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Under the Spotlight: How to Navigate  
Government Scrutiny from Regulators and  
Legislatures Worldwide

Christine Braamskamp and Marcus Childress

Friday, June 14, 2024



# Agenda

- The Landscape
- Overview of Government Scrutiny Processes across Jurisdictions
- Case Study: Online Child Safety Efforts
- What to Do When You Hear from a Regulator or a Legislature
- Proactive Best Practices
- Q&A

# The Landscape

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# Overview of Government Scrutiny Processes across Jurisdictions

United States

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## Congressional Investigations

*“All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.”*

U.S. Constitution, Article I, Section I

# Congressional Investigations

- Congress may conduct investigations **“in aid of its legislative function,”**
  - Has broad discretion in deciding the scope and relevance of information it can request.
- Investigations take many shapes and tools for oversight vary.
  - Tools for oversight vary
    - Letter inquiries and document requests (voluntary)
    - Subpoenas
    - Informal interviews
    - Depositions
    - Briefings
    - Hearings



# Government Scrutiny Sources in the US

- US Congress
- Federal Agencies
- Law Enforcement / US Department of Justice
- State Attorneys General



# United Kingdom

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# Parliament

- UK Parliament consists of the House of Commons and the House of Lords
- Work conducted in committees, e.g. Select Committees
  - Designed to investigate public and private sector activities that have a significant impact on public
  - Run inquiries on specific topics and report back to Parliament
- Select Committees can “send for persons, papers and records”
  - Growing trend of witnesses pushing back
- In most cases, Select Committee hearings take place in public, with seating available for both the public and the media
- Select Committee hearings (or parts of hearings) can be conducted in private in very specific circumstances



# Other Inquiries

- Public Inquiries
  - Investigations set up by Government ministers
  - Often led by judges
  - Respond to events of major public concerns or to consider controversial public issues – typically after criminal investigations have been concluded
  - Focus on the UK but may impact global companies: Post-Office Horizon IT Inquiry and the Levenson Inquiry
  - Conclusions typically set out in a written report, shared first with the government and then made public
    - Reports sometimes sent to core participants before being published, if contents likely to result in significant reputational damage or legal ramifications
- Statutory vs. Non-Statutory Inquiries
  - Inquiries Act 2005 vs. greater procedural and formal flexibility
  - But non-statutory inquiry cannot compel witnesses to give evidence under oath or produce materials
  - Statutory inquiries must generally be held in public. Non-statutory inquiries can be held in private

# Examples of UK Regulators and Enforcement Agencies

- **Serious Fraud Office (SFO):** a specialist prosecuting authority tackling top level serious or complex fraud, bribery, and corruption
- **Crown Prosecution Service (CPS):** the principal criminal prosecution authority for England and Wales
- **National Crime Agency (NCA):** the UK's leading law enforcement agency for, amongst other things, economic crime that crosses regional and international borders
- **The Financial Conduct Authority (FCA):** financial markets regulator which regulates over 45,000 businesses. The FCA has a wide variety of supervisory and enforcement powers
- **Competition & Markets Authority (CMA):** responsible for promoting competitive markets and tackling unfair behavior, including
  - i. investigating mergers
  - ii. investigating cartels or anti-competitive behavior
- **Ofcom:** UK's regulator for online safety. Ofcom may issue codes of practice and guidance and take enforcement action, including issuing fines.

# European Union

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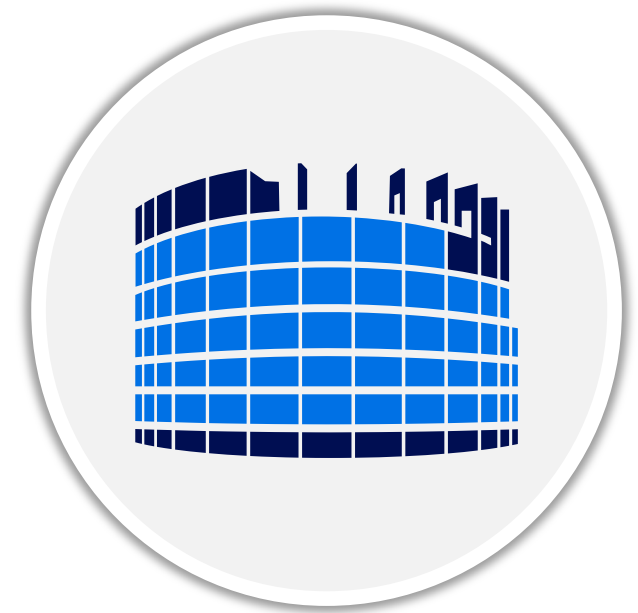
# European Union — Scrutiny

- **The European Commission**
  - Proposes new laws which are sent to the European Parliament and the Council of the European Union for approval
  - Responsible for upholding EU law and can take actions against businesses
  - Has the power to conduct sector inquiries
- **The European Parliament**
  - Debates, passes, or rejects legislation proposed by the European Commission
  - Has the power to set up committees to conduct inquiries into violations of EU law by member states
- **The Council of the European Union**
  - Debates, passes, or rejects legislation proposed by the European Commission



# European Parliament Inquiries

- Investigates breaches of EU laws by member states and public bodies
- Can obtain evidence via summons
  - Can impose sanctions on bodies or authorities that fail or refuse to comply
  - For individuals, Member State in which the person lives is expected to bring proceedings against them under national law
  - Refusal to co-operate can result in reputational damage as well as sanctions
- Hearings almost always take place in public, unless there are exceptional circumstances
- Individuals or organisations who are likely to be affected by the result of an inquiry must be informed and given the opportunity to respond
- Inquiries usually have to be concluded within 12 months, but committees may monitor ongoing actions taken in Member States after the conclusion of the Inquiry



# European Commission Inquiries and Investigations

- Initiates sector inquiries into potential issues relating to competition policy
  - Inquiries used to prompt changes to legislation or regulations
  - Focus tends to be on industry-wide practices, not on the behaviour of specific companies
  - But can lead to investigations into specific companies
- European Commission has a wide range of investigatory powers
- If company has breached a competition law or regulation, European Commission can make:
  - **Prohibition Decision:** requiring the company to stop the infringement, or imposing remedies or fines
  - **Commitment Decision:** requiring the company to offer binding commitments to address concerns

# Case Study

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# Case Study: Online Child Safety Efforts



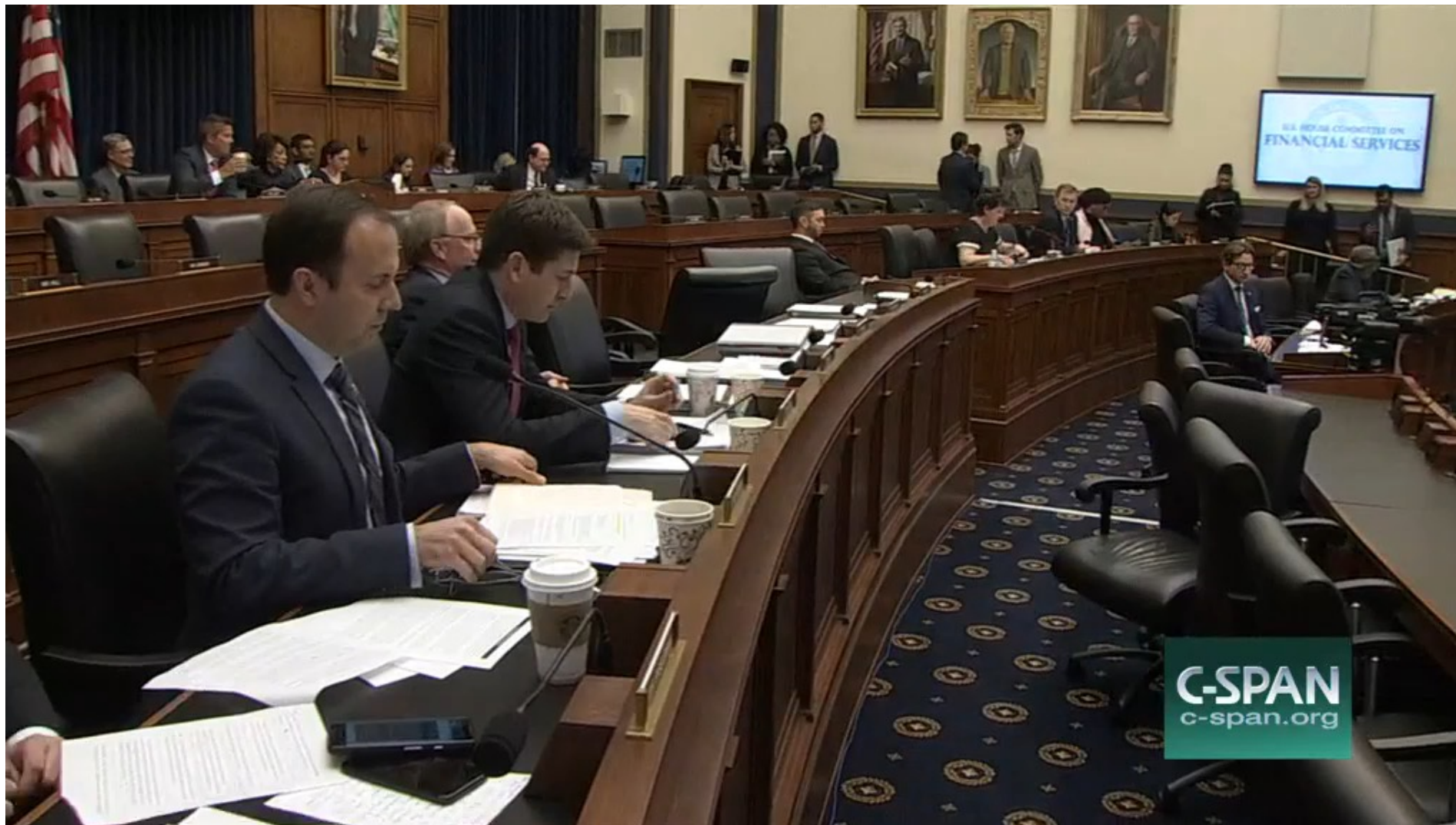
## View across jurisdictions

- Australia: AOSA
- EU: DSA
- UK: OSA
- US: KOSA; FTC action

# Managing across Forums

- Parallel proceedings—Congressional hearings, State Attorneys General, Department of Justice, litigation, parliamentary hearings, media inquiries
  - 360-degree strategy needed with legal, government affairs, and communications synced
  - Consistent messages and cohesive strategy, including in messaging to internal and external stakeholders
    - Employees
    - Customers
    - Investors
    - Regulators
    - Media

# Litigation Filings Arising in Congressional Hearings



# Best Practices

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# What to Do When You Hear from a Regulator or a Legislature

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# What to Do When You Hear from a Regulator or a Legislature

- **Maintain a swift, coordinated, and comprehensive strategy**
- **First 48 hours are essential**
  - Focus on gathering the facts
  - Maintain a big-picture approach
- **Consider voluntary disclosure where appropriate**
- **Have a strong communications strategy**
  - Engage early on with stakeholders
  - Consider public statements or announcements
- **Maintain business as usual**



# Proactive Best Practices

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# Proactive Best Practices

- **Establish strong governance practices**
- **Document retention policy**
  - What to keep and for how long
  - Ensure staff are aware of and follow the policy
- **Response plan**
  - Communicate with staff in advance about the possibility of government inquiries
  - Ensure they know who to contact internally if they receive a call or letter
  - Reduce anxieties by reminding the team that the organization has a plan

Always remember:  
**Every communication has two sides**

Questions?

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# About Us



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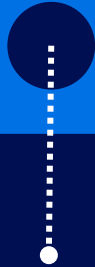
## FULL SCHEDULE

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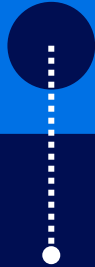
Session 1  
**Inputs and  
Outputs: The State  
of Play in Year Two  
of Generative AI**

Friday, May 10  
12 pm CT



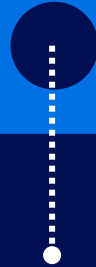
Session 2  
**One Year Later:  
DEI in a Post-  
SFFA World**

Friday, May 17  
12 pm CT



Session 3  
**Hot Topics in  
Fintech and  
Crypto**

Friday, June 7  
12 pm CT



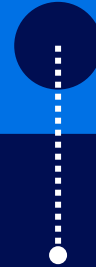
Session 4  
**How to Navigate  
Government Scrutiny  
from Regulators and  
Legislatures  
Worldwide**

Friday, June 14  
12 pm CT



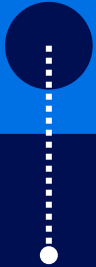
Session 5  
**Global Enforcement  
Trends and Emerging  
Risks in Sanctions,  
Export Control, and  
Supply Chain**

Friday, June 21  
12 pm CT



Session 6  
**Information  
Exchanges:  
Navigating Antitrust  
Risk Without Safe  
Harbors**

Tuesday, June 25  
12 pm CT



Session 7  
**US Supreme  
Court Term in  
Review**

Friday, June 27  
12 pm CT