

The Baker McKenzie logo is positioned in the top left corner. It features the company name in a white, sans-serif font. The word "Baker" is on the top line, and "McKenzie." is on the bottom line. The text is set against a dark, semi-transparent rectangular background that blends into the overall abstract, geometric pattern of the slide.

**Baker
McKenzie.**

Is there now a blueprint for digital and tech regulation?

John Groom, Ben Slinn, Rebecca Bland | 10 November 2021

A small, solid red square is located in the bottom left corner of the slide, below the speaker information.

Speakers



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Agenda

1 HOW DID WE GET HERE?

2 THE BLUEPRINT FOR DIGITAL AND TECH REGULATION

3 REGULATION IN PRACTICE: AADC

4 SO WHAT DOES LEGAL DO?

The background is a dark blue gradient with a complex, abstract geometric pattern. It features numerous overlapping, semi-transparent polygons in shades of purple, red, and orange. In the upper right corner, there is a network of small, colorful nodes (red, green, blue, yellow) connected by thin lines, resembling a molecular structure or a data network. The overall aesthetic is modern and digital.

1

**How did we
get here?**



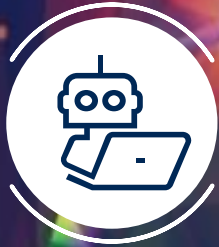
Intermediary
Liability



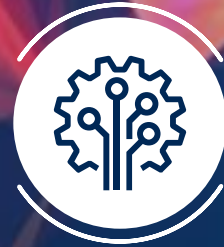
Value / Harmful
Content



Network Security



AI and Robotics



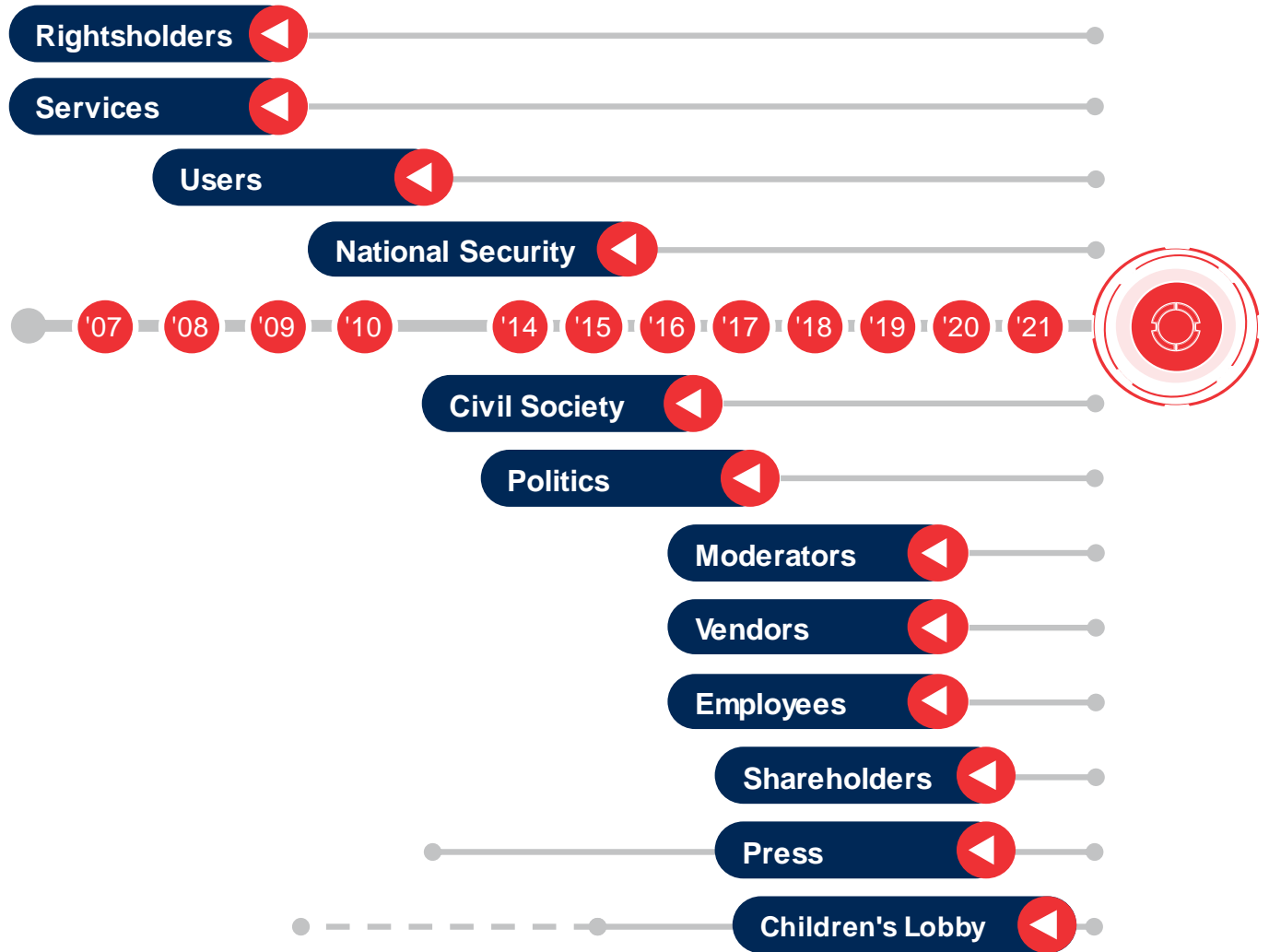
Invasive / Impactful
Technologies



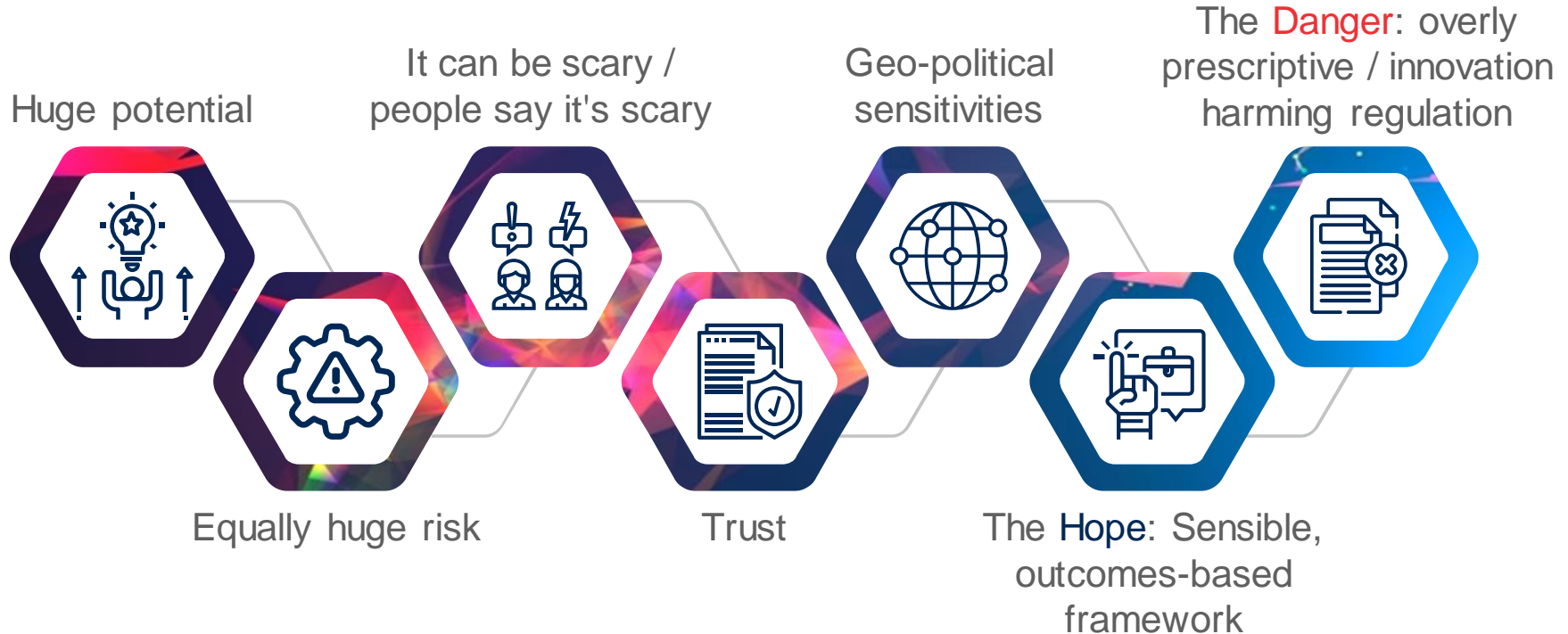
Children



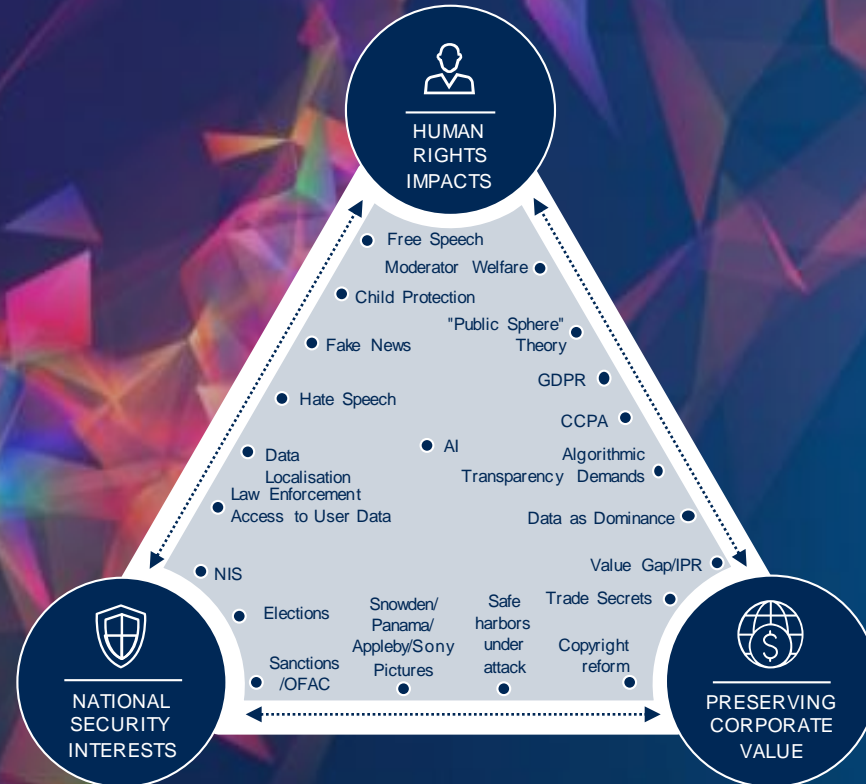
The
stakeholders
are changing
and growing.



Why is digital and tech regulation so "in"?



The perfect storm.



EU AI Regulation

Health Warning



Brussels, 21.4.2021
COM(2021) 206 final
2021/0106 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE
(ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION
LEGISLATIVE ACTS**

{SEC(2021) 167 final} - {SWD(2021) 84 final} - {SWD(2021) 85 final}

- Very broad, very long
- Not in force yet
- Expect a lot of lobbying

Scope

Definition of AI system (art 3(1)):

**“AI
System”**

“software that is developed with one or more of the techniques and approaches listed in Annex I and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with;”

- Machine learning
- Logic and knowledge-based approaches
- Statistical approaches

Application

Who would be caught? (art 3(1) and art 3(4))

“**Provider**” of an AI System:

“develops an AI system or has it developed and places it on the market”

- Own developed products
- Use of own and third party systems in developing products (and to third parties using those products)

“**User**” of an AI System:

“Using an AI system under its authority” except in personal non-professional capacity

The background features a complex, abstract geometric pattern of overlapping, semi-transparent polygons in shades of purple, blue, and red. In the upper right corner, there is a network of small, colorful dots connected by thin lines, resembling a data visualization or a molecular structure. The overall aesthetic is modern and digital.

2

The blueprint for digital and tech regulation



Accountability



Transparency



Proactive
measures



Fixed Contact Point



Higher Penalties

Some common themes emerging.

	EU GDPR	EU Copyright Directive	EU AVMS Reforms	EU P2B Regulation	EU Terrorist Content*	EU DSA*	EU AI Regulation*
Nominal Focus	User Privacy	Artists' Rights	User Protection	Big Tech Market Power	National Security	Harmful content	AI
Principle 1: Accountability	Express accountability principle	Platforms responsible for third party infringement	Platforms responsible for harmful content	Platforms must treat traders equally	Platforms responsible for terrorist content	Duty of care; responsible for harmful content	Providers and users responsible for AI used
Principle 2: Transparency	Privacy notice + justifications for processing	Reporting requirements	Registration w/ regulator	Disclosure and reporting requirements	Terms, policies, reporting	Terms, policies, reporting [to regulators], "reasons"	Registration, reporting requirements, disclosure obligations
Principle 3: Proactive Obligations	Internal audits + security measures	Filtering obligations	Gate, rate, block obligations	Algorithm changes (potentially)	Block obligations	Risk Assessments and mitigations	Conformity assessment / risk management systems
Principle 4: Fixed Point	DPO	Platform	Editor	Platform	Terrorist Content Rep	Single point of contact	Human oversight
Principle 5: Higher Penalties	Up to 4% WWT	Direct liability for infringement	Up to regulator	Civil Liability Regulatory Actions	Up to 4% WWT	Up to 6% WWT	Up to 6% WWT

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3

Regulation in practice: AADC

Age Appropriate Design Code ("AADC")

- Statutory Code
- Applies from 2 September 2021
- Online services and processing of children's personal data
- Applies to information society services likely to be accessed by anyone under the age of 18
- Includes 15 standards of age appropriate design



The standards



Developments outside of the UK

- Ireland: "Fundamentals for a Child Oriented Approach to Data Processing" (Fundamentals)
- Netherlands: "Code of Children's Rights"
- France: CNIL recommendations on protection of minors online





4

**So what does
Legal do?**

So what does Legal do?



Day to day

**Understand
the product**

Iterate

**Stay within
market?**



**Longer
term**

How to comply

Policy position

**Growth
strategy**

Challenging regulation?



Freedom to do
business



Freedom of expression
(and information)



National Constitutional
Principles?



No obligation to
Monitor (ECD)



Country of Origin
Principle (ECD)

Questions

The background features a large white circle on the left side, set against a dark blue gradient. On the right side, there are several colorful, semi-transparent geometric shapes, including triangles and polygons, in shades of purple, red, and blue. Some of these shapes are interconnected by thin lines, creating a network-like structure. The overall aesthetic is modern and abstract.

The image features the Baker McKenzie logo in the top left corner, set against a dark background with a complex, abstract geometric pattern of overlapping triangles in shades of purple, blue, and red. The logo consists of the words "Baker" and "McKenzie." stacked vertically in a white, sans-serif font. The background pattern is dense and intricate, with some areas appearing more brightly lit than others, creating a sense of depth and movement.

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