- 4. Smart Cities and Infrastructure: AI played a pivotal role in the development of smart cities and infrastructure projects. The UK saw AI-driven advancements in traffic management, energy efficiency, and public safety. These technologies enhanced urban living and sustainability efforts.*
- 5. Education and Research: In 2023, the UK further emphasized the importance of AI education and research. Initiatives aimed to train a workforce well-versed in AI and machine learning, preparing the country for the AI-driven future.*
- 6. Global Collaboration: The UK continued to engage in global discussions on AI standards and regulations. Collaboration with other countries ensured that AI technologies adhered to common ethical guidelines, particularly in areas like facial recognition and autonomous weapons.*

*Overall, the UK's AI landscape in 2023 was marked by a forward-looking regulatory approach, the integration of AI into critical sectors,*



## AI Developments

*a focus on ethical considerations, and a commitment to international collaboration to ensure responsible and innovative AI development. These developments positioned the UK as a significant player in the global AI arena while emphasizing the responsible use of AI for the benefit of its citizens and society as a whole.*

As you can see, the summary produced by ChatGPT sounds impressive and does cover off some important updates from 2023; however, it also requires the reader to scrutinise the factual content. For example, it's worth remembering this version of ChatGPT can only summarise events up to April 2023 and, reading point 4, one might be led to believe that scores of new, AI-developed smart cities popped up across the UK in 2023 (with, one imagines, suitably futuristic flying cars and robot dogs) which is, of course, not yet true (we're hopeful for robot dogs...).

### Deepdive articles

#### AI and music

LS's Cliff Fluett chatted with Music Ally's Editor Joe Sparrow about the bigger-picture possibilities and repercussions that AI could have on the music industry. It's one of "*the most consequential tools the music industry could use*" and one that "*could solve a number of its biggest challenges*," including real-time music detection, metadata, and personalised discovery.

[Have a listen to find out whether the music business is really prepared for the impact of AI](#), and discover some of the applications of AI in the music industry that you might not have yet considered.

#### AI and advertising

Generative AI is still in its infancy in relative terms, but growing exponentially, and is set to transform the ad industry. The possibilities are many and varied, including (as CAP and the ASA say) generating tailored ads that resonate uniquely with each individual viewer, as well as the ability to churn out dynamic campaigns that evolve according to consumer response. It can replace many human hours with a click of a button – but we'll leave aside the potential negative impact it may have on those working hard in the industry for the moment, even if it's an issue close to our hearts!

AI is set to impact the ad industry in ways which are hard to imagine just yet. We don't know what we don't know. However, CAP and the ASA have issued updated guidance on how they will regulate the use of generative AI in advertising.

Take a look at [our thoughts on this new guidance for AI generated ads](#).

#### AI and the arts

The opportunities created by AI for performers are vast: we are potentially heading towards passive income for performers who, by licencing their image or voice, might not have to step foot on set or in a studio again. In the musical world, [Grimes recently released her own AI tool](#) offering a split of royalties for any works derived from her AI generated voice and an [AI-generated Drake and The Weeknd](#)

## AI Developments

[song](#) went viral on social media. The downside to this is that there are significant risks that performers may be exploited or have their voice or [their likeness used in a manner detrimental to their reputation](#), given gaps in the current intellectual property (IP) framework.

Check out [our article on Equity's AI Toolkit for performers](#) as part of its campaign to "Stop AI Stealing the Show".

### AI and sport

The use of data in sport is a well-established practice: sports teams, institutions, and governing bodies have a long history of leveraging data science to enhance the performance of athletes and players, with the goal of achieving a competitive advantage and improving the quality of the game.

The proliferation of AI technology and the availability of vast amounts of data have revolutionised, and will no doubt further transform, the use of data in sports. By using computer systems and algorithms to perform tasks that would normally require human intelligence (e.g. machine learning, problem-solving, and decision making), AI is being used to analyse vast amounts of data, provide real-time feedback, and enhance the overall performance of athletes and teams.

[Read our Q&A in which we discuss some of the key questions on the use of AI in Sport.](#)

### AI and television and film

The SAG-AFTRA strike dominated headlines in the media industry in 2023. The strike officially ended on 9 November 2023 after a protracted period of negotiations. AI appears to have been one of the final hurdles in those negotiations; indeed, only a few days before the tentative deal was announced, famous actors were taking to social media in response to reports that the Alliance of Motion Picture and Television Producers were seeking the right to create digital replicas of deceased actors without requiring any consent from the deceased's estate or from SAG-AFTRA.

[Read our thoughts about digital replicas and the use of AI in film and television.](#)

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## AI Developments 2024 Overview

The variety, scope, and abilities of AI tools will continue to grow exponentially in 2024. As the use of AI by businesses matures and evolves from simply experimenting with AI tools to fully integrating them into various facets of their operations, there will be an increasing need to establish robust internal governance frameworks, including by implementing responsible AI policies and practices.

Following from the UK Government's white paper on its approach to AI regulation, it originally looked unlikely that any formal AI legislation will be proposed in the UK in 2024. However, in December 2023, Michelle Donelan appeared before the Science, Innovation and Technology Select Committee and reportedly suggested that the Government would introduce AI legislation in the future (although this is unlikely to happen in this parliamentary Session) after concerns that the proposed light touch regulatory approach was inadequate. We also expect to see more progress from our European friends as the EU AI Act moves closer to becoming enacted into law [following the provisional agreement on the Act](#) reached between the European Parliament and Council on 8 December 2023.

In addition, we anticipate further Government and industry consultations on how future guidance, codes of practice and legislation should operate following the results of the CMA's updated review of competition and consumer protection considerations in the development and use of AI foundation models, the launch of the Digital Regulation Cooperation Forum AI and Digital Hub, and the publication of the UK House of Lords Communications and Digital Committee's report on its inquiry into large language models. We also expect to find out if the Intellectual Property Office has been able to reach agreement on a voluntary code of practice on copyright and AI.

Finally, as businesses look to make use of AI tools, we expect to see increased focus on ensuring that existing contractual frameworks remain fit for purpose in the age of artificial intelligence. Indeed, both the UK's Society for Computers and Law and the European Commission have already published their proposed standard AI contractual clauses which serve as helpful checklists of issues to think about when considering AI vendor contracts. [We have published our initial views on these clauses and compiled our checklist](#) of our top five issues for customers to help de-risk their contracts with suppliers of AI solutions.

## Online Safety Act 2023 Recap

**On 26 October 2023, the much-anticipated Online Safety Act received Royal Assent and became law.**

The approval of the Act marks a pivotal moment in the UK's approach to online safety, particularly the safety of children. Indeed, the Act is heralded as taking a "zero-tolerance" approach to keeping children safe by ensuring that social media, video game and other online platforms with user-to-user interactions are made directly responsible for the content they host, including via the imposition of hefty fines (of up to £18 million or 10% of their global annual turnover, whichever is biggest).

In particular, online platforms will be required to:

- ▶ block the publishing of illegal content and remove it quickly when it does appear
- ▶ enable age-checking measures to prevent children from accessing legal but harmful and age-inappropriate content
- ▶ assess the risks and dangers posed to children on the largest social media platforms and publish risk assessments of the same
- ▶ provide clear and accessible ways for users to report concerns

More generally, the Act is intended to provide additional protections for all internet users by:

- ▶ requiring illegal content to be removed
- ▶ making platforms responsible for enforcing their commitments to users through terms and conditions
- ▶ offering users the option to filter out harmful content, such as bullying
- ▶ requiring platforms to prevent users being exposed to online fraud by blocking and removing scams
- ▶ criminalising the non-consensual sharing of intimate images, including deepfakes
- ▶ forcing platforms to prevent activity that facilitates animal cruelty and torture (even if the act takes place outside of the UK)

The new rules will be policed by Ofcom who will take a phased approach to implementing the Act in 2024.

### Deepdive articles

Online Safety Act, the Digital Services Act, and next steps

As mentioned, the Online Safety Act applies to a range of online services, including those that allow users to share content or interact with other users, and it sets out new rules aimed at keeping safe all users in the UK, especially children.

The rules apply to organisations big and small, even 'micro-businesses' with limited resources, as well as individuals who run an online service. They apply to services where people can create

## Online Safety Act

and share content, or interact with each other (i.e., 'user-to-user services'); or where people can search other websites or databases ('search services'); or individuals or businesses that publish or display pornographic content.

Have a look at [our guide on how to get ready for the Online Safety Act](#), as well as [our comparison between the Online Safety Act and the Digital Services Act](#).

### Online Safety Act and age assurance

Age verification in the digital world, is a serious challenge. There has been uncertainty about what the regulators require to ensure those who are underage are blocked from seeing inappropriate content. Now, draft guidance, recently released by Ofcom, helps resolve this. While the guidance is focused on restricting access to pornographic content, it is relevant to any business wanting to implement online age-gating effectively.

[Read our commentary on Ofcom's age assurance update.](#)

### Online Safety Act and video-sharing

Until the Online Safety Act is fully implemented and replaces the existing VSP regime, Ofcom has demonstrated that it remains committed to enforcing the current regime in respect of video-sharing platforms.

[Read our article about Ofcom's approach to regulating the video-sharing platform, BitChute.](#)

### Online Safety Act and advertising

The Government has introduced tough measures to prevent fraudulent ads being published on social media and search engines through the Online Safety Bill. Over the summer, ministers convened a new taskforce to gather more evidence around illegal advertising and build on industry initiatives to tackle harms and increase protections for children as part of the Online Advertising Programme which attempts to address the wide range of harms caused by paid-for online ads in the whole supply chain.

Check out [our thoughts on the Online Advertising Programme](#) and how it relates to the Online Safety Act.

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# Online Safety Act 2024 Overview

Following its receipt of Royal Assent, Ofcom received immediate powers as the UK's online safety regulator and is moving quickly to implement the new legislation via the following phased approach:

## Phase 1: illegal harms duties

Ofcom launched the first of four major consultations in November 2023 focusing on illegal harms and setting out proposals for "how internet services that enable the sharing of user-generated content ('user-to-user services') and search services should approach their new duties relating to illegal content".<sup>3</sup> In particular, this consultation aims to combat child sexual abuse and grooming, as well as fraud and terrorism. Ofcom aims to publish final illegal harms codes in Autumn 2024.

## Phase two: child safety, pornography and the protection of women and girls

Ofcom published draft guidance on "age assurance and other Part 5 duties for service providers publishing pornographic content on online services" on 5 December 2023, as well as launching a consultation focused on this draft guidance. Further draft codes of practice and guidance relating to child protection are being released in Spring 2024 and draft guidance on protecting women and girls by Spring 2025.

## Phase three: transparency, user empowerment, and other duties on categorised services

Ofcom will begin work on phase 3 in early 2024, focusing on the additional duties that will apply to categorised services, including those relating to transparency reporting, user empowerment, fraudulent advertising, and user rights.

Service providers will also need to begin preparing for full implementation of the Act. In the guidance note "Ofcom's approach to implementing the Online Safety Act,"<sup>4</sup> Ofcom suggest that most service providers will need to:

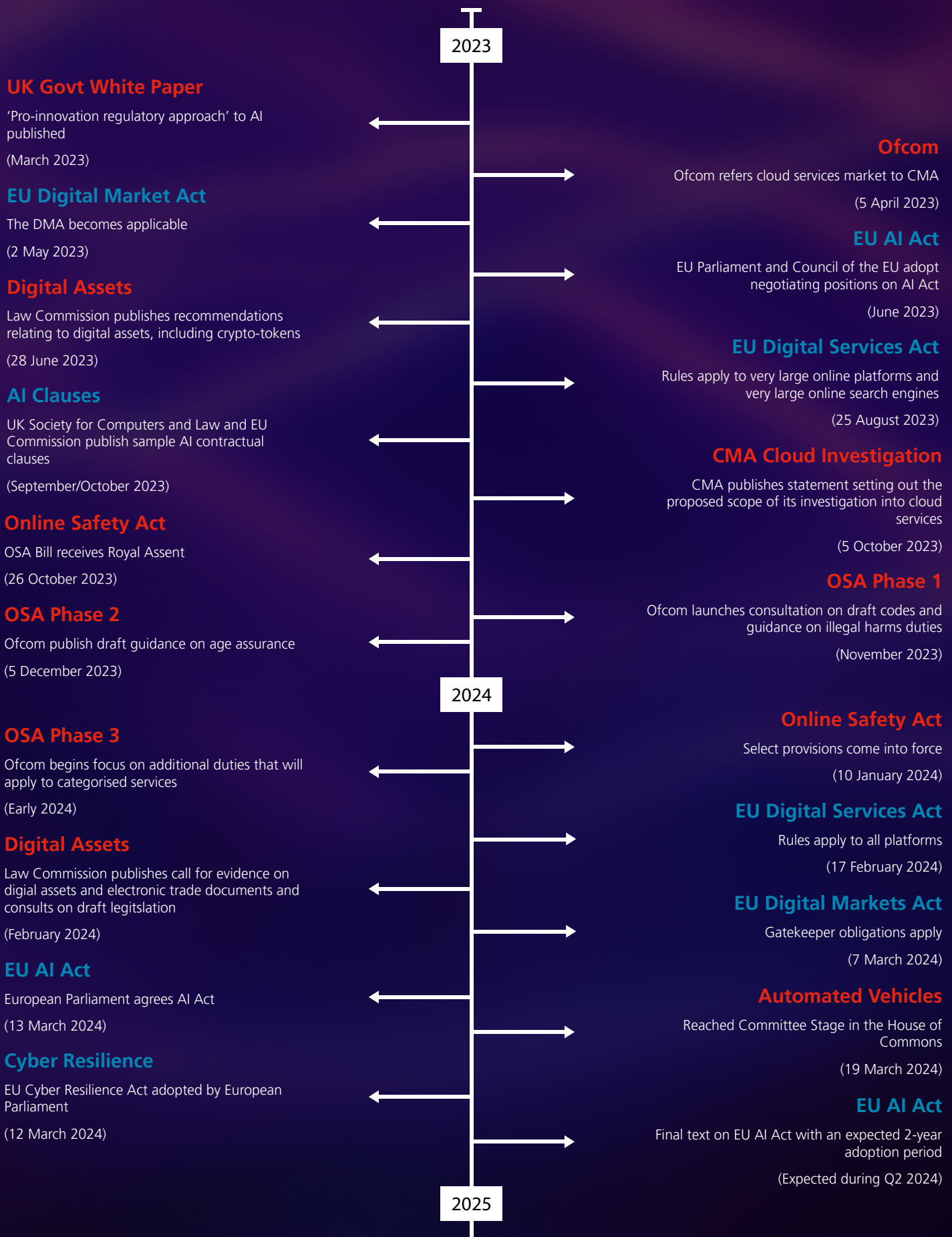
- ▶ carry out risk assessments, to assess the risk of harm to all users from illegal content and (if a service is likely to be accessed by children), to children, from content harmful to them;
- ▶ take effective steps to manage and mitigate the risks identified by these assessments;
- ▶ be clear in their terms of service about how users will be protected;
- ▶ provide means for users easily to report illegal content and content harmful to children; and for them to complain, including when they believe their posts or account have been wrongly blocked or removed;
- ▶ consider the importance of protecting free expression and privacy, in meeting their new duties.

Businesses large and small (in fact over 100,000 service providers) are estimated to be affected by the Online Safety Act.<sup>5</sup> Ofcom will have its work cut out in 2024 and beyond, with a rolling regime of consultations on a range of draft guidance notes which will need to be clear, specific and practical, while at the same time being suitable for a wide range of service providers.

<sup>3</sup>Consultation: Protecting people from illegal harms online - Ofcom

<sup>4</sup>Ofcom's approach to implementing the Online Safety Act

<sup>5</sup>Ofcom's approach to implementing the Online Safety Act







# Commerce

## Retail and Routes to Market 2023 Recap

2023 was a bumper year for retail, at least from a legal perspective. From increased regulation around consumer protection and product safety to a growing emphasis on environmental responsibility within the industry, we saw it all in 2023.

Here at Lewis Silkin, we were particularly interested in the impact of new consumer protection rules, especially as they relate to online sellers and we've dedicated [a whole section of this report to the Digital Markets, Competition and Consumers Bill](#). In addition to the DMCC Bill, consumer protection was also a focus of the Competition and Market Authority's investigation into the groceries sector which identified concerns in relation to current unit pricing rules. This finding was supported by Which? who, earlier in the year, also found that supermarkets were not complying with unit pricing requirements, particularly in relation to loyalty card pricing (which the CMA plans to review in early 2024).<sup>6</sup> In addition, decisions by both CAP (backed by the ASA) and the Court of Justice of the European Union regarding free trials and subscriptions also demonstrated the importance which regulators are placing on ensuring that consumers can make fully informed decisions about how to spend their money.

Product safety was also a hot topic in 2023 as manufacturers, importers, and distributors began to anticipate the introduction of Product Security and Telecommunications Infrastructure Act 2022 which received Royal Assent at the end of 2022 and is due to come into effect on 29 April 2024. The Act (and associated Regulations) aims to increase security requirements for network and internet connected products.

Franchising was also considered by the courts in a number of cases. In particular, the courts considered the concept of exclusivity in franchising arrangements, as well as whether an extension to an existing franchising agreement could be opposed.

Finally, 2023 also saw increased focus on environmental, social, and governance (ESG). More than ever before, consumers are conscious of where they shop and, in particular, the ethical and environmental reputation of the brands with which they engage. According to the EY Consumer First Index,<sup>7</sup> 24% of shoppers have stopped purchasing (or purchased less) from a brand that isn't doing enough to help the environment. We also saw renewed action from regulators in relation to greenwashing; in June 2023, the ASA issued an updated version of their guidance on misleading environmental claims which reflected recent ASA decisions (have a read of [our article on the ASA's stricter interpretation of greenwashing claims](#)).

<sup>6</sup> Supermarket pricing review launched after Which? investigation - Which? News  
<sup>7</sup> Future Consumer Index: In crisis, but in control (ey.com)

## Retail and Routes to Market

### Deepdive articles

#### Retail and supermarkets

The Competition and Markets Authority (CMA) is investigating cost of living pressures in the groceries sector. Its latest update, published over the summer, is accompanied by two reports:

- ▶ an assessment of retail competition in the groceries sector, and
- ▶ a review of unit pricing practices across major retailers.

[Read our article on the CMA's investigation.](#)

In addition, earlier in 2023, Which? carried out a survey of supermarket loyalty cards, separately publishing a report about fake reviews, and the European consumer authority BEUC carried out a survey of consumers about their views on the online environment. Which?'s research identified key problems, particularly when two prices are given for the same product, with one price available to customers with a loyalty card, and a 'regular' price for those customers who don't have a loyalty card.

[Read more of our comments about this survey.](#)

#### Retail and cybersecurity

Retailers are a rich source of sensitive data which is tempting to cyber criminals, and it is no surprise that there have been many high-profile cyber attacks affecting retailers so far in 2023.

Read more from our expert, Ali Vaziri, in [his article for Retail News, outlining why cyber security is vital for the retail sector.](#)

#### Retail and free trials and subscriptions

At the beginning of 2023, CAP (backed by the ASA) issued an Enforcement Notice to advertisers regarding free trial periods. It's an attempt to stamp out so called 'subscription traps', where consumers sign up to a free trial period for a product or service, but find it hard to stop the service once (or before) the need to start paying kicks in.

Take a look at [our thoughts on the Enforcement Notice.](#)

In addition, 2023 also saw the handing down of an important decision by the Court of Justice of the European Union in Case C-565/22 | *Sofatutor*. Although not directly relevant to the UK following Brexit, it will still be of interest to those trading with consumers, and also illustrates the importance more generally of ensuring consumers are provided with the requisite information before they enter into a contract. It also highlights that consumer groups are very much laser-focused on these issues at the moment.

[Read a summary of, as well as our take on, the case.](#)

#### Retail and product safety

The Product Security and Telecommunications Infrastructure Act 2022 is due to come into force in April 2024. Part 1 of the Act

## Retail and Routes to Market

aims to make consumer connectable products more secure and is supplemented by additional regulations which detail the security requirements that apply in relation to “relevant connectable products”.

Have a look at [what you need to know about these new product safety laws](#).

### Retail and franchising

The High Court recently heard the case of *Winkworth Franchising Ltd v Goble* in which it considered whether a franchisor’s opposition to the extension of a franchise agreement was valid.

[Read our key takeaways on the case](#).

In addition, in *London Business House Limited, Faisal Rehman v Pitman Training Limited, Pitman Training Group Limited*, the High Court considered the issue of exclusivity in franchising contracts.

[See here for more](#).

### Retail and supply chains

The UK Government had consulted about the role of the Groceries Code Adjudicator in supply chains. The Government was considering abolishing the Groceries Code Adjudicator (and not for the first time) and transferring its powers to the CMA. The proposal was part of the wider statutory review of the GCA.

[To find out the outcome, see here](#).

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## Retail and Routes to Market 2024 Overview

**As we checkout on 2023, we're already looking ahead at what will be filling our baskets in 2024.**

Firstly, changes to consumer protection laws in the retail space will be in full swing with the DMCC Bill being finalised. This will have an impact on areas such as consumer subscriptions, combating fake reviews, unit pricing, and drip pricing. In addition, the CMA has committed to continuing various of its investigations in the grocery sector in 2024 (including in relation to infant formula, retail competition, loyalty scheme pricing, and unit pricing), and is likely to continue its work investigating online choice architecture and greenwashing.

Product safety will also be a big deal this year with the introduction of the Product Security and Telecommunications Infrastructure Act 2022 in April 2024. As more connectable products are brought to the market, it is reassuring for consumers to know that stakeholders are taking the security of those products seriously.

## Digital Markets, Competition and Consumers Bill 2023 Recap

In April, the UK Government published the [Digital Markets, Competition and Consumers Bill](#) saying that it would “*crack down on rip-offs, protect consumer cash online and boost competition in digital markets*”<sup>8</sup>

The Bill followed the [Government’s responses to consultations in 2022](#). The Bill covers the regulation of digital markets, reforms competition law, and in particular for this section, consumer law. On the consumer side, there are some significant proposed developments for anyone doing business with UK consumers that will substantially increase the risks, and financial exposure, for traders and advertisers for breach of consumer protection laws.

The CMA will have more powers to deal directly with consumer law infringements, including a power itself to issue fines, without going to court first, and to compensate consumers. Fines can be up to 10% of global turnover.

The Bill also contains reforms to substantive consumer law, in particular targeting subscription services, which have long been a concern for UK regulators. It also repeals and restates the Consumer Protection from Unfair Trading Regulations 2008, with a few changes.

The Bill also reforms Christmas Club savings schemes and alternative dispute resolution schemes.

Under the Bill, businesses must:

- ▶ provide clearer information to consumers before they enter a subscription contract
- ▶ issue a reminder to consumers that a free trial or a low-cost introductory subscription offer is coming to an end, and a reminder before a contract auto-renews onto a new term
- ▶ ensure consumers can exit a subscription contract in a straightforward, cost-effective and timely way

A significant change is that the Bill includes a new separate offence of omitting material information from an invitation to purchase. The Bill also includes a new power for the Secretary of State to amend the list of commercial practices that are automatically considered unfair.

It also permits the Government to consult on whether the commissioning of fake customer reviews and posting reviews without taking reasonable steps to check they’re genuine should be added to the unfair practices (see later).

The new consumer protection measures of the Bill are intended to apply to the whole of the UK. Consumer protection policy is devolved to Northern Ireland but reserved for Scotland and Wales. As a result, legislative consent will be required from the Northern Ireland

<sup>8</sup> [New Bill to crack down on rip-offs, protect consumer cash online and boost competition in digital markets - GOV.UK \(www.gov.uk\)](#)

## Digital Markets, Competition And Consumers Bill

Assembly.

The Bill is expected to be in force from the middle to end of 2024. It will only apply to contracts entered into after it comes into force. Secondary legislation and guidance will be issued.

With the introduction of the Bill, the UK will be entering into a new era for consumer protection. The CMA has already been making moves to improve and modernise how it works – a point it highlighted in its annual plan. With its new powers under the DMCC Bill, businesses can expect more regulatory action. With potentially eye-watering fines on the table, many companies who previously took a “risk-based approach” to compliance with consumer laws will need to reassess their position. Cross-border businesses will also now need to take account of the divergence in consumer law between the UK and EU.

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# Digital Markets, Competition And Consumers Bill 2024 Overview

So, what will come in 2024? At the time of writing, the Bill awaited Committee stage in the House of Lords and has some way to go through the parliamentary process.

More UK changes coming?

In addition, [the Government issued a further consultation](#) on consumer law in 2023. Its proposals cover these key areas:

- ▶ The display of pricing information
- ▶ Hidden fees and drip pricing
- ▶ Fake and misleading reviews
- ▶ Online platforms' responsibilities to consumers
- ▶ Online interface orders
- ▶ Protection from unfair trading – e.g. changes to the list of practices that will always be deemed unfair

The consultation ended on 15 October 2023 with a response due as we write. Organisations trading with consumers will already be keeping an eye on the passage of the Bill and preparing to review their practices accordingly, but it looks like there may be more change to come.

With the rise in some supermarkets making cheaper prices only available for loyalty card members, the CMA plans to begin a review of the use of loyalty scheme pricing by supermarkets in early 2024. The CMA's work will consider how the growth in loyalty scheme pricing is affecting consumers and competition in the groceries sector.

New rules for telecoms advertising

CAP and BCAP have [published guidance on mid contract price rises](#). The guidance took effect from 15 December 2023 to give advertisers a chance to update their materials.

Ofcom also [examined if inflation-linked, mid-contract price rises](#) give phone and broadband customers sufficient certainty and clarity about what they can expect to pay. In December 2023, it proposed banning telecoms companies from providing for both inflation-linked price rises and price rises that are set out in percentage terms in contracts. It said that companies would be required to set out price rises in pounds and pence. In addition, it has consulted on new rules for informing customers about mobile roaming arrangements. Due to the UK's exit from the EU, several statutory protections designed specifically to protect customers when roaming, including by increasing price transparency, fell away at the end of June 2022. The consultation ended on 28 September 2023. Ofcom plans to publish

# Digital Markets, Competition And Consumers Bill

## 2024 Overview

its final decision in early 2024.

### EU law changes

The [EU has also been considering further changes](#), including to the use of “dark patterns” (something not fully considered in the UK consultation other than regarding drip pricing, although the CMA (and the ICO) has been actively investigating their use).

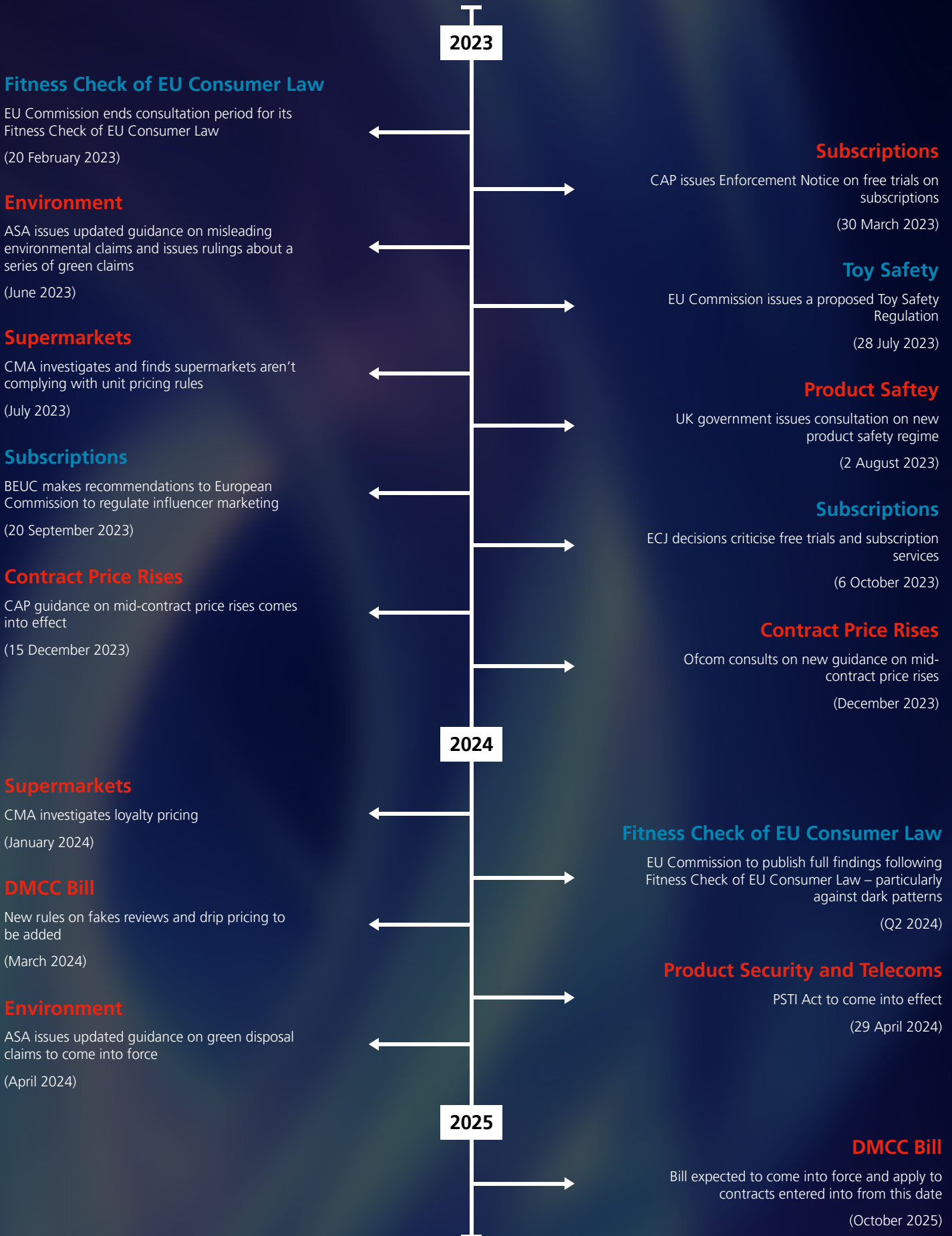
### Product safety

Another issue for traders to consider is product safety regulation – [the UK Government called for evidence](#) in August, and has, according to the Times, indicated that it will be introducing amendments to the DMCC Bill to deal with the liability of online marketplaces for unsafe products. The EU has provisionally agreed a new product safety Regulation and a [Cyber Resilience Regulation](#).

In addition, Part 1 of the [Product Security and Telecommunications Infrastructure Act 2022 \(PTSIA\)](#) aims to make consumer connectable products more secure. The PTSIA is due to come into force on 29 April 2024. It imposes new requirements on manufacturers, importers and distributors regarding issues such as default passwords, etc.

Therefore, 2024 is shaping up to be a very busy time for B2C traders.







# Creative

## Advertising And Marketing 2023 Recap

It's been another busy year for advertising regulation, with key developments in areas such as environmental claims, crypto and stereotyping on grounds of race or ethnicity, among others.

### Environmental advertising

We were expecting the ASA to continue with strict enforcement around environmental advertising as well as publishing stricter guidance around environmental claims, specifically 'net zero' and 'carbon neutral'. It [published updated guidance in May 2023](#), with greater emphasis on social responsibility. It also [published new guidance on "green disposal" claims](#) in November 2023.

The CMA is currently investigating eco-friendly claims made by ASOS, Boohoo & George at Asda. We are still waiting for the outcome of those investigations. It is also [investigating claims made by Worcester Bosch](#) in relation to its hybrid hydrogen/natural gas boilers. The [CMA is also looking at sectors such as food, drink, and toiletries](#) and started an investigation into a well-known consumer group in December 2023.

We wondered if Schedule 1 of the Consumer Protection Regulations would be changed for the first time since they were implemented in 2008. It looks like they will as part of the Digital Markets, Competition and Consumers Bill, but there are no current plans to include unsubstantiated green claims.

We also wondered if there would be new rules in the EU on misleading green claims. Even though there was arguably no need as the Unfair Commercial Practices Directive can be used already, the [EU did propose a new Directive](#) and has also [proposed changes to the UCPD](#).

### Influencer marketing

The Department of Culture, Media & Sport select committee [published the Government's response to their report](#) in July 2022, which included several recommendations, including the possibility of yet another code of conduct. To date nothing has happened on this.

The Digital Markets, Consumer & Competition Bill was introduced to parliament in April 2023. Although it repeals and restates the Consumer Protection from Unfair Trading Regulations, it does not make any meaningful changes to substantive consumer law which would affect influencers. However, it does create increased powers for the Competition and Markets Authority. This could have huge repercussions, potentially leading to greater, and more frequently awarded, fines.

#ad is under scrutiny and is being heavily criticised. One size doesn't always fit all and #ad is arguably not the clearest form of disclosure. However, [the ASA updated its guidance](#) earlier in 2023 and is sticking

# Advertising And Marketing

with #ad.

With an increased focus on performance in influencer marketing, we have seen talent managers, influencer and brands better monetising data whilst focusing on new commercial contract terms that cover off both legal and commercial requirements.

## Crypto advertising

[New rules were introduced](#) in October relating to crypto advertising. The Financial Conduct Authority is now responsible for regulating technical claims in advertising for cryptoassets, although the ASA will still be responsible for other aspects under the CAP Code, such as matters relating to offence, social responsibility, superiority claims, fear and distress, denigration and other claims that do not relate to specific characteristics of the product. The restrictions include requirements to include clear risk warnings; risk summaries and a ban on incentives to invest such as refer a friend bonuses and new joiner bonuses.

The new rules do not cover cryptoassets that are non-fungible, such as Non-Fungible Tokens (NFTs), or Limited Payment Tokens that can only be redeemed with the issuer and used for the payments of specific goods and services, such as non-monetary customer loyalty points. Advertising for these will continue to be regulated by the ASA.

In other news, the Government rejected calls to regulate cryptoassets as gambling, saying that they were adequately regulated as financial services.

## Online Safety Bill

The Online Safety Bill is [now the Online Safety Act](#) and received Royal Assent in October 2023. Its main focus is protecting children, but it also places requirements on the biggest platforms regarding fraudulent advertising. In addition to those obligations, it also places a range of obligations on many other companies, large and small, including those that operate websites and platforms that allow users to exchange messages or to interact with one another, or that allow users to share or search for content.

Ofcom is responsible for [ensuring that companies within the scope of the new Act comply with their obligations under it](#). See the section on the Act in this report.

We'll be running events on this throughout the year, so keep an eye on our website and newsletters to make sure you're up to date.

## HFSS food advertising

HFSS rules on placement and online promotion came into force on 1 October 2022. Rules banning multibuy deals on HFSS foods and drinks, for example 'buy one get one free' deals, and restrictions on free refills for soft drinks were delayed until 1 October 2023. They have now been delayed to 1 October 2025. This matches the delay to the 9pm watershed for HFSS products and a restriction of paid-for HFSS advertising online. [See our client guide](#).

The Government consulted on draft regulations to clarify key aspects of the new advertising measures and Ofcom consulted on its implementation of the measures. [It issued its statement on regulating HFSS advertising](#) in July 2023. It has decided to designate the ASA as a

## Advertising And Marketing

co-regulator for the online advertising prohibition; and proceed with the amendments to the BCAP Code and the Broadcasting Code. In December 2023, CAP and BCAP [issued a related consultation on the new rules](#).

The Welsh and Scottish Governments also consulted on introducing restrictions on HFSS promotions and advertising, and the Welsh Government has now announced that [new rules will apply in Wales from 2025](#). This will include volume-based promotions, such as multi-buys, and restrictions on where HFSS products can be displayed, such as at the end of aisles. It also plans to include within scope temporary price promotions and meal deals, which were left out of the restrictions for England.

What else has happened in 2023?

CAP and BCAP [issued new guidance on racial and ethnic stereotypes in ads](#). It provides advice about how to avoid racial and ethnic stereotypes that are likely to cause harm or serious or widespread offence in advertising. It aims to provide clarity and detail on factors the ASA is likely to consider when assessing complaints.

The [ASA also issued its five year strategy](#) in which it said that it would continue to invest in AI to support regulation. The strategy has six prongs involving people, planet, online, awareness and buy-in, collective ad regulation and operational transformation.

What did not happen?

We were expecting significant changes to the rules on gambling advertising as part of the UK Government's long-awaited White Paper on gambling. However, [when it was published in April 2023](#), it did not include proposed legal provisions on advertising or sponsorship. This apparent change in direction followed the Premier League's voluntary decision to ban gambling advertising from the front of clubs' shirts from the end of the 2025/2026 season. However, the White Paper does include proposals for all major sports governing bodies to sign up to a cross-sport Code of Practice on gambling sponsorship. It will be designed to improve standards where gambling sponsorship is prevalent in sport similar to what is in place in the alcohol industry. In addition, the Government wants customers to have greater control over the types of marketing they receive, such as opting-in for online bonuses and offers for different types of gambling products.

The Gambling Commission has issued some follow-up consultations, one of which asked for views about [introducing a new requirement to give consumers the ability to opt in](#) to the product types they are interested in and the channels through which they receive marketing.

As well as this, the [ASA introduced new rules on gambling advertising in October 2022](#). The old rules required that gambling ads must not be of "particular appeal" to children, whereas the new rule prohibits content (imagery, themes and characters) with "strong appeal" to under-18s from featuring in gambling ads, regardless of how such content is viewed by adults. There have been [several rulings about the new rules](#). [Read more in our Sports section](#).

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# Advertising And Marketing 2024 Overview

We expect 2024 to be as eventful as 2023 for advertising regulation across the UK and EU. Topical issues such as green claims, influencers, gambling advertising and the use of generative AI will continue, while the Digital Markets, Competition and Consumers Bill coming into effect will also impact advertisers.

## Online Advertising Programme

The Online Safety Act aims to prevent fraudulent ads being published on social media platforms and search engines, but the Act itself does not have much more to say about potentially harmful advertising. Therefore, the Government [announced its Online Advertising Programme](#) which goes further by attempting to address the wide range of harms caused by paid-for online ads across the whole supply chain.

The Online Advertising Programme [includes a Ministerial-led task force](#) that aims to drive forward non-legislative action. The Online Advertising Programme will also focus on:

- ▶ Harms arising from illegal online advertising, such as fraud and scams, the spread of malware, and adverts for illegal products (including weapons) and illegal services. These harms are generally performed by bad/illegitimate actors using advertising to undertake criminal activity.
- ▶ The protection of children and young people from adverts for products and services that are illegal to be sold to them, for example, alcohol, gambling, vapes and other products/services prohibited to be sold to them. This relates to the targeting and media placement and/or content of ads.

[The Taskforce has announced](#) that the UK Government will conduct a further consultation including a more detailed taxonomy of online harms. It also plans to introduce a duty for misleading advertising under the current Consumer Protection from Unfair Trading Regulations (this will be done via primary legislation). It is also considering age-verification and age-estimation requirements for in-scope services to protect children from primary priority content on their services.

## Price advertising

As people face cost of living pressures, [the CMA has been investigating various issues](#) related to the groceries and fuel sectors. With regard to groceries, it has focused on the extent to which rivalry between retailers ensures they keep their prices as low as possible and whether consumers can shop around to get the best deals. It also considered the issue of unit pricing after a research study by Which?. The Government has recently consulted on reforms to unit pricing.

As part of that consultation, the Government also consulted on drip pricing. Drip pricing occurs when consumers are shown an initial price for a product (known as the base price) and additional fees are introduced (or “dripped”) as consumers proceed with a purchase or transaction. It can result in consumers being “baited” into choosing a product because of its lower base price, but then ultimately paying more once further fees and optional products are added. The Government called for more evidence on whether there should be further intervention specifically focused on drip pricing, and if so, which practices it should address.

## Media Bill 2023 Recap

The Draft Media Bill was published on 29 March 2023 with the aim of reforming the regulation of public service broadcasting in the UK, particularly in the context of the growing popularity of digital streaming. Following stakeholder feedback at Committee stage, the Government confirmed that it had accepted the majority of the Committee's recommendations and, on 8th November, the Bill had its First Reading in the House of Commons, followed by its Second Reading on 21 November. The Bill was at Committee Stage in the House of Commons as we wrote this report.

The key provisions of the Bill include:

- ▶ video-on-demand (VoD) services, such as Netflix, Amazon Prime Video, Disney+, will be brought under new Ofcom rules, regardless of whether they are headquartered in the UK
- ▶ more streaming services will be required to provide subtitles, audio descriptions, and signing to support people with disabilities
- ▶ public service broadcasters (PSB) will be given more flexibility to deliver on their obligations
- ▶ PSBs' on-demand services must be easier to discover on smart TVs and streaming sticks
- ▶ Channel 4 will no longer be privatised and will be allowed to produce its own content
- ▶ new reforms will be introduced to guarantee access to UK radio on smart speakers and cut red tape for commercial radio stations
- ▶ updates to the UK's listed events regime

### VoD services

Most video-on-demand services are not currently covered by Ofcom's Broadcasting Code, nor (unless they are based in the UK) are they regulated in the UK at all. Consequently, the Media Bill aims to level the playing field between traditional linear broadcasters and video-on-demand services. The Bill proposes to bring mainstream VoD services under a new 'code' containing rules similar to those that already apply to linear TV in respect of harmful content and impartiality. This aims to ensure that UK audiences, especially children, are better and more consistently protected from harmful material. Large "tier 1" VoD providers (yet to be designated) will also have to comply with certain rules around sponsorship and product placement, which already apply to VoDs based in the UK, as well as new accessibility requirement on subtitles, audio descriptions, and signing.

# Media Bill

## PSBs

PSBs will be given greater flexibility as to how they deliver on their obligations, which the Government says will make it easier to share distinctively British programming and impartial news with viewers on a range of platforms, including on-demand services. However, Ofcom will have new powers to require PSBs to provide more of a particular type of programming if audiences are being underserved. Further, Channel 4 (which must currently commission its programming from third party production companies) will no longer be barred from producing its own content. Finally, major online TV platforms – such as smart TVs, set-top boxes and streaming sticks – will be legally required to carry and prominently feature designated PSB services.

## Radio

The Media Bill will relax content and format requirements on commercial radio, with the aim of allowing stations a much larger degree of flexibility to update or adapt their services without needing consent from Ofcom. There will be new, clearer requirements for commercial stations to provide national and local news and relevant local information (traffic and travel). The reforms also include additional provisions to help manage an eventual switchover of radio to digital and to enable Ofcom to license overseas radio stations. Finally, the Bill will also provide that UK radio stations are not charged by tech platforms for the provision of their live services to listeners, that platforms cannot overlay content (such as advertising) over the top of those services (unless this is to facilitate a user preference), and that stations are reliably provided in response to listeners' voice commands.

## Listed events regime

The Bill updates the listed events regime to ensure that the range of relevant services that fall within the scope of the regime includes both television programme services and internet programme services, and amends the conditions so that relevant services must be provided by a PSB (this is currently the de facto case as only channels that meet this criteria are provided by PSBs).

## Deepdive articles

### Media Bill and Ofcom

Ofcom published a call for evidence on the future of TV distribution. This comes in the wake of the draft Media Bill and renewed scrutiny on changes to the way in which audiences consume content – increasingly, short-form content, distributed over the internet and watched on demand. Given Ofcom's stated focus on "*supporting the availability of, and engagement with, media we trust and value*," the regulator is now seeking evidence to explore how internet distribution will evolve and remain resilient for TV platforms and streaming services.

[Read more about Ofcom's call for evidence.](#)

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## Media Bill 2024 Overview

Following its Second Reading on 21 November 2023, we now wait for the Media Bill to pass through the remainder of the parliamentary process during 2024 which, we expect, will mean that it is unlikely that we will see the enactment of the Media Bill before summer 2024. Until then, we wait with anticipation to see what, if any, further changes will be made to the Bill before it becomes law.

If enacted in its current state, the Bill will, according to the Government, *“enact reforms that keep our broadcasters at the top of their game in the years ahead. [It] will do that by levelling the playing field, removing threats to their sustainability and opening up new opportunities to maximise growth and unlock potential”*.<sup>9</sup> The tangible effect that this will have on viewers remains to be seen but if it contributes to the production of even more high quality content from the UK’s public service broadcasters, it can’t be a bad thing!

However, the pace of change in the content industry is so quick that the Government may realise before long that further regulation is required. For example, the Media Bill’s attempt to deal with major VoD platforms fails to address the recent growth of unregulated FAST (free ad-supported streaming TV) channels. These are generally only available on a linear (‘pushed’) basis online and are not available on an on demand (‘pulled’) basis so will normally fall outside the scope of the current and proposed new regulation.

<sup>9</sup> [Media Bill to maximise potential of British TV and radio - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/media-bill-to-maximise-potential-of-british-tv-and-radio)

## Sport 2023 Recap

One of the top legal developments in sport in 2023 was the introduction of the new FIFA Football Agent Regulations which aim to reinforce contractual stability, protect the integrity of the transfer system, and achieve greater financial transparency. In particular, key changes include the (re)introduction of an examination and licensing system, a cap on agents' fees (and new rules about who can pay them), limits on multiple representation, formal requirements for representation contracts, and new rules around the signing of minors.

[For more information about the Regulations, have a read of our guide.](#)

All national football associations were due to implement the Regulations domestically by 30 September 2023. However, the implementation was delayed in the UK as we awaited the outcome of the FA Rule K arbitration proceedings. Agencies CAA Base, Wasserman, Stellar, and ARETÉ challenged the implementation of the Regulations as they relate to English domestic transfers. A ruling in these proceedings was handed down in November which declared that if the FA implements the cap on fees and the restrictions on the timing of payments in the Regulations, it will be in breach of the Competition Act 1998. However, the FA announced that the Regulations would take effect from 1 January 2024, superseding the Working with Intermediaries Regulations. The Regulations had also not been implemented in countries such as Germany, Spain, France and Italy, with FIFA suspending certain provisions pending court action in Germany, so there is still work to do in this space.

The other big story of 2023 which has attracted debate not just amongst sports lawyers but most football fans, is the introduction of a new independent football regulator for English football. In February 2023, [the Government published a white paper regarding the governance of national football](#) in which it proposed that a new regulator would reform *"the culture of governance in English football clubs, and mitigate the risk of clubs being entirely lost to fans and communities"*, with a key purpose to *"ensure that English football is sustainable and resilient for the benefit of fans and the local communities football clubs serve"*.<sup>10</sup> Then, in the November King's Speech, the Government announced that legislation to establish a regulator in the form of the Football Governance Bill would be brought forward.

### Deepdive articles

#### Sport and football regulation

In the King's speech, delivered on 7 November 2023, the introduction

<sup>10</sup> [Football Governance: Government Response to the Committee's Ninth Report - Culture, Media and Sport Committee \(parliament.uk\)](#)

## Sport

of a Football Governance Bill was confirmed “to safeguard the future of football clubs for the benefit of communities and fans”.

[Take a look at our deepdive article](#) to explore what the legislation aims to achieve and when progress might be seen.

### Sport and sponsorship

The Premier League announced that its member football clubs have collectively agreed to withdraw gambling sponsorship from the front of clubs’ matchday shirts, becoming the first sports league in the UK to take such a measure voluntarily in order to reduce gambling advertising.

Here, [we set out our initial thoughts](#) on this move by the Premier League.

### Sport and gambling

In October 2023, CAP introduced new rules banning gambling ads from including any content (imagery, themes, and characters) likely to be of strong appeal to under-18s. Since then, the ASA has published numerous rulings on the subject. In addition, CAP has published guidance along with the rules, which outlines clear categories of high, medium, and low risk content. This includes advice that football is of inherent appeal to children, and so top flight players and managers are highly likely to be of strong appeal.

[Read our commentary on the appeal of sports stars in gambling advertising.](#)

### Sport and ticketing regulation

The Competition and Markets Authority investigated the secondary ticketing market due to concerns about information provision and compliance with consumer protection laws across the sector. It has also taken enforcement action against various ticketing websites. Following from this, in August 2021 the CMA made various recommendations to the UK Government about the secondary ticketing market. The Government has however now rejected those recommendations.

Take a look at [our thoughts on the CMA’s recommendations and the Government’s rejection of them.](#)

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## Sport 2024 Overview

The biggest sporting event of 2024 will undoubtedly be the Olympic Games and Paralympic Games held in Paris. As ever when it comes to big sporting events of this nature, we expect ambush marketing (where a brand piggybacks on an event to promote their products without an official association with that event) to be a key concern.

At Lewis Silkin, we regularly advise brands about what they can and can't do when it comes to running campaigns alongside big events, and we've previously published some helpful guides on ambush marketing in the wake of [the 2020 Olympic Games and Paralympic Games in Tokyo](#) and [the FIFA World Cup 2022](#). Keep your eyes peeled for updates.

In addition to the Olympics, we expect to see the publication of the draft Football Governance Bill which, alongside establishing a new independent football regulator, will:<sup>11</sup>

- ▶ create new tests to make sure owners and directors are suitable
- ▶ set a minimum standard of fan engagement and require the support of a majority of fans for any changes to a club's badge, name, or home shirt colours
- ▶ require clubs to seek the regulator's approval for any sale or relocation of a stadium (and demonstrate that they have consulted their fans about this)
- ▶ prevent clubs from joining breakaway or unlicensed leagues
- ▶ intervene as a last resort to ensure financial sustainability through the redistribution of broadcast revenue
- ▶ establish a compulsory "Football Club Corporate Governance Code"

The new regime is intended to apply to the top five tiers of the English football pyramid. Its implementation is unlikely to be speedy – the Bill will need to make its way through the parliamentary process for approval, following which we expect there to be a lead-in time for its implementation while the regulator itself is established and any additional codes and guides are drafted. Of course, it is possible that a non-statutory, shadow regulator could be established in the interim with the aim of ensuring that the regulator is operationally functional as soon as the legislation comes into force. We wait to see how the introduction of the Bill plays out and whether it will be an own goal or put the UK at the top of the league for football regulation.

Having seen the establishment of Women's Premiership Rugby as a new entity distinct from the Rugby Football Union, we look forward to seeing how the separation of the Women's Super League from the Football Association progresses in 2024 and what this will mean

## Sport 2024 Overview

for women's football going forwards, following the Government's response to the review of the women's game, which was published in December 2023.

More generally we look forward to sport continuing to further embrace tech – we anticipate increasingly sophisticated metaverse ventures, the continued adoption of virtual advertising, and the use of AI driven data analytics products to become standard in sport performance and entertainment. We have no doubt that, sport being sport, there will also be the odd surprise or controversy that, as lawyers, we will again need to adapt to quickly.

<sup>11</sup> [The King's Speech background briefing notes.pdf \(publishing.service.gov.uk\)](#)

## Football

Introduction of new FIFA Football Agent Regulations (Phase 1)  
(9 January 2023)

## Media Bill

Culture, Media and Sport Committee publishes report on the Media Bill's radio measures  
(23 June 2023)

## Green Claims

ASA issues stricter guidance on environmental claims including the terms 'net zero' and 'carbon neutral'  
(28 July 2023)

## Crypto Ads

New rules are introduced relating to crypto advertising, making the FCA key regulator  
(8 October 2023)

## Media Bill

Media Bill has the first reading in the House of Commons following acceptance by the government of the majority of CMS Committee's report recommendations  
(8 November 2023)

## Green Claims

Directive adopted by European parliament  
(January 2024)

## Football

Football Governance Bill was introduced to Parliament  
(18 March 2024)

## Green Claims

Directive on empowering consumers for the green transitions  
(March 2024 - in force 2026)

## Olympics

Olympics and Paralympics takes place in Paris  
(July to September 2024)

## Football

Premier League withdrawal from gambling sponsorship on front of matchday shirts takes effect  
(End of 2025/26 season)

2023

## Green Claims

EU Commission adopts a proposal for the Green Claims Directive  
(30 March 2023)

## Green Claims

EU Parliament votes in the Green Claims Directive  
(June 2023)

## Media Bill

Culture, Media and Sport Committee publishes report on the Media Bill's non-radio provisions  
(22 September 2023)

## Football

Government announces Football Governance Bill in the King's Speech  
(7 November 2023)

## Green Claims

ASA issues updated guidance regarding green disposal claims  
(28 November 2023)

2024

## Media Bill

Ofcom publishes its roadmap to regulation  
(26 February 2024)

## Green Claims

CMA publishes results of green claims in fashion sector investigation  
(27 March 2024)

## Media Bill

Media Bill to continue parliamentary process through House of Lords, culminating in Royal Assent  
(RA expected Summer 2024)

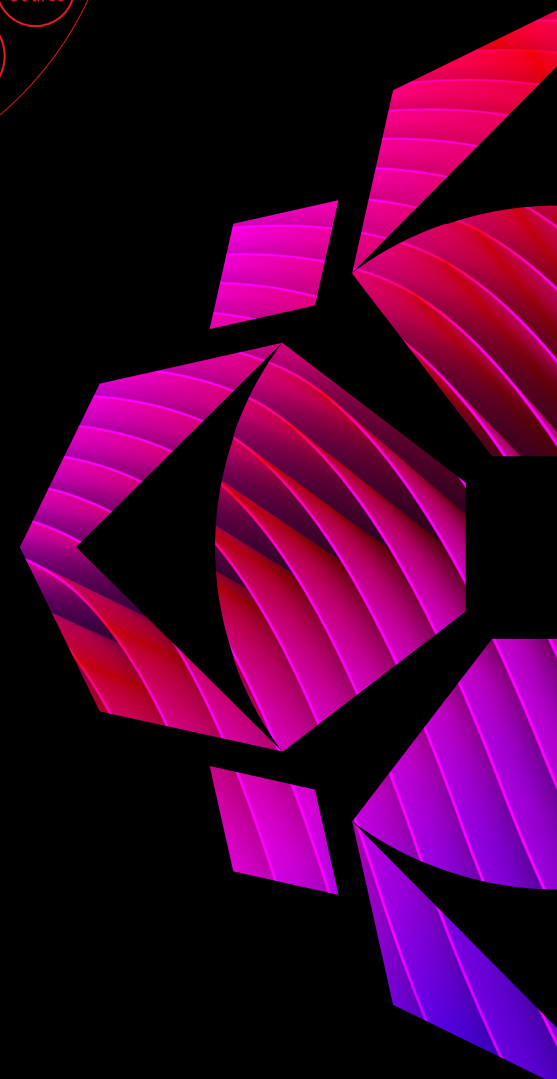
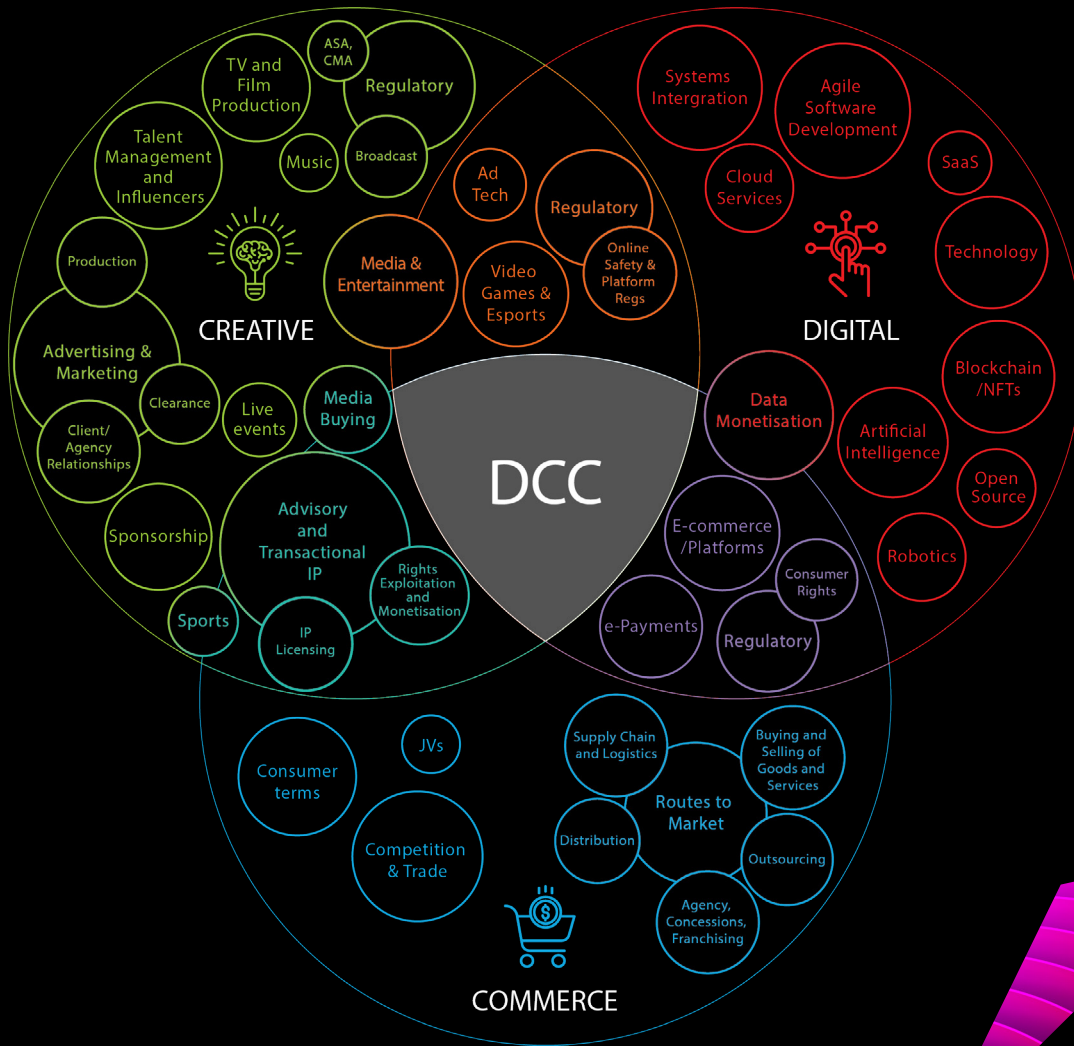
2025

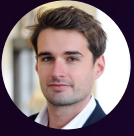
## HFSS Foods

New legislation to tackle HFSS advertising to come into effect  
(2025)

# Digital, Commerce and Creative

This report is brought to you by Lewis Silkin's Digital, Commerce, and Creative team. We offer specialist legal advice on all digital, commerce and creative issues, helping our clients to achieve their objectives. Our expertise includes:





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