

H2 2025: What Retailers Need to Know Now

Several significant legal changes in the first half of 2025 have, or will, impact retailers in the United States and Europe. Our team has been tracking them closely and advising clients on their implications and how businesses can best position themselves.



Potential Changes to Content Moderation Laws (Section 230) and the Impact on Online Businesses



Legal Development. FTC, DOJ, and FCC have all signaled their intention to modify or overhaul Section 230. Specifically, key administration leaders have indicated they will enforce Section 230, and/or their views that Section 230 does not protect online businesses' decisions to remove speech or deplatform users. State legislatures and Attorney Generals have taken a different approach to content moderation, focused on increased transparency and child protection (including age-consent mechanisms which may create friction in the shopping-to-checkout funnel).



Why it matters. Changes to Section 230 may require changes in product display, terms and conditions flow, and how businesses curate or modify reviews and ratings. If Section 230 is overturned, companies may not be able to remove unhelpful, improper, or inflammatory reviews or ratings.

European Product Liability Directive and Implications on American Retailers Selling into Europe



Legal Development. The European Product Liability Directive will go into effect in 2026. It will have significant consequences for US Retailers that sell into the European Union (EU). Under the new law, manufacturers, retailers, distributors, and platforms that are sued for a product defect must make mandatory disclosures about the nature of the defect and previous cases and/or settlements relating to the alleged defect. Defendants will be presumed liable if they fail to make this disclosure, and it must be done in an easily understandable format.



Why it matters. Businesses that sell into the EU will have to comply with these disclosures. The law leaves several open questions and strategy decisions for the industry including: how to draft the disclosure, what happens once it is made, who has access to it, and whether to settle before any disclosure is required. Other open questions are whether these disclosures can and will be used by American class action lawyers, and if this is the start of an "American style" discovery standard in Europe for products liability cases.

AI Developments in Retail



Legal Development. Retailers should be aware of local and federal laws concerning AI that will impact their business. In California, the California Consumer Privacy Act (CCPA) gives consumers opt-out rights with respect to businesses' use of "automated decision-making technology," which includes "profiling" consumers based on their "performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location or movements." Proposed AB3048 in California would amend the CCPA by requiring businesses to include an opt-out preference signal in consumers' settings. In December 2023, an FTC Enforcement Action prohibited Rite Aid from using facial recognition technology to identify shoplifters due to the number of false positives.



Why it matters. Your business needs to utilize AI to stay competitive and efficient without incurring more legal risk. Learn how to navigate IP/copyright/trademark issues and other content moderation headwinds, while remaining in compliance with CCPA and trends from the FTC.

Changes to Online Sign Ups and Terms & Conditions (T&C) Consent



Legal Development. Earlier this year, the Ninth Circuit affirmed a district court ruling holding that the online sign-up flow for ClassPass – a company offering subscription services to local gyms – did not bind consumers to its T&Cs because the sign-up flow was not sufficiently clear. Specifically, the courts criticized the layouts, font choices, and even where the “check boxes” appeared on the sign-up screens, despite the consumer having to click “consent” or “sign up” three different times in the sign-up funnel. ClassPass has petitioned for rehearing *en banc*.



Why it matters. The ruling contradicts over a decade of online contract formation case law in the Ninth Circuit and elsewhere. If it stands, it will cast doubt on the validity of online contracts, and businesses will have to reconsider their online contract formation flows. This will impact any retailer with a “log in” or “sign up” feature to shop and buy.

[Click here to schedule a presentation with our team.](#)

Contacts



Cheryl Falvey

Partner
Washington, D.C.
+1.202.624.2675 | cfalvey@crowell.com



Deborah Arbabi

Partner
Orange County
+1.949.798.1318 | darbabi@crowell.com



Preetha Chakrabarti

Partner
New York
+1.212.895.4327 | pchakrabarti@crowell.com



Joanna Forster

Partner
San Francisco
+1.415.365.7283 | jforster@crowell.com



Shauneida Navarrete

Counsel
New York
+1.212.590.5438 | snavarrete@crowell.com