

# Regulating the digital economy

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# Headlines

- The **Digital Economy Team** leads scrutiny of the most significant firms in the digital economy, including Facebook, Google, Apple and Amazon. It builds 1:1 relationships with these global firms to influence their approach to data protection, escalating these for supervisory action where required.
- Following the UK's exit from the EU the ICO now has sole jurisdiction over these firms, which was previously the competency of other European data protection authorities under the EU's 'one stop shop' arrangements. We are implementing findings from an ICO-commissioned review of our scrutiny of these firms, to ensure that we can robustly identify and address privacy issues.
- The ICO is not the only regulator of these firms, who are of significant interest to Ofcom (the future online safety regulator) and the Competition and Markets Authority (which is taking on an increased remit for scrutiny of digital markets). Legislation to introduce the new online safety and digital markets regimes is planned for 2022 and has significant interactions with the ICO's remit.
- The need for regulatory cooperation has driven the creation of the Digital Regulation Cooperation Forum, in which the ICO, CMA, Ofcom and the Financial Conduct Authority (FCA) develop shared positions and interventions on issues of mutual interest, such as advertising technologies or child safety online.

## In more detail

### 1. Regulating the digital economy

- 1.1. While the ICO regulates c. 1 million organisations, not all pose the same level of potential risk to UK citizens. The Digital Economy Team scrutinises the data protection practices of those firms presenting the highest risk to UK citizens, with the aim of influencing change through upstream intervention before significant harm occurs.
- 1.2. The team currently holds direct, senior-level relationships with Google (Alphabet), Facebook (Meta), Apple, Amazon, Microsoft, Snap, Twitter and TikTok. It has successfully influenced these firms' practices in priority areas such as transparency, children's privacy and targeted advertising – often prompting changes that have been rolled out not just in the UK, but across the world more generally. A snapshot of current areas of scrutiny for these firms is included below.
- 1.3. While the ICO was part of the EU's 'one-stop-shop' (OSS), these firms would have been subject to primary supervision by the data protection authority where their main establishment was based (e.g. Ireland for Facebook, Luxembourg for Amazon). Following the end of the Brexit transition period in 2021, the ICO now has sole regulatory jurisdiction over these firms. Earlier this year, we commissioned PA Consulting to review our approach to scrutiny of these firms, to ensure that we can robustly identify and address privacy issues.

*Snapshot of current activity to scrutinise key digital economy firms:*

	<b>ICO monitoring activity</b>  <i>Date of most recent activity</i>	<b>Ongoing ICO investigations and regulatory action</b>  <i>Date investigation launched</i>	<b>Concluded ICO investigations</b>  <i>Date investigation concluded</i>
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## 2. Promoting digital competition

- 2.1. The large digital economy firms are not just of interest to the ICO. Around the world, much attention is focused on the market dominance of these firms and the impact this has on consumers.
- 2.2. Privacy and competition harms in digital markets have a common root – the economic characteristics of data. The value of data increases as firms collect and analyse more information, enabling them to optimise services, sell advertising and drive in-house innovation.
- 2.3. Since the advent of the digital age there have been clear commercial incentives for firms to amass and exploit personal information, eroding privacy as a consequence. Uncompetitive digital markets limit consumer choice over where their personal data goes or how it is used, and prevent consumers from exercising genuine consent.
- 2.4. The interests of competition and data protection authorities align. However, close cooperation is needed to avoid competition and privacy objectives being traded off against each other. For example, several firms have introduced pro-privacy measures (such as Google’s Privacy Sandbox or Apple’s App Tracking Transparency tool) in ways that may entrench their dominance.
- 2.5. In recognition of this, the ICO and Competition Markets Authority (CMA) set out a [joint statement](#) in May on how we will work together to regulate digital markets – busting myths about conflicts between the regulatory regimes. For example, competition remedies to promote data sharing can align with data protection law, so long as that sharing is legal, fair and proportionate.
- 2.6. In July, DCMS and the Department for Business, Energy and Industrial Strategy (BEIS) launched a [consultation](#) on the establishment of a new Digital Markets Unit (DMU) within the CMA. If passed, stronger ex-ante powers would make the CMA one of the most significant digital regulators globally and enable it to meaningfully influence privacy outcomes in digital markets.
- 2.7. Under the new regime, the DMU will be able to designate large digital firms as having ‘strategic market status’ (SMS) and set standards for their behaviour through an enforceable a code of conduct centred on principles of (1) fair trading, (2) open choices, and (3) trust and transparency.
- 2.8. The DMU also will be able to undertake pro-competitive interventions for SMS firms, such as mandating interoperability of services and data portability. A stronger merger control regime for SMS firms will automatically refer transactions for review and lower thresholds for blocking acquisitions.
- 2.9. These reforms offer significant opportunities for the ICO but the risk of regulatory overlap and conflict is real. We are working closely with DCMS, BEIS and the CMA to shape the design of the new legislation and its implementation, with the aim of:

- ensuring that changes to firm behaviour introduced by the code of conduct complement the ICO's own ex-ante data protection regulation;
- helping design pro-competitive interventions (e.g. data-sharing) in a way that supports information rights as well as competition outcomes;
- baking privacy considerations into the thresholds and decision-making criteria for merger review; and
- supporting effective collaboration between the ICO and the DMU.

DCMS currently intends to bring forward digital markets legislation in summer 2022 – potentially at the same time as legislating for changes to the data protection regime.

### 3. Upholding online safety

- 3.1. The digital markets regime is not the only digital legislation proposed for 2022. In May, DCMS published its draft Online Safety Bill, which creates a new legal framework for identifying and removing illegal and harmful content from the internet.
- 3.2. As drafted, the Bill applies to providers of user-to-user services – online services which allow users to share user-generated content such as large social media platforms, online market places, online forums and gaming sites – and search services with links to the UK.
- 3.3. Service providers will have responsibilities to monitor the content that is published and shared on their platforms by users, and do something about it if it is illegal or harmful to others. Service providers will be classed into categories according to the level of risk they pose, with the largest social media companies likely to fall into Category 1.
- 3.4. Service providers will have duties to carry out and maintain illegal content risk assessments; to take steps to mitigate and manage risks of harm caused by illegal content; to provide a reporting and redress mechanism for users; and to keep clear and transparent records to evidence compliance. Where the service is likely to be accessed by children, they must also comply with additional duties. Further duties apply to Category 1 providers, including in relation to legal but harmful content.
- 3.5. Ofcom – the communications regulator – has been appointed as the regulator to uphold and enforce the Bill. It will prepare codes of practice for services to follow to comply with their duties. Eligible organisations will be able to make super-complaints to Ofcom in relation to service providers' compliance with their duties. Ofcom will have the power to impose fines of up to 10% of global turnover on service providers that fail to comply with their duty of care.
- 3.6. The interests of privacy and safety regulators align, but some means of upholding users' safety can infringe users' privacy or weaken the security of

their communications. Service providers will have obligations to protect freedom of expression and privacy in carrying out their duty of care.

- 3.7. The ICO will need to work closely with Ofcom on the design of codes of practice that specify how providers should meet their obligations under the Bill. The two regulators will need to forge joint positions on the handling of issues such as anonymous accounts and user ID; age assurance and profiling; algorithmic recommendations; targeted advertising; end-to-end encryption; geolocation; and photo identification. The Joint Committee of Parliament appointed to scrutinise the draft Online Safety Bill has just released its [recommendations](#), accelerating work with an impact on the ICO.
- 3.8. We are working closely with DCMS and Ofcom to shape the design of the new legislation and its implementation. Ofcom already has some powers in this area, with its recently-introduced Video-Sharing Platform regulations requiring providers to protect users from harmful videos. The ICO has worked closely with Ofcom on implementation of this new regime and its relationship to the Age-Appropriate Design Code, with joint stakeholder engagement and communications to explain how the two regimes work together.

#### 4. The Digital Regulation Cooperation Forum

- 4.1. The Digital Regulation Cooperation Forum (DRCF) is a voluntary initiative launched in July 2020 to support cooperation between the CMA, ICO and Ofcom, with the Financial Conduct Authority joining from April 2021. It helps answer the frequent calls for reform of the digital regulatory landscape (e.g. to merge digital regulators; create an oversight body; or hive off certain regulatory functions) from external stakeholders.
- 4.2. A central secretariat oversees the delivery of the DRCF's annual workplan, led by Gill Whitehead as DRCF chief executive. The DRCF is accountable to the chief executives of the four regulators, one of whom acts as rotating chair (currently Melanie Dawes of Ofcom). Day-to-day governance of DRCF is delegated to a sponsor director for each of the four regulators (Stephen Almond for the ICO).
- 4.3. Its [2021-22 workplan](#) commits to six strategic projects, in which two or more regulators work together to develop aligned regulatory positions:

**1. Algorithmic Processing**  
**2. Advertising Technologies**  
**3. End-to-End Encryption**  
**4. Design Frameworks**

**5. Data Protection and Competition Regulation**

**6. Age Appropriate Design Code (AADC) / Video Sharing Platform (VSP) Regulation**

- 4.4. The secretariat also oversees work on:

- **horizon scanning** – with a joint call for views on future technology trends issued in November
  - **communications** – including shared DRCF announcements and work to amplify each regulator’s individual announcements
  - **engagement** – joint events with non-DRCF regulators, industry, parliamentarians and overseas counterparts
  - **capacity and capability** – e.g. co-recruitment initiatives for tech specialists
- 4.5. At its best, the DRCF can unlock new opportunities to achieve the ICO’s objectives through these regulators. For example, the ICO’s collaboration with the CMA to scrutinise Google’s plans to phase out third-party cookies has resulted in binding commitments to privacy being offered to the CMA that go further than what the ICO could achieve alone. DRCF also provides a mechanism to deconflict areas of potential overlap between the ICO and other regulators, as seen in the coordinated implementation of the ICO’s Age Appropriate Design Code and Ofcom’s Video Sharing Platform regulation.
- 4.6. DRCF is a fledgling initiative and work is ongoing to enhance its governance and delivery. The House of Lords’ Communications and Digital Committee has recently recommended that the Digital Regulation Cooperation Forum be renamed the Digital Regulation Board and put on a statutory footing, with an independent chair and non-executive directors and the power to direct all digital regulators (including those beyond the current DRCF) to cooperate. DCMS is considering how to respond to this latest proposal for reform.

## Your first 100 days

- 5.1. We will work with you to identify opportunities for you to articulate your views on digital regulatory cooperation. Scheduled announcements include:
- Finalisation of Google’s commitments to the CMA on development of its Privacy Sandbox in **January**.
  - Publication of DRCF reports on algorithmic processing and end-to-end encryption in **February** and **March**
  - Introduction to Parliament of the final Online Safety Bill in **March** (TBC)

## Your key stakeholders

- 6.1. Key stakeholders for the Digital Economy Team include:
- **Major technology firms** – Facebook (Meta), Google (Alphabet), Apple, Amazon, Microsoft, Twitter, Snap and TikTok
  - **Ofcom** – Chief Executive: Dame Melanie Dawes DCB
  - **Competition and Markets Authority (CMA)** – Chief Executive: Dr Andrea Coscelli CBE



- **Financial Conduct Authority (FCA)** – Chief Executive: Nikhil Rathi
- **Digital Regulation Cooperation Forum** – Chief Executive: Gill Whitehead
- **Government** – primarily DCMS, but also the Home Office (on online safety) and Department for Business, Energy and Industrial Strategy (on competition)

6.2. Your office is developing a programme of stakeholder engagement for your first days in post. We recommend early meetings with Melanie, Andrea, Nikhil and Gill.

## Your team



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