

TOP THINGS R&C BUSINESSES SHOULD KNOW ABOUT DIGITAL DEVELOPMENTS



Robotic Process Automation and Artificial Intelligence

Robotic Process Automation (RPA) has been helping organisations improve the efficiency of processes by automating routine business processes for a number of years – indeed, the automation of back office processes has become an increasingly standard offering. Recent developments in Artificial Intelligence (AI) add a new layer of autonomy to robotic automation due to its "self-learning" capability, opening up the possibility of automating more processes and more steps in those processes. Indeed, PwC has estimated that 45% of all work activities eventually might be automated this way (PwC: Organize your future with robotic process automation).

How are these technologies being used?

The market is rapidly advancing with recent developments in technology. Large scale automation is possible with end-to-end processes being performed with very little human interaction which means that RPA can be used in a retail context for a variety of functions such as: supply chain analysis, managing complaints, enrolling customers in loyalty programmes, issuing loyalty rewards, processing return authorisations, sending shipping notifications and completing month-end documentation. We are also seeing advances in the application of these technologies in customer-facing functions, as providers add cognitive capabilities to their tools; in a retail context, examples include the use of "chatbots" to interact with customers and recommend products and "check out free" technology using automated shopping and purchasing processes.

What are the benefits?

Potential benefits to retail and consumer businesses may include:

- ▶ **Cost efficiency** – the cost of operating a software robot can be much less than onshore (or even offshore) labour;
- ▶ **Performance** – robots can perform processes faster than a person;
- ▶ **Data** – data gathering from automated processes can help achieve better performance monitoring;
- ▶ **Accuracy** – processes are more predictable, consistent and less prone to errors than those handled by people;

- ▶ **Business agility** – robots can perform 24/7 and can be re-scheduled or re-assigned as needed;
- ▶ **Productivity** – employees do not have to undertake monotonous activities and can instead focus on more important and interesting tasks.

How can businesses secure the benefits of technological advancement?

Whilst these technologies have the potential to bring significant efficiencies and cost savings, one of the key challenges for customers is securing these benefits, since savings may not automatically be passed on by suppliers under existing pricing models.

However, other contractual provisions may assist, such as:

- ▶ continuous improvement provisions and efficiency and productivity initiatives with price reduction commitments;
- ▶ use of gain sharing mechanisms to ensure that any cost benefit is realised whilst encouraging ongoing collaboration;
- ▶ exercising benchmarking rights to compare prices in the market and reduce charges to within certain parameters.

For more detail on some of the key contractual and practical points to consider, please see our briefing, available at:

<https://www.addleshawgoddard.com/en/insights/insights-briefings/2018/digital/robotic-process-automation-and-artificial-intelligence/>.

Social Listening

Social listening involves monitoring social media to find out what is being said about you and your industry and using these insights to improve your business and engage with customers.

Examples of use:

- ▶ **Driving product development and innovation:** See how customers respond to your products and products of your competitors. What features do they like? What don't they like? What products do they want to see?
- ▶ **Personalised marketing:** Producing personalised content based on an understanding of your customers. How does your target market converse, what words do they use? How can your target market be segmented into different categories?
- ▶ **Improving customer service:** Spotting trends in customer feedback and complaints in relation to you and your competitors, and identifying opportunities for prompt customer engagement. Social listening can create opportunities for interaction with customers who feel dissatisfied but have not communicated this to you directly.
- ▶ **Identifying customers, potential customers and influencers:** Find out the best places to focus your marketing efforts and identify potential influencer relationships. Who is sharing information about your brand/industry? Where are they sharing it?
- ▶ **Crisis Management:** Track brand health in response to negative publicity to seek opportunities for remediation and mitigation.
- ▶ **Monitor IPR infringement:** Find out if your customers or potential customers are talking about a product which is a copy of your own.

Key legal and practical considerations:

Data privacy

It's important to consider what data is collected and processed as part of any social listening campaign and, in particular, whether this will include personal data. The use of personal data collected via social media is coming under increasing scrutiny following the implementation of the GDPR and the recent Facebook-Cambridge Analytica scandal. Where personal data is involved, key considerations should include:

- ▶ **Anonymisation:** Do you need to use personal data, or can wider trends be drawn from fully anonymised data? If you can use anonymous data, it is less risky.
- ▶ **Lawful basis:** Do you have consent or another lawful basis for using personal data? Third party consents may be more difficult to rely on under the GDPR.
- ▶ **Transparency:** How will you make users aware of how their scraped data will be used? The law generally requires you to provide a privacy notice, even where the data is from a third party source, unless a limited exemption applies.
- ▶ **Purpose:** How is personal data used once collected? Would individuals anticipate their data being used in this way and how will you ensure the data isn't used for additional unplanned purposes?
- ▶ **Data subject rights:** You must have processes in place to ensure that you can fulfil any rights requests from data subjects (for example, individuals who object to you using their data).

Website operator objections

Social media operators may object to data scraping to protect the value of data on their websites. The law surrounding the legality of data scraping and the rights of website operators is a complicated and developing area. Possible arguments include:

- ▶ **Infringement of intellectual property rights:** Some website operators have previously objected to data scraping on the grounds of infringement of copyright and database rights. This would be a difficult claim for operators in the context of social media websites, given the reliance on users for content and the amount of data which is likely to be copied.
- ▶ **Website terms and conditions:** It's common for website terms of use to prohibit data scraping. The key question is whether there is a valid contract incorporating the terms and conditions. I.e. is there a passive set of website terms and conditions? Or is there a *walled garden* environment, whereby access to the database is conditional upon entering into access terms and conditions?
- ▶ **Other arguments:** A question to be tested in the UK is whether data scraping could be a breach of the Computer Misuse Act 1990, which relates to hacking. Similar arguments have been brought in the US in relation to comparable legislation but there seems to be an unwillingness to prohibit the harvesting of publicly available data on the basis of (old) anti-hacking legislation.

Service Provider terms

In light of the legal issues above, it'll be important to ensure terms with social listening providers contain adequate protections. For example, consider documenting agreed data collection methods and also think about whether it's necessary to conduct due diligence on the methods the provider uses to obtain data.

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