

What Next?

The Communications Industry after Brexit

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Although the leave vote seems to have happened a long time ago, uncertainty remains. The lengthy timescale for the UK's departure from the European Union, and our inability to know how negotiations will pan out, have resulted in a fair degree of confusion in the communications world.

It was only a handful of years ago that the global recession and the rise of digital and other disciplines sent the industry into a period of self-analysis and, ultimately, of great change: could we be about to see the same again?

In this note, we look at the likely development of the law following Brexit, and the effect this will have on the communications industry.

Regulatory rules

This is a potentially comforting place to start. The laws relating to advertising, for example, are long-established and unlikely to be affected greatly. The CAP Code, which is the rulebook for non-broadcast advertising, is now in its 12th edition, and is administered at national level by the Advertising Standards Authority. It is difficult to see much change here.

The laws regulating the way in which businesses may communicate on social media with consumers are underpinned by EU law, but it is hard to imagine that there will be a strong appetite for watering down consumer protection, especially since many of these laws relate to observing fairness and not falsely appearing to be a consumer.

In general, our regulatory stance on what can be communicated tends to be led by prevailing standards in society (to borrow a phrase from the CAP Code) on matters such as privacy, the way in which we treat vulnerable members of society, and the need for fairness and transparency. For this reason, we may not see great upheaval.

Data protection

With communication comes data: vast quantities of it, in fact. And in this area, there is less certainty.

In the UK we are currently bound by the Data Protection Act 1998, which derives from an EU directive. This Act requires organisations to observe eight principles with regard to the protection of personal data, and has particularly stringent obligations for the protection of what the Act terms "sensitive personal data". Data protection in the UK is administered by the Information Commissioner's Office, which can hand out fines and other sanctions in the event of non-compliance.

In May 2018, data protection law in the EU will be overhauled by the introduction of the General Data Protection Regulation ("GDPR"). This will, among other things, increase the size of fines that may be levied against businesses that fail in their obligations. As a Regulation, it will be directly applicable, meaning that it does not require national legislation in order to be enacted.

Given the timescale for an exit, it looks as though the UK will be subject to the GDPR, at least for a while. After that, it seems fair to speculate that since the UK will want to continue to do business in Europe, it will be willing to remain subject to the GDPR or something very similar, but for now we don't know for certain what the future holds.

Contracts

In the communications world, the contract is the backbone of the client-agency relationship. Whether it's the Master Services Agreement governing all the work, or a celebrity agreement relating to a specific element, the contract is the last word and so is frequently turned to – often, it must be said, when times are difficult.

As we draw near to Brexit, what will clients see when they look at the contract? Will the force majeure clause, allowing suspension (and often termination) where factors outside a party's control arise, be invoked – and, if so, could an unfavourable Brexit outcome fall within the definition and therefore allow an easy termination?

Communications businesses should review their precedent contracts, and consider adding something to disallow immediate termination in the event of an unfavourable withdrawal from the EU. At the same time, clauses dealing with territory should be assessed to see whether, post-Brexit, they still meet requirements.

Clients

Brexit presents both a challenge and an opportunity for communications businesses by creating uncertainty for their clients. For example, will consumer clients see new laws being introduced that affect them? Will clients in the financial sector need to prepare for a softened regulatory regime, or even a shift in the UK's pre-eminent position as a global financial centre?

Then there are the big players. Will global clients have to change the way in which they do business in the UK? There will almost inevitably be taxation consequences to the UK's departure from the EU, and so communications businesses should begin to get a feel for what their larger clients' structures could look like in a couple of years' time.

Whatever the outcome of the UK's negotiations, businesses will have to adapt to the altered terrain, and part of the way in which they will demonstrate their ability to do so will be through messaging.

For these reasons, it is hard to envisage anything more than tinkering in the short term, but businesses should be vigilant. The current position, put broadly, is that employees have a lot of rights but a hurdle in enforcing them due to the existence (since 2013) of tribunal fees. If, post-Brexit, rights are diminished, there could be disharmony in the workplace and a reduced incentive to work hard. Conversely, if the government in power when Brexit takes place chooses to abolish or greatly reduce tribunal fees (perhaps to demonstrate that the UK is not becoming anti-worker in the absence of EU supervision), businesses may face unrest and increased costs.

Employees

Few sectors are as reliant on staff as the communications industry: they contain the classic "people businesses", in which pay, holiday allowance and promotion prospects generally outstrip the national average, often by some distance.

It's tempting to speculate that little will change. Many employment rights are rooted in national law; with those that derive from the EU, we often gold-plate them by providing more than the minimum. And many employment laws, of course, follow current social norms on matters such as discrimination.

Conclusion

The communications industry has changed greatly over recent years. Brexit may kick-start further developments, but businesses should be open to them. The industry has always embraced the new: the next few years will give it an opportunity to adapt again and, no doubt, to prosper.



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