LEWIS SILKIN

The AdLaw Insights Podcast with Brinsley & Geraint: Mid-year review - Agentic AI, social media bans, pricing enforcement and Cannes Lions 2026

Geraint Lloyd-Taylor

Hello and welcome to our podcast. It's Geraint and Brinsley. We're back. It's been a few months since our last podcast, but we are here with various updates of things that have happened in the first half, I guess, of 2026. We're going to cover stuff including agentic AI, social media bans, updates on pricing claims, updates on ASA type procedural developments that you might need to be aware of that are mildly more interesting than they sound I hope, Brinsley.

Brinsley Dresden

No, actually they're as dull as they sound.

Geraint Lloyd-Taylor

Okay, great. We'll gloss over them quite quickly. Yes, lots and lots of developments. And we're freshly back from Cannes, which explains my shirt. I just wanted to get that in there. Yes. I don't normally wear this shirt to the office, but...

Brinsley Dresden

Thank God for that. Yeah. But also you're disappointingly not wearing your Cannes shorts.

Geraint Lloyd-Taylor

No. Well, you'll never know under the table here. Nobody will know. Either way. Yes. Could be in my speedos. Who knows? Excellent. Let's dive in. Let's dive in and start talking AI. It was impossible to miss AI at Cannes, and there's been some developments when it comes to agentic AI. So why don't you tell us about those to kick us off?

Brinsley Dresden

Yes, so the agentic AI is obviously a slightly different topic from the one which has been dominating everybody's thoughts for the last couple of years. And the really important thing that happened was the publication of this paper, The Future of Agentic AI and some CMA guidance about what companies need to bear in mind when they're going to use agentic AI, which just for the avoidance of doubt is when really when consumers log into a website and the agentic tool will help them navigate the way through, for example, a purchasing journey. This is much more than this the sort of automated tools

that we're used to. This is actually something which is making decisions for you and driving you in a particular direction. But that then gives rise to all kinds of problems because there is the potential for the agent to act in a way which is not consistent with consumer protection law. And it could, for example, put people under undue pressure or mislead people about prices or availability, all sorts of potential risks that really are so probably in some ways no different from the risks you could have if you had poorly trained humans manning your helplines and your phones. But this is really when you're using AI to do that instead. And the basic rule is that you need to train well, first of all, you need to disclose to consumers that you're using agentic AI. Then you also need to train your agentic AI to only do things in the way which are consistent with consumer protection law and particularly with the DMCCA. But you also need to monitor it and make sure that it isn't going off on a frolic of its own, which would be inconsistent with the legal position. So there are all sorts of risks that need to be met. Reading the paper, I thought what was interesting was that essentially it's saying the same thing which the ASA keeps saying, which is that don't think that if the wheels come off and there's a problem that you can just say, well, sorry, it's not our fault. It's the AI what done it and I think the CMA and the ASA will very much take the view of well you're responsible for it just in the same way you would be responsible for a member of staff. So you've got to make sure you're getting it right. And provided you do that, then there are all sorts of opportunities. The other interesting thing, outside of the sort of the narrow, fairly obvious, I suppose, consumer protection risks, are the collusion risks where different AI agents might collude to, for example, massage prices upwards. And perhaps try and encourage people to spend more money than actually they would really need to. So it's the brave new world. It's the brave new, slightly scary world. And we will obviously see, I think, a high expectation from the regulators that you need to be in control of what your agentic tools are doing. Yeah.

Geraint Lloyd-Taylor

I think it's the beginning of the dawn of the age of agentic, isn't it really, so we haven't seen the full remit of what it's going to do, but that's preparing for some of the potential consequences, I suppose. Excellent. Staying in the digital world, in a sense, I just wanted to mention also that there's a social media ban for under-16s that's coming in soon. I had to say that the current Prime Minister, Keir Starmer, brought this about.

Brinsley Dresden

At the time of recording.

Geraint Lloyd-Taylor

The revolving door of prime ministers that we've had for the last few years. This week's prime minister. So I assume this is still on track, but in terms of timing, it looks like the legislation is meant to come in and be introduced just by Christmas with this sort of ban coming into force in spring 2027. I don't know whether that's still the case, but I assume it is. I think the surprising thing about this ban is that it doesn't just touch on this sort of social media platforms you might think of immediately like Snapchat and TikTok and Instagram and Facebook and X, but also YouTube is going to be covered as well, which is sort of surprising. There are so many children on their iPads watching endless clips of YouTube that sometimes people don't think of it as a social media platform in the same sense, but it is, of course.

Geraint Lloyd-Taylor

Brinsley Dresden

Well I think the problem with YouTube is when you say watching endless clips, I don't think that's the problem. The problem is the word endless, and the way in which people can get sucked into spending way too long staring at their screen, just watching video after video. Sometimes quite long form videos and sometimes, frankly, really educational, interesting, informative videos. But even still it's the addictive nature of it. Which I think is problematic. I have been struck by this. There seems to be government on the long-established principle of something must be done. And the default position of the UK government often seems to be, well, let's ban it. Because actually doing something proportionate and effective is just too difficult. So they take the sledgehammer approach. And I gather that in Australia they've found obviously, famously the Australians rolled out their ban in December last year. Apparently now 61% of Australian under sixteens are still accessing the banned platforms through various workarounds. And you know, I knew when I was 16, smoking and particularly well, smoking and drinking, but particularly smoking was wildly attractive because it was illegal or banned, or we weren't supposed to do it. By the time you get to 30, you think God, how did I ever get into smoking cigarettes? This is disgusting. And you quite quickly give up. So I do worry that by banning it, you're just making it actually to the average sixteen year old that much more attractive and they'll...

Geraint Lloyd-Taylor

And they find crazy ways to get around these things. But there was widespread support, apparently. There was a study that the government did, a consultation called Growing Up in the Online World, 116,000 responses, and 9 in 10 parents backed the ban, apparently. So, it was a bit self-selecting, aren't they, these sorts of responses.

Brinsley Dresden

Yes, I mean not that, you know, we don't mean to imply that the market research industry isn't always absolutely spot on, but you know I did wonder about quite the reliability of that. I thought what was more interesting was this quote from Amnesty International, who I suppose I found interesting because I would have thought, I would have expected Amnesty to be people saying, yes, social media is challenging harmful, this is a really good thing.

Geraint Lloyd-Taylor

I did, I did.

Brinsley Dresden

And in fact, what they said, it's the right diagnosis, but it's the wrong prescription. So, and their point is that the issue isn't so much that children can exist and access social media, but that the platforms are unsafe by design. And that's the real mischief. And it does seem it's quite a thing. When you take a step back as well, you think, God imagine a world in which a government would say, right, well, we're banning the under sixteen from watching television. Or listening to the radio, or going to the cinema, or reading newspapers. So you do kind of think, it's superficially attractive and clearly we're all aware of these very all sorts of tragic things that have happened as a result of social media. But at the same time, I'm just not sure this is going to be an effective solution or that it's the right solution.

Geraint Lloyd-Taylor

It feels like a simplistic solution to a complex and nuanced problem, doesn't it? But there we are. We're going to have to grapple with that. And of course, it has an impact on advertisers who are trying to reach the under 16s and have been able to do that by YouTube and other platforms potentially in various ways over recent years. So I think there's going to be pressure to find different ways of reaching young audiences, even if technically the rules around reaching those young audiences are quite strict anyway.

Brinsley Dresden

Yes. Well and just sort of a final observation on that is of course, you know, the ban on the rolling bans over the last twenty five years or so on advertising food to children has basically killed the market for the creation of children's television. So these things do have a knock on effect. Yeah.

Geraint Lloyd-Taylor

Interesting. Okay, let's move on to this massively interesting ASA procedural update and let's keep it as brief as we can, given that it sounds as dull as ditch water.

Brinsley Dresden

Disappointed by your uncharacteristically un-nerdy approach to this fascinating topic. Life too short. I did talk to Guy Parker about this when we were in Cannes. Classic name drop there, in case you didn't catch it. And even Guy didn't seem to think it was very interesting. But I think it is quite interesting. There you go. So a couple of things that stood out. One is this fact that they are they've written into the rules that they're going to disclose the complainant identity in certain circumstances. I mean, I think they do. Well, of course, we know when they do do it. So we know, for example, our friends at Free Cities, their name almost always appears where they are the complainant. What we don't know are the occasions when the ASA are agree not to disclose an identity for some reason, nor where they where the people just lie about who they are. I've certainly been involved in some investigations in the very recent past, where people with skin in the game, who are not necessarily directly competitors, but who do have a sort of commercial interest in the outcome, have tried to keep their heads down about

who they are. So I think that is quite significant. Another, I think a slightly odd provision is this idea that the ASA will give a provisional view about the likely outcome.

Geraint Lloyd-Taylor

Doesn't seem right somehow, does it?

Brinsley Dresden

No. I mean it grates to me as an idea of kind of fairness, legal fairness.

Geraint Lloyd-Taylor

I think lawyers will wince at this. It's a bit like a judge giving you a wink during a trial. It's just such an odd thing. I don't know what you're supposed to do with the information. If they indicate, we're probably going to uphold, do you double down and give them even more arguments and more substantiation and just worry more? If they indicate that they're not going to uphold, probably. Do you ease up? And then what if they change their minds later? I mean, it's just such an odd and pointless indication.

Brinsley Dresden

I mean, we know that quite, you know, quite sensibly, the ASA triage the complaints that they get. So they've always gone through a process anyway. And I think if they think there's nothing in it, then they won't have picked it up in the first place. And then we know that if they do pick it up, you get sometimes they will offer you an informal resolution as an alternative, sometimes they won't. That I think is a bit of an indication of how they're approaching it. But if they give you this provisional view in initial correspondence, is that then going to be linked to an offer of an informal resolution? Are they gonna say, well, look, you might want to cop a plea because if this goes to council, ultimately we think they'll uphold it.

Geraint Lloyd-Taylor

It's slightly odd. We'll have to see how that actually sort of unfolds in real life as it were. Let's see where that goes. Any other updates? Independent review filter.

Brinsley Dresden

Yes, well we have this new independent reviewer now who is in place. The old independent reviewer, sadly, Sir Hayden Phillips sadly passed away a few months ago. He was a very distinguished civil servant in his time. But he'd been doing the job a long time. So we'll have to see now whether the new incumbent changes things. This idea that they again I think in some respect these changes are actually they're kind of codifying things, which in practice they've been doing for quite some time. So it says now that the independent reviewer can decline a review even if it meets the threshold, if she then now

thinks that the outcome wouldn't be substantially different. Well, I've kind of had that message before back in the day from Sir Hayden, where he'd say, Well, yes, maybe there was a substantial particularly a substantial procedural flaw, but frankly, even if it had all been done correct, I think the outcome would have been the same and therefore there is just no point. But it's probably a good thing that that's been now memorialized in the rules.

Geraint Lloyd-Taylor

Yes, I suppose the only impact it'll have though is there'll be even fewer successful independent reviews of decisions. I mean, it's already a vanishingly small proportion of applications that are successful or accepted in the first place and then it's successful and then result in a sort of reversal of the decision because sometimes the ASA can just tweak the rationale, for example, which I suppose is what this is getting at.

Brinsley Dresden

Yes. And this is, I mean, one I think we've always said to clients, you need to front load your defense because frankly, once it gets to the point where the executive is drafting a recommendation that says a complaint will be upheld, as it becomes more and more and more difficult to change, you know, to turn the tanker around and achieve a not upheld outcome, you can do it, you can go to the independent or the Industry Advisory Panel, you can do your submission to council, you can try and persuade council not to follow the recommendation, but nine times out of ten they will. And if independent review is going to be even more difficult than it already was, as you say, it was already vanishingly difficult, you've got to make sure that you leave no stone unturned with that initial response. There's also actually a new provision in the rules about late evidence. Which is another reason I think why you have to front load. Don't think, well, we'll hold this back and we'll just submit it later if we need to, because there's now an increasing risk that they'll just turn around and say, Well, you must have had this evidence before, you should have submitted it and you didn't, so we're not going to look at it now. Yeah.

Geraint Lloyd-Taylor

So there. Maybe you managed to spice it up, maybe that's what's going on. Okay, let's move on to cosmetics claims. There have been some developments there, haven't there? Do you want to tell us about those?

Brinsley Dresden

Yes. Very interestingly, the ASA published three decisions about a month ago concerning L'Oreal, Beiersdorf and one well, one one skin. And there were really rules about claims that something is clinically proven when effectively actually they were more they there were sensory claims really. They were more claims about consumer use based on consumer use test data rather than clinical data. And I had noticed, and I've been speaking to clients about the way in which increasingly advertisers seemed to be using the phrase clinically proven, when actually what they meant was, you know, nine out of ten cats said that, well, owners said their cats preferred it. And so what these three cases, and there was a fourth case as well about BeautyPie, what these cases seem to do is really the ASA not creating new rules or new policy, but actually just kind of resetting the dial and going back to where we were traditionally, which was basically if you want to claim that your product is clinically proven, then you must have clinical substantiation for it, not simply consumer use test data.

Geraint Lloyd-Taylor

Yes, and in particular there were a couple of examples clinically proven to reduce wrinkles in four weeks. Adding appearance of is always a sort of useful bit of leverage. But it was a cumulative claim as well, so over four weeks. And so the ASA said in relation to cumulative claims in its guidance note, it hasn't seen any evidence of any successful cumulative effect that is a genuine cumulative effect for cosmetics products. Went as far as to say that, which is bold. Which is why you have to sort of rely less on clinical data because it's hardly ever going to come up to snuff and more on sort of consumer perception, but make clear that that's what it's based on, I suppose.

Brinsley Dresden

Yes, yes. I think actually just as a segue as well from our previous conversation about the the guidance the new procedural rules, I was a bit suspicious about these complaints. They supposedly came from consumers, but they were all very similar in nature. It seems a little bit implausible that unconnected consumers, independently of each other, decided to register these complaints about very similar kinds of issues about clinically proven claims all at the same time. And it's I struggle to avoid the conclusion that some advertiser somewhere had been picked up by the ASA. Because people are, you know, perfectly reasonable in doing, they say, well, hang on a minute. You know, half the market is doing this. So why are you allowing them to get away with it? The ASA in those circumstances will say, well, if you see things you think break the rules, you should put in a complaint. And so they do. Whether they do it as it were, transparently, having first engaged the competitor complaint process or whether they just sort of masquerade as consumers and go in, who knows.

Geraint Lloyd-Taylor

Yes. Okay. So that's a little bit of an update on cosmetic claims. Another really important area where there has been an update over the last few months is around pricing claims. And more broadly, the CMA, the Competition and Markets Authority has been very active in enforcing the new DMCC Act, which has all to do with consumer law. Before that all came about, before this new law came about,

there was a particular case that we've been monitoring, the Emma Sleep, Emma Mattress case, that touched on a few of the issues that are really relevant to the new law, but actually were decided under the old law. So that's been trundling along. There's been an update that I can bring you. So Emma Sleep had been found to have broken consumer law through doing some sort of some practices that the CMA considered misleading. So one of them was around using countdown timers that were false, so the countdown timer would just reset. Another one was around high demand messaging and deceptive discount claims. So when it came to the high demand claims, there's an example that was given of a claim that an item on their website had been viewed 6,500 odd times or 400 odd times in 24 hours, but they'd only sold a handful of those units. I think it was sort of half a dozen units or seven units were sold. So you create this massive impression that lots and lots of people are viewing it. You better act fast if you want to buy the actual mattress. But there are plenty in stock and there's a false sense of urgency. They were actually, they admitted that that would be suboptimal and they won't do it again. So that part of the claim was settled and actually Emma Sleep gave binding court enforceable undertakings to stop those practices. But at the same time, there's another development that's been going on which is in fact, in some ways more interesting and more important for people, it's around the was now pricing or what we call reference pricing. So you claim something was £100, now £50, what are the rules around that? And the CMA has been really pressing them on that issue. The case went to trial in June, 2026 and so we are waiting for the outcome of that. We're in between the outcome of the trial and the actual judgment being handed down. So we don't know what the judgment is just yet at the time of recording, but we will obviously provide an update when there is one. But the main point of issue is that the CMA wants you to not just have the genuine usual price of the item proven by having it on sale at that price for a good amount of time. They want you to sell only twice as many at the discounted price as you did at the high price. So you can sell 10 mattresses at the usual price, and then you can sell 20 at the discount price, but then you've got to stop making the claim was X, now Y on the basis that if you're selling so many at the discounted price, that becomes the usual new price of the product. So it's a slightly difficult point. Yes, exactly. So if you sell it for a year or three months at a particular price, then you can discount it for up to three months. Yes. And then after that, again, you have to stop making the claim. But both of these things exist at the same time. So there's the volume requirement and the duration requirement at the same time. It's not one or the other. Yes. Which is going to cause difficulty for people if the court actually sides with the CMA on this.

Brinsley Dresden

Yes.

Temporal element as well, isn't there?

Brinsley Dresden

And clients, I've spoken I think it depends a little bit on the nature of your business, but for some businesses, just that kind of monitoring is quite a big challenge.

Geraint Lloyd-Taylor

A huge challenge. Yes, online retailers sell thousands of products and prices actually fluctuate quite a lot. So establishing that genuine usual price is also very, very difficult. And we've seen a few rulings

from the ASA around Black Friday deals. That is a time of the year where these sorts of claims do come into difficulty. And partly it's because you do sell many thousands of a product during these drastic sales, end of line sales, whatever they might be. And it doesn't, I don't think anybody has been particularly complaining, feeling harmed by this over many, many years. But the CMA has decided that it's a harmful practice that it wants to stamp out. So anyway, we'll bring you an update on that when we've got one. And just to say that, you know, the CMA has been issuing fines in recent months as well. Under the DMCC Act, the CMA has the power to issue fines of up to 10% of annual global turnover for breaches of these rules around misleading claims. And other rules around pricing. For example, if you don't put in the cost of delivery or if you add some sort of per transaction fee that you haven't told people about in advance, you can end up with a fine. And the AA driving school was fined 4.2 million pounds in April, 2026 for that precise practice of drip pricing, adding a sort of three pound transaction fee at the end of the transaction. And then they had to refund many thousands of customers that amount as well without the customer having to do anything. So that was a fine of 760,000 or cost of 760,000 in terms of reimbursing people. And the more recent case we've had is StubHub have also been found guilty of the same practice essentially by the CMA and fined about £900,000 in their case. And it's important because these are fines that are quite large, but they are actually discounted because these companies have settled early with the CMA. So they've had a discount to 40%. So they could have been larger fines. And as part of that settlement, they've had to agree not to appeal. So there won't be appeals that come out of those cases, which is a neat thing for the CMA to add as a condition to settling these things early and for less.

Brinsley Dresden

Yes, absolutely. And one thing that I, you know, with the new powers under the DMCCA, there was this notion that finally the CMA was going to have these kind of muscular powers. And I think it's quite interesting. I noticed that the Australian federal court had also had sort of fined or imposed penalties of fifteen million Aussie dollars on Emma Sleep over similar issues very recently in April this year. I believe I'm right in saying that 15 million Aussie dollars is about seven and a half million pounds. I think it's roughly two to one. So, you know, within the same ballpark of what the CMA are now doing, can contrast that. If you go back a few years ago now, maybe 10 or 15 years, I do remember when Reckitt Benckiser got into trouble for claims about Nurofen and claiming that there were different kinds of Nurofen for different kinds of pain when in fact they were all identical. And in the UK, all that they got was an upheld ASA complaint and some reputational damage, and if you like, the you know, the metaphorical slap on the wrist. Whereas in Australia, they were fined, I think, something like a million and a half Australian dollars, plus they then had a class action to contend with. So it does feel as though now the UK regulator is getting the kind of powers that the Australian regulators had, that the American regulators had. And this is, you know, we are really now seeing these, as you've mentioned, StubHub and the AA and there are others in the system already. It's been transformative.

Geraint Lloyd-Taylor

Yeah, it really has. It does put us on a sort of level playing field with those sorts of regulators. Let's say a final few words on Cannes, because we were there last week for Cannes Lions and haven't changed as it were, I must say. But it was a very hot Cannes, lots of rosé was consumed. But what were the sort of takeaway messages to you. What did you come away reflecting on?

Brinsley Dresden

Change your shirt soon.

Brinsley Dresden

Well, we you and I were engaging with lots of bodies like the European Advertising Standards Alliance, the International Advertising Association, International Council for Advertising Standards, it's a bit alphabet soup. So we were chatting a lot with regulators and industry bodies like that. And I think the thing that came out is the importance of self-regulation, the fact that self-regulation does protect and in fact, encourage creativity and that on the creative side of the business, people should embrace the fact that self-regulation is better than the alternative, which isn't the complete freedom to do whatever you like. It would be more statute, it would be more, you know, social media bans and that kind of thing. And everybody really does have a responsibility to try and reinforce and strengthen the self regulatory regime, because in the end that's our best bulwark against sort of further regulation, which does seem to be creeping in around the world. There's lots of pressures to impose ever tighter legal restrictions. So if you want to avoid that, it's incumbent upon you to play the game and beef up self regulation.

Geraint Lloyd-Taylor

Including in areas, sustainability came up as an issue. Not just banning fossil fuel companies from advertising, but actually anything that uses a lot of fossil fuels or has a large impact on the environment is being mooted, touted, floated in some countries. So yes, it's really important that I think the self-regulatory systems work as they seem to work. But also they need to work in an AI world. So we've got agentic AI on the sort of horizon, let's say, but we're deep into AI generated ads already. And a lot of the conversation there was around maintaining trust, as well as obviously the separate conversations around protecting creative industries. But maintaining trust, deep fakes and labeling came up as a topic. And obviously in the EU, there's the EU AI Act that's coming into effect in August, which requires labeling. So people will need to do a bit of an audit on their AI-generated ads and ads that have a large degree of AI generation or sort of augmentation around them. They need to really look at whether that labeling requirement applies to them. The UK has been slower as well as changing prime ministers. I think we've been slow to get on top of this. But in the meantime, it's slightly uncertain in the UK whether we're going to follow the EU when it comes to this sort of labeling of everything. It doesn't look like that's the trend that we're sort of following, but we still in the UK have to think about whether AI generated content is misleading because of the AI element and then maybe labeling might be necessary. But we won't get too far into that labeling discussion for now. Any other final thoughts on Cannes before we wrap up?

Brinsley Dresden

The most interesting conversation I had was with I bumped into a friend on the plane flying back and he's a very senior figure in the kind of media buying and planning world. And what we were chatting about whilst we waited for our bags at City Airport, which seemed to take forever, was the impact he's seeing of AI on media planning and how now you know, careers like the one that he's had are probably no longer going to be available to the next generation because so much of this work now is just being

done using AI. So massive changes commercially for the industry as well as from a regulatory point of view, which is probably what you and I think about much more, but the commercial impact obviously is going to be huge.

Geraint Lloyd-Taylor

Yes, and it's here to stay, but it's very hard to predict in three months, six months, 12 months what else is going to disrupt all of this, whether data centers become such an issue, whether the use of AI becomes so expensive, it becomes prohibitive, and people have to use it in smarter ways. There's all sorts of potential ways this could go.

Brinsley Dresden

Well I and I think looking forward, the next edition of this podcast will probably be presented by the AI Deepfake, Geraint and AI Deepfake Brinsley, and it'll just all be AI generated and you and I can go back to Cannes put our feet up.

Geraint Lloyd-Taylor

Excellent. On that happy note, I think we can draw a line there. Do remember to check out our adlaw.lewissilkin.com parcel page where we publish a lot of updates on everything we've been talking about today, ASA rulings, legal developments, consumer law updates, pricing developments, all sorts of useful stuff on there. And get in touch with us if you want to discuss anything or if you want to explore any of these topics any deeper.

Brinsley Dresden

Yes, get in touch on LinkedIn or send us an email, give us your feedback about the podcast and anything that you'd like us to cover off perhaps in a future edition before we hand over the reins to our AI deep fake friends.

Geraint Lloyd-Taylor

They'll be much better at this than we are. Thank you very much for joining us, see you next time. Thank you.

Brinsley Dresden

Bye bye.