

The Online Safety Act 2023 and its Key Implications

A recent development has been the passing of the *Online Safety Act 2023* in the UK, which aims to enhance protections for users online while imposing significant responsibilities on tech companies. This legislation mandates that firms, including companies like Apple and OpenAI, must impose measures against harmful content on their platforms, with OFCOM overseeing compliance. AI tools will be scrutinized by OFCOM, with audiovisual manipulation tools becoming available. Companies with platforms using search tools will be mandated to conduct risk assessments focused on identifying hate speech or content that may be harmful to children being prevalent.

When the Act's key enforcement mechanisms take effect, companies will be required to adopt further comprehensive safety measures, which may involve increased investment in content moderation technologies. OFCOM has been on a hiring spree to strengthen its regulatory apparatus. This revelation is significant as it signals that the watchdog is committed to enforcing the new act's provisions. Non-compliance could lead to fines or operational restrictions, creating challenges for clients operating in the digital space. As firms navigate these new regulations, legal expertise will be imperative in ensuring compliance.

Before the recent general election, OFCOM published a 'roadmap to regulation' which has set out key prospective timelines for implementation of the bill's key provisions, the majority of which are expected to be put in place by 2026.

How this new regulatory regime will process cases is yet to be determined. The OFCOM codes of practices briefly cite a 'comply or explain' basis for enforcement. OFCOM has sought to engage companies and developers through consultations in an effort to allow a flexible transition to the new regulatory regime.

One key issue that has been cited as a preliminary objective for the introduction of the *Online Safety Act 2023* is to strengthen regulations against advertisers. There has been a significant increase in fraudulent advertising in recent years, and this new regulatory regime will compel platforms to draft risk assessments that will be

focused on the vulnerability of consumers being exposed to fraudulent advertising.

A final consideration that must be made is how the government and the judiciary will balance the explicit objectives of this legislation with what is considered to be a fundamental right to free speech. It is cited in the bill that there is a positive duty imposed on platforms regarding users' right to free speech when implementing content moderation measures. The issue of free speech was one that became an area of debate this summer during the riots following the Southport murders. Both the government and the judiciary adopted a narrow view of free speech protections when condemning those who incited hate and violence but were equally met with criticism for infringing the right to free speech by commentators worldwide, most notably Tesla and SpaceX CEO Elon Musk.

In summary, while the government and judiciary come to terms with implementing and enforcing a new regulatory regime, lawyers will be required to advise clients involved in all spheres of the digital realm to put in place measures to satisfy the latest regulatory standards that should be fully put in place by the end of 2026.