

RETAIL IN THE DIGITAL ERA FORUM

KEY THEMES, CHALLENGES AND GETTING INVOLVED

OVERVIEW

In the first BRC Legal Community event dedicated to the future of digital retailing, delivered in partnership with Said Business School, attendees heard from a range of academics, industry experts, legal specialists, technology providers and regulators. There was strong agreement about the key themes which need careful attention if retailers are to maximise the success of the rollout of new technology, not least AI, and harness its benefits successfully for consumers. There was also an understanding that any new regulation needs to take into account a proportionate approach for trustworthy businesses.

THE 10 KEY THEMES AND CHALLENGES IDENTIFIED

- 1** The need for regulators and consumers to **understand the true nature of AI and associated digital technologies** – including use of algorithms; machine learning; big data; blockchain etc – and how they are (and could be) used to benefit consumers.
- 2** **Accurate assessment of technological benefit is essential:** Economic hype accompanying the development of a new technology sometimes fails to match the reality. Use of obscure jargon or associated terms can limit the ability of businesses to accurately assess the impact. Digital transformations frequently fail when companies disregard the value of their legacy systems, do not pay sufficient attention to the need for cultural evolution and/or adopt a 'big bang' approach to introducing change.
- 3** **Legislative lag can sometimes be detrimental – but sometimes lead to better regulation and more innovation once the new technology is fully understood:** While rushing to regulate a new technology was not viewed by attendees to be desirable (indeed whether regulating a technology rather than its uses or those who use it was a sensible approach), there was general agreement that the development of legislation over long time scales can mean that the problem being targeted is either no longer relevant or has changed in definition. At the same time, there is a trade off between legislative clarity and certainty. The first step should be to assess whether existing regulations or approaches in fact cover – or can be adapted to cover - the uses of the new technology.
- 4** **Consumers have access to ubiquitous product data:** Smartphone technology means that consumers have constant access to data about price, quality and availability of a given product. The ability to monitor and compare price movements has particular relevance in a legal context as well as having a potential benefit for consumers.
- 5** **Consumer behaviour and reaction to technology is not fixed:** Where use of a given new technology (eg provision of personal or biometric data or facial recognition to track a regular customer) may be viewed as 'creepy' by some, in other cultures, geographies or groups the reaction may be quite different. Similarly attitudes can change over time, as customers become more confident their data is being treated in a trustworthy manner.
- 6** **Consumer trust in new technology and its application is crucial:** For a new technology to achieve its goals it needs to be understood, trusted by and deliver successfully for consumers. Low levels of trust (for example in relation to retailers' ability to handle sensitive data), whether justified or not, can have a material impact on the success of a new product or service and lead to pressure on regulators for new regulation.
- 7** **A seamless digital identity is key:** Ensuring that customers are recognised and responded to effectively, seamlessly and consistently at any of the touchpoints they may have with a company (online, in store, while browsing) is essential to serving them well. However, this requires effective and proportionate authentication and appropriate customer consent mechanisms.



8 Regulators need to be careful when considering marketplaces and small businesses: Creating new or specialised mechanisms for regulating marketplaces can add to the burdens on the SMEs which use them. Regulation itself can become a barrier to entry. New regulation that is essentially targeted at the activities of social media platforms should not automatically cover marketplaces unless their activities are the same as those of the social media platforms. Only undesirable activities should be targeted not the fact that platforms and marketplaces are both online.

9 Understanding the shortfall in colleague knowledge and/or talent is essential: Skills shortages and skills gaps can mean that companies may find it difficult to secure the right people at the right time to develop and implement appropriate technological solutions. It can also be difficult to recruit the right people with the right knowledge at director or board level to take corporate responsibility for how the new technology is used – which is essential for a trustworthy business.

10 Deterrence is less effective than incentive: Compliance and rules-based approaches can have unintended outcomes. Positive incentives frequently work much better. Fines levied on companies sometimes just become part of the cost of doing business to the detriment of an inbuilt ethical approach to business that embodies a genuine desire to act appropriately, legally and ethically.

In the second half of the forum, regulators identified many of the key areas which are currently under consideration including:

1. Utilisation and regulation of AI and Machine Learning (EU proposal pending)
2. Personalised and drip pricing based on detailed individual profiling
3. Marketing and advertising fairly online
4. Digital identity, facial recognition and effective age verification
5. Internet of Things – liability; safety; security; hacking; IP; data collection and ownership; consent; transparency (UK proposals pending)
6. Data ownership by consumers and privacy and transparency
7. Data ownership by businesses and implications for competition and innovation – knowledge is power
8. Online advertising enforcement and scam busting

The BRC is now planning a series of roundtables to explore these and other topics in more depth.

Heading the list will be Internet of Things; AI Regulation; and Competition issues – depending on availability of relevant participants from the regulators.

To express an interest in being kept informed and joining these roundtables contact graham.wynn@brc.org.uk

