



TMT annual report

Evolutionary tale

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Evolutionary tale

Technology is revolutionising the economy and it is also having an impact on the way in which law firms provide legal services, with specialisation increasingly important

All businesses in all sectors are being impacted by the digitalisation of the economy. As a result, technology, media and telecommunications (TMT) lawyers are much sought after as clients look to rapidly adapt their businesses in order to keep up with a new breed of competitor. Meanwhile, data protection is a worry for business owners as they seek legal counsel to ensure they comply with the demands of the General Data Protection Regulation (GDPR). The fact there is a new wave of tech-savvy clients is also a concern, as well as an opportunity, for law firms. The new market players want highly-specialised advice from lawyers who are up-to-speed with the latest trends and developments. This is daunting for many lawyers. So some boutique firms are teaming up with technology engineers in order to ensure they are fully equipped with the skills and knowledge to solve any problems that clients may have.

Spain: Firms forced to reassess service provision

Law firms are reorganising their internal structures in order to provide a better service to technology clients – meanwhile, the emergence of TMT boutiques mean the legal market is becoming increasingly competitive

Event: Iberian Lawyer Global Roundtable
Host: Cuatrecasas

Technology-related M&A and litigation is on the rise with the result that law firms are taking the step of reviewing their

internal structures with a view to providing a better service to such clients, attendees at the *Iberian Lawyer TMT Madrid Roundtable* said. For example, some firms now have lawyers that specialise in helping clients with the ‘digital transformation’ of their business. Indeed, some lawyers argue that the traditional law firm structure is ill-suited to providing technology clients with the service they actually need.

Advising clients on how they can do business digitally is a major source of work for law firms at present, said **Cuatrecasas partner Alvaro Bourkaib**. Meanwhile, technology-related transactional work and litigation, as well as General Data Protection Regulation advice, is also on the increase. Bourkaib added that technology lawyers are increasingly becoming generators of work for other departments within law firms.

Given that many companies in the technology sector are start-ups, often the law firms that advise them effectively become their “in-house lawyers”, according to Bourkaib. He also said that the market for technology-related legal services is becoming increasingly competitive: “Boutiques have the flexibility to create multidisciplinary teams of professionals that may include engineers, for example, which is an option that traditional big firms in Spain have not taken yet, for various reasons, and instead leverage their well-established full legal service capabilities.”

Garrigues partner José Ramón Morales said the evolution of the technology sector has resulted in law firms modifying their internal structures to better serve clients – for example, whereas there were once practice areas and industry sector groups, there are now lawyers specialised in helping clients ‘go digital’ as an increasing number of traditional clients are in the process of transforming their business for the digital age. He also said that some clients that had always operated in the B2B (business to business) sphere, now

face the challenge of having to deal directly with end-users.

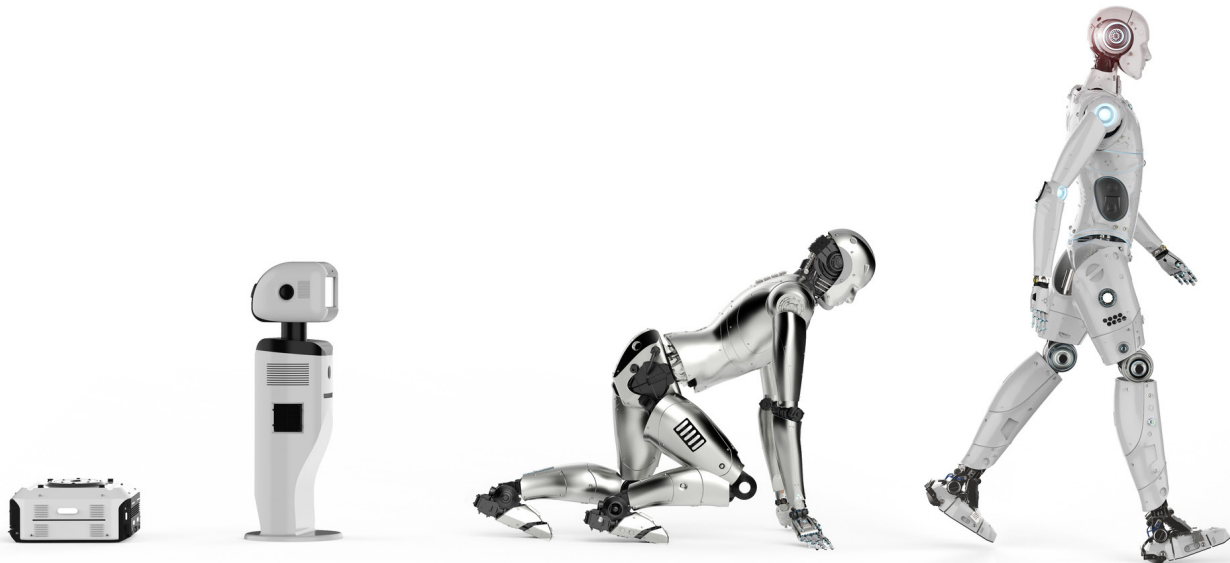
Meanwhile, Morales said that clients were increasingly seeking protection from big risks such as cyberattacks as there was a growing risk of senior executives losing their jobs due to malfunctions related to their information systems. He added that there are a lot of boutique law firms operating in the technology sector, so larger firms have to set up the equivalent of boutiques within their own firms that offer the specialist knowledge that clients require.

Due to the highly-specialised nature of the technology industry, increasingly law students are being given technology-related training in universities, said **Uría Menéndez counsel Leticia López-Lapuente**. Meanwhile, in-house lawyers are currently experiencing a lot of pressure as they deal with changes in the legal framework, she added. “In-house lawyers are increasingly asking external legal advisers for advice on strategic decisions,” López-Lapuente said. She also said that technology lawyers were generating work for lawyers in other practice areas. “Our tax lawyers are involved in work related to blockchain, for example.”

Trust is becoming increasingly important in client relationships, López-Lapuente said. “Data breaches can lead to criminal law matters, so trust is very important.” Meanwhile, the General Data Protection Regulation is generating a lot



Cuatrecasas partner Alvaro Bourkaib says technology lawyers are increasingly generating work for other departments within law firms



of work for law firms, while the fintech sector is also a source of a significant amount of instructions. In addition, businesses are increasingly using complex algorithms for a variety of functions and this is also creating work for law firms.

Though technology impacts on all sectors, the type of technology used by each industry, and its legal implications, varies widely, said **Ecija managing partner Alejandro Touriño**. “Real estate is different to automotive or pharmaceuticals, for example,” he added. Meanwhile, foreign investment in the technology industry in Spain has increased and this is creating more opportunities for lawyers, but it means law firms have to provide training related to new trends such as blockchain, for example, for their lawyers, Touriño said. However, he added that, despite these market trends, there are still relatively few law students studying technology, despite the fact that the emergence of new industries such as fintech, for example, requires lawyers to have

expertise in both banking and technology.

While there are a significant number of boutique law firms offering services to technology clients, Touriño argued that establishing a boutique firm can be risky. “Boutiques only get small pieces of work and it can be difficult for a boutique to have broad expertise,” he said. Touriño also said that there are still law firms who do not take the technology sector very seriously, though he adds that the ‘Big Four’ have won a significant amount of technology-related work.

Technology clients generally fall into one of four categories, according to **CMS Albiñana & Suárez de Lezo partner Javier Torre de Silva**. These categories are: firstly, the “sector champions” such as Amazon – clients that are prepared to pay higher fees and have a high level of industry knowledge; secondly, traditional telecommunications companies that want to become involved in other sectors; thirdly, the majority of businesses – they are having to evolve into technology companies,

though they are starting from scratch and need a lot of advice on GDPR, for example; and finally, start-ups, though these do not necessarily generate profitable work for law firms. He added that, as technology penetrates a wider range of sectors, so more specialised legal knowledge is required. “To advise on healthtech, you need to know about pharmaceutical regulations [in addition to technology law].”

Torre de Silva also said that, while transactions traditionally were often based on the transfer of physical assets, increasingly a company’s value is based on the data they possess. He added that healthtech is a growing industry due to the aging population, while e-sports is another industry that is generating an increasing amount of legal work.

Clients, including those operating in the digital environment such as online banks, are increasingly asking law firms to provide technology-related training for their staff, said **Javier Fernández-Samaniego, founding partner of Samaniego Law**. He



What types of TMT work currently represent the biggest opportunities for law firms?

“Data-related work, from privacy and GDPR matters to big data matters, are among the main areas of growth.”

Diego Ramos, partner, DLA Piper

“Blockchain and bitcoin – now is the time for law firms to specialise and cover these niche areas, especially in relation to the payment services industry.”

José Ramón de Hoces, partner, Pérez-Llorca

“Nowadays the cornerstone of almost every single business is its technological component and this generates opportunities for highly-specialised law firms. We anticipate that companies will keep on moving to cloud-based customer relationship management systems, while there will be a greater demand for services related to IT arbitration. The importance of AI and machine learning will increase in all sectors. Also, autonomous vehicles will soon be in our daily lives.”

Alexander Benalal, counsel, Bird & Bird

added that “digitally transformed” clients require a different approach from their legal advisers, but traditional ‘practice-oriented’, and even ‘sector-oriented’, law firm structures are not always providing them. He continued: “It used to be the case that clients would call corporate lawyers for strategic advice, but with digital transformation there is now room for technology lawyers to be the trusted strategic advisers – however, there are few technology lawyers who can take on the strategic adviser role.”

Samaniego argued that, when it comes to advising clients on technology, law firms face competition from consulting companies, such as Accenture, who he said are “better positioned than law firms” with regard to advising on the General Data Protection Regulation, for example. He added that technology lawyers are also being asked to provide advice on anti-trust issues (for instance,

in relation to algorithms and collusion), while, with regard to the fintech industry, Samaniego argued that technology lawyers are as important as banking lawyers when it comes to advising such clients. He also said there were significant opportunities for law firms related to contentious data protection matters. Samaniego continued: “Every data breach will potentially become a class action claim.”

Portugal: Funds target Lisbon tech businesses

Investment funds ploughing money into Portuguese technology sector, but keeping up with client demand in this ever-changing sector is a major challenge for law firms

The Portuguese technology sector has received significant financial backing from major investors, including private equity funds, and consequently there has been a growth in demand for technology-related legal advice. Meanwhile, data protection is a major concern for clients, with the General Data Protection Regulation generating substantial work for Lisbon law firms.

However, meeting client demand in this rapidly changing environment is one of the biggest challenges lawyers currently face. Technology, media & telecommunications-related M&A activity is generating significant work for lawyers in Portugal, as traditional operators seek to divest unused infrastructure to independent wholesale operators, says **MLGTS managing associate Gonçalo Machado Borges**. He adds: “Private equity firms and investment funds have been moving into this sector and consequently, negotiating the underlying long-term agreements is interesting and challenging.”

Machado Borges also says that scrutiny of co-investment and network sharing arrangements should also increase once the new

European Code for Electronic Communications comes into effect. Meanwhile, data security issues are of increasing concern to clients and, from a regulatory perspective, they also face the challenge of adjusting to a “rather excessive focus” by ANACOM on consumer information and protection, he adds.

Magda Cocco, partner at Vieira de Almeida says data protection is becoming an increasingly important consideration for businesses. She adds that breaches of data privacy are increasingly common, and consequently clients need advice on what notification obligations are involved and what actions can be taken to mitigate such risks in future. Meanwhile, fellow **Vieira de Almeida partner Fernando Resina da Silva** says the issue of drones is one that is generating significant work for lawyers.

There are questions concerning who should be allowed to fly drones, where should they be permitted to fly and what are the privacy implications. Possible proposals include the introduction of “free zones” where researchers and manufacturers can test new technologies, such as drones and self-driving cars.

The General Data Protection Regulation (GDPR) has led to an enormous amount of work for law firms and managing this workload effectively is a key challenge for technology lawyers, says **PLMJ partner Daniel Reis**. He adds that the biggest opportunity at the moment is blockchain and initial coin offerings (ICOs), which are “just starting to appear and which indicate that the fintech revolution is finally generating work for law firms”. However, Reis also says one of the biggest challenges law firms face is continuing to offer a service to clients that is relevant in an ever-changing technological landscape.

Cuatrecasas senior associate Sónia Queiróz Vaz echoes the view that GDPR has meant “boom time” for lawyers. She adds: “GDPR has raised awareness, in a manner never seen before, among companies and consumers, and for this reason, even though the implementation of GDPR was some months ago, the truth is that there is still a lot

of work to do.” Queiro *should it be Queiróz Vaz?* says clients that have not completed their GDPR’s assessment and compliance projects are constantly contacting law firms for advice. “Some of them need ongoing assistance with privacy and data protection, including training, support for data protection officers, privacy impact assessments, and plans for privacy by default and by design

The use of disruptive technologies, such as blockchain and big data, is transforming the way TMT clients are doing business, according to **Uría Menéndez-Proença de Carvalho partner Francisco Brito e Abreu**. “Such technologies have a data-centric approach, and therefore it is becoming increasingly important for clients to be familiar with the regulatory framework relating to the protection of data as a valuable asset,” he explains. “The forthcoming years will involve the consolidation of a more organised and compliant approach to using data (personal and non-personal) to tailor the offering of products and services.”

Blockchain is one of the main challenges law firms now



Blockchain is transforming the way clients do business, says Uría Menéndez-Proença de Carvalho partner Francisco Brito e Abreu

have to contend with as it is having a profound impact on the development of the “tech ecosystem” and causing major concerns for clients that relate to smart contracts and ICOs, says **Pedro Vidigal Monteiro, of counsel at Telles Advogados**. Other significant developments include artificial intelligence and big data, which are providing tech clients with “multiple challenges, particularly related to data protection and cybersecurity concerns”.

Major TMT clients face fierce competition from “fast-evolving

players eager to penetrate the market” and therefore have to innovate to keep pace with the rapidly evolving market, says **Carina Branco, counsel at Techlawyers by Pbbbr**. She adds: “Some of our major clients with very high recurrent IT costs are now being challenged by competitors that promise to replace old concepts by more flexible, adaptable and balanced cloud solutions.”

Branco continues: “TMT clients – particularly in the EU – continue to be pressured by the personal data compliance risks and the need to ‘self-regulate’.

The biggest opportunities for law firms relate to cloud computing and artificial intelligence, particularly in relation to self-driving vehicles, the internet of the things and privacy, says **Anselmo Vaz, Afra & Associados partner Ana Rita Paínho**.

She adds: “The 5G generation is a huge challenge for mobile operators but a larger challenge for cutting-edge technology companies, with opportunities for new contractual models and B2C (business to consumer) online services.”

Data protection agencies conducting more inspections following introduction of GDPR

The introduction of the General Data Protection Regulation has contributed to a rise in inspections by data protection agencies, with the result that clients are requiring more legal advice on audits, says **Norman Heckh, partner at Ramón y Cajal Abogados**.

“Data protection issues have of course been a major concern for clients recently, and we have conducted a large number of audits and reviews,” says Heckh. However, as clients become more savvy and begin to take a closer look at the details, the nature of the services they require is changing. “Clients are no longer just demanding an audit, but looking for sophisticated advice,” says Heckh. “This is generating work for data protection specialists.”

Also contributing to the enhanced focus on data protection issues is the recent increase in inspections. “We’ve started to see inspections and we’ll see sanctions in the future,” says Heckh.

“The data protection agency is very sophisticated, not just in terms of the legislation but also regarding specific industries – inspectors know what to ask, and where to focus efforts.” While this may seem a potential source of trouble for companies, Heckh believes that it will have a positive impact by generating legal certainty. “A lack of legal certainty is a challenge faced by many clients in the technology industry, which tends to move at a faster pace than regulations,” he adds. “The regulator often doesn’t provide fast enough answers,” says Heckh. “Technology companies take compliance seriously, but many wouldn’t have launched if they had been too cautious,” he adds. “There is a lack of flexibility in legislation which causes doubt for clients,” says Heckh. “We help by providing answers based not just on legislation, but common sense – clients demand less aversion to risk as well as highly commercial advice from us.”



Norman Heckh

Client concerns regarding Blockchain and data security driving increase in demand for legal advice

Law firms have key role to play in protecting clients from the risks associated with data management – implementing data protection measures is vital



Anna Viladàs Jené

Demand for technology-related legal advice is increasing as clients from a wide range of sectors are forced to come to terms with matters such as the potential impact of Blockchain, as well as the risks of potential security breaches, says Anna Viladàs Jené, partner at Roca Junyent.

Awareness of the potential of new technologies is increasing with clients requesting advice on issues ranging from the legal implications of Blockchain to data protection, according to Viladàs Jené. “Demand for TMT advice is growing across many sectors, and we act for a diverse client base which extends beyond the traditional, technology-based start-ups,” she says. “We’ve seen a lot of demand in sectors as diverse as transport healthcare and the arts.”

Viladàs Jené believes that the use of Blockchain technology will become more widespread in the management of intellectual property rights. “Blockchain could be a very useful tool in this context, as it improves traceability and could therefore provide the means to certify the provenance of a work of art,” she says. “It will also have a big impact on the management of copyright issues,” Viladàs Jené adds. Blockchain has also had a notable impact on the banking and finance industry, says Roca Junyent partner Xavier Foz Giralt. “We’re starting to see the practical implications of Blockchain, particularly in the banking and finance industry, where it is aiding the development of fintech and new models of financing,” he says.

Meanwhile, according to Roca Junyent lawyer Teresa Pereyra Caramé, another factor contributing to the increase in demand for technology-related advice is a growing awareness of the importance of Big Data. “We’re seeing a diverse range of client profiles, all of which are interested in making the most of the vast amounts of information that they handle,” says Pereyra Caramé.

As companies begin to better understand the potential of the information that they manage, they have also become more concerned about the implications of any potential security breach. The entry into

force of the General Data Protection Regulation in May this year has of course contributed to this, says Viladàs Jené. “Clients are concerned, and the GDPR has meant that many companies are paying more attention to data protection – a matter that had perhaps not been at the top of their list of priorities,” she explains.

Serious impact

Law firms have a key role to play in protecting clients from the risks associated with data management, says Pereyra Caramé. “Implementing the right data protection measures is vital for any business,” she adds. “Data breaches can have a very serious impact, including damage to corporate reputation.” Pereyra Caramé believes that taking a long-term, business-wide approach to data protection is the best strategy. “Clients need to understand that data protection is a not a one-off issue,” she argues. “It’s an ongoing process, which requires continuous attention and improvement,” Pereyra Caramé remarks. As the entry into force of the GDPR happened very recently, there are still doubts about the approach that the regulator will take with regards to enforcement. “We haven’t handled any inspections yet, but we expect these to begin in the coming months,” says Pereyra Caramé. “We’ll then begin to see how the authorities interpret the legislation.”

Another issue that is causing uncertainty in the legal sector is the potential impact of artificial intelligence (AI) on law firms’ business. This is an issue that has been at the centre of much of the debate about technology in recent months. “All firms are talking about AI, but we don’t quite yet know all the ways in which it can be applied to the practice of the law,” remarks Viladàs Jené. She believes that AI will become a tool which will be of great help to lawyers, and does not see such technology as a threat. “Artificial Intelligence is a tool, we’ll work alongside it, it’s not going to put us out of work,” she claims. “Artificial Intelligence will not be a substitute for the creativity which a lawyer can bring, or for the relationship of trust that we build with clients,” Viladàs Jené says.



Xavier Foz Giralt

Law firms must change their business models to serve clients in a more ‘collaborative’ way

TMT clients are ‘volatile, fast evolving and constantly question their strategy’, so their legal advisers have to be permanently available to solve problems that are seldom ordinary

The fast-developing nature of the TMT sector means law firms will have to change their business models on order to serve clients in a more ‘collaborative, informal and pragmatic’ manner, according to Carina Branco, Counsel at PBBR in Lisbon, Portugal.

“TMT has continued to grow in Portugal; however, major TMT clients continue to be pressured by fast-evolving players eager to penetrate the market, and they also have the pressure of having to be innovative in order to try and cope with the constant evolution,” she says.

“Some of our major clients with very high recurring IT costs are now being challenged by newer solutions that promise to replace old concepts with more flexible, adaptable and balanced cloud solutions.”

As a result, TMT lawyers are having to change their strategies and their business models in order to serve their clients. “All in all, lawyers tend to be very traditional, says Branco.

“However, the issue is not just about technology we use (or resist using), it’s more to do with the way we work,” she explains. “TMT clients challenge us to be more collaborative, more informal, more straight to the point and pragmatic. Why? Because they just do not have the time.”

Unlike clients from other sectors, TMT clients are “particularly volatile, fast evolving and constantly questioning their solutions, their goals and their strategy”, says Branco.

She adds: “It means we constantly have to be there because their problems are seldom ordinary and recurring.” Consequently, the TMT sector is now prompting Portuguese law firms to question their ways of doing business.

“I believe the traditional law firm pyramid has gone, and soon we will have to re-design our business model,” says Branco.

“And probably one of the most dramatic challenges ahead is that the hourly-rate model is under threat.”



Carina Branco

Blockchain could drive a ‘fourth industrial revolution’, but lack of regulation is a problem

Blockchain technology, which acts as an incorruptible digital ledger system, has the capacity to drive what will effectively be the “fourth industrial revolution”, says Marta Gil de Biedma, partner at Ventura Garcés & López-Ibor. However, for clients using blockchain the main problem is the lack of regulation, both at a national and European Union level, she adds.

One of the key issues is which is the applicable jurisdiction with regard to blockchain transactions as records can be located anywhere in the world, Gil de Biedma explains. In addition, there is the question of how to enforce the ‘right to be forgotten’ – one of the main principles of the General Data Protection Regulation – when one of the main facets of the technology is that it is impossible to make alterations to the ledger.

These are just two issues that highlight the difficulty in regulating

blockchain. However, lawyers are currently tasked with assessing what any potential regulations could mean for clients. For example, a fintech start-up may want to use the technology to make acquisitions, or large corporations may be testing blockchain to ascertain whether it can be used to improve the way they do business.

Gil de Biedma says Ventura Garcés & López-Ibor has spent considerable time and resources providing blockchain training for its lawyers. “We believe that blockchain will be part of all our futures,” she says. “That’s why we train our lawyers to become experts.”

She adds: “Blockchain can be applied to all transactions involving currency, goods or property. One example is real estate transactions, which involve considerable amounts of paperwork. However, smart contracts mean there is no need for intermediaries and this reduces costs.”



Marta Gil de Biedma

All industry sectors face digital challenges and may need to develop new business models

Traditional aviation legislation was not designed to cover new technology such as drones and flying cars – meanwhile, the implementation of the GDPR is creating many opportunities for lawyers



Magda Cocco



Fernando Resina da Silva

Regardless of which industry sector they operate in, companies face significant challenges related to communications, media and technology challenges, and their need for clarity on these issues is presenting many opportunities for lawyers, according to Vieira de Almeida partners Magda Cocco and Fernando Resina da Silva.

“Virtually all economic activity faces challenges in the digital sphere, making communications, media and technology advice crucial”, says Cocco. She adds that technological developments are facilitating the creation of new business models in many sectors such as banking and finance, agriculture and insurance.

Meanwhile, there are also implications for legal advisers, as Resina da Silva explains. “The client expects legal advice from someone who understands the technology and the products and services that use and incorporate it,” he says. To ensure a thorough understanding of the issues involved, law firms are increasingly creating interdisciplinary teams that enable lawyers to seek advice from other professionals including engineers, and scientists specialising in different areas, such as biology, nanotechnology and physics.

Even with a clear understanding of the underlying issues, lawyers can still encounter major challenges when advising clients in the technology sector. “Technological developments are not accompanied by the swift adaptation of the law, and lawyers have the difficult job of incorporating new technologies into existing laws, which are often obsolete and created for completely different scenarios”, says Resina da Silva.

Flying cars

Take the example of drones. Until recently, the only applicable legislation for drones was aviation law, which was originally developed for aeroplanes and helicopters. Resina da Silva says that the law was “not at all intended for this new reality in which a small device controlled by a person of any age can fly anywhere while capturing images and carrying objects, not to mention flying cars, which are already becoming a reality.”

A number of legal issues can arise in relation to drones. For example, who is allowed to control drones? Where can they fly? What are the security and privacy implications? These are matters addressed by the new regulations – though they were not considered at all by the previous legislation. Resina da Silva has first-hand experience with such matters after helping various clients adapt to the existing regulations, and consequently he is now being asked to assist different entities involved in the drafting of relevant legislation and regulation. His work has involved defending the creation of the “so-called free technology zones”, where researchers and manufacturers can test new technologies, such as drones and self-driving and connected cars. Resina da Silva argues that the creation of free technology zones in Portugal could help to attract more foreign tech companies.

Meanwhile, the implementation of the EU’s General Data Protection Regulation (GDPR) has created tremendous opportunities for lawyers who specialise in data protection. Cocco believes that this trend will continue as companies change the way they interact with clients, employees, business partners and third parties. As a consequence, data privacy impact assessments will “continue to be of utmost importance whenever a new product or service that uses new technologies is launched”, Cocco says.

Worst-case scenario

Data protection is becoming an increasingly important consideration for businesses, Cocco says. She adds that data privacy breaches are becoming more common in an economy in which data is “one of the most valuable assets”.

In the worst-case scenario, specialised legal advice on the scope and extent of notification obligations, as well as the type of mitigation actions to take, is a key requirement.

To avoid any potential incidents involving breaches of data privacy, precautionary measures need to be taken by clients. However, fulfilling compliance obligations can often entail high costs for businesses.

Technology lawyers in ‘unchartered territory’ due to lack of regulation and case law

Considerable opportunities exist for lawyers to sell technology-related services to clients, however many law firms ‘still resistant to technological developments’

Given that technology develops so quickly, there is often a lack of applicable regulation or case law, which means lawyers are often operating in uncharted territory, says CCA Ontier partner Filipe Mayer.

Mayer adds that, while this scenario means lawyers have the ability to find creative solutions to clients’ problems, it also means they have to anticipate the regulator’s reaction. “Guessing how the system will adapt to new realities brings a lot of responsibility”, says Mayer. However, he adds that there are also considerable opportunities for lawyers to sell technology-related services to clients, especially those that rarely, or never, use any technology. Mayer says it is now necessary for every company to have some sort of interaction with technology, whether it’s hiring new staff, doing advertising or filling in tax forms, for example.

Such trends apply to a wide range of sectors, says Mayer. “Take

agricultural companies, which are now implementing manifold tech processes.” With such a large variety of clients requiring advice on the legal requirements related to technology, the opportunities for cross-selling are huge as TMT is becoming mainstream, according to Mayer.

Technology is taking over all sectors, and the legal sector is no exception. Clients now expect law firms to use legal technology, and as a result, medium-sized and large firms are investing in such products. However, the legal sector is very traditional, and many firms are still resistant to technological developments, Mayer says.

Yet other firms, including CCA Ontier, are already using knowledge management tools, as well as artificial intelligence to help draft contracts and enable clients to sign documents digitally. By optimising processes, the cost of legal advice is reduced, time is saved and human error is avoided.



Filipe Mayer

Portuguese legal framework ‘not ready’ for the digital world

The Portuguese legal framework is still not ready for the digital world, and this is creating challenges for technology, media and telecommunications lawyers when drawing up contracts, says Joana Gomes dos Santos, partner at Caiado Guerreiro in Lisbon.







Gomes dos Santos adds: “Portugal is a civil law country, which means that a lot of things are already foreseen in our legislation, so we don’t need to include them in contracts.” However, she adds that, as TMT [technology, media and telecommunications] is such a fast-moving area, legislation “just isn’t keeping up as we would like it to, which means that the contract process in this area is a little more exhaustive”. TMT lawyers must approach contracts in a slightly different manner than they would normally, says Gomes dos Santos.

“Sometimes, a big challenge for us is to give a very straightforward answer, to say yes or no, because the legislation is not really ready,” she explains. “You have to say, look this is our understanding of the law, this is what we think is the correct interpretation, but there is a big chance the regulator will not agree.” Gomes dos Santos continues: “And even then the regulator can change its opinion, particularly now there’s a new generation coming in that is more comfortable with new technology.”









Meanwhile, people working in the technology sector tend to forget that most people are unfamiliar with the terminology used, says Gomes dos Santos. “Contracts in Portuguese are usually simpler than those in English, but in the area of TMT, there are new words used and new inventions, so lawyers must detail them and specify their meaning to avoid conflict.”



Joana Gomes dos Santos

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