

Tech disputes

Spring 2021

Our quarterly round-up of key cases and developments arising in the wide world of tech provides a road-map to highlight issues which may impact your business, short-to-long term.

Key developments

Regulatory framework proposed: Consultation on autonomous vehicles.

The Law Commission and Scottish Law Commission have set out [proposals](#) for a new legal framework for self-driving vehicles in the UK. The proposals would put in place a comprehensive regulatory framework before self-driving vehicles are introduced at scale, and aims to build public confidence in the safety of the technology. The consultation focuses on: the definition of key terms including “self-driving”, “user-in-charge” and “fleet operator”; the process for authorising automated driving systems; possible criminal liabilities for both individuals and businesses; and the collection and storage of vehicle data.

Ofcom report published: The emerging technologies identified as disruptors and influencers.

Covering everything from digitising scent to the use of AI to improve mobile services, Ofcom has published a [report](#) identifying some of the emerging technologies which it believes have the potential to disrupt the communications market in the medium to long-term future. The report is based on Ofcom’s consultation with industry experts in Spring 2020 and forms part of its wider project on emerging technologies. Ofcom hopes that this will help individuals and businesses, and protect from risks which may arise.

Areas of action identified: EU Cybersecurity Strategy adopted.

The Council of the European Union has adopted the new [Cybersecurity Strategy](#) presented by the European Commission. The aim is to increase the EU’s collective resilience against cyber threats. Specific areas of action identified by the Council include the creation of a network of security operation centres in the EU to monitor signals of attacks and the implementation of the EU 5G toolbox measures.

New regulator announced: Tackling concentration of power among the ‘tech giants’.

The Department for Digital, Culture, Media & Sport (DCMS) and the Competition and Markets Authority (CMA) have launched a new [Digital Markets Unit](#) (DMU), a competition regulator which will aim to prevent big tech companies from exploiting their market dominance to crowd out competition and stifle innovation. The DMU will oversee plans to give consumers more choice and control over their data, promote online competition and crack down on unfair practices.

New criminal offences proposed: Consultation on “intimate image abuse” offences.

A [consultation paper](#) on a suite of new criminal offences designed to criminalise “intimate image abuse”, including the creation of deepfake pornography, has been published by the Law Commission. The consultation is focussed on individuals rather than the liability of platforms for the creation and sharing of intimate images, as the UK government is already undertaking policy work in relation to platform liability more generally.

Draft EU AI regulation: The EU has released a proposed draft regulation for AI

The [proposed regulation](#) contains some unprecedented restrictions on the use of AI, including an outright ban on AI used for “indiscriminate surveillance” and a possible ban on AI that breaches EU values of human rights. More broadly, certain high risk AI applications will be subject to additional regulatory requirements. The draft regulation suggests that, like the GDPR, AI regulation may carry heavy penalties – up to 4% of global turnover – for those found to be in breach.

Key cases

Lessons to be learned from a failed digital transformation project (*CIS General Insurance Ltd v IBM United Kingdom Ltd*)

There was no real winner as the Technology and Construction Court [found](#) in favour of the Co-operative Group insurance company in its claim against IBM for its failure to provide a new IT system for its business. CIS contracted IBM to produce the system in 2015, but after a series of delays the project was abandoned with £120 million spent and CIS left with little to show for it. Although the Court found IBM was in breach of the managed services agreement, it awarded CIS only £16 million of the £130 million claimed, having dismissed its claim for wasted expenditure as being equivalent to a claim for “loss of profits, revenue or savings” (albeit expressed by reference to expenditure that had been incurred) and so expressly excluded by the contract.

Uber drivers are not self-employed (*Uber BV and others v Aslam and others*)

The Supreme Court handed down its landmark [judgment](#), upholding the decision of the employment tribunal that Uber drivers were workers and so entitled to statutory entitlements such as the minimum wage and statutory annual leave. The decision focused on the reality of the relationship between Uber and its drivers, rather than the written contracts between them. This judgment will have significant implications for other companies involved in the gig economy.

Clause in settlement agreement protecting IP rights not penal (*Permavent Ltd v Makin*)

The Patents Court [found](#) that provisions in a settlement agreement prohibiting a defendant from challenging a claimant’s entitlement to IP rights were not unenforceable penalty clauses. The court held that although the clauses were “*undoubtedly extremely harsh*” on the defendant, they were proportionate and designed to protect the claimant’s legitimate business interests in circumstances where breach of the relevant provisions could have had “*highly damaging consequences*” for the claimants’ business.

Electronically supplied software deemed ‘sale’ of ‘goods’ (*The Software Incubator Ltd v Computer Associates UK Ltd*)

The Advocate General deemed that the electronic supply of computer software, licensed for an unlimited period in return for a fee payment, constituted the ‘sale’ of ‘goods’ within the meaning of Council Directive 86/653/EEC (the Commercial Agents Directive). The AG’s [opinion](#) will be presented to the Court of Justice and is not legally binding. Nonetheless, the Court’s eventual decision will have implications for software resellers in countries implementing the Commercial Agents Directive.

Refusal to exclude evidence obtained by phishing (*Ras al Khaimah Investment Authority v Azima*)

What do you do with the fruit of a poisoned tree? The Court of Appeal has recently [found](#) confidential emails obtained using a ‘spear phishing’ attack were admissible evidence in a claim for misrepresentation and conspiracy. Read more about the decision in our [recent UpData article](#).



Spotlight on: Digital transformation

The process of digital transformation is as challenging as it is essential. Risks are certain and problems that will cost you time and money are inevitable. But the way legal services have traditionally been offered has contributed, causing delays, or worse, barriers, to digital transformation. Law firms can and should do better. And we will.

By talking to businesses, hosting workshops, and conducting in-depth research, we not only have a sound understanding of the challenges you will face but offer a problem-solving partnership that will enable you to overcome them.

As part of our Accelerate Digital programme, we’ve broken down the digitalisation journey into four stages: Explore, Build, Implement and Protect. Our research identified four areas of specific challenges that can hinder your digital transformation: data, growth, regulation and talent. Each of these areas carries its own risks and challenges, but we have developed solutions for each.

View our [roadmap](#) to find out more, and watch our webinars on demand [here](#) for a closer look at the roadmap.

Keen to find out more?



Online resources available at the click of a button

- **Artificial intelligence: new tech, new legal risks.** In this webinar our speakers discussed current AI trends and the emerging legal issues associated with the use of AI. View the webinar on demand [here](#).
- **The Digital Agenda in the UK and Europe.** In this session our speakers discussed the recently proposed UK and EU regulation of the market aspects of certain digital platforms. Watch the session on demand [here](#).
- **ESG for TMT clients.** Our speakers shared their views and experience on some of the key ESG issues for clients in the TMT sector. Watch the session on demand [here](#).
- **Enforcing contractual obligations in a post-COVID-19 world.** Our panel looked at English law contractual obligations in a post-COVID-19 world, including what to do when negotiating contracts and how to enforce obligations. Watch the webinar on demand [here](#).
- **Virtual deals and disputes: the challenges, solutions & lasting impact.** Our multi-jurisdictional team provided insights into the trends we're seeing, how to conduct deals and disputes most effectively and efficiently and if solutions designed for lockdown will bring lasting changes. View the webinar on demand [here](#).



Related publications

- [UpData](#)
Data risk - the latest news, updates and insight.
- [Gaming and esports download](#)
Interesting issues we've seen in the legal sector and beyond.
- [AI: stay smart](#)
Key regulatory updates relating to AI around the world.
- [Digital download](#)
The latest, need-to-know information, communications and technology updates.
- [FinTech bulletin](#)
Legal and regulatory developments in the UK, EU and internationally.
- [TechNotes](#)
A series of bite-sized articles summarising the legal challenges posed by the disruptive technologies.



Please view any of these updates using the links above, or contact a member of our team to discuss any of the issues highlighted.

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