



## **Navigating Regulatory Risk**

Specialisms and standards to thrive in a changing environment

Updated: October 20<sup>th</sup> 2023

**Better decisions, faster.**



## Increasing Challenges

### Growing Regulatory Risks

Around the world, we see ever more legislation impacting the digital advertising sector. Covering privacy, consumer rights, competitive markets, and challenges from the rapid rise in AI capability. Regulators are [imposing more considerable fines](#) on a broader range of companies for a greater variety of infractions.

TikTok is [challenging a Euro 345m fine](#) imposed in September by the [Irish Data Protection Commission](#).

The ruling is based on breaches relating to child privacy. The critical issue is that the choice architecture of the registration process prompted child users to keep low privacy settings, potentially enabling unauthorized access to their accounts.



This [OMG POV](#) goes into the detail of the ruling and potential implications for brands. It illustrates the need to avoid [‘dark patterns’](#) that lead consumers to make sub-optimal choices and the need to document the use of sensitive data specifically.

In the US, Amazon has been fined a smaller sum of USD 25m for breaking [child privacy laws in the Alexa app](#). The eCommerce giant is also appealing a long-standing EU fine of Euro 746m. The final judgment will be made in Jan 2024. This [OMG paper on the case](#) details implications and watch out for advertisers.

The case revolves around Amazon’s reliance on ‘legitimate interest’ as a GDPR consent mechanism more valid in commerce than previously judged cases in social and content environments.

It is not just in the digital space that marketers are being fined. The UK ICO recently fined several companies over [GBP 500k for unwanted calls](#) to vulnerable people.

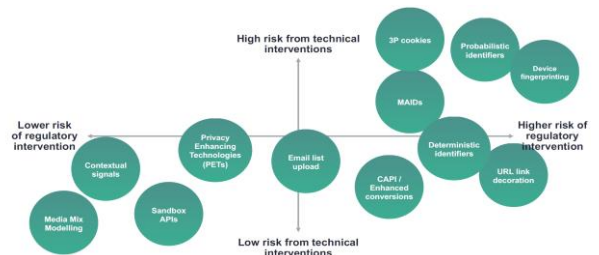
### Privacy Perspectives

Brands must navigate [an increasingly complex and enforced regulatory landscape](#), managing shifting levels of risk exposure by market, activity, audience, and data type. There are tangible and immediate challenges to delivering competitive advantage within market and sector regulations.

Several states now require businesses to [conduct privacy impact assessments](#) in the US. California's [Delete Act](#), signed into law this week, creates a single mechanism for consumers to request to be deleted from all data brokers, profoundly impacting how they process data.

The new [Data Protection and Digital Information Bill](#) in the UK aims to replace legacy EU GDPR rules with fewer business restrictions.

Last week, OMG UK hosted [2023 Privacy Perspectives](#), an all-day event focused on the shifting regulatory and policy landscape alongside guidance and solutions to address the challenges.



A succession of rulings and new legislation have made it increasingly clear that consent will be required for many digital advertising use cases, but the impact will vary significantly.

We are shifting from basic compliance and brand safety to [data ethics](#). New [competition laws](#) mean that much more information is transparent, especially in the walled gardens, making it easier for external parties to scrutinize advertising decisions.

[Data governance](#) is of ever-increasing importance in both complexity and impact. OMG now provides a wide [variety of services](#) to support clients.

These services reduce risk, optimize workflows, and deliver competitive advantage through training, assessments, and consultative practices in data collection, consent management, and data utilization.

**Better decisions, faster.**



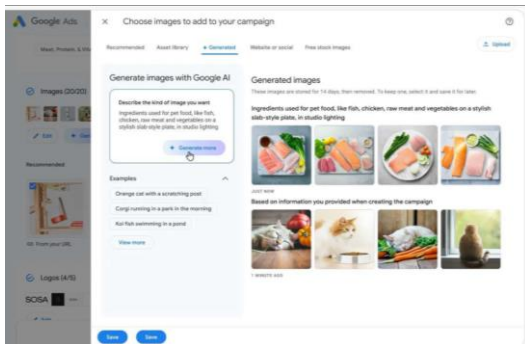
## Immediate AI Risks

A new but fast-growing area of [legislative focus and regulatory risk is AI](#). Media headlines have focused on long-term economic and even existential risks. However, more practical and immediate risks from AI must be dealt with.

There is now an increased understanding of Gen AI's potential to infringe copyright as such new models from [Omnicom partners](#), such as [Adobe Firefly](#), are trained purely on properly licensed content, with enterprise clients [covered by IP indemnities](#).

Using private AI environments addresses concerns about confidentially and data security. Omnicom's partnership with [Microsoft Azure](#) is one of the world's first examples of enabling secure access models such as GPT4.

Advertising tools are getting AI upgrades, and risks are associated with these. Generative AI tools can create and optimize an unlimited number of creative variations.



However, all output still falls under the relevant local [advertising codes of conduct](#) that cover bias, stereotyping, and unsubstantiated claims. Even though it is easy to turn on such systems, procedures must be in place to review output and check for compliance.

We must also be vigilant against biases and errors from [AI decisioning systems](#), such as targeting sensitive data, impacting vulnerable groups, or hallucinating missing information. As well as a range of non-obvious [second-order implications](#).

Generative AI has been in mass culture for less than a year, yet it already has profound effects. We are still some way from trusting the models to work autonomously. Robust structures and standards must be adopted to maximize short-term utility without exposure to significant risk.

## Defining Standards

Well-defined standards must be implemented to manage risk in a dynamic landscape. This enables a common understanding between parties, accelerates learning, and delivers trust in new models.

This week, OMG led with several announcements of new standards in various channels through an expansion to our [long-standing CASA initiative](#).

CASA's objective is to create universal principles to drive better transparency and controls for advertisers. OMG has been working with industry bodies such as the WFA's GARM and the 4As to define a framework of adjacency and audience [controls for advertisers](#) that can be standardized across social media.

| # | Advertiser Right   | Partner Pillar  | CASA-SSP Pillar                     |
|---|--|---|-------------------------------------|
| 1 | Decide where their ads are going to appear   | Adjacency and placement controls  | Granular supply curation            |
| 2 | Determine the audience who sees their ads  | Audience targeting  | Unaltered signals                   |
|   |  |   | Scalability and control             |
| 3 | Know how and where their ads were delivered and who saw them, and how the ad was purchased | Detailed delivery reporting and third-party verification*, and auction transparency | Post-Auction Reporting              |
|   |  |   | Up-to-date auction protocols        |
| 4 | Confidence that they are only paying for impressions served to human beings                | Anti-fraud measures, fraud detection, claw back provisions                          | Individual anti-fraud collaboration |
|   |  |   | Industry anti-fraud collaboration   |

These principles are being applied to a new CASA initiative aiming to better [connect the buy side to six major supply-side platforms](#) to avoid the use of made-for-advertising inventory.

Retail Media is one of the fastest growing channels, growing to USD110bn worldwide. CASA this week introduced a program to determine [incrementality in retail media](#). Standardization will be critical in effectively measuring the impact of investment in retail media and using retail data in channels such as connected TV.

As legislation worldwide restricts the use of some data forms, we will rely more on models to optimize decisions for competitive advantage. These models will need standardized information flows and levels of trust to be most effective.

Many of these themes will be further explored in the next edition of OMG Future Signals this November – registration is [open here](#).



**Jean-Paul Edwards**

OMD Worldwide Managing Director, Product

[jean-paul.edwards@omd.com](mailto:jean-paul.edwards@omd.com)

