

Ready to comply

From Microsoft versus the FTC to child protection rulings, how **legislative changes** will shape the year ahead

This year could be a watershed moment for the videogame industry, as issues that have been rumbling along for far too long, including concerns over data privacy, online safety and loot boxes, look set to come to a head. “We’re going to start seeing a lot more implementation of legislation that’s been talked about,” says **Anna Poulter-Jones**, an associate in the Computer Games and Digital Media groups at law firm Sheridans. “We’re going to be seeing more of this actually coming into play and impacting companies.”

There’s a sense that the videogame industry has largely managed to avoid intense scrutiny from regulators over the years but now, according to **Peter Lewin**, senior associate at law firm Wiggin, all eyes are firmly fixed in its direction. “You’ve got the CMA [Competition and Markets Authority] in the UK looking at the platforms and looking at the Activision Blizzard stuff. You’ve got the data-protection authorities like the ICO [Information Commissioner’s Office] in the UK and the FTC [Federal Trade Commission] in the US. You’ve got advertising and marketing regulators like the ASA [Advertising Standards Authority],” Lewin says. “The games industry has been under the radar, I think, for legislators and regulators for surprisingly long – and now, just because of how big games are getting, they’re being spoken about in the same breath as tech companies and social media companies.”

The biggest regulatory issue currently facing the industry is undoubtedly Microsoft’s \$68.7 billion takeover of

OPT ME OUT
Alex Tutty thinks games will have to start being designed from the ground up with privacy concerns in mind, which means collecting only essential data from users. “Regulatory bodies, if they come knocking on the door – and they do come knocking at the door for a number of clients – ask questions like, ‘Have you considered the impact of the data collection?’ ‘Does it need to have this?’ And if it doesn’t, you’re in breach.” As requirements get stricter with the wave of new legislation, Tutty thinks we’ll see more options to opt in to the likes of voice communications and data tracking rather than them being on by default, as well as the ability to delete or change your personal data that is held.



Anna Poulter-Jones, associate in the Computer Games and Digital Media Groups, Sheridans

Activision Blizzard. The FTC issued a lawsuit in December in an attempt to block the deal, citing its potential to harm competition in the market, and the hearing is due to take place in August. But either party could appeal whatever decision is made, meaning any kind of resolution could still be a long way off.

There’s also the problem that the deal still has to be approved in other markets across the world. **Julian Ward**, head of games at the UK law firm Lee & Thompson, thinks that “both the UK and the European Union will be influenced in some shape or form by what happens in the US with the FTC,” but notes that the EU has hinted that it has received a lot of negative responses to the takeover from its survey of developers.

Then again, the deal has been approved in Chile, “and it’s likely that South America is going to move in that direction as well,” he says. If the deal ends up being approved in some countries but not in others, it would be “a real pickle, legally, in terms of which legal entities and corporate entities are allowed to exist within certain territories, and whether or not there are restrictions and separations of the companies.” Whatever happens, he reckons it’s likely that legal negotiations over the deal will drag on into 2024.

David Hoppe, founder and managing partner of the tech-focused legal firm Gamma Law, thinks there are three possible ways in which some kind of

resolution could be reached within the next year. One would be a settlement between the FTC and Microsoft, although he argues that this is unlikely. “It’s hard for me to see what Microsoft could offer as a concession that they’ve not already offered,” he says, adding that at the start of January, the FTC said it was not engaged in any significant discussions with Microsoft about a possible settlement. Another way would be for the losing party to accept whatever decision is made at the hearing in August, without appealing. And the third way is for

Microsoft to cancel the takeover altogether.

“From my perspective, that’s probably the most likely outcome here,” Hoppe says. Ward points out that the deal is already a massive drain on the company. “Microsoft obviously has very deep pockets, but just the cost in terms of money, in terms of

time, in terms of resources: it’s a big burden upon Microsoft to deal with this challenge.” He adds that the longer Microsoft pursues the deal, the bigger the termination fee it would have to pay should it decide to abandon the takeover. That fee, stipulated in the merger agreement, started off at \$2 billion. At the time of writing, it was set to rise to \$2.5 billion on January 18; after April 18, it will increase to \$3 billion. If Microsoft wants to cut its losses and run, it would make financial sense to do it sooner rather than later. “It will be interesting to see whether Microsoft is

“Both the UK and the EU will be influenced in some form by what happens in the US with the FTC”