MARKETING MEETS COMPLIANCE

Resolving the Divide

Analysing internal viewpoints on managing the process of ensuring marketing material meets regulatory and brand requirements in UK, US, and Australia.

Red Marker

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Executive Summary

This whitepaper, intended for Legal, Compliance, and Marketing professionals working in highly regulated industries, presents an exploration of the critical process of assessing marketing for regulatory compliance, and the relationship between those teams involved in the review processes.

The qualitative and quantitative study, involving over 550 Legal, Compliance, and Marketing professionals in the U.S., U.K., and Australia, reveals notable misconceptions about this dynamic. Many Marketers see compliance reviews as a hindrance but are open to using automation and technology featuring artificial intelligence (AI) to address it. Compliance professionals express concerns about the Marketing team's commitment to thorough compliance reviews. Both sides acknowledge challenges including high content volume, time constraints, and current review process inefficiencies.

Consensus emerges regarding the need for enhanced communication and the mitigation of subjectivity. The whitepaper concludes by outlining potential improvements, emphasizing automation and improved communication, and explores the promise of AI-enhanced compliance reviews of marketing and advertising material.

Introduction

It is important to acknowledge that diverse organizational structures and roles influence the marketing compliance process in each business. For the context of this whitepaper, the terms 'Compliance' and 'Legal' are used interchangeably, with the understanding that the term used broadly applies to roles accountable for scrutinizing and overseeing the regulatory compliance of marketing assets.

Marketing Meets Compliance: Resolving the Divide provides an in-depth exploration into a critical, albeit rarely discussed challenge impacting enterprises with large volumes of marketing content: the tension between marketing creativity and compliance rigor.

This isn't just a theoretical problem — it's a practical barrier that may be holding back aspects of your organization's productivity and growth. This whitepaper challenges prevailing perceptions around the current approach, inviting a reassessment of the potential for transformation.

If you're navigating the complex world of marketing, legal, or compliance, the inefficiencies may be a daily reality. It could be hindering creative content, escalating operational costs, and impeding strategy execution. Furthermore, this issue carries an increased risk to your organization's reputation and bottom line, as regulatory authorities worldwide continue to revise regulations to enhance safeguards for consumers. At the same time, consumers are growing more aware and cautious of issues such as false advertising, misleading claims, and an overall lack of transparency.

To examine this complex issue, a comprehensive study — encompassing qualitative and quantitative research — was conducted in collaboration with Arlington Research. The perspectives of over 550 Compliance, Legal, and Marketing professionals were scrutinized. These experts were drawn from large organizations with 5,000+ employees, spanning sectors such as retail banking, commercial banking, investment banking, fund/asset management, health Insurance, medical insurance, and dental insurance, and covered regions including the U.S., U.K., and Australia.

For the first time, light is shed on how attitudes of these diverse roles diverge and converge. All parties involved are grappling with an archaic process that impedes their efficiency. Even though a notable portion of Marketers felt Compliance constraints hindered their pace, it wasn't about assigning blame. The true breakthrough was a unanimous agreement: both teams share a keen interest in

modernizing their workflow. This unity was highlighted by the eagerness for a more efficient review process, coupled with a willingness to harness technology and eliminate current inefficiencies.

It is clear it is time to move beyond stopgap solutions and enact a fundamental change. The question remains, why does this process remain static when technology has facilitated modernization of many other aspects of professional life?

In the pages that follow, a deeper exploration will be conducted into some of the key challenges related to the marketing compliance process, explain how technology can mitigate these issues, and provide clear, actionable steps to bring Marketing and Compliance into harmony within your organization. The path to resolution begins here.

ENSURING CONTENT COMPLIANCE

Relationship Dynamics

An initial step in cultivating a smoother process is understanding the relationship between these teams. The research provides insightful perspectives from each department, notably including nearly a third of marketing respondents who regard the relationship with Legal and Compliance as the most significant pain point during the review process, and similarly, from the Legal and Compliance point of view, where a quarter (25%) view the relationship with Marketing as a daily hurdle. This highlights the perceived challenges they see in one another, which leads to misconceptions and inefficiencies in their collaboration.

An "us versus them" mentality characterizes the relationship, with over 80% of both sides agreeing with this sentiment. This can be largely attributed to the legal and commercial realities, as well as the distinct goals and working processes of the two departments. Marketing teams, tasked with the responsibility of crafting engaging, compelling content to fuel business growth, may occasionally tread into contentious territory, thereby testing the limits of regulatory compliance. On the other hand, Compliance and Legal focus on ensuring all content adheres to complex and evolving regulatory standards, a stringent stance sometimes seen by Marketers as potentially stifling creativity.

80%

An overwhelming 80% of Marketing, Compliance and Legal respondents admit feelings of "us vs. them" when dealing with one another.

This divide is further amplified by a mutually perceived lack of empathy, where each side feels the other doesn't fully grasp their respective roles, responsibilities, and challenges. This sentiment is echoed by 20% on both sides.

Delving into specific issues, 31% of Compliance professionals believe that the Marketing team doesn't entirely comprehend the intricacies involved in conducting thorough compliance reviews. Conversely, a striking 82% of Marketers believe that if they have enough experience, compliance reviews become superfluous. They claim to feel confident in determining what's acceptable and what's not, without compliance oversight.

> " Legal and Compliance have a set of rules that we obviously have to adhere to, but sometimes they apply the rules to a T. We, as marketers, tend to look at it with a bit more of an open lens."
> — *Head of Marketing*

Despite these differences, the parties are more aligned than they might realize. Whilst a significant proportion (82%) of Compliance and Legal professionals feel that Marketers don't understand why they need to adhere to the rules, an overwhelming 84% of Marketers agree that good governance is key to their business's success — indicating potential common ground for collaboration.

Proactive risk identification during the early stages of content creation has not traditionally been considered in-scope for Marketing teams, who typically wait until Legal and Compliance provide feedback in a dedicated review stage much later in the process. This reactive mindset skews an already imbalanced relationship and adds friction around imminent deadlines. Giving Marketing teams the training and tools to consider compliance issues early and often could pave the way towards a more symbiotic partnership.

31%

of **Compliance professionals** believe that the Marketing team doesn't entirely comprehend the intricacies involved in conducting thorough compliance reviews.

82%

of **Marketers** believe that if they have enough experience, compliance reviews become superfluous.

The responsibility for regulatory compliance sees more concurrence. Both teams primarily attribute this to the CCO, demonstrating a shared understanding (67% of Marketing and 68% of Compliance/Legal).

Responsibilities, Challenges, and Compliance Reviews

Exploring the divide between teams requires a detailed survey of the issues around responsibility, accountability, and perceived challenges. Within a complex landscape of cross-functional interactions, misalignment on these foundational issues can only deepen the divide.

The question of accountability is a key source of tension. From the Compliance and Legal perspective, 15% view Marketing's perceived lack of accountability as a challenge. This is further solidified by the 80% of Compliance team members who feel that the Marketing team deflects the blame when external challenges to content arise. However, these numbers don't reveal the entire narrative. They hint at a broader issue — a discordance in perceptions regarding who directs the review process and who bears the ultimate responsibility for regulatory compliance.

Conflict arises when teams are asked about who they perceive as directing the review process. In this multiple choice question, most Marketers (75%) believe this task falls to the Chief Marketing Officer (CMO)/Marketing Director. But only 33% of Compliance teams concur, with a majority (70%) placing the responsibility on the Chief Compliance Officer (CCO). Interestingly, 59% of Marketers also see the CCO as playing this role, suggesting an openness for collaboration, even though this contradicts their primary choice of the CMO.

Who directs the review process?

Respondents who said CMO
75%
33%

Respondents who said CCO
59%
70%

● MARKETING ● COMPLIANCE
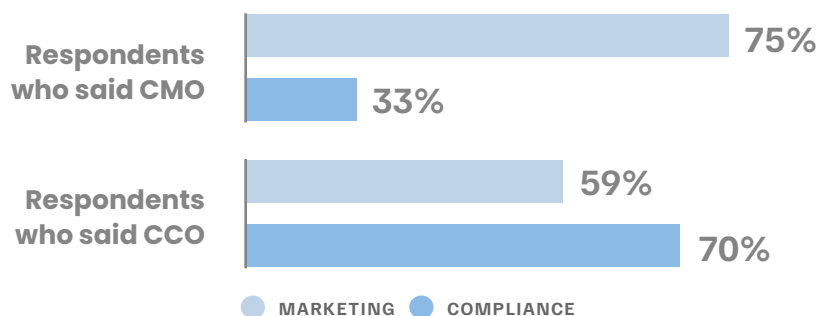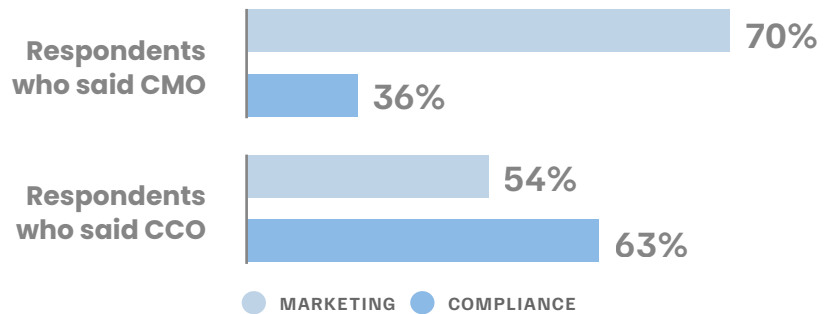
However, when considering who should be held accountable if an official regulator challenges marketing or advertising, the perspective shifts. While 70% of Marketers believe that the CMO/Marketing Director
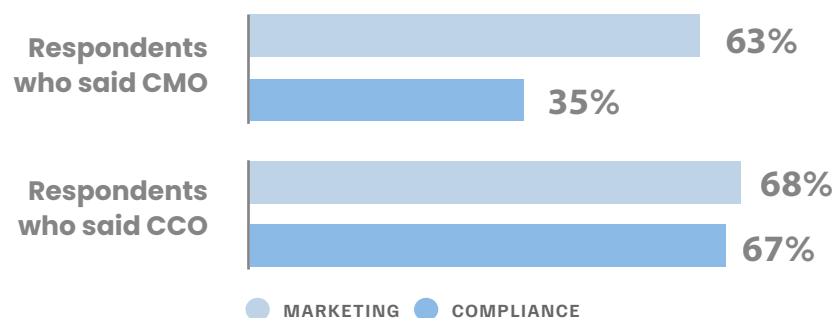
is accountable, 54% also place this responsibility on the CCO. On the other hand, Compliance is more inclined towards the CCO (63%), assigning less accountability to the CMO (36%).

Who is accountable for challenged material?

Respondents who said CMO
- Marketing: 70%
- Compliance: 36%

Respondents who said CCO
- Marketing: 54%
- Compliance: 63%

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It's important to note that this was a multi-choice question, and in total, 67% of Marketing professionals and 73% of Compliance professionals agree that the CCO and/or Head of Risk Management should be held accountable, making this a close result. The significant difference emerges when looking at the accountability of the CMO, where only 36% of Compliance/Legal agree, compared to 70% of Marketers, suggesting Marketing certainly sees a level of accountability on their side also.

Who is responsible for regulatory compliance?

Respondents who said CMO
- Marketing: 63%
- Compliance: 35%

Respondents who said CCO
- Marketing: 68%
- Compliance: 67%

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Beyond perceptions of responsibility and accountability, both teams undeniably encounter shared challenges — managing high content volumes and time constraints, resulting in a strong consensus on the need to expedite the review process.

These findings show a complex web of perceptions, raising questions rather than providing definitive answers. Is the Marketing team's shared responsibility viewpoint a path to bridging the divide? How can the differing views on directing the process be reconciled? What do these shared challenges tell us about the operational realities of these distinct but intertwined departments?

Perception of Current Compliance Review Process

Analyzing perceptions of the current marketing compliance review process is crucial in understanding the dynamics between Marketing and Compliance/Legal teams. According to a question that asked how well the current review process works for their team on a scale of 1-10, both teams gave high scores, with Marketing at 8.6/10 and Compliance at 8.8/10.

However, despite the high ratings, 22% and 25% of respondents from teams, respectively, believe that there is an absence of a well-defined review process. Marketers, particularly from organizations with 5,000-10,000 employees, highlighted this as a bottleneck — expressing a desire for a more streamlined process. This viewpoint is further substantiated as 79% of Marketers say process issues such as having too many steps, taking too long and approval being sought too late, contribute to overall inefficiency. This figure comes from the same group of respondents who find the review process lengthy and convoluted (79%).

Despite these reservations, a majority of Marketing professionals (83%) would prefer to have their work scrutinized stringently by Legal and Compliance rather than a light touch review, ensuring no potential risks are overlooked. However, this raises the question of the timing of Compliance and Legal involvement during the content creation process. Late-stage, reactivel reviews of marketing and advertising can have negative repercussions on campaign timelines and lead to multiple rounds of revisions. This could be detrimental to the agility deemed essential for effective marketing (80% of Marketers agree).

22%
of respondents believe that there is an absence of a well-defined review process.

> **Most of the time, the rules are open to interpretation, so it always comes back ...and we will take on board what they say and then decide, having all the information from legal and compliance, do we want to take the risk for commercial reasons or is it not worth it?"**
>
> *— Head of Marketing*

Additionally, many Marketers (82%) believe that having sufficient marketing experience reduces the necessity for compliance oversight. When taking into account the context, this sentiment reflects not a dismissal of the compliance and legal functions, but rather suggests a desire to provide Marketing with enhanced knowledge and tools to proactively undertake risk reviews themselves. To elevate Marketing's ability to detect and mitigate risks, clear guidelines and consistent feedback are required. Unfortunately, 76% of Marketers believe this is lacking, citing inconsistent or vague feedback, disagreements among reviewers, unnecessary escalations, and overly subjective reviews.

Thankfully, there is cross-functional consensus about the need to reduce subjectivity in the review process, with 81% of Marketing and 89% of Compliance teams in agreement. This remarkable level of alignment in an otherwise fractious relationship demonstrates fertile ground on which to base process improvements — such as better knowledge transfer, more robust record keeping and the establishment of objective rules — with the promise of mutually beneficial results.

Lastly, all teams share a pragmatic attitude to risk management. Instead of aiming for complete adherence to every rule, they prioritize maintaining an acceptable risk level (81% of Marketers and 90% of Compliance professionals agree). This underscores a mutual comprehension of the practicalities of risk management in business, and sets the stage for productive discussions about enhancing the review process's efficiency and effectiveness - although the qualitative research indicated that teams may not be aware of their shared perspective.

Clearly, while there is general acceptance of the current compliance review process, there is room for improvement, starting with clear lines of communication. Addressing these issues can foster better alignment between Marketing and Compliance/Legal, promoting a smoother and more effective workflow.

Possible Improvements and Expectations

With the complexities of organizational structures in mind, the study identified potential areas of improvement that could foster more harmonious and efficient working relationships. There is a widespread desire for productive conversations about improving the compliance review process, (85% of Marketing and 89% of Compliance teams agree).

Marketing and Compliance professionals both express desires to
1) establish a clear, efficient process, and
2) minimize human subjectivity in reviews.

As mentioned previously, a high proportion of both sides see the minimization of subjectivity as important (Marketing 81% agree and Compliance/Legal 89% agree), indicating shared aspirations for an "ideal review process" that involves the least amount of human bias.

Aligned with improving objectivity, the research also revealed a significant shared sentiment about the role technology could play in the review process, particularly artificial intelligence (AI). When asked about the potential uses of an AI-based tool that could automatically identify compliance and brand risks in marketing content, an overwhelming majority responded positively: 95% of Marketers and 93% of Legal/Compliance professionals believe this could support a more effective marketing compliance review process within their organization.

Further analysis shows that the teams have common expectations for potential improvements. Efficiency emerges as a primary requirement, with 33% of Marketers seeking a faster review process. Both teams also value the idea of automating checks for standardized content (32% each) such as disclosures, disclaimers, and terms and conditions. Additionally, Compliance and Legal highly prioritize automating the inclusion of disclaimer wording into documents (31%).

33%
of **Marketers** are seeking a faster review process

32%
of **all respondents** value the idea of automating checks for standardized content

31%
of **Compliance and Legal** respondents prioritize automating disclaimer wording into documents

EXPLORING THE FUTURE
AI in Marketing Compliance

Amidst the challenges of handling increasing regulatory complexities, expanding workloads and external scrutiny, numerous organizations persist in relying on isolated and often manual methods to manage the process, typically depending on spreadsheets and email (more than 48% of all respondents). While these practices may have been satisfactory in the past, crucial questions arise: Will they scale to meet future demand, and do they optimize resource distribution in business, ensuring efficiency and effectiveness at every stage of this critical process?

Considering the remarkable willingness exhibited by all parties to explore technology for this process, the role that innovative tools can play in reshaping internal processes must be considered. Incorporating these innovative tools into the current workflow has the potential to drive substantial enhancements in efficiency and productivity, while also fostering better collaboration between Compliance/Legal and Marketing.

AI is at the forefront of these technologies, promising the ability to analyze marketing content in real time, identify potential compliance issues, and save substantial time. This not only improves approval turnaround times but also enables more efficient use of resources.

The introduction of AI is not about replacing the human touch, but enhancing it. With AI automating straightforward steps such as the inclusion of standard disclaimers, Marketing, Legal and Compliance teams can work more effectively, focusing their expertise on nuanced analysis and high-value tasks.

While the comfort of familiar processes can be compelling, it's imperative to recognize that adhering to them may not offer the most efficient or effective long-term strategy. Adopting transformative technology isn't innovation for innovation's sake; it's about giving teams the best tools and support, laying in a foundation on which to base robust, scalable marketing compliance endeavors to meet future regulatory demands, mitigate significant reputational risks and avoid financial damage.

Practical Steps to Improve Communication

The crux of this research reveals a straightforward reality: There is greater alignment between the involved departments than commonly perceived. However, this alignment is often clouded by the communication gap, resulting in inefficiencies that can be streamlined.

AI technology holds the potential to greatly enhance productivity and compliance accuracy, but it constitutes just one facet of process transformation. Effective results require a cohesive collaboration between people and technology. Here are specific strategies that can be implemented to improve cross-functional alignment:

Regular interactions: 81% of Marketers see Compliance as a barrier, indicating a lack of understanding and engagement between the two teams. Scheduling regular meetings can ensure ongoing dialogue,

81%

of **Marketers** see compliance as a barrier, indicating a lack of understanding and engagement between the two teams.

fostering a better understanding of each team's challenges and working processes. These interactions could take the form of formal meetings, casual catch-ups, or joint training sessions.

Joint workshops: Given the time constraints these teams face, it's essential to optimize training opportunities. Short, concise training sessions, focused on the most critical updates, especially regarding regulatory changes, have been highlighted as valuable by 90% of all respondents. Moreover, sharing pertinent updates such as changes to regulations and disclaimers is crucial. This proactive communication ensures that all teams stay informed, aligned, and ready to adapt to any changes in the regulatory landscape.

Clear roles and responsibilities: Clearly defining roles and responsibilities can help alleviate such confusion, ensuring everyone understands their part in the marketing compliance review process, for instance, appointing subject matter experts (SMEs) within each team to address inquiries, confront challenges, or address concerns.

Shared goals and metrics: Having cross-functional teams work towards shared goals, naturally drives collaboration. Introducing joint KPIs or shared success metrics to optimize the process can align the two teams toward a common objective, improving relations.

Feedback mechanisms: Constructive feedback is critical for improvement. Encourage teams to provide open feedback on the review process, highlighting areas of success and potential improvements. The study found that Marketers are open to having potential risks pointed out in-line with a conservative risk appetite. Use this receptiveness to foster a culture of learning and continuous improvement.

Early involvement of compliance checks: 85% of Compliance professionals believe that reviews would be more efficient if they weren't constantly rechecking the basics. To counter this, technology to undertake compliant content checks should be embedded throughout the content creation process. This empowers Marketers to identify potential risks before asset submission and reduces reactive, approval-stage amendments.

85%

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Leverage technology for consistency and objectivity: Introducing advanced solutions not only streamlines the review process but also facilitates improved team communication, shifting risk identification from a reactionary stance to a proactive one. Additionally, as the technology identifies issues and offers feedback, less experienced team members can progressively gain insights.

AI-Enhanced

If there's one unequivocal insight from this research, it's that the intersection of Marketing and Compliance/Legal is ripe for transformation. Traditional, fragmented approaches for reviewing marketing assets in terms of compliance no longer suffice in a rapidly evolving environment. With the advent of AI-driven technologies and the undeniable thirst for streamlined processes, a new blueprint for collaboration emerges.

With a focus on improving the marketing compliance process for all involved through technology, Red Marker offers tools that can improve the compliance review process in three distinct ways.

Establishing greater objectivity: By reducing the influence of human bias and subjectivity, AI and automation can provide a more balanced and fair assessment of compliance risks, along with objective and consistent feedback. This increases trust in the review process, reduces disagreements over subjective matters, and accelerates learning.

Fostering dialogue: Red Marker's solution facilitates improved communication between Marketing and Compliance/Legal. By streamlining the review process, these tools can help teams better understand each other's needs and foster a more collaborative working environment.

Increasing process efficiency: AI and automation facilitate the rapid and accurate assessment of substantial content volumes for potential risks, thereby accelerating the review process. Incorporating risk reviews early in the creative process means fewer iterations, not to mention last-minute changes in the face of looming campaign

deadlines. This shared concern about review, amendments, and approval speed is a central focus for Marketing, Legal and Compliance teams.

By harnessing AI, we're going beyond refining this process. We're here to help you to reshape the marketing compliance narrative within your organization, and dispel the "us versus them" mentality that can impede productivity. With enhanced objectivity and improved communication, you can foster a collaborative environment of mutual respect and understanding; those involved can work at optimum efficiency — creating, reviewing, and disseminating compliant marketing material to engage customers and benefit the bottom line.

Transform your marketing compliance process using automation to effciently identify legal, regulatory and brand risks in marketing and advertising content.

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