

Online Harms – The New GDPR?

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Welcome

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Who We Are And What We Do

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Who We Are And What We Do

- BLM launched Commercial Advisory Team in 2017
- Everything you'd expect from a Commercial Law Firm: Commercial & Residential Property, Planning, Dispute Resolution, Corporate, Commercial, IP, Media, Regulatory & White Collar Crime, Employment, Family & Private Client
- Dedicated expertise in Creative, Digital & Marketing Sector with a relentless commercial focus
- Embedded in the Sector – MPA, Creative Pro-Manchester and Bulletproof Agency Network
- Launch of fully-integrated CD&M Offering in March 2020
- Built on the “Pod” Model – Agency within a Law Firm - designed to meet your changing needs
- New, innovative fixed-price & flexible “on demand” Legal Support Service for Agencies & Senior Teams – BLM Clarity
- Additional Debt Recovery & “Family Matters” Offerings
- Like Amazon Prime for Legal Services (but we don't want to be sued...)
- Clarity Beta Launch – TBC

State Of The (Social) Nation



State Of The (Social) Nation

- Digital 2020 April Global Snapshot – 23/4/20 (Hootsuite, WeAreSocial & Kepios)
- COVID-19 pandemic has impacted every aspect of our lives
- Many changes evident through digital behaviour
- Billions turn to devices and networks to help them cope with Lockdown
- The stricter the Lockdown, the higher rates of use are
- Video Calls have taken centre stage
- Increase in Gaming & E-Sports
- New opportunities for Digital Advertisers
- World Population – 7.77 Billion / Unique Mobile Phone Users – 5.6 Billion (66% Penetration)
4.57 Billion Internet Users (59% Penetration)
- 3.81 Billion Active Social Media Users (49% Penetration)
- Social Media Growth – April 2019 v 2020 – 8.7 increase (304 Million)
- 76% of 16 to 64-year-olds say they're spending more time using Smartphones, with Laptop, Desktop, Tablet & Connected Device usage also increasing
- 57% watching more shows & films via Streaming Services, 47% spending longer on Social Media, 46% spending longer on Messenger Services & 36% spending more time on mobile apps

Regulation – What's The Harm?



ONLINE HARMS WHITE PAPER

Helping make the UK the safest
place in the world to be online

Regulation – What's The Harm?

- The Online Harms White Paper was launched in April 2019 aiming to create a culture of “transparency , trust and accountability”
- New legislation will make companies responsible for their users’ safety online, especially children and other vulnerable groups and for tackling harm caused by content or activity on their services
- Compliance with a new statutory duty of care will be overseen and enforced by an independent regulator
- Consultation closed on 1st July 2019 and the government (now with an unassailable majority) intends to introduce the legislation “as soon as possible in 2020”
- Deals with “harms” not otherwise covered by existing law, including fake news, cyberbullying, sale of illegal goods & material promoting self-harm
- Legislation will apply to “companies that provide services or tools that allow, enable or facilitate users to share or discover user-generated content, or interact with each other online”
- Expect Online Harms Bill soon-ish – “an elaborate fudge”?
- No Govt. commitment to bring to Parliament next year, but insistence it’ll be “soon”
- High-Profile incidents may push back up the agenda to make social safer?

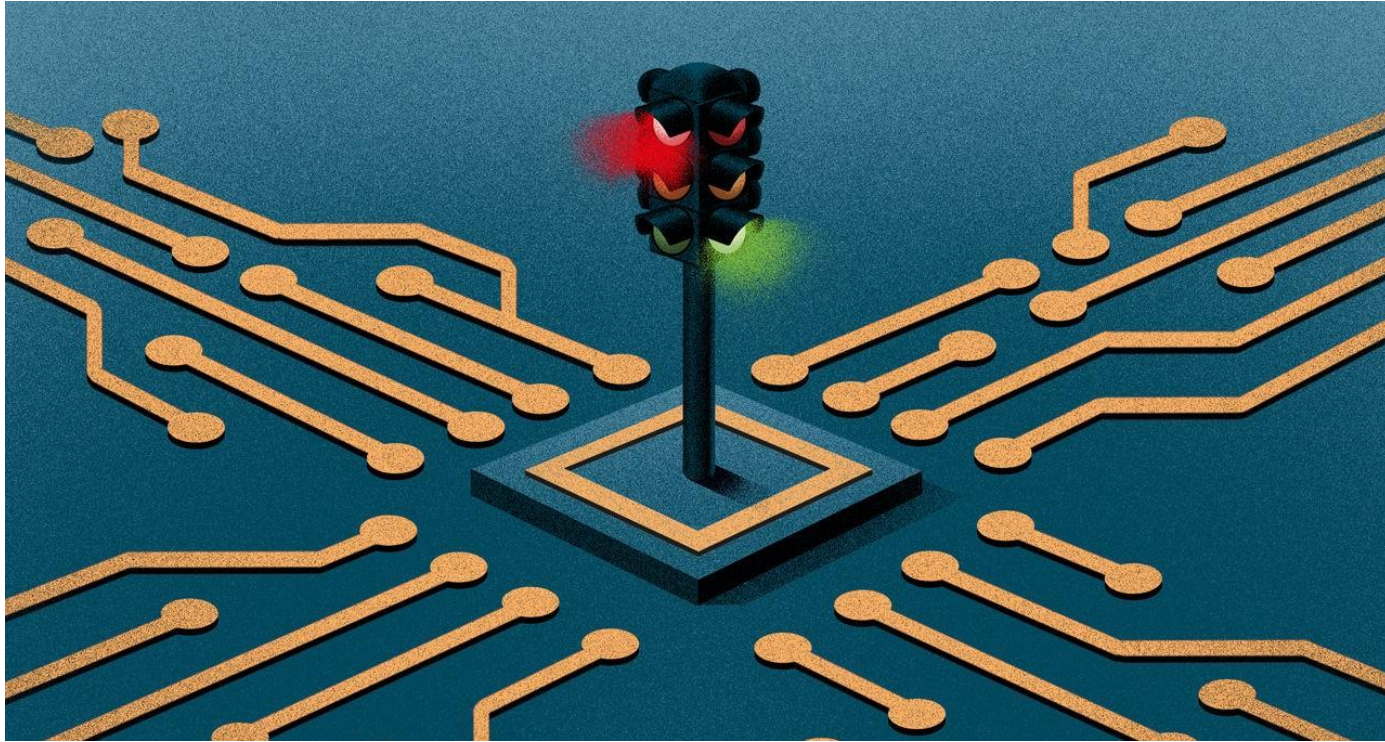
Regulation – What's In Scope?



Regulation – What's In Scope?

- Public largely supports Regulation – Molly Russell/Ask.FM
- New Legislation is intended to address a range of online activities that have grown rapidly and uncontrolledly, sometimes with tragic consequences including:
 - the spread of Terrorist Content
 - Sexting
 - Child Sex Abuse
 - Underage access to Pornography
 - Revenge Pornography
 - Hate Crimes
 - Harassment
 - Sale of Illegal Goods
 - Cyber-Bullying
 - Trolling
 - Fake News and Disinformation
 - Material that advocates Self-harm and Suicide

Regulation – Who Will It Affect & How?



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- Legislation will apply to “Companies that provide Services or Tools that allow, enable or facilitate users to share or discover User-Generated Content, or interact with each other online”
- It will affect a wide range of Companies including Multinationals, Start-Ups, SMEs and Charities
- However, there will be a commitment to “minimise excessive burdens”, particularly on Small Businesses and Civil Society Organisations
- New Statutory Duty of Care “to keep users safe and tackle illegal and harmful activity on their services”
- Legislation is to be enforced by a new Online Harms Regulator: OFCOM
- Compliance to be linked to a risk-based approach (similar to GDPR), proportionate and underpinned by new Codes of Practice to flesh out new requirements
- Regulatory Fines - Similar to GDPR?
- Duty Of Care is likely to give rise to Civil Claims

Regulation – Will It Work?



Regulation –Will It Work?

- White Paper has raised awareness of the “Online Harms” issue and moved it up many businesses’ Risk Registers
- GDPR a useful precedent in terms of Training, Management and the appointment of a “Harm Officer”
- Conversely, application and enforcement in practice is not currently well-defined and difficult to pin down
- Like Cybersecurity, practical yardsticks for minimum best practice will take time to develop and formulate
- How will it be technically enforceable against businesses outside the UK whose content will remain accessible to those whom the legislation seeks to protect?
- Focus on Freedom Of Expression
- “Duty Of Care” not a product of Case Law over a period of years, so imprecise
- OFCOM won’t investigate individual complaints – the right regulator?
- Statutory Appeals Process (rather than Judicial Review)
- Encourages Satellite & Group Litigation?
- Director Liability without involvement in wrongdoing?
- Fines at GDPR scale?

Regulation –Where Should You Start?

- Familiarise yourself with Government Papers & Consultation Response - consider whether you are likely to fall “in scope”
- Build a multi-functional team including Legal, Human Resources, Information, Technology, Compliance and Risk Management and Insurance, consider the implications of being “in scope”
- Consider how this requirement may touch other stakeholders including those in their supply chain and contract terms
- Consider creating a single point of contact with responsibility for dealing with the new regulatory regime – “Harm Officer”
- Consider to what extent your content and activities fall within the scope of the proposed new regime, and whether you wish to continue providing them
- Under the leadership of the organisation’s Data Protection Officer, carry out a risk assessment, similar to a Data Protection Impact Assessment (DPIA), to get a clear idea of which of their activities may cause “online harm”
- Map current insurance cover to identify any gaps in coverage and any coverage which may protect you from future claims relating to “online harm”, as well as clarifying the scope of cover for regulatory fines

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Thank you