

Holistic AI E-Book

The State of Global AI Regulations in 2023

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Holistic AI

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KEY TAKEAWAYS

- The AI market is set to grow by 19.6% each year and reach \$500 billion this year.
- With the ubiquitous adoption of AI across industry there has also been a similarly paced regulatory focus.
- Looking at the EU, US, China, and UK this publication sheds light on current approaches to AI regulation around the world, while providing high-level breakdowns of what to watch for in 2023.

What to watch for in 2023



European Union

The groundwork will be laid for the EU AI Act to hopefully take effect in the next 2 years, promoting a risk management framework to be prepared in tandem with the DMA & DSA.



United States

How regulatory bodies and case law lead the pack in targeting companies that intentionally use bad data, and dark patterns and proliferate algorithmic discrimination.



China

Focusing on the implications of digital services, attempting to delve into the complexity of recommender systems, black box technology and enforce it's deepfake regulation.



UK

Its sectorial approach to the regulation of AI will continue, pushing for innovation while considering transparency and consumer protection.

INTRODUCTION

2022 signalled a strong year for artificial intelligence (AI) and what is to come. The end was marked by the introduction of [ChatGPT](#) and within the first weeks of 2023, Microsoft has been in talks to [invest \\$10 billion](#) into the parent company, OpenAI. This would accelerate the already fast-moving adoption of AI across industry, bringing ChatGPT into daily used tools such as Microsoft Suite. This is an echo of projections that the global revenue of the AI market is **set to grow by 19.6%** each year and **reach \$500 billion** this year. With the ubiquitous proliferation of AI, there has also been a similarly paced regulatory focus.

The momentum of 2022, which saw the general approach to the [EU AI Act](#) adopted in December, the publishing of the United States (US) [AI Bill of Rights](#) in October, the [UK's AI Regulation Policy Paper](#) in July, and the enforcement of China's Algorithmic Recommendation Management Provisions in March, has set a strong precedent of what is to come.

This year, 2023, the groundwork will be laid for the EU AI Act to take effect within the next two years, prompting the establishment of risk management frameworks. In the United States, the focus will be on how regulatory bodies and case law lead the pack in targeting companies that proliferate algorithmic discrimination or intentionally use bad data, and dark patterns.

There may also be contention between understanding where AI is being regulated in silo (EU AI Act) and how it is also being regulated through other pieces of legislation, both existing laws and those that have recently come into effect (i.e., the [Digital Services Act](#) and the [Digital Markets Act](#)).

Lastly, whereas China was once the [inspiration](#) for EU lawmakers to prohibit social scoring by algorithmic systems in the EU AI Act, the Asian powerhouse is now silently leading the AI regulatory playbook, and 2023 might see others borrowing from their precedent.

Looking at the four global leaders in the AI regulatory eco-system, this publication sheds light on current approaches to regulation, while providing high-level breakdowns of what to watch for in 2023 and commenting on what this means for AI governance going forward.

THE EUROPEAN UNION

Across the Americas and Europe, the European Union (EU) has been leading regulatory activities in this space with a focus on a [risk management](#) approach, precipitating the implications that will come following the mass adoption of AI. With the EU AI Act now in parliament, it is expected to pass and come into force by 2024 and become the global standard. However, the EU's regulation of AI does not stop there; AI technologies are also implicated in both the Digital Markets Act (DMA) and Digital Services Act (DSA), which will require algorithmic transparency in the form of independent and third-party audits. This section will give a high-level summary of these three pieces of legislation, highlighting key timelines for 2023 and discussing their anticipated impact on what is to come.

At a glance

● The EU AI Act

First proposed by the European Commission in April 2021, the AI Act is the EU's proposed law to regulate the development and use of AI systems, with stringent requirements for 'high-risk' AI systems, including those used in human resources (HR), banking, and education. Once adopted, it will be the first law worldwide that regulates the development and use of AI in a comprehensive way. The AI Act is set to be the "GDPR for AI," with hefty penalties for non-compliance, extra-territorial scope, and a broad set of mandatory requirements for organisations which develop and deploy AI. Any enterprise operating in or selling into Europe should be aware of the wide-ranging implications of the Act and take steps to ensure readiness with its provisions.

The regulation uses a [risk-based approach](#), where systems are [classed](#) as having low or minimal risk, limited risk, high risk, or unacceptable risk. Low-risk systems include spam filters or AI-enabled video games and comprise most of the systems currently being used on the market.

High-risk systems are ones that can have a significant impact on the life chances of a user and are subject to specific requirements. High-risk systems include those used in:

- Biometrics
- Critical infrastructure
- Education and vocational training
- Employment, workers management and access to self-employment

- Access to and enjoyment of essential private services and essential public services and benefits
- Health and life insurance

Systems with unacceptable risk are those that manipulate behaviour in a way that may result in physical or psychological harm, exploit the vulnerabilities of groups, or are used for social scoring by governments and private actors.

The [latest and final compromise text of the EU AI Act](#) (adopted 6 December 2022) marks the EU ministers' official greenlight to adopt a general approach to the AI Act. As the member states have adopted the general approach, the European Council will now enter negotiations with the European Parliament. Parliament will adopt their position, and an agreement is expected.

The absolute deadline for an agreement is February 2024 due to the European Parliament elections and the appointment of the new European Commission in May 2024. Thus, the beginning of 2023 is anticipated to be dominated by the Members of the European Parliament (MEPs) and Council of Ministers (EU member state governments) negotiating their respective positions. In addition, the European Commission has requested that the European standards organizations (CEN/CENELEC) develop technical standards for AI Act compliance in parallel with the legislative process.

The Commission requested that the standards be completed by the time the Act is adopted, at least in 2024. This is unusual as standards are usually developed after a law is adopted, demonstrating the urgency with which the Commission is treating the AI Act.

This year, the EU AI Act will continue to lead discourse surrounding what to expect as the global standard for AI regulation, with a focus on the governance of the high-risk systems categories.

● The Digital Markets Act

Referred to as a landmark piece of legislation, the Digital Markets Act (DMA) strives to [reduce the bottlenecks](#) that so-called gatekeepers create by monopolising the digital economy. Here, gatekeepers are defined as providers of core platform services:

- Online intermediation services
- Online search engines
- Online social networking services
- Video-sharing platform services
- Number-independent interpersonal communication services
- Operating systems
- Cloud computing services
- Advertising services
- Web browsers
- Virtual assistants

Providers of these services fall under the scope of the legislation if they meet these objective criteria:

1. Are of a size that impacts the internal market.
2. Have the control of an important gateway for business users towards final consumers.
3. Are in an entrenched and durable position.

The designation of gatekeepers is based on the presumption that they meet the above criteria; however, companies are given the opportunity to provide evidence and arguments that speak to potential extenuating circumstances. Meaning that companies can argue that they should not be designated as gatekeepers despite meeting the criteria. Conversely, the EU Commission can also launch its own market investigation using a qualitative assessment to deem a company a gatekeeper even if the outlined criteria or threshold are not met, extending the scope of the legislation even further.



Leaving no room to avoid transparency, under Article 15 companies must perform an independent audit about the profiling methods of customers used across any of the core platform service(s) and send this to the European Commission. The DMA refers to the [GDPR](#) regarding defining and understanding the profiling methods in question, where Article 4, defines profiling as:

‘any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyze or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location or movements.’

The adoption of this definition by the DMA further exemplifies the EU Commission’s commitment towards the protection of natural persons with respect to the processing of their data. Consequently, companies should pay attention to this definition as it is likely this will serve as the broad basis for the obligated independent audits.

While the DMA begins to apply on 2 May 2023, companies will have until June/ July 2023 to notify the commission of their qualification as a gatekeeper. Gatekeepers will then be officially designated around August/September 2023, and the DMA will become fully enforced from February/March 2024.



● The Digital Services Act

The Digital Services Act (DSA) is a lengthy (300 pages) and horizontal (cross-sector) piece of [legislation](#) with composite rules and legal obligations for technology companies. Notably, there is a focus on social media, user-oriented communities, and online services with an advertising-driven business model. One of the central goals of the Digital Services Act is to put an end to the [self-regulation of tech companies](#) and force them to be more transparent, particularly in the realm of algorithmic accountability and content moderation. To do so, the DSA includes clear responsibilities for the EU and member states to enforce these rules and obligations.

The Digital Services Act applies to host services, marketplaces, and online platforms that offer services in the EU, regardless of their place of establishment. Therefore, the effect of the Act and the expectation to comply will be felt globally.

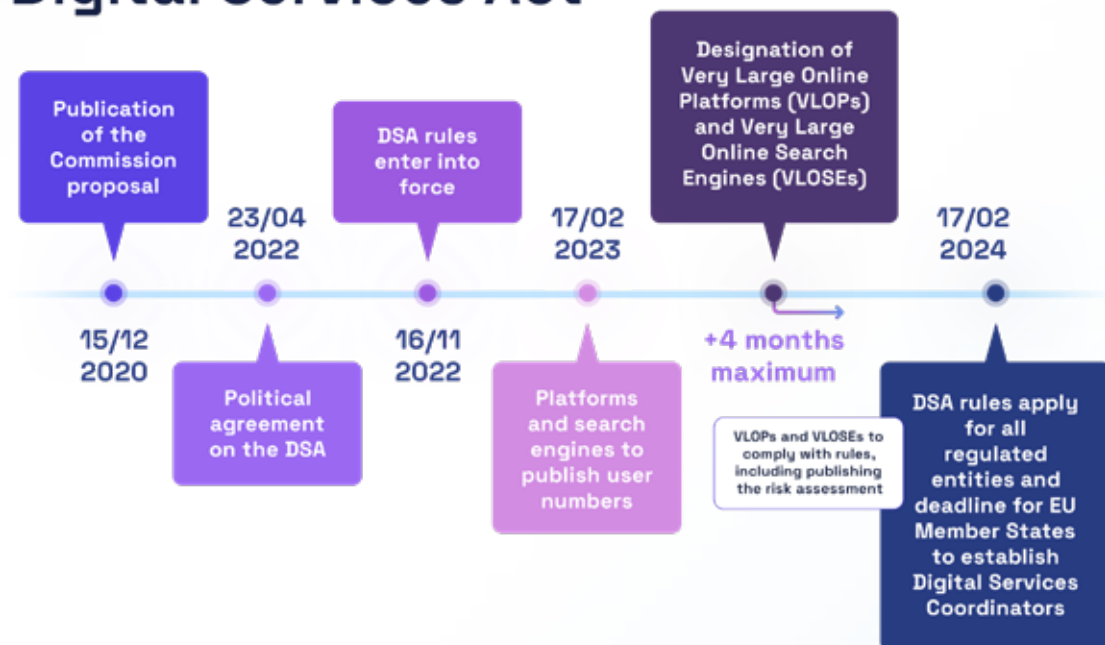
There is a specific focus on Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs), where VLOPs have been defined as platforms that have over **45 million** average monthly users in the EU.

A risk governance approach underpins the [EU Digital Services Act](#). It pertains to regulated responsibilities to address systemic issues such as disinformation, hoaxes and manipulation during pandemics, harm to vulnerable groups and other emerging societal harms. These issues are categorised as online harm/harmful content in the legislation and are governed by Articles 26, 27 and 28.



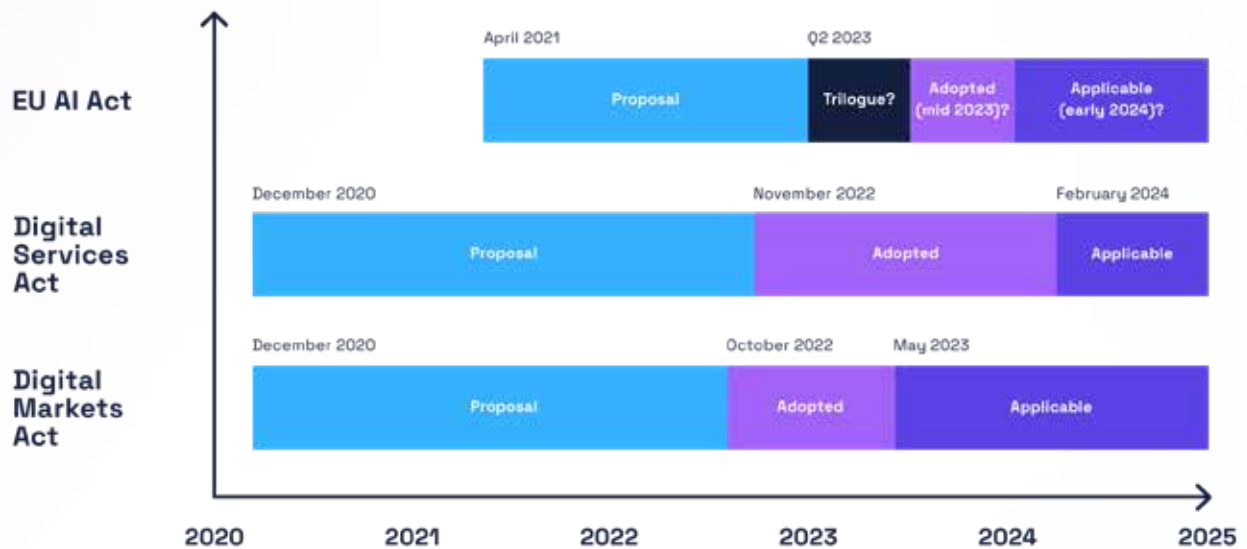
The Digital Services Act came into effect on 16 November 2022, and digital service providers now have three months to publish their number of active users – 17 February 2023. As per Article 93, the new rules will become applicable from 17 February 2024. VLOPs and VLOSEs would have to be ready to comply four months earlier – November 2023.

Timeline for Digital Services Act



What is next: the three-pronged approach

Although the EU AI Act is leading the discourse and preparation surrounding regulating algorithms and artificial intelligence in business and organisational practices, this may be considered a short-sighted approach. Nevertheless, the collective impact of the EU AI Act, the DMA and the DSA is likely to be significant. The three pieces of robust legislation will work in tandem to ensure companies are not misusing AI or leveraging innovative technology unchecked to (knowingly or unknowingly) promote harm whilst also standardising a risk management approach in AI governance. While each of the legislation's underpinned by different goals and enforcement mechanisms, transparency is a central theme that cannot be ignored. In reflection, each piece of legislation mandates that companies and organisations that meet specific criteria conduct independent audits, conformity assessments and/or third-party audits to comply and avoid the potential of unprecedented fines.



Overall, the EU is wasting no time in becoming the global leader in the regulation of AI, promoting AI governance through a risk management framework. However, the promotion of AI and AI innovation should not be mistaken as missing. In reality, the EU has positioned itself to safeguard against the potential harms of AI whilst allowing companies to test their technologies in real-world unsupervised [regulatory sandboxes](#) under certain conditions. Allowing for real-world test-cases highlights the importance the Commission is putting on checks and balances.

THE UNITED STATES

Setting a solid precedent for 2023, 2022 marked the 117th Congress as the most AI-focused Congress in history. From all three levels of government and other bodies, the United States has been demonstrating their commitment to making AI safer through aspirational endeavours and concrete legislation to guide efforts and regulate AI. As a result, 2023 may see a significant shift in focus from the more voluntary and aspirational measures to those heavier in enforcement by regulators such as the Federal Trade Commission (FTC) and more high-profile cases regarding algorithms. This section will outline national-level efforts and the precedent they set before moving to the role of bodies such as NIST and the FTC to be the major players to set standards in this space before discussing what may come next.

At a glance

● The US AI Bill of Rights

In 2022, the White House published a Blueprint for an [AI Bill of Rights](#) to guide the design, deployment, and development of AI systems. The Blueprint is nonbinding and relies on designers, developers and deployers to voluntarily apply the framework to protect US Americans from the harms that can result from the use of AI. The agenda adopts five principles to address these concerns:

- **Safe and effective systems** – steps to ensure that users are protected against unsafe and ineffective systems, including adherence to standards and ongoing monitoring.
- **Algorithmic discrimination protection** – proactive and continuous action should be taken to prevent algorithms from unfairly discriminating against particular groups by protecting against the use of proxy variables and ensuring that datasets are representative.
- **Data privacy** – there should be built-in protection against abusive data practices, and users should have agency over how their data is used.
- **Notice and explanation** – informing users that an automated system is being used and how and why it will impact relevant outcomes.
- **Human alternatives, consideration, and fallback** – users should be able to opt-out of automated systems and receive support to resolve any issues encountered with the system.

The Blueprint is also accompanied by a technical companion, a handbook to support the implementation of the principles outlined by the framework. The document, *From Principles to Practice*, is based on insights from researchers, technologists, advocates, and policymakers and gives examples of how the guidance can be applied to different AI technologies. However, while a significant signpost underpinned by commonly accepted AI governance principles, it is unlikely that the US AI Bill of Rights will become more than a voluntary framework.

● NIST

The National Institute of Standards and Technology (NIST) is an agency of the United States government working on research and standards as they relate to the use and deployment of AI. NIST plays a critical role in establishing benchmarks and the development of AI standards.

This year, in line with Executive Order (EO) 13960, [Promoting the Use of Trustworthy AI in the Federal Government 2020](#), NIST will be responsible for re-evaluating and assessing any AI that has been deployed or is in use by federal agencies. This is to ensure consistency with the policies in EO 13960, the guiding principles of which are described to be in line with American values and applicable laws. The order also requires that agencies, excluding national security and defence, make public an inventory of [non-classified and non-sensitive current and planned Artificial Intelligence \(AI\) use cases](#). These use cases will be part of NIST's evaluation, which will then shape the next iteration of [frameworks](#) which guide government uses of AI.

● The Algorithmic Accountability Act

First introduced in 2019, the [Algorithmic Accountability Act](#) of 2022 (AAA) was reintroduced into both houses of Congress in February 2022. If passed, the Act would be binding and require companies to assess the impact of the automated systems they use and sell in terms of bias and effectiveness. Documentation from impact assessments would be required to be submitted to the Federal Trade Commission (FTC). Companies would also be required to be more transparent about when and how automated systems are used. This would apply to any person, partnership, or corporation that uses an automated system to make critical decisions if they have more than \$50 million in annual revenue and possess, manage, modify, handle, analyse, or control the data of more than 1 million people.

The FTC would enforce this legislation by developing assessments, reporting guidelines, and providing annual anonymized aggregated reports on trends using the submitted documentation. The FTC would also have the power to conduct audits of AI systems developed by vendors and AI systems used by companies for decision-making. The FTC would establish a Bureau of Technology that employs 50 staff to support this.

The Act has yet to win support in the House or the Senate and is not expected to pass, with the EU AI Act set to become the global gold standard for AI regulation. However, its introduction signals the intent of U.S. lawmakers to address issues that result from the (potential) harms associated with AI through AI governance mechanisms. Algorithmic accountability is a critical theme in this space and could govern the US approach to regulating AI.

[Washington DC's Stop Discrimination by Algorithms Act 2021](#) is a state-level legislation that laid the foundation for the AAA and would prohibit algorithmic decision-making from utilising subsequent determinations in a discriminatory manner as well as require the notification to individuals of the use of their personal information. Although the legislation has not yet passed, following a public hearing in 2022, there has been a commitment by the Council to reintroduce it in 2023.

● The Federal Trade Commission (FTC)

Shaping up to be the body with the most hunger to regulate AI in the US, Bloomberg has predicted that 2023 will be marked by a determined, and aggressive FTC. Backed by its three-for-three records in getting settlement orders against companies that were investigated for their use or development of algorithms through suspiciously acquired data, this prediction is likely to ring true.

It has also brought complaints against Facebook (now Meta) to hold it accountable for violating the 2012 Order and the FTC Act. [In this case](#), Facebook seemingly allowed consumers to opt into the company's facial recognition algorithm. Still, the algorithm was being deployed regardless of whether a consumer was opting in. [In another case](#), a California based-photo app, Everalbum, received allegations of deceiving consumers about the use of facial recognition and its data detention policy, with accusations that it retained the photos and videos of users who deactivated their accounts. A consent order was brought forth, and if made final, each following violation would carry a civil penalty of up to \$43,280 for Everalbum.

Focused primarily on privacy, the FTC is also anticipated to double down on its targeting of dark patterns, addressing the legality of this deceptive technology. This focus on dark patterns speaks to a bigger picture in the AI regulatory ecosystem that seeks to protect consumers from deceptive technology. Indeed, the EU AI Act addresses through significant manipulation, and the GDPR addresses through its protection of natural persons against automated means of data processing, which is taken a step further by the DMA.

● State-level initiatives

Aside from the work different US agencies are doing to research, develop and promote standards for responsible AI, the US has also been strong in addressing the harm associated with AI through state-level and local legislation. While the official enforcement of such legislation is currently lagging, with the delay of NYC's Bias Audit Law, which was set to apply from 1 January 2023 and has now been delayed to 15 April, 2023. States across the US are doing what they can to address and mitigate these harms. The table below summarises the state-level landscape, including only legislation that has been passed, identifying key dates and verticals addressed.

Legislation	Jurisdiction	Summary	Verticals
A Local Law to amend the administrative code of the City of New York, in relation to automated employment decision tools.	New York City	Bias audits of automated employment decision tools; candidates must be informed of the use of the tool 10 business days prior to its use and the data used to make decisions.	Bias, transparency
Artificial Intelligence Video Interview Act.	Illinois	Enacted - effective 15 th April 2023	Transparency
Concerning protecting consumers from unfair discrimination in insurance practices.	Colorado	Bias audits of algorithms and data, maintenance of a risk management framework, explanation of how data and algorithms are used.	Bias, transparency



Industry Spotlight HR Tech

While the use of artificial intelligence (AI) is proliferating across all industries, this is particularly true in the HR sector, where previously human leads responsibilities such as candidate sourcing and screening, onboarding performance review and management and internal mobility are increasingly being automated. While this can reduce some of the burdens on HR professionals and make the recruitment process more engaging and efficient for candidates, using these tools poses novel risks, particularly in relation to bias.

The most notable development is the mandating of third-party bias audits of automated employment decision tools used to evaluate candidates or employees residing in New York City. Aside from this, the Illinois Artificial Intelligence Video Interview act imposes transparency obligations on employers using AI to judge video interviews, and California has proposed amendments to its employment regulations to address the use of automated decision systems.

To address some concerns about using automated employment decision tools (AEDTs) in making employment decisions, the New York City Council has taken decisive action and passed **legislation** that **mandates bias audits** of these tools. Initially due to go into effect on 1 January 2023, the enforcement date has now been **pushed back** to 15 April 2023 considering concerns raised during the public hearing on the Department of Consumer and Worker Protection's (DCWP) **proposed rules** about whom qualifies as an independent auditor and the suitability of the impact ratio metrics. In response to these concerns, the DCWP has published an **updated version** of its rules and announced a second public hearing that will be held on 21 January 2023.

What is next: addressing algorithmic accountability

The US approach to regulating AI has been focused on the verticals of bias and transparency as concerns that the technology will reverberate the existing fractures of inequity have been brought to the forefront. Recent examples include an ongoing lawsuit against insurance company **State Farm**; it is alleged that their automated claims processing has resulted in algorithmic bias against black homeowners. In another recent case, Louisiana's authorities came under fire when the use of facial recognition technology led to a **mistaken arrest**.

Moreover, on 9 January 2023, the Department of Justice and Department of Housing and Urban Development (HUD) announced the filing of a [statement of interest](#) in a current lawsuit (*Louis et al. v. Saferent et al.*) in the district of Massachusetts. The lawsuit alleges that the “defendants’ use of an algorithm-based scoring system to screen tenants discriminates against Black and Hispanic rental applications in violation of the Fair Housing Act.” The lawsuit itself reflects on a broader eco-system of attempting to understand and mitigate the role algorithms may play in discrimination, as seen in the aforementioned cases.

Where national laws such as the AAA and state laws such as Washington DC’s Stop Discrimination by Algorithms Act 2021 are currently stalled, the application of existing legislation to AI and the precedent set by case law will play a large role in shaping the US’s regulatory approach to AI. Along with this, the FTC will be a strong player to watch in this space, as similar to the landscape in the EU, they ramp up investigations as they pertain to areas of privacy, AI and manipulation. Thus, it will be interesting to take note of how this fragmented approach continues to take shape.

CHINA

Silently and from afar, China has led the pack and made its mark on the global AI playbook in 2022 by passing and enforcing three distinct regulatory measures from national, regional, and local levels. This momentum is carrying into 2023, where China has already cracked down on deepfake technology. This section will provide a high-level overview of China’s current regulatory landscape highlighting both last year’s measures, and the recently enforced legislation before discussing what this could potentially mean for what comes next.

At a glance

● China’s Deep Synthesis Provisions

On 10 January 2023, China’s Deep Synthesis Provisions came into effect. The regulation is a part of the government’s efforts to strengthen its supervision over deep synthesis technologies and services. The [provisions](#) apply to both ‘deep synthesis service providers’ (companies that offer deep synthesis services and those that provide them with technical support) and ‘deep synthesis service users’ (organisations and people that utilise deep synthesis to create, duplicate, publish or transfer information).

The provisions are centred on four key verticals:



Ultimately, these provisions will change the way that AI-generated content is produced for 1.4 billion people in a significant way due to their comprehensive scope. While the [UK](#) is also intending to ban the creation and dissemination of deepfake videos without consent, China's law goes beyond this. The regulation creates rules for every stage, from creation to labelling to dissemination, leaving room for the potential suppression of organically captured content as well. With the potential to influence the development of deepfake regulation in other jurisdictions, 2023 will provide the opportunity to see how exactly these provisions are enforced.

● Internet Information Service Algorithmic Recommendation Management Provisions

On 1 March 2022, the [Internet Information Service Algorithmic Recommendation Management Provisions](#) went into effect. Drafted by the Cyberspace Administration of China, the provisions require that providers of AI-based personalised recommendations in mobile applications uphold user rights, including protecting minors from harm and allowing users to select or delete tags about their personal characteristics. For example, companies are banned from offering different users *different prices* based on personal characteristics collected and would have to notify users if a recommendation was made based on an algorithm, giving users the option to opt out.

Other provisions outlined in **Article 13** prohibit the algorithmic generation of fake news and require that online service providers that also operate in online news seek special licensing. **Article 19** offers special protection to the elderly by requiring online service providers to address the needs of older users, specifically in the context of fraud prevention. The regulation's provisions are grouped into three main categories: general provisions, information service norms and user rights protection. The provisions will affect US and international companies that use algorithms and/or machine learning in their applications or websites which operate in China, as they are already expected to comply.

● Shanghai Regulations on Promoting the Development of the AI Industry

The [Shanghai Regulations](#) were passed in September 2022 and have been in effect since 1 October, 2022. The regulation is considered a piece of industry promotion legislation, with respect to the innovative development of AI. However, keeping in mind future implications of AI, the regulation introduces a graded management system and enforces sandbox supervision. The sandbox exists so companies have a designated space to test and explore technologies. Uniquely, the Shanghai AI Regulation stipulates that there is a certain degree of flexibility regarding minor infractions. This is to continue to encourage the development of AI without burdening companies or developers with the fear of stringent regulation and instead shows a deeper commitment to fostering innovation. This is done so through a disclaimer clause where relevant municipal departments will oversee creating a list of infraction behaviours and making it clear that there will be no administrative penalty for minor infractions. To create checks and balances to the innovation-centric approach, the regulation also establishes an Ethics Council to increase ethical awareness in this field.

● Regulations on Promoting artificial Intelligence Industry in Shenzhen Special Economic Zone

The [Shenzhen AI Regulation](#) was passed in September 2022 and went into effect on 1 November 2023. The regulation aims to encourage governmental organisations in China to be at the forefront of AI adoption and development, by increasing financial support for these endeavours. A risk-management approach towards AI is adopted by the regulation to foster this growth by allowing Shenzhen-based AI services and products that have been assessed as “low-risk” to continue in their trials and testing even without local norms if international standards are being complied with. **Article 72** of the regulation emphasises the importance of AI ethics and encourages *risk assessments* to identify adverse effects of products and systems. The Shenzhen government will be responsible for the development and management of the risk classification system. Despite being a local-level regulation, this is a significant development as Shenzhen is home to many AI and tech-related businesses, where an estimated \$108 billion USD will be invested into this space from 2021 to 2025.

What is next: setting precedent

Already a leader in content regulation, China is taking note of how regulations are becoming a way to set global norms and standards. Wanting to set that precedent itself, China has been involved in some of the earliest enforcement of AI regulation in the world. Where focus has been placed on bias, and transparency in other parts of the world, similar to the aims of the DSA, China is focusing on the implications of digital services, attempting to delve into the complexity of recommender systems and black box technology, making the head start.

For example, through the Algorithmic Recommendation Management Provisions, China has an [Algorithm Registry](#), which is an attempt to see if meaningful information can be derived from the collection of these algorithms and how they work. With China seemingly ahead of the curve, 2023 may be the year that other jurisdictions look to it, as global efforts to tackle algorithmic harms ramp up.

UNITED KINGDOM

While the UK has not yet proposed specific legislation to regulate the use of AI, the UK government has demonstrated its support for the regulation of AI systems through a series of policy papers, frameworks, and strategies. Whether the UK will make the adoption of the EU AI Act ubiquitous across the continent or take a different path, as it already is with its own stance on the EU's Digital Markets Act, will become clear in time. In the interim, this section will summarise the UK approach thus far, highlighting advancements already made in 2022 and commenting on what perhaps is next.

At a glance

The DCMS, Department for Business, Energy & Industrial Strategy, and Office for Artificial Intelligence jointly released a policy paper on 18 July 2022 titled [Establishing a pro-innovation approach to regulating AI](#). Under this framework, in the UK, AI regulation will be context-specific and based on the use and impact of the technology, with responsibility for developing appropriate enforcement strategies delegated to the appropriate regulator(s). The government will [broadly define](#) AI to provide regulators with some direction – adopting fundamental principles relating to transparency, fairness, safety, security and privacy, accountability, and mechanisms for redress or contestability. However, the government will ultimately allow regulators to define AI according to the relevant domains or sectors.

Four principles underpin the framework:

- **Context-specific** – AI should be regulated based on its use and impact, with responsibility for designing and implementing proportionate regulatory responses delegated to regulators.
- **Pro-innovation and risk-based** – regulators will focus on high-risk concerns over hypothetical or low risks to encourage innovation and limit barriers.
- **Coherence** – a set of cross-sectoral principles tailored to the characteristics of AI will be established, and regulators will interpret, prioritise and implement them within their sectors and domains.
- **Proportionate and adaptable** – cross-sectoral principles will initially be set out on a non-statutory basis to allow for a dynamic approach to regulation.

Even without AI-specific regulations, standards are being developed through standardisation mechanisms. For example, Central Digital and Data Office (CDDO) and the Centre for Data Ethics and Innovation (CDEI) have recently established [The Algorithmic Transparency Recording Hub](#). The Hub helps public sector organisations with AI governance by focusing on transparency, helping the organisations provide clear information about the algorithmic tools they use and why. Part of the government's wider National Data Strategy, the Hub could set a precedence of a commitment to transparency that is expected across sectors.

Taking a sectorial approach, the [Bank of England](#) has opened a consultation on its model risk management framework for banks, one of the priorities of which is to identify and manage the risks associated with the use of AI and machine learning in the financial sector.

When it comes to regulating AI via existing legislation, the financial services industry is a significant case.

Industry Spotlight Financial Services

72% of financial services firms use or develop AI/ML, with adoption rapidly increasing across all business areas.

UK firms and banks must remain vigilant to ensure their AI or future AI are being developed and deployed in line with current law and regulations. For example, firms in financial services need to be aware that their AI must align with the FCA's rules and guidelines. One such rule is that customers must be treated fairly and communicated openly. As such, this has implications for firms that use AI to determine creditworthiness, which can result in adverse outcomes for specific customers.

Algorithmic trading is another area where firms need to monitor due diligence. If AI is being used in high-frequency trading, then the regulations and rules that have been written for governing algorithmic trading to avoid the **risks of rapid and significant market distortion** also apply to the AI and must be complied with.

Additionally, existing legislation such as the **UK Equality Act** applies to any financial services firm that serves the public. Financial providers must ensure they are not discriminating against customers based on

protected characteristics directly or indirectly. This would include procedures (i.e., the use of AI in determining creditworthiness) to determine the provision or rate of services.

Area of concern (lead regulator)	Relevant law, regulation or guidance	Relevance for AI
Consumer protection (FCA)	Equality Act 2010 FCA's Principles for Business and the 'Consumer Duty'	Algorithmic bias discrimination (e.g., in pricing and customer risk segmentation).
Data (ICO, PRA and FCA)	UK GDPR and Data Protection Act 2018 Principles for effective risk data aggregation and risk reporting The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017	Rules governing the collection, processing and use of data used to train, test and validate AI systems (e.g., data minimisation; data security; accuracy requirements). Restrictions on automated decision-making and profiling.
Governance and risk management (PRA and FCA)	FCA Principles for Business PRA Rulebook Corporate governance: Board responsibilities (PRA SS5/16)	Firms must establish and implement adequate risk management and governance systems and processes (e.g., defined roles and responsibilities; sufficient technical skills and expertise at board and senior levels). These systems and processes must be adapted to address the novel risks of AI.

Model risk management (PRA)	<u>Proposed model risk management (MRM) principles for banks</u>	Once enacted, firms will have to apply these MRM to the governance of AI and ML models which inform key business decisions.
Accountability of senior management (PRA and FCA)	<u>Senior Managers and Certification Regime (SM&CR)</u>	<p>The SM&CR aims to protect consumers and strengthen market integrity by enhancing senior leadership accountability.</p> <p>Although there is currently no assigned Senior Management Function (SMF) for AI, its use in different business areas will fall within the scope of different SMFs.</p>
Outsourcing and third-party risk management (PRA and FCA)	<u>FCA Handbook</u> <u>Outsourcing and third party risk management</u> (PRA SS2/21)	Rules relating to outsourcing and third-party risk management are relevant for AI procurement.

Beginning 31 July 2023, firms will also have to comply with New Consumer Duty rules outlined by Principle 12. In accordance with this principle, a firm must act to deliver good outcomes for retail customers. For example, firms must avoid foreseeable harm to retail customers.

As such financial firms which use AI in their business practices to recommend investment endeavours or in determining creditworthiness should be diligent in their liability to disclose this to customers to not breach responsibilities in avoiding foreseeable harm and acting in good faith for retail customers.

What is next: continuing a sectorial approach

The government has made it clear that these initiatives are only the beginning, and over the next ten years, it will aim to ‘cement the UK’s role as an AI superpower’. Doing this will require cooperation between government departments to move the regulatory agenda forward, consultation with technical experts, investment in infrastructure and education, and a dynamic and adaptable approach. 2023 will continue to see the UK’s focus on AI governance vis-à-vis guidelines for public sector procurement, such as the Algorithmic Transparency Hub. The UK’s sectorial approach to the regulation of AI will also continue, thus far being credited as successful due to the reliance on industry experts to regulate rather than a central regulator.

However, without specifically addressing the direct harms that AI can pose through a central body may lead to significant gaps that affect vulnerable people. For example, research by the [Oxford Internet Institute \(OII\)](#) referred to the fact that “non-discrimination law does not adequately protect groups used by AI decision-making.” It would be worthwhile to bring into public discourse the broad understanding that protected groups are not always synonymous with algorithmic groups, making the harm more nuanced than that which can be captured under the Equality Act.

Overall, the trajectory of the UK’s regulatory activities is positive, with a good balance of the encouragement of innovation and a push for transparency as well as consumer protection. While it is likely that the EU AI Act will become the global gold standard for AI, the UK’s approach towards AI regulation may remain independent reflecting current efforts to regulate by industry than adopt a centralised approach.

CONCLUSION

2023 is just the beginning for the AI regulatory landscape across the world. While different jurisdictions are taking different approaches, the advent of the EU AI Act, which will govern AI through an entire continent, is set to become the global standard. The most important takeaway from this is the emphasis that will be placed on risk management and a proactive approach to AI governance. The US and the UK will either immediately follow suit or continue with their vertically fragmented and sectorial approaches to AI regulation in the short term.

Across jurisdictions, there will be a focus on digital services and big tech companies as the Digital Services Act comes into effect and the Federal Trade Commission continues its investigations into areas at the intersection of algorithms, dark patterns and privacy. This is supported by China's approach to AI regulation, which used 2022 to kickstart efforts by enforcing regulations focused on recommender systems and now deepfake technology in 2023. Knowledge transfers are critical in developing AI regulation that adequately addresses harm. As such, it would be positive to see East-West collaborations as different jurisdictions begin to enforce their laws.

2023 will be a year to watch in this space and it would be wise for businesses and organisations to be proactive in implementing a risk management framework within their systems. [Holistic AI](#) has pioneered the field of AI risk management and empowers enterprises to adopt and scale AI confidently. Our team has the technical expertise needed to identify and mitigate risks, and our policy experts use that knowledge of and act on proposed regulations to inform our product. Get in touch with a team member or [schedule a demo](#) to find out how you can take steps towards external assurance.

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