

# What's in store for 2015?

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# 1. Copycat packaging

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- **April 2014** saw a BIS call for evidence regarding the enforcement of Consumer Protection from Unfair Trading Regulations 2008 (CPRs) as they apply to copycat packaging
  - **Issue:**
    - CPRs prohibit '*marketing of a product (including comparative advertising) which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor*' (Reg 5(3)(a))
    - '*Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not*' is unfair (Para 13, Schedule 1)
    - **However, there's currently no right for competitors to enforce this** (though the EU Directive does potentially allow for this, and the issue was also considered when CPRs were first introduced)
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# 1. Copycat packaging

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- **What are the main issues being consulted on?**
  - any problems with current enforcement regime (by the CMA etc)
  - the scale of actual consumer detriment
  - how it works in other EU states (e.g. in Ireland businesses can generally enforce the equivalent of the CPRs)
  - cost/benefit of giving competitors this right
  - how it would actually work (both legally and practically)
- **What can we expect in 2015?**
  - consultation outcome (was due in September 2014)
  - proposed (and actual) amendments to the CPRs?



## 2. Consumer Rights Act 2015

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- **Overview:**

- "Streamlines" 8 pieces of UK consumer legislation
- Key elements: Digital content, services, goods and unfair contract terms



## 2. Consumer Rights Act 2015

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- **What are the key advertising issues?**
  - *the mandatory 'satisfactory quality' standard for goods and digital content can in certain cases be judged by reference to 'any public statement made in advertising or labelling'*
  - Will give consumers a potential contractual claim for breaches of advertising statements/claims
- **What can we expect in 2015?**
  - Consumer Rights Act 2015 due to come into force on 1 October 2015

## 3. Vidal-Hall & others v Google Inc.

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- **What happened?**

- Google cookies create a detailed profile of a user's browsing habits circumventing Apple's Safari security settings
  - The claimants claim Google misused their private information and acted in breach of confidence and/or in breach of its statutory duties under the DPA
  - In Jan 2014, the claimants sought permission to serve their claim form on Google Inc. in California
  - Google applied to the High Court for an order declaring the English court has no jurisdiction to try these claims
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### 3. Vidal-Hall & others v Google Inc.

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- **What did the court decide?**
    - the misuse of private information is a tortious claim
    - "damage" required does not have to be significant physical or economic harm - damages for distress were recoverable in a claim for misuse of private information
    - the definition of personal data could include online behavioural data
  - **What can we expect in 2015?**
    - full trial?
    - binding judicial decision on preliminary issues?
  - **And what might this mean for the future of programmatic advertising?**
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## 4. Unlimited fines for CPR breaches?

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- **Background**

- the Government's view is that **removing the maximum level of fines (currently £5,000)** that magistrates can hand down on summary conviction would be an effective way of deterring and punishing crime
- there are two currently tabled pieces of legislation that would start the process of implementing this:
  - The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Standard Scale of Fines for Summary Offences) Order 2014
  - The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Disapplication of Section 85(1), fines Expressed as Proportions and Consequential Amendments) Regulations 2014.





## 4. Unlimited fines for CPR breaches?

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- **What would this mean?**

- for statutes where the maximum summary fine is currently £5,000  
fines would instead be unlimited
- this includes the CPRs and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

- **What can we expect in 2015?**

- the draft legislation was placed before Parliament in draft form on the 9th June 2014, but is yet to go through the required 'affirmative procedure'
- adopted and in force in 2015?



## 5. Consumer Dispute Resolution

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- **Background**

- the Government has published its response to the consultation on implementing:
  - the Alternative Dispute Resolution for Consumer Disputes Directive (2013/11/EU) (**ADR Directive**)
  - the Online Dispute Resolution for Consumer Disputes Regulation (524/2013) (**ODR Regulation**)
- A key underlying rationale behind both is that around 1/3 of consumer complaints remain unresolved (around 2 million in 2012)
- **Under the ADR Directive**, the Government's principle obligation is to ensure that domestic and cross-border ADR provided by a certified ADR body is available for all B2C EU contractual disputes (but it's not mandatory to use ADR)
- **Under the ODR Regulations**, all online businesses will have to provide information about, and a link to, the Commission's 'ODR platform'.

## 5. Consumer Dispute Resolution

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- **What are the key issues?**
  - all businesses selling to consumers will be required to give details of an approved ADR provider
  - all online retailers will be required to provide a link to the Commission's 'ODR Platform'
  
- **What can we expect in 2015/16?**
  - the ADR Directive has to be transposed by **9 July 2015**
  - the ODR Regulation fully comes into force on **9 January 2016**



## 6. Pricing Practices Guide review

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- **Background**

- Guide recommends a set of **good practices** to traders in giving consumers information about prices in various situations
  - Latest edition issued by BIS in 2010
  - In February 2014, Trading Standards Institute issued a **call for evidence** on whether or not the current Pricing Practices Guide should be reviewed
  - Exercise was part of TSI's new remit of delivering on most aspects of business education under the authority of the Consumer Protection Partnership
  - TSI received 62 responses from a broad range of individuals and organisations.
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## 6. Pricing Practices Guide review

- **What are the key advertising issues?**

- Hot topic as seen with "The 'Promotional' Price is Right" CAP guidance issued on 30 July 2014
- A significant number of respondents to TSA call for evidence felt:
  1. that the Guide failed to promote fair trading practices – recommendations only and not mandatory
  2. The Guide can only address a limited number of scenarios and will always lag behind innovative pricing practices
- Advertising Standards Authority provided ideas for **sector guidance** (for online advertising, hotels, telecommunications, tickets and letting agents)

- **What can we expect in 2015?**

- **TSI consultation** with government followed by public consultation regarding TSI's revision proposals
- **A revised version of the Pricing Practices Guide** - which could incorporate: (a) further principles based guidance; (b) modernising due to increasing use of e-Commerce; and (c) recent OFT studies and actions

## 7. Northern Ireland gambling laws

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- **Background:**

- In Northern Ireland gambling (other than the National Lottery) is regulated under the **Betting, Gaming, Lotteries & Amusements (NI) Order 1985**
  - The 1985 Order is modelled on previous laws which Great Britain repealed and replaced with the Gambling Act 2005
  - In early 2011, a **public consultation** was undertaken by the Department of Social Development in Northern Ireland to seek views on possible changes to the current gambling laws
  - Following the public consultation Minister Nelson McCausland announced in January 2013 that gambling laws would be updated and improved
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## 7. Northern Ireland gambling laws

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- **What are the key advertising issues?**
    - Residents of Northern Ireland will be able to participate in promotional prize draws
    - Some restrictions on advertising will be lifted (currently there is a blanket prohibition on all gambling advertising)
  - **What can we expect in 2015?**
    - Understood that draft legislation would be put forward to Northern Ireland's Assembly before the **May 2015 elections**
    - Could we see the **removal of the requirement for free entry routes** for purchase-linked promotions to reflect the position in the rest of the UK?
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## 8. Changes to lotteries laws for charities

- **Background:**

- Lotteries are illegal unless they fall into one of the eight categories of permitted lottery set out in the **Gambling Act 2005**
- Government felt certain rules could be simplified to make it easier for voluntary groups and commercial organisations to raise money for charity
- The DCMS launched a **consultation** on proposals to lift restrictions on incidental non-commercial lotteries – so they could be held at commercial events, and so private lotteries (private society, work and residents' lotteries) would be permitted to raise money for charities and good causes without restriction
- Responses were received by the DCMS in April 2014



## 8. Changes to lotteries laws for charities

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- **What are the key issues?**
    - The DCMS confirmed it will **go ahead with all of its proposals**
    - It will not permit **work lotteries** to be held on a **multi-site basis** as this would enable large companies with sites located nationwide to run work lotteries that would overlap with small society lotteries
  - **What can we expect in 2015?**
    - The government said it will introduce the changes via an appropriate legislative vehicle
    - **No timescale** given
    - Followed by revised **Gambling Commission guidance**
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## 9. Nuisance calls investigations

- **Background:**

- The DCMS is **currently consulting** on proposals to lower or remove the threshold for consumer harm, to enable ICO to bring enforcement action against those responsible for unsolicited direct marketing calls and SMS text messages
- Currently, before issuing an MPN of up to £500,000, ICO must be satisfied there is a serious contravention of the Privacy and Electronic Communications Regulations 2003 which is likely to cause **substantial damage or substantial distress**
- The deadline for responses is **7 December 2014**
- The DCMS asked Which? to convene a **task force** to look at consent and lead generation issues in the context of nuisance calls

## 9. Nuisance calls investigations

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- **What are the key advertising issues?**

- In 2013 ICO received 161,720 concerns about nuisance calls and texts, and the TPS received over 2000 complaints in September alone

- **What can we expect in 2015?**

- Life will become more difficult for those involved in 'nuisance calls'
  - 2003 Regulations amendments:
    - Lower the threshold to "annoyance, inconvenience or anxiety"?
    - Remove the existing legal threshold altogether to simplify the 2003 Regulations and provide greater flexibility to ICO?
  - ICO to review its **Guidance on the 2003 Regulations** with a view to publishing a revised 2015 version
  - Government implementing some of the Which? TaskForce recommendations:
    - Draft recommendations were presented to the All Party Parliamentary Group on 14 October
    - Recommendations due to be published on **8 December 2014**
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## 10. 2015 Rugby World Cup laws?

- **Background:**

- For the London 2012 Olympic Games and Paralympic Games, and the Glasgow 2014 Commonwealth Games, new legislation was implemented to satisfy the demands of the International Olympic Committee and the Commonwealth Games Federation
- The London Olympic Games and Paralympic Games Act 2006 introduced strict advertising regulations, created 'event zones' within which unauthorised trade was prohibited and introduced a 'black list' of words with Olympic connotations
- The same will not happen for the Rugby World Cup 2015 - **existing laws** will be used to combat any ambush marketing.

## 10. 2015 Rugby World Cup laws?

- **What are the key advertising issues?**
  - Be mindful of registered **trade mark** rights
  - Given their high profile, the events' trade marks may also qualify as marks with "**a reputation**" so benefit from wider rights where a use of the marks takes unfair advantage of, or is detrimental to, them
  - Watch out for other IP rights such as **copyright** in mascots and logos
  - Passing off actions could be used to deter unauthorised associations
  - **What can we expect for 2015?**
  - **No special legislation or regulations** have been introduced in respect of the English 2015 Rugby World Cup ... yet?

# Further questions?

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