OLSWANG

Annual Review 2015

Disrupt, influence

OLSWANG

2015

Experts in Technology,
Media and Telecoms

Contents

04 **Highlights**
Olswang's year in numbers

06 **Welcome**
Michael Burdon and Dirk Van Liedekerke review technology's transformative capabilities

08 **Pick and choose**
Organisations are collecting data like never before. How can they minimise the risks?

10 **Freer trade**
New trade initiatives will make it easier to do business in Asia-Pacific in 2015

12 **Europe's skyline**
Three experts discuss the continent's present and future real estate opportunities

15 **New rules for a new era**
How Europe's employers and legislators are handling employee rights in the age of ubiquitous technology

20 **The big Q&A**
With more everyday items going online, what are the legal ramifications of the 'Internet of Things'?

24 **A marriage of necessity**
Telecoms businesses are discovering the virtues of sharing their costly infrastructure with competitors

26 **Behind the cloud**
How the future expansion of cloud computing will owe a debt to a century-old law of economics

28 **Berlin in bloom**
The German capital's startup scene is booming, and ad tech companies are leading the way

30 **Trending in Singapore**
Nine tech trends from a burgeoning South-East Asia

32 **Tipping the balance**
Our experts discuss how the Lean In movement is benefiting the women of Olswang

34 **Doctors of data**
The convergence of life sciences and technology promises significant gains for public health, but are ethics and law ready for the consequences?

36 **Work. Experience**
Haverstock School's John Dowd on how businesses can inspire the next generation

Highlights

150 corporate transactions, with an aggregate value of £5bn

8,000 followers on LinkedIn, Twitter and Xing

3,500 clients attending events internationally

6% growth in revenue

Awards

- The Lawyer Hot 100 list: Corporate Law
- The Lawyer Hot 100 list: Litigation
- Global Competition Review 100
- The Times Top 50 Employers for Women
- World Trademark Review 1000 UK list: Gold
- Managing IP Global Awards: Europe Copyright Firm of the Year
- Client Choice Awards: International – Exclusive Winner Media/Entertainment, UK: Selina Potter
- International Association of Outsourcing Professionals: World's Best Outsourcing Advisor
- Acquisition International Finance Awards: Investment Fund Tax Advisory Firm of the Year
- Finance Monthly Law Awards: UK Data Protection Firm of the Year

Directory rankings

65
category rankings in Chambers & Partners internationally

109
individual rankings in Chambers & Partners internationally

38
cross-border deals

30
jurisdictions covered in dispute resolution

20,000
patents and trademarks under management

8
offices

800+
employees

120
partners

£117.6m
revenue

71%
of employees engaged with CR

£971,000
worth of pro bono advice

Welcome

Our clients are disrupting and influencing the world's fastest-growing sectors. We are proud to be their partner, say CEO Michael Burdon and Chairman Dirk Van Liedekerke

Technology's ability to disrupt – business models, consumer behaviour, the law – is exhilarating and endless. Immersing yourself in sectors where its impact is acute, where growth is global and confidence is rising, is richly rewarding.

A deep interest in our sectors and the drivers behind change means that we're able to protect our clients' interests, create real value and help them to grow.

Helping our technology, media and telecoms clients to meet their ambitions is what motivates our people, wherever in the world they may be.

We want to be the ones our clients turn to when they want real insight, opinion and understanding. That's why over the past year we've invested in new expertise where it matters most to our clients. From telematics to nanotechnology, we are able to lead the conversation and shape the debate.

Our insight and technical expertise across a wide range of market issues and opportunities, whether in real estate or the Internet of Things, are brought to life on these pages, through roundtables, comment pieces and briefings.

We keep the conversation going at www.theguardian.com/media-network/changing-business and encourage our clients, employees and contacts to join the debate.

Looking ahead

We can only attract new talent and new clients by being clear about our strategy: to be regarded worldwide as a full-service law firm, famous as experts in technology, media and telecoms.

Our ambition is embraced within the firm. This creates its own energy and provides a clarity of purpose that builds confidence and dictates the type of relationships we have with clients.

Our culture is distinctive, values diversity and is inclusive. It is most visible in our approach to corporate responsibility, where we focus on our local impact as we work together as an international team.

Whether supporting a school for refugees in Munich or developing the social enterprise sector in Singapore, we are making a positive impact in the community.

Crossing borders

We're proud that we are now ranked in 'TMT' in the Chambers Global directory for every region in which we have an office. Among these is Singapore, where we have built a strong brand in a short space of time. The exciting, exponentially growing economies of South-East Asia are creating individual and collective opportunities across a range of converging sectors.

"From telematics to nanotechnology, we are able to lead the conversation and shape the debate"

We're equally proud that this year we've worked on more cross-border deals than ever before. For example, dunnhumby's acquisition of Sociomantic Labs involved our offices in Berlin, London, Madrid, Paris and Singapore. It shows that the need for a uniquely qualified TMT firm is borderless.

This work is critical for our clients and for the ambitions of our people. Technology doesn't respect traditional boundaries or traditional thinking. That's why it changes lives and transforms the fortunes of businesses.

It's also why we're so excited about what lies ahead for our clients, and for our firm.

Pick and choose

Data protection is causing sleepless nights for corporate boards. How can organisations mitigate the risks of collecting vast amounts of personal information?

Comment

Contributors
Ross McKean
Andreas Splittgerber
Viola Bensinger

Having succumbed in 2013 to one of the largest data breaches in history, US retailer Target has seen a 46% drop in profits and the resignations of both its CEO and CIO. A reminder, if one were needed, of the damage that can be caused by data transgressions – even before contemplating class actions and regulatory liability.

The regulatory environment itself is toughening up. Under proposals for the EU General Data Protection Regulation, fines of up to 5% of annual global turnover could be imposed on non-compliant companies.

Companies' concerns have led to increased interest in data audits and risk assessment, ranging from full analysis of all data and procedures to mitigate legal risk, to audits of products and services that process data or data analytics – in particular, technology that monitors the behaviour of customers in order to tailor products or of employees to predict future insider threats.

Concerns over data usage have grown in line with the volume of data that is collected by companies, and the lack of understanding of how to exploit it thereafter. The problems come from not having the right analysis software in use and not having a handle on who has access to data and how secure it is, along with companies' temptation to use that data in inappropriate ways.

So how can organisations mitigate the risks without missing out on the opportunities?

1 Privacy by design

One solution is anonymisation or, if possible, pseudonymisation. Steering clear of collecting identifiable data minimises risk. It might not *eliminate* risk, because building a profile amounts to processing regulated personal data in some jurisdictions.

However, it will still help to smooth paths with customers and regulators if data has been gathered in a non-personal way, given that in the event of a breach the risk of harm to an individual is much lower.

2 Try to future-proof

It is hard to predict the future, but clever wording can help. Companies should try to find the right description of purpose for their data-processing activities: one that is specific enough to meet legal requirements but leaves room to manoeuvre in the future. Avoid, for example, stating that data collected will be used to send emails; saying 'electronic communication' allows greater leeway.

3 Don't add restrictions

A bad privacy policy is one that adds restrictions on a company for no purpose and doesn't add any transparency for the consumer. Avoid saying "we will ask for your consent before processing data for any other purpose" if it is not universally required.

A better policy tells consumers what a company will do with the data – not what it won't. More enlightened brands are using a layered approach. In addition to the general privacy policy, they will describe in a short passage how data will be used whenever specific fields are collected.

4 Use less data

When designing processes and launching new apps, companies should ask: "What is the minimum amount of data we need to achieve the desired result?" This makes sense from both a regulatory-compliance and financial point of view. Managing and housing large amounts of data is expensive, particularly in the event of having to comply with disclosure obligations in litigation. There needs to be a legitimate business reason for collecting the data. If it is not going to make money, don't bother.

5 Find out who is collecting what

The biggest internal challenge is understanding what data a business has. What is important for the business? What must be kept confidential? Who has access to it? Who is it shared with? Data scientists claim that there is no value in keeping data beyond six months. When conducting data analytics on a consumer, a statistically significant dataset can be built up within a quarter, with all the right consents.

There is a caveat: data must not be deleted before checking whether there is an overriding obligation for it to be stored – for example, for book-keeping requirements or tax returns, or if litigation is ongoing.

Different trends, different jurisdictions

In the UK and Ireland, where consumers tend to care more about price than a company's approach to data protection, there is a more lenient legislative approach. Laws are stricter in Germany, where customers are prepared to pay more for higher security and higher standards of data protection, and even more so in Spain and France. The huge success of Threema, a $1.99 messaging app with end-to-end encryption that prides itself on its security, demonstrates this heightened awareness. Within just 24 hours of the Facebook-WhatsApp acquisition announcement, Threema revealed that it had signed up 200,000 new users, and its three employees had been overwhelmed. Of the 200,000 new sign-ups, 80% of them live in Germany.

At cross purposes

Under EU legislation, companies that have obtained data for one purpose cannot use that data for a separate, incompatible purpose. This 'purpose principle' has come into sharper focus as technology has advanced. Five years ago, companies might have obtained consent to use data for sending email newsletters to their customers. Now, they have the technical capacity to push location-based data to customers, but not the legal basis to use the original data on the new technologies. In some countries, such as Germany, explicit tick-box consent may be needed for this new purpose.

Briefing

The target dates for the ASEAN Economic Community and the Trans-Pacific Partnership are fast approaching. Rob Bratby considers their likely impact

Freer

Background

TPP

The Trans-Pacific Partnership (TPP) is an ambitious trade agreement through which the US is seeking to advance its trade and investment interests in the Asia-Pacific region, which it considers to be vital to its economic success. Negotiations are taking place with 11 other countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

In addition to providing US goods and services with access to new markets, the TPP will apply strong and enforceable employment and environmental standards, new rules governing state-owned enterprises and a robust and balanced intellectual property rights framework, and will encourage a thriving digital economy. It also seeks to improve the transparency and consistency of the regulatory environment to make it easier for small- and medium-sized businesses to operate across the region.

AEC 2015

The Association of South-East Asian Nations (ASEAN) Economic Community 2015 (AEC 2015) seeks to achieve economic integration between members of ASEAN by next year. ASEAN includes Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

The AEC will be defined by four characteristics: a single market and production base, a highly competitive economic region, a region of equitable economic development, and a region that is fully integrated into the global economy. It aims to transform ASEAN into a region with free movement of goods, services, investment and skilled labour, and the freer flow of capital.

To enhance the competitiveness of the region, the countries agreed to cooperate further in the following areas under the AEC 2015 framework: competition policy, intellectual property rights, infrastructure development and tax efficiency.

Current status

TPP

Chief negotiators met in Canada in July 2014 to discuss a number of areas, including intellectual property rights, employment, state-owned enterprises, services, investment and market access. However, the meeting wrapped up without much progress – not even an agreement on a date for the next meeting, due to major differences over issues such as intellectual property, according to *The Japan Times*.

Negotiators missed a self-imposed deadline to sign a deal at the end of 2013. Now there are fears that time is running out before the start of the campaigning season for the 2016 US presidential election kicks the agreement into the long grass.

Country leaders have been more upbeat. US President Barack Obama called for a deal to be hammered out by the end of November, while Singapore's Prime Minister Lee Hsien Loong said in June that the deal had "almost been completed". A month later, Japan's Prime Minister Shinzō Abe was reported to have "strong intentions" to complete talks by the end of the year.

AEC 2015

The full completion of the AEC is unlikely to take place in 2015. Some commentators have suggested that 2015 be regarded as a milestone year, measuring work in progress rather than a hard target. One concern is a lack of leadership on the issue. Some have suggested that the policy of rotating the ASEAN chairmanship could slow down progress, particularly when less-developed member states with less negotiating experience are at the helm.

trade

Key considerations

TPP

The TPP is a trade-focused agreement that will be legally binding. Commitments signed up to by member countries will need to be implemented as national law, and breaches of the agreement will have clearly defined legal consequences.

What is important to note about the TPP is that it is effectively a political exercise and the interests of each government's key constituencies will have a bearing on negotiating positions. The US and Japan have locked horns over several details, including Japanese tariffs on agricultural imports and US access to Japan's huge automobile market.

Developing states including Malaysia have objected to limiting the role of state-owned enterprises, while other governments have protested about copyright provisions to restrict the proliferation of cheaper generic drugs.

Given these varying national interests and the 'horse-trading' nature of late-stage trade negotiations, it is difficult to predict what a final agreement might look like.

AEC 2015

Unlike the TPP, the AEC as a whole is a non-legally binding statement of mutual intent by neighbours within the ASEAN region. Comprising various individual binding agreements, its scope is much broader than trade.

For example, in an effort to bring Myanmar back into the international community, ASEAN chose the country to host the 2013 South-East Asian Games. Decisions such as this aim to build regional cooperation, cohesion and identity as well as encourage trade.

Impact

TPP

E-commerce and financial services are particularly likely to benefit from provisions pushed for by the US allowing the free flow of data across borders and no local server requirement. Eliminating server infrastructure duplication could lead to significant cost savings.

However, some TPP signatories have expressed concern about the protection of citizens' personal information if cross-border data transfers are permitted. Former US intelligence contractor Edward Snowden's revelations about the US government's monitoring of personal data have made some signatories nervous. That said, some Asian governments are also open about wanting to retain access to their citizens' data. Whatever the reason, this has been a hotly contested issue during negotiations.

On the whole, the TPP will make it easier for companies in member countries to expand into jurisdictions covered by the agreement – not only by lowering barriers to entry but also by providing a clear framework in which that expansion can take place.

AEC 2015

ASEAN countries have a total population of 600 million and are sandwiched between China, with 1.35 billion people, and India, with 1.24 billion. These numbers are hugely attractive to companies, but the cost of doing business across ASEAN is high – mainly due to its diversity. Differing legal, business and cultural practices make it difficult to successfully roll out a single product or service. So AEC negotiations have sought to build areas of commonality that now make an 'ASEAN strategy' meaningful.

Companies that are already successful within their home countries are well placed. In telecoms, Singapore's SingTel, Malaysia's Axiata and Vietnam's Viettel already have significant interests in other regional markets. Another example is Singapore cinema operator Cathay Organisation's foray into the Middle East.

Such experience in multiple jurisdictions across ASEAN could become a springboard for global expansion, with the prospect of ASEAN companies becoming trade buyers in Europe thanks to the AEC.

Europe's skyline

Roundtable

City by city, building by building, the continent's real estate landscape is changing and throwing up distinct opportunities in each market

Roundtable experts
Jonathan Lewis, UK
Emeline Peltier, France
Florian Rösch, Germany

What is the current state of the market?

Jonathan Lewis: Overseas investors and sovereign wealth funds have pushed up London prices, making it hard for private-equity investors to achieve high returns. Buyers are looking at the south-east of England and, outside the UK, at Spain, which is perceived to be at the bottom of the market. But opportunities do exist, even in a heated market, for property companies that have the experience to build better returns into a less attractive, more complicated asset.

Florian Rösch: Germany is still one of the preferred real estate markets. It's seen as stable, making it relatively easy for fund platforms to raise capital. At present, we are seeing a yield compression, with high demand pushing prices up and yield down. In particular, private-equity buyers are pushed into riskier investments, such as distressed assets and locations outside Germany's five main cities, and into other asset classes such as retail boxes, logistics and hotels.

Emeline Peltier: France remains by far the third-largest investment destination – after the UK and Germany. The combination of a greater availability of financing and an improvement in European economies has fuelled a greater appetite for risk compared with the situation a year ago.

What about availability of capital?

FR: Bank financing is still good and terms are even improving. Loan to value ranges between 60% and 80% depending on asset class and location. But it is still mostly the German banks that are active – in particular Pfandbriefbank – whereas five years ago we saw UK and Irish banks, too.

EP: There is greater availability of financing and banks seem to be more willing to lend to investors acquiring property. Alternative financing is also on the rise. However, it is not always easy to raise finance and French banks are notoriously reluctant to offer finance unless it's for a core prime asset in Paris. I see more German banks financing French real estate deals.

JL: What's driven the market in the past year or two is the absence of debt, but there's a huge amount of equity from UK institutions and funds, high-net-worth people and highly publicised overseas investors coming into the UK market.

"French banks are notoriously reluctant to offer finance unless it's for a core prime asset in Paris. I see more German banks financing French real estate deals"
Emeline Peltier

"I think the influx of Far Eastern capital is only just beginning"
Jonathan Lewis

"The German investment market will remain strong in the near future as investors continue to be attracted to its stability"
Florian Rösch

Are any particular asset classes becoming more prevalent?

EP: Logistics is one of the most attractive and therefore active sectors. Working together with our German and UK offices, we have just closed a €472m pan-European logistics deal for Tristan Capital Partners, involving multiple assets in Poland, Germany and France, and there are other logistics deals in the pipeline.

JL: Shopping centres. They don't necessarily appeal to investors coming to the UK for the first time, but to clients with experience who can see opportunities. Those who bought shopping centres in the past couple of years have done very well. We have set up an asset management service in Reading that is helping clients to deal with the high volume of work the centres create.

FR: Some private-equity buyers are looking into development – both residential and office. It's riskier than investing in an existing building with clear cashflow, but it does provide better returns.

Who are the main players in the market and how does their presence impact on your service?

FR: We are seeing more foreign institutional investors attracted by pan-European deals. They have the capital available and there is less competition on cross-border deals. As Emeline mentioned, our combined European offering was demonstrated in the Tristan logistics deal. We also did a large logistics deal for AEW where we cooperated with Paris and the UK. This is a big focus of ours.

JL: Five years ago, we were acting for many of the highly leveraged investors; now, the client base is primarily a mixture of UK and overseas funds. The US funds tend to have investment committees, so decision-making is slightly different, and there are more compliance-type procedures we need to be familiar with. Alongside real estate, we're often quite heavily involved in providing corporate and tax services, particularly structuring investments in a tax-efficient way. I also think the influx of Far Eastern capital is only just beginning. We've been to Malaysia, Hong Kong and Singapore, and investors there are interested in the UK and London as their first port of call, but also in Germany and France.

What does the future hold?

JL: We'll continue to see funds being the main purchasers, but we're already starting to see more debt coming into the market and this will maintain activity levels. We expect there to be more development, in terms of both residential and offices. There's been increased letting activity, which is the best sign that the real estate market is really picking up. The past few years have seen foreign capital driving yields down, with no real letting activity. But more occupational activity is a good sign of substance, and is a reason to be optimistic in the medium term.

EP: Competition on prime assets means that the main markets will soon reach maturity, and we can expect more activity in the secondary markets, in and around Paris. Distressed assets will present good opportunities for investors. However, we are awaiting details of new regulations – environmental and on commercial leases – which is creating uncertainty because we cannot yet predict the financial impact of having to comply with these new rules.

FR: The German investment market will remain strong in the near future as investors continue to be attracted to its stability. Capital markets in the real estate sector will be interesting. I think our focus will be transactions, capital markets, developments and forward deals over the next few years.

New rules for a new era

Workplace technology is blurring the boundaries between personal and professional lives. Our employment partners shed light on who's watching whom...

Comment

The view from France

Employers may now have more ways to access information about employees, but France's strict privacy rules mean that there is little they can do with what they find

Karine Audouze

The French are fiercely protective of their right to privacy and this is not something they are about to give up any time soon.

The rise in digital communications tools such as email and smartphones, along with easy access to social media platforms such as Twitter and Facebook, gives employers new means to vet and monitor candidates and employees. Employers can now learn a lot more about their staff than they could in the past.

However, French employers are still very restricted in how they can use that information – largely because of France's tough employee-protection laws. Individuals' right to privacy is embodied in the French Civil Code, while the country's data-protection law dates back to 1978. Employers also have a duty to protect the confidentiality of their employees' correspondence.

These rules give employees the right to a private life in the workplace. In return, employees have a responsibility not to communicate confidential information or publicly insult their colleagues and employers.

Private or public?

The key question in France is if, and when, digital communication platforms such as email and Facebook will be deemed to be private or public. The lower courts have tended to come down on the side of the right to privacy.

Last year, a case was brought before the Civil Chamber of the French Supreme Court in which an employer sought damages against an ex-employee who had insulted the former employer on Facebook. The court ruled that the ex-employee's actions took place in a private sphere because only a very few individuals could access her Facebook wall.

Based on this ruling, if employees are cautious enough about restricting access to their Facebook accounts, then they can freely share their negative views about colleagues and employers. However, this could change if an upcoming French Supreme Court ruling on the issue comes down in favour of employers.

Bad behaviour

But it is not just insulting comments being uncovered by employers in the digital sphere. The Head of HR at one French organisation told me that an employee who had taken time off sick had posted news on Facebook suggesting that they were in Thailand opening a new restaurant. It was thought that someone from the office was probably Facebook friends with this employee, and they shared the news with other colleagues.

However the news broke, under current laws it is unlikely that the employer could act directly on information that was on a private wall. What the incident does show is that Facebook and other social media platforms render such employee behaviour more visible.

Whatever further workplace changes digital communication brings, the right to a private life is likely to remain sacrosanct in French society. The trade unions are strong supporters of this, and in April they scored a victory after employers covered by the SYNTEC Collective Bargaining Agreement accepted an amendment that obliges executive employees to disconnect from remote-working devices during mandatory minimum rest periods. Employers must now ensure that employees are able to disconnect.

The amendment means that affected employers can no longer expect employees issued with a smartphone to respond to emails or phone calls at all hours.

When it comes to digital employment, the French are coming out fighting.

"The key question in France is if, and when, digital communication platforms such as email and Facebook will be deemed to be private or public"

The view from Germany

Lawmakers are starting to realise that the questions posed by the digitalisation of the workplace need to be answered

Manteo Eisenlohr

To say that Germany has been slow to tackle the challenges posed by new communications technologies in the workplace is an understatement. Chancellor Angela Merkel's faux pas last year – she referred to the internet as "virgin territory" – showed how far Germany's politicians and lawmakers have to go to catch up with technology.

In the absence of a steer from Brussels, where proposals to reform data-protection laws are currently on the table, Germany's employee data-protection legislation is still pending. Specific legislation governing employees' behaviour on digital platforms is also non-existent. Whether an employee is in breach of the law depends entirely on the courts' interpretation of general legal principles.

"We have been helping clients in Germany to navigate problems that the law hasn't even anticipated yet"

Common sense

Fortunately, common sense on all sides (from employers, employees and the unions) is proving to be a sufficient safeguard – particularly in light of high-profile scandals such as those involving Deutsche Bank, which illegally monitored employee emails, and supermarket Lidl, which installed video cameras throughout its stores and in staff changing rooms because of concerns about theft by employees.

We have been helping clients in Germany to navigate problems that the law hasn't even anticipated yet. When eBay wanted to record its customer-support staff's telephone calls and computer journeys in order to provide them with further training, the company works council raised concerns about data-protection rights. It took us 14 months to reach a position where both parties were happy for the monitoring technology to be implemented.

Employees' data-protection rights are also cited as a concern when companies want to make use of cloud computing services. Germans are reluctant to see their personal data transferred to clouds in countries that are not regarded as data-protection safe havens, and works councils are increasingly insisting that employers seek their consent before storing employee data in the cloud.

Works councils are also concerned about employees having to use an electronic keycard to access different parts of their workplaces. The technology alerts employers to unusual employee movements, but whether they can use this information to confront staff is unclear. Either way, it is considered by some to be a step too far when it comes to monitoring.

Change is afoot

The need for legal clarity on these and other digital employment dilemmas is clear, and there has already been some progress in the form of a coalition agreement between Germany's two governing parties that commits the coalition to reviewing employment law in light of workplace digitalisation.

We can expect to see a number of developments. The Federal Data Protection Act is likely to be amended to offer clearer employee data-protection rules and will come hot on the heels of the new EU Data Protection Directive.

The changes will give employers guidance on monitoring employees and vetting candidates, including via social media.

We can also expect to see clarity on the use of mobile devices out of working hours, employees' misuse of social media and the protection of trade secrets.

Germany's lawmakers have been slow to realise the impact of communications technology on the workplace, but it is finally dawning on them that they need to give employers answers to some difficult questions if they are to help German companies remain globally competitive.

Disrupt, influence

The view from Spain

Spain's courts have typically ruled in favour of employees, with employers preferring to settle out of court, but employers must be prepared for that to change

Daniel Cifuentes

When a Spanish supermarket caught one of its cashiers on CCTV giving products to customers free of charge, it thought it had a clear-cut case of dismissal for gross misconduct. Spain's Supreme Court, however, thought otherwise.

In a recent ruling, the court said that the CCTV footage was not valid evidence: while the supermarket had informed employees that CCTV was being installed for monitoring purposes, it had not expressly stated that the footage could be used against them.

Employers in Spain should take note.

Unwritten rules

There are currently no specific national employment laws governing the use of technology in the workplace. The new challenges that digital employment poses are regulated purely by case law, and the courts have not looked kindly on companies without robust policies.

Companies need to anticipate and address potential problems in a digital employment policy that is regularly updated – ideally annually or biannually – in order to adapt to new technologies, practices and case law.

Unfortunately, employers have been slow to do this, despite the fact that the Supreme Court has set out criteria for what a policy should cover. The tendency has been to strengthen existing policies piecemeal in response to particular incidents rather than undertake a root-and-branch review in anticipation of potential problems.

Companies' lack of action is understandable. Spain is emerging from one of the worst financial crises in its history and employers have been focused on survival. Right now, their demands on government are for a reduction in social security costs, flexible hiring practices and cheaper dismissal costs.

Be prepared

Early case law suggests that the courts will come down in favour of employees, and this only emphasises the need for employers to prepare. In a recent case, Spain's National Court considered a company policy that required employees to provide a personal mobile phone number and email address. The company said it was to assist communications with employees but the court ruled it null and void, stating that the requirement breached employees' right to privacy and could potentially put employees 'on call'.

Taking employment cases to court in Spain is something of a lottery. Evidence against an employee needs to be very strong for an employer to succeed. In the technology age, this is compounded by lack of clarity on what type of evidence is invalid because it breaches rights to privacy. For this reason, employers prefer to settle cases out of court – but if Spain's lawmakers decide to catch up with the digital era, this may change.

What should a digital employment policy include?

Inform employees that a particular technology has been placed at their disposal but is owned by the company

Clearly state that the technology is for professional purposes

Make employees aware that the company can monitor use of the technology

Before any monitoring takes place, ensure that it is necessary, adequate and proportionate

Source: Supreme Court, Spain

The view from the UK

Employment tribunals have to date been relatively sympathetic to employers in cases triggered by the challenges of workplace digitalisation

Melanie Lane

For nearly two decades, UK employees have enjoyed certain rights to privacy and freedom of expression in the workplace under the protection of the 1996 Employment Rights Act and the 1998 Data Protection Act.

But in light of recent data breaches that have been damaging to organisations' reputations – Edward Snowden being the most high-profile case in point – the pendulum appears to be swinging back in favour of employers.

UK employment tribunals have not been sympathetic to privacy or freedom of expression arguments from employees dismissed for misconduct uncovered via digital communications tools – particularly when data security is compromised.

The UK courts increasingly accept that companies have an obligation to protect their data – but actions they take to do so must be proportionate to the risk of the breach. Because there is no clear definition of 'proportionate', an employer must assess the impact its proposed actions will have on employee and data protection, and aim to achieve a balance between both. Some businesses, such as large defence firms, will be in a stronger position than others, such as small retail businesses.

"Existing UK law provides general principles on issues such as data protection and employees' rights to privacy, but no specific answers"

Digital challenges

This trend is good news for those employers wrestling with the mounting challenges posed by digital communications technology; however, questions remain.

New technological developments, such as predictive analytics software that flags changes in patterns of behaviour, allow even more sophisticated levels of monitoring than that which has previously been possible; but do these technologies fall on the right side of the law – particularly when employees have reasonable expectations of privacy both inside and outside the workplace?

And when employees share derogatory views about their employer or colleagues, or even personal discriminatory views, on social media, can employers use this evidence to discipline or even dismiss the offending employee?

Increasingly, instances of misconduct uncovered via social media are posing problems. In one recent case we dealt with, a senior employee was running his own networking business alongside his day job – in breach of his employment contract. When he publicised his business via LinkedIn, colleagues who were connected to him on the social media platform alerted his employer. The employee resigned before he could be dismissed, but had the case gone to an employment tribunal could the LinkedIn evidence have been used?

The increasing trend for employees to bring their personal electronic devices to work and connect them to the company's secure network has its benefits: for example, reducing IT equipment costs and increasing engagement from employees who are happier using devices they are familiar with. But how can employers balance these benefits with the need to adequately protect their and their customers' confidential corporate information?

Legislation lacking

Existing UK law provides general principles on issues such as data protection and employees' rights to privacy, but no specific answers to these digital-era questions. Meanwhile, workplace technology continues to develop at a frightening pace and many employers are left feeling somewhat at sea.

The proposed new EU Data Protection Directive is expected to address the general challenges posed by the digital world, but the rules governing processing in the employment context will be left to national governments.

The Information Commissioner's Office, which is responsible for data protection in the UK, has started to issue specific but limited guidance for employers on issues such as social media usage.

What is proving to be more useful is the reasonable body of case law that is building up – on social media misuse in particular. Based on this, employers can generally rely on social media posts that reveal employee misconduct as evidence in employment tribunals. Tribunals tend to be pragmatic about what evidence is permissible – but it is important to note that the usual unfair-dismissal principles still apply.

Employers that have a detailed social media policy in place and can demonstrate that they have followed proper disciplinary procedures prior to a dismissal will find themselves in the best possible position.

They also have culture on their side. Privacy may be a strongly held value for many of the UK's European neighbours, but within its own borders – home to an intrusive press – that argument holds much less weight.

The BIG Q&A

The Internet of Things

Cars that warn about congestion… Wearables that update you on your personal wellbeing... The Internet of Things (IoT) is touching every part of our lives. With legislation still catching up, how can companies make the most of the IoT's opportunities – and avoid its pitfalls?

Contributors
Purvi Parekh
Anthony Waller
Justin Hill
Christoph Enaux
Blanca Escribano

What is the IoT?

The IoT is a network of everyday objects that are connected to the internet via telecoms and technology.

What can it do?

What can't it do? It has the potential to touch almost everything in our personal and professional lives; how we live, work and play. It brings social and economic benefits and operational efficiencies.

For example?

1 Health

Doctors can proactively monitor patients' illnesses remotely to ensure that treatment is given in time to avoid further deterioration in health.

2 Social

If you are en route to an engagement, be it a meeting or a school pick-up, telematics information can automatically anticipate traffic problems and reroute you to avoid them.

What is 'machine to machine' (M2M)?

M2M is the technology that sits underneath the IoT and makes it work. It is the IoT's basic building block.

Why has the IoT's time come now?

1 Convergence

We first spoke about convergence in the 1990s; now, it is finally happening. The technologies behind telecoms infrastructure and electronic devices are talking to each other.

2 Business

Regulatory intervention has made it difficult for telecoms companies to sustain revenue. They need to innovate and grow into new areas of business. Their search has led them to the IoT, which works by transmitting small amounts of data. Opening up increasingly redundant 2G spectrum to IoT makes commercial and financial sense.

3 Growth

Now that the technology is mainstream and consistency of standards a focus area for stakeholders and industry bodies, more providers are entering the market.

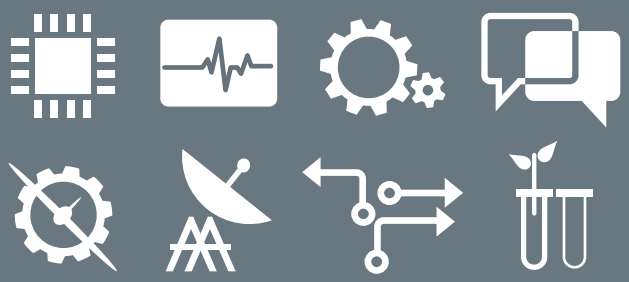
4 Product proliferation

Until recently, there was a lack of devices and infrastructure required to make the IoT a reality. Now, hardly a day goes by without a new IoT device being profiled.

There are currently about 200 potentially connectable devices per person. By 2020, analysts expect that there will be 26 billion connected objects around the world.

Cisco predicts that the value of the 'Internet of Everything' (which brings together not just things but also people, processes and data) will be $14.4trn by 2022.

Our IoT clients come from a range of industries



- *Computer science*
- *Electronics*
- *Microchip manufacturers*
- *Medical devices*
- *Aerospace*
- *Mechanics*
- *Communications*
- *Navigation/ guidance*
- *Defence*
- *Bioscience*
- *Chemistry*

Disrupt, influence

Sectors that will lead the way, offering customers advanced and better services

Healthcare | Financial services | Transport | Leisure

What are the big issues?

1 Data protection

Not all IoT applications have a privacy component but, where they do, the volume and detail of data collected can introduce new risks to privacy. Data encryption, device authentication and adequate protection against false requests for information become key. User profiling or targeting become even greater concerns.

2 Security

Every IoT device is connected to the internet, making them vulnerable to hackers. As the IoT blurs the line between private and public, the possibility of someone hacking into your connected car or home becomes a more serious matter. How will the IoT be patrolled and protected? Will there be a consistent approach to security standards?

3 Capacity

The IoT will transmit and generate currently unimaginable amounts of data. The sharing and combination of data through cloud services will increase, and with it the locations and jurisdictions where data resides. Is there enough bandwidth and storage capacity to handle this data explosion?

What is the existing legal framework in the EU?

1 Five EU directives

Despite legal scrutiny, there is no tailor-made legislation for the IoT (yet); it is mainly governed by existing law and regulation. The package of EU directives governing electronic communications services and networks is the starting point. In the UK, this package is implemented via the Communications Act 2003.

2 EU Data Protection Directive

Adopted in 1995, this regulates the processing of personal data and is at the heart of EU privacy and human-rights law. It applies to all member states.

3 EU Consumer Rights Directive

A new EU Consumer Rights Directive that beefs up protection for consumers who buy products or services remotely came into force on 13 June 2014. In the UK, the directive will be implemented through the Consumer Contracts Regulations 2013, which will replace the Distance Selling Regulations.

Are regulators interested?

Yes! The IoT has captured the attention of regulators and lawmakers across the world.

1 The OECD

In January 2012, the OECD published a report called *Machine-to-Machine Communications: Connecting Billions of Devices*. The report considered what governments can do to promote the IoT as a new source of economic growth.

2 The US

In November 2013, the US Federal Trade Commission (FTC) looked at the IoT and put forward a case for targeted regulation to help the industry to develop.

3 BEREC

BEREC, the European regulatory body for electronic communications, undertook a similar exercise to the FTC and came to similar conclusions.

4 Ofcom

In July 2014, Ofcom, the UK communications regulator, called for inputs on the promotion of investment and innovation in the IoT. The consultation followed an Ofcom-commissioned report on the future demand for IoT applications and their likely spectrum requirements.

The IoT value chain is long and complex

Are there specific laws in the pipeline?

'Connected Continent' is a package of proposals currently going through the European Parliament that is designed to create a single European market in electronic communications. While the draft regulations do not specifically mention the IoT, it is an influential driver behind the reform.

When the package passes into European law – anticipated to be as soon as the end of 2014 – there will, in theory at least, be fewer barriers to entry combined with more efficient spectrum use. Significantly, the Connected Continent package will be passed as regulation, not as a directive; as such, it will be directly applicable in all of the EU's member states as soon as it is adopted.

Reforms to the EU Data Protection Directive are also expected to be agreed in the next 12 months. The revised legislation, which is also likely to take the form of a directly applicable regulation, will deal with digital-era issues such as user-profiling.

In addition, the output of Ofcom's call for inputs may lead to the implementation of specific legislation in the UK.

What is the opportunity?

The huge potential growth, combined with the lack of regulatory intervention, is an opportunity for every player in the IoT value chain.

1 Structure

You can structure your business model innovatively. Intellectual-property protection at the outset is paramount.

2 Future-proofing

You can future-proof your contracts against upcoming regulation.

3 Liability chain

Liability across the IoT value chain can be complex. You can be smart about recognising and handling these issues head-on in commercial negotiations.

Who are we working with?

We are working with businesses that are innovating, whether they are creating new products and services or building the infrastructure or services to facilitate and support the IoT. We particularly work with mobile businesses, tech companies, telematics players and investors.

What are they doing?

They are developing IoT-related technology in a range of areas, including:

- Smart-metering
- Life sciences
- Connected homes
- Wearables
- Transport and infrastructure
- Telecoms services and networks.

Innovation as a competitive advantage

As technology and telecoms teams build and test the first real-world IoT systems, they create possibilities and overcome new technical problems. These activities can generate valuable intellectual property.

We help IoT businesses to protect their investment in innovation using smart patenting strategies, prudent management of copyright and know-how and brand protection. Patenting can protect connected devices and control and communications systems as well as software functions in ways that prevent 'technology followers' implementing them later. Copyright alone only deters followers from accessing and directly copying the code.

Leading telecoms and technology businesses use patents as part of a strategy to secure their own freedom to operate in the markets in which they choose to do business.

Comment

A marriage of necessity

Strategic collaboration between direct competitors is allowing telecoms companies to build advantage and meet demand

Contributors
Sylvie Rousseau
Christophe Gaschin
Purvi Parekh

'Fast-moving' and 'competitive' are terms that are synonymous with the telecoms industry. Yet this is the sector that is recognising that collaboration with competitors is key to coping with pressure on profit margins and building strategic advantage.

Telecoms operators face immense pressure. Increased competition continues to reduce margins, while consumers demand more sophisticated services at lower-than-ever prices. Meanwhile, these operators must comply with regulatory licences that impose, among other things, network coverage obligations in unprofitable areas.

To combat these pressures, operators are focusing on infrastructure costs and looking to share with competitors. The trend is to share all or part of their largest expenditure – their network elements – whether sharing the non-active parts of the network, such as towers, cables, power units or air-conditioning units ('passive sharing'), or access rights to their radio access network, up to and including the common operation of radio frequencies, i.e. spectrum sharing ('active sharing').

Industry sources say that passive infrastructure sharing could deliver annual capital expenditure savings of up to 60%, in addition to significant operational expenditure savings in areas such as site maintenance, personnel and power. These savings mean that capital can be reallocated to the development of services and innovative technology. By combining resources and reducing individual infrastructure needs, mobile network operators can improve coverage and deploy newer technologies more quickly. Sharing may in fact become essential. Radio frequency, or spectrum, is a finite resource, while rights of way and rights to erect dishes on private property such as rooftops can be difficult to obtain.

A marriage of necessity is not a decision that is taken lightly, and for operators the conditions have to be right. Mature markets are a good fit. The battle for customers has moved from better network coverage to value-added services, meaning that infrastructure offers little competitive advantage. Growing markets also foster cooperation. Operators tend to have a rollout obligation as part of their licence, which has, in the main, been met in Europe. However, in Africa there are currently 15,000 towers and that number is set to double in the next five years. Sharing towers enables operators to roll out networks much more quickly – particularly into more remote areas.

Turning theory into practice

Operators can start by outsourcing tower management to a tower company or service provider. Once they are confident of the arrangement, part of the tower may be sold to the tower company and leased back. Inter-operator site-sharing is common in the early stages, and joint ventures between operators are more common in developed markets. As markets continue to evolve, operators in Europe are turning to active sharing, which adds complexity. Operators that have built relationships with tower companies are keen to progress. But tower companies are reluctant to include active sharing within a contract: involving transmission equipment brings a higher risk of regulation.

A sound contract is crucial to the success of collaboration, and some of the key clauses focus on future considerations. If, for example, two operators have a tower, can either be prevented from selling its share to a tower company that may then rent space to a third operator not party to the original agreement? It is a likely scenario, given the need for tower companies to increase profits through a replacement tenant, but it is difficult to control due to the restraints of competition issues. Clauses should also consider future technology and performance and quality issues.

Confidentiality, control and regulatory issues have prevented a boom, but the EU's Connected Continent legislation will encourage regulators to support these arrangements, proposing "appropriate compensations for timely freeing up of spectrum, infrastructure and spectrum sharing". There is government recognition of a greater need for bandwidth, and the competition is being fought over value-added services rather than infrastructure.

Given the various challenges, the move towards closer cooperation will not be a revolution but an evolution. To many, the idea of collaborating with a competitor is revolutionary in itself, and it may take time for some to grasp that collaboration is the new competition.

"A marriage of necessity is not a decision that is taken lightly, and for operators the conditions have to be right"

Sharing in action

In a landmark deal, Vodafone UK and Telefónica UK agreed to pool parts of their infrastructure to create one national grid. It was designed to create two competing networks offering indoor 2G and 3G coverage targeting 98% of the UK population, and lays the foundations for a faster nationwide 4G service than could be achieved independently. Olswang advised on all commercial and corporate aspects of the partnership, including the creation of a new 50/50 joint venture company.

Securing the advantage

Indian telecommunications company Bharti Airtel is a model in cost reduction and obtaining first-mover advantage. In 2010, the company acquired about 15,000 towers from Zain Telecom, spanning 16 jurisdictions across Africa. It is now in the process of selling those towers to the four main tower companies in Africa. If the deal is concluded, it will reduce the company's debts and will also secure considerable first-mover advantage in price negotiations with the tower companies.

Comment

Behind the cloud

To fully appreciate why the 'cloud' is the future of computing and anticipate its legal impact, one can look at a law of economics coined in 1890 and learn what happened around the same time just 200 metres from Olswang's London office, says Clive Gringras

In 1890, Alfred Marshall finished a decade's work. His eight-volume *Principles of Economics* was finally ready. Those, like Keynes, who read the fourth volume were introduced, for the first time, to the concept of 'economies of scale'.

Marshall's analysis, then novel, was that in some trades, "If [a man] can double his production, and sell at anything like his old rate, he will have more than doubled his profits. This will raise his credit with bankers and other shrewd lenders; and will enable him to increase his business further, and to attain yet further economies, and yet higher profits; and this again will increase his business and so on. It seems at first that no point is marked out at which he need stop."

In other words, there are some trades – some businesses – that are better when bigger. They deliver a better service than lots of smaller businesses. They can deliver the same or higher quality at a lower cost than smaller businesses.

At the same time as Marshall was at the University of Cambridge writing his economics treatise, Lord William Armstrong, the founder of Newcastle University, was "lounging idly about, watching an old water-mill", when it occurred to him how powerful the water would be if "concentrated in one column". Harnessing this power prompted Armstrong to build the world's first hydroelectric power station, which lit one lamp in the gallery of Cragside House in Northumberland. Word spread. Other houses and offices, where near flowing water, started to copy Armstrong's innovation. Each house or office would build their own energy collection system and install their own dynamo, draping wires throughout the house to the one or two lamps that their production could illuminate. It did not stop there, as we know. In 1882 Thomas Edison installed Europe's first public power

"Cloud computing is now where electricity was in 1890"

station at 57 Holborn Viaduct in London. This lit over a thousand lights across homes and offices. Marshall's economies of scale were working their magic with electricity.

In a century we have moved from hundreds of individual homes generating their own power to having a collection of massive power stations each generating energy for consumption by billions of people. With electricity, bigger simply is better. It's easier to maintain, regulate and police one large station than thousands of little ones. Because the marginal costs decrease with the size of the plant, the costs to consumers can fall even as security and efficiency advances are made by its owner.

Powering the cloud

Cloud computing is now where electricity was in 1890. There are still homes and offices across the world that each protect and support their own data-storage device. Hundreds of millions of television set-top boxes and video recorders purr quietly in homes across the world – each hosting gigabytes of storage. The more sophisticated homes (the equivalent of Lord Armstrong's Cragside House) have network-attached storage drives – portforwarding through their owners' routers to allow access across the internet. There are also the Holborn Viaducts of this digital era trying to persuade these homes and offices to stop supporting their own storage and buy it, as they do with electricity, from a supplier. Amazon and Microsoft provide remote storage and processing power – 'cloud computing' – mainly to enterprises. Add Apple, and you have three of the largest suppliers of cloud computing to consumers, whereby music, video, photos and documents can all be stored remotely.

Microsoft's Irish data centre will have 415,000 square feet of servers. That's over five football pitches of data storage, yet it will need fewer than 100 people to support and run the whole operation. Its newly announced Iowa data centre is even larger. Count how many technicians work to support the in-house servers that operate your own IT. Forget jargon and technology – it's the unchallenged law of the economies of scale that will drive down the costs of Microsoft's Azure and Amazon's Elastic Compute Cloud (EC2) while driving up the relative costs of keeping one's own servers in the 'IT room'.

But just as Edison's power plant at Holborn Viaduct faced regulation from the Electricity Act of 1884, so regulators have their eyes on cloud computing. Then, it was about electricity cables passing through local authority borders; this time, it is about data passing out of a country's borders. The draft Data Protection Regulation is concerned with personal data passing outside of the EU's borders into regimes that do not provide adequate protection for that data. If one were to read the many articles about cloud computing, one might come away thinking that personal data is the only dataset sitting in the cloud. This is not true, and we are increasingly seeing cloud services powering all of our computing tasks and processing all the data that we currently have on-premise. Lawyers will need more than a good knowledge of data protection alone to advise on cloud deals.

Most businesses cannot function without computers, and as their computing power is moved to the cloud they will become more concerned with the service levels that their cloud providers deliver. Power cuts are a very rare occurrence, and users of cloud services are demanding similar 'rare occurrences' of downtime for their cloud computing services. Cloud providers that merely provide 'as is' uptime guarantees rather than the 'four nines' (99.99%) type of guarantees will find themselves sidelined for business-critical services.

As with the electricity market, competition for cloud services is intense and providers will compete not only on price but also on service availability. Lawyers will need to understand how to negotiate these sorts of service-level agreements and be wise to providers' definitions of downtime that exclude certain times of the day or periods under a certain duration.

Portable data

The legal profession will also need to be ready for the free movement of data between cloud providers. Just as any appliance will work plugged in, regardless of the electricity supplier, and just as the debate between AC, DC and voltages is over, so customers of cloud services expect their data to be portable. The providers that will earn respect from customers are those that have the confidence to allow the customer's data to be exported during the life of the contract and after termination. And the data that the customer has access to should be not merely the data they uploaded but also the metadata that the cloud's servers also host.

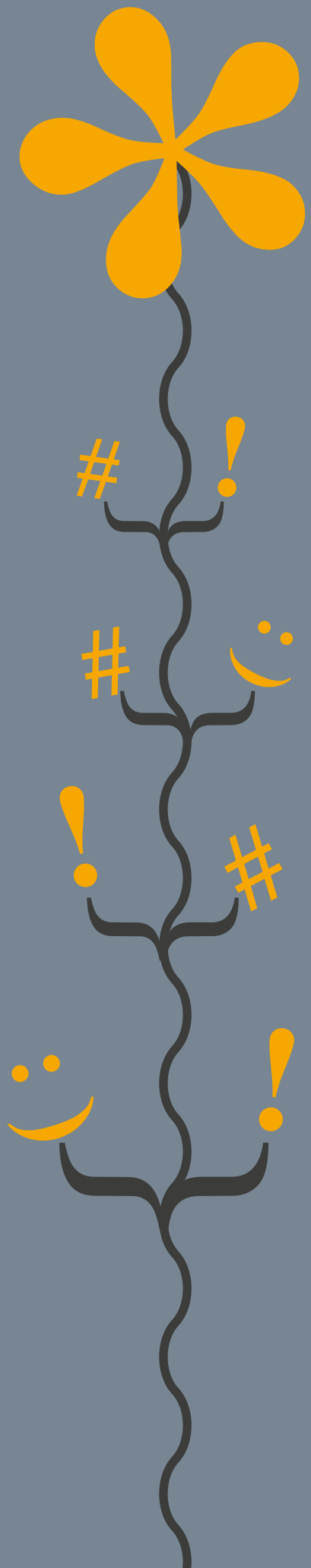
Security is another area where customers have high expectations. Competition between cloud providers should drive up the levels of security being offered to cloud customers. Users of cloud services have to trust that a cloud provider is treating their data with high standards of care. Standards such as ISO/IEC 27001:2005 should become the norm, and customers will be insisting that these meet the physical, logical, process and management controls as a minimum.

It's the century-old law of economies of scale that will drive cloud computing deeper into our homes and offices.

Berlin in bloom

Comment

dunnhumby's acquisition of Sociomantic Labs shows that ad tech businesses are hot property, and illustrates why Berlin is back in business



Contributors
Mark Bertram
Thomas Schubert

The world's leading businesses are paying ever-closer attention to the intelligent technology behind online and programmatic advertising. The rise in IPOs is testament to the buzz.

Among recent high-profile listings is the Rubicon Project, which follows the successful entry of Paris-based Criteo to the US market in late 2013. The business was valued at around $1.6bn. "These businesses are getting those valuations because of what they can deliver to all ends of the value chain," says Partner Mark Bertram. "The industry is now being looked at by corporates that were not obvious buyers 12 months ago – let alone two or three years ago."

Ad tech is the real-time technology that allows websites to serve different adverts to different users. Online advertising space is bought in real-time auctions, which operate in a similar way to stockmarkets. The moment someone lands on a website, ad tech companies are asking "What do we already know about this user? Are they interested in our clients' adverts?"

If the program does recognise you from previous online activity and thinks you will be interested, it will then start bidding for the space. This happens in the blink of an eye, and is settled by the time the webpage loads on your browser. Ad tech companies develop their programs to help their clients to get the best price and the best advertising space.

"We discussed the challenges of this kind of deal with the client, how to motivate the founders and how the Berlin scene was developing"
Thomas Schubert

From €3,000 to €100m: the Sociomantic story

Sociomantic's real-time technology and extraordinary ability to achieve scale in a short space of time led dunnhumby, the world's leading customer science company, to acquire the business in April 2014.

Launched by three university graduates with just €3,000 of their own money, Sociomantic Labs was formed in Berlin in 2009. The founders – Thomas Nicolai, Lars Kirchhoff and Thomas Brandhoff – developed Sociomantic's ad tech proprietary technology while they were gaining their PhDs. Just four years after it was founded, Sociomantic was generating revenues in excess of €100m and employing more than 200 people in 16 offices across Europe, Asia and the US. "To build a business with that sort of revenue, with no external funding, in 16 territories in just five years and keep control is phenomenal, and it's down to the founders," says Mark Bertram.

In an interview with Niklas Wirminghaus, editor of startup magazine *VentureVillage*, Thomas Nicolai explained Sociomantic's success. "Yes, we happened to be in the right market at the right time with the right technology. But we also delivered results and kept going. We had 16- to 18-hour days.

"And you should never forget where you come from," he continued. "All three of us are from Eastern Germany. We know what it used to look like. We appreciate the success and know what it means."

"These very young, very smart guys are completely focused on their own technology, their business and what they can deliver to their clients and customers," adds Mark. "And now they've found exactly the right partner to extend their reach."

Berlin starts up again

Sociomantic was the largest exit from Berlin's startup scene. An ecosystem of incubators and accelerators (including Microsoft's) has been nurtured by the creation by the city's Mayor of a 'startup unit', alongside a rise in venture funding. Olswang's involvement in 'Friday at Six', a web talkshow for startup founders, and Media Net, a network for creatives, shows an appreciation of the opportunities and challenges faced by startup founders.

"We discussed the challenges of this kind of deal with the client, how to motivate the founders and how the Berlin scene was developing. It's a good example of clients choosing us not just on the basis of our M&A capability, but for knowing their industry and speaking their language," says Thomas Schubert, Partner in Berlin.

The deal digested

Olswang advised dunnhumby on the acquisition – one of 38 cross-border deals that the firm worked on this year.

Olswang's teams in London and Berlin enabled a smooth process, with more than 40 lawyers working on the deal. "This was an acquisition of a German holding company under English law," says Thomas Schubert. "Yes, there are particularities in German and English law to be aware of, and challenges in how best to structure these deals, but with very close cooperation, working as one team, it was a success."

Trending in

Contributors
Andrew Stott
Ian Ferguson

South-East Asia has been a rare economic bright spot in recent times. M&A deal value is growing, regimes are relaxing their stance on foreign investment and consumer confidence and disposable income are rising. As South-East Asian economies hit their stride, distinct opportunities are emerging in each market. Here are nine trends we're keeping an eye on

1 Indochina as a unified market

Indochina has had varied commercial appeal over the years. Thailand was once hailed as *the* new South-East Asian economy and multinationals rolled in, but years of protests, riots and coups left its stability in question. Vietnam has always been enticing, but has also been deemed too risky by most due to its underdeveloped and unclear legal system, while Cambodia and Laos have been dismissed on the grounds that low economic development and urbanisation make for small available markets despite their population sizes. Myanmar, of course, was closed to most nations until recently. But times are changing and systems and stability are improving. With rising incomes, and perhaps a closer cultural affinity between the countries than exists across any other part of South-East Asia, there is an opportunity to coordinate activity – and Indochina with its 200 million citizens has become a far more attractive prospect. Our prediction is that this trend is set to grow and grow.

2 Serious about security

With stable environments, reliable energy supply and highly qualified workforces, Singapore and Malaysia are becoming datacentre and back-office powerhouses and global hubs for technology procurement and outsourcing. In tandem, we are seeing a rise in cybersecurity concerns and rising growth and investment in the cybersecurity industry.

3 Myanmar open for business

What began a couple of years ago with the large infrastructure industries – construction, telecoms, etc – is widening, and we are seeing a flood of interest in Myanmar in areas as diverse as healthcare and media. The country continues to evolve and is working hard with foreign partners to clarify and modernise its legal system, improve its processes and in many cases leapfrog its neighbours in the adoption of new technologies. The watchwords here are responsible and inclusive investment, which ensure that companies import not just goods, but good business practices.

Comment

Singapore

4 Startup city

The regional startup scene is gradually picking up pace, with Singapore taking an early lead as the hub for South-East Asia. The Singapore government has launched a series of initiatives including investing in intellectual property skill development, underwriting intellectual property-backed financing and significant tax incentives for startups and venture capital to encourage growth in the sector. While very early-stage compared with the likes of Silicon Valley, signs are extremely promising. After just four years in business, Viki, a Singapore-based online video platform, was acquired in 2013 for $200m by Japanese giant Rakuten. Meanwhile, other startups such as Redmart are making waves in areas as diverse as financial services and social media.

5 Big players are ready for M&A

The Rakuten deal is not the only example of foreign investment in the region – London-based Hailo recently announced a joint venture with SMRT Road Holdings in Singapore. There is a confluence of interest: big business from Japan and the big US online players (Google, Facebook and LinkedIn) are firmly established in Singapore and have their radars tuned to acquisition opportunities.

6 Governments are helping to drive success

Central governments are recognising the value of their technology industries and are sponsoring initiatives to generate impetus and up-skill the workforce. Singapore and Malaysia are both putting in place 10-year plans to become technology hubs for the region. Singapore's aim is to have several billion-dollar-valuation businesses before the decade is out, while Malaysia is investing heavily in nanotechnology and industrial tech parks to feed the ecosystem.

7 Pan-Asian collaboration

The need to access the full South-East Asian region to create scale is a primary driver behind pan-regional deals. We are experiencing rapid rollout by international and regional TMT businesses through joint ventures and acquisitions that give them access to the wider region in short order – and not just the hotter or more developed economies. As the network of ASEAN treaties grows and implementation begins across the region, we expect to see increasing tax and trading incentives for regional businesses and the diverse regulatory ecosystems slowly beginning to align.

8 Localisation

Broadly speaking, the region is much less accessible to foreign investment than Europe or the US, so businesses need to embrace partnering arrangements. In a region where politics and big business are rarely far apart, and cultures can differ widely from Western norms, having a well-connected local partner can be an invaluable asset, while local businesses look to foreign investors to develop local capital – both financial and human.

9 Retailers without borders

There are 600 million potential consumers across South-East Asia and, while reaching each of them physically is virtually impossible given the challenges posed by the geography and infrastructure of the region, the digital marketplace (both online and, increasingly, mobile) offers a unique opportunity to reach them digitally – quickly and at a comparatively low cost. This is why e-commerce players – such as Rocket Internet AG retailers Zalora and Lazada – are supercharging their efforts to be the first to capture the diverse online consumer base of South-East Asia. In August 2014, Philippine Long Distance Telephone Company (PLDT), the leading telecoms operator in the Philippines, took a 10% stake in Rocket Internet AG as part of a deal to develop online and mobile payment solutions together. Olswang advised PLDT. Offline retailers, meanwhile, are targeting the growing urban areas where populations and disposable income are on the rise and infrastructure poses less of a challenge.

Comment

Tipping ♀ ♂

First there was the best-selling book by Sheryl Sandberg, the Chief Operating Officer of Facebook – *Lean In: Women, Work, and the Will to Lead* – along with the Lean In Foundation and an online community, LeanIn.org, which in its own words is dedicated to "encouraging women to pursue their ambitions". Now, Lean In circles are springing up in all kinds of places across the world – including at Olswang. What might Lean In mean for females, the firm and the future?

Roundtable experts
Jo Dooley, Diversity & Inclusion Specialist
Natasha Kaye, Partner

the balance

Learning from each other

Natasha Kaye: Lean In is partly a support network for women in the firm, and partly a way for women to learn from each other and get to know their peers. They can share experiences, develop leadership skills and overcome some of the challenges that many women face. It is about how we support women within the firm and ensure that they can fulfil their potential.

Jo Dooley: It all started with the book *Lean In*, which a number of people here were reading and, love or hate it, they were talking about it. This led to us forming Lean In circles inside the firm – three groups originally, among partners, associates and business services/PA staff. And it's grown from there. Olswang has always had a reputation for being just a bit different from a cultural perspective – I think women who have joined us from other firms have said that they find the culture here very supportive. But no one would claim that we're perfect – which is why we need to do things like Lean In.

NK: It's hard to measure the effect that the circles are having, but I don't think there's much doubt that Lean In helps to demonstrate that Olswang wants to support female progression through the firm, and it goes into the mix to encourage women to stay here rather than move to other firms. We are also starting to have some tangible outputs. We've organised our first women's networking event, for instance, with one of our clients coming in as a speaker, and have initiated networking training for our female associates. And there are other initiatives going on, such as a very informal working mums' group where lawyers who are mums – from trainees to partners – can meet for lunch and have the sort of informal chats that other mums probably get at the school gates.

JD: We're really digging deep on the issues and trying to change things. The circles themselves are closed, confidential, safe environments, and when women are dealing with professional problems and challenges I think it's quite empowering for them to hear how someone else has been through the same thing, and how she coped with it. The groups often comprise women from a number of our offices, so they also serve to help us better understand common themes and jurisdictional differences.

I hear that they're now starting to cross-refer work to each other. So on a networking level they are getting to know colleagues and really understanding what they do and how they work. And they're becoming trusted referrers to each other of work.

I think we need to take pride in the fact that we have a relatively high number of female partners at Olswang – 25% this year, up from 22% in 2013. But we are far from complacent. I don't think anyone believes that the women are less talented than the men – so if that's not the case, then we need to keep challenging ourselves to create a firm and a profession that make the most of female potential.

New generation, new attitudes

NK: I think you can feel the changes in attitude that are happening inside the firm as a result of the circles. They are empowering – we are definitely seeing a group of women who are more confident and more ready to step up to seize the opportunities that are there. The support network helps them develop themselves and become leaders. But Lean In goes much wider than that. There are new challenges to the structure of law firms that are coming not just from women, but from younger professionals generally. They have very different expectations about flexibility and work-life balance than the generations before them.

JD: That's right. They're ambitious, they understand the reality of working in a law firm, but they want more autonomy in how they deliver. Olswang has always been pretty good at flexibility, but the challenges we're all facing are changing, and we're going to have to see more trust and more understanding that just because you can't see somebody working, that doesn't mean that they're not working. And, increasingly, this applies equally to men and women.

NK: Those attitudes are really important when it comes to attracting graduates. I do a lot of trainee interviews, and it's remarkable how much the people I speak to focus on these issues: flexible working, the corporate social responsibility commitments that we make, or the support groups we have for women. And clients are interested, too – 'Lean In' is a bit of a buzzword at the moment, so everybody's intrigued.

JD: Clearly, there's a way to go yet. But you can feel the debate opening up everywhere – in the press, in companies, in government – and it's taking on a new momentum. I am delighted that Olswang is part of this movement and I am very excited to see the changes it's bringing.

"There are new challenges to the structure of law firms that are coming not just from women, but from younger professionals generally"

Comment

The convergence of life sciences and technology heralds a 'digital health' revolution with the potential to reshape consumption of healthcare services, transform government policy and minimise disease risk by enabling health-focused lifestyle choices. Are our legal and ethical frameworks ready for the transformation?

Doctors of data

Contributors
Robert Stephen
Stephen Reese

The healthcare industry has long understood that a 'one-pill-fits-all' approach is an inadequate way to treat billions of individual patients across a multitude of genetic, cultural and environmental backgrounds. It has therefore attempted to work towards an idealised vision of personalised medicine, whereby the right drug is delivered to the right patient, at the right time, in the right dose. However, the ability to derive and collate the individualised data necessary to deliver on this vision has, to date, been a limiting factor.

The advent of personal genomics provided a significant step towards enabling personalised medicine, but it is innovation in wearable and implantable devices capable of measuring a multitude of personal biochemical and physiological parameters that will deliver on genomics' promise.

Wearable technologies such as the Samsung Gear and the Apple Watch are marketed largely as lifestyle products, with apps aimed at measuring and improving health- and sport-related activities. However, these products are also part of a new category of medical devices capable of monitoring all the vital bodily functions in real time and transmitting this data via wireless networks and mobile-phone technology to a cloud storage facility for diagnostic purposes.

Devices are now available that can, in a non-hospital environment, measure and transmit all of the same categories of health markers that would currently be measured in an intensive-care facility. These products include earphones that can check blood-oxygenation levels, edible microchips that can capture food intake and rest patterns, and even nanotechnology-enabled sensors, or 'nanobots', which can be injected into the bloodstream; there, they wirelessly transmit data regarding the presence of markers that can help to predict diseases such as cancer or heart failure.

The benefits of harnessing device technology in this way are beginning to influence the collaborative and acquisition strategies of the major pharma companies, which are looking at complementary diagnostic partners that have the technology to transform their therapeutic innovations. These companies' ultimate commercial goal is to deliver integrated diagnostic and therapeutic products under a single brand.

The connectivity of wearable devices is relevant not only to the uploading of data for diagnostic purposes, but also to delivering information to the user to improve their use of healthcare services and products. A vast amount of public money is wasted as a result of patient non-compliance with medication regimens. The impact of medication-reminder apps, for example, which prompt patients to take their pills and connect to a pharmacy to refill prescriptions, could have a sizeable impact on reimbursement arrangements and the strategies of pharma companies.

Among the health apps in the NHS library is Sleepio, a program that delivers personalised cognitive behavioural therapy for insomniacs, which won the Wired Health Bupa Startup competition. At a recent event in Berlin, where healthcare startups pitched their ideas to the industry and prospective investors, innovations included web applications that allow patients to obtain early-stage medical advice, help them perform exercises tailored by doctors, and support doctors and labs in managing their workflows and data.

In developing countries, the ability of smartphones to capture patient data could also have a powerful impact on national vaccination programmes. Tracking each vaccinated individual via a barcode scan can facilitate an understanding of the stage at which sufficient individuals have been vaccinated, which can help to create effective immunity for the whole population.

Detecting, reporting and collating vast amounts of individuals' biological and physiological data also provides great opportunities for the biopharmaceutical industry to improve the efficiency of its clinical trial and post-approval surveillance procedures. Many therapeutically effective drugs (Vioxx is a significant example) are not presently available because of serious negative side effects in a relatively small number of patients. The use of devices to constantly monitor for markers of the onset of such side effects will change the entire regulatory environment – and should ensure that many more important drugs reach and remain in the market.

Data privacy

The ability to sync wearable technology to a smartphone will allow people to create a hub of personal healthcare data that they, their GP and even their personal trainer can access.

Here, the issues of data protection and purpose become acute – individuals will want to use the data for their personal benefit, but what are the legal and ethical parameters guiding what employers or insurers can do with it? What happens when the line is crossed between information about wellbeing and information concerning matters of life and death?

This concern – of private medical records becoming a commercial proposition – goes to the heart of the debate over the UK's NHS care.data programme to share and link patient data in order to improve research and "transform health services". In February 2014, the scheme was delayed by six months in order to "ensure stronger safeguards around the uses of the data [and] clarity about the rights people have to opt out".

Such gathering of data raises fundamental questions about privacy and ethics. The price of genetic information has fallen dramatically – from $10m per genome in 2001 to close to $1,000 – but the much-publicised shutdown of 23andMe's home DNA-testing service by the US Food and Drug Administration demonstrates the difficulty of regulating consumer-driven medical research.

It is little wonder that legislators do not have the answers. The convergence between technology, life sciences and data is fast-moving, making categorisation and enforcement difficult. The world of wearable technology is not yet regulated. And with very little precedent, legal and commercial departments need experts with degrees in computing and biology.

Engineering in the life sciences field is not new, but the internet has brought discovery much closer to the individual – and, with it, the need for doctors (and lawyers) who understand data algorithms.

"In 20 years, humans will finally attain the status of cars for their medical care. They'll have wearable and embeddable sensors with predictive analytics, and, most importantly, autonomous driving capabilities. Most cases of cancer will be successfully treated, Alzheimer's will be substantially delayed or even pre-empted. DNA sequencing will be performed for most individuals at birth (or as a foetus). Hospitals, except for certain key functions like intensive-care units and operating rooms, will be completely transformed to data-surveillance centres. People will look back and laugh about the old physical office visit and the iconic 'stethoscope' along with the way so much of healthcare was rendered in the pre-digital era."

Eric J. Topol, Chief Academic Officer of Scripps Health and Professor of Genomics at the Scripps Research Institute in California.

Wörk. Experience

When young people are exposed to the world of work, great things can happen. This should inspire more schools and businesses to collaborate, says John Dowd, headteacher of London's Haverstock School

Yousuf Qureshi has been working with a business tutor from the business world ever since he joined Haverstock School's sixth form. His tutor focuses on motivating him to do well in his studies, but the influence doesn't end there.

The confidence Yousuf has gained from the relationship has not only made him aspire to a career in finance, it has also unleashed the entrepreneur in him. At just 17, Yousuf has turned his passion for bodybuilding into a small personal-training business and he now has long-term ambitions to set up his own fitness company.

He isn't alone. At Haverstock School, hundreds of current and former students have seen their ambitions and aspirations grow as a result of contact with the workplace.

Haverstock became a business and enterprise college at the very start of the specialist schools movement. We wanted our young people to see education as a means to a future rather than just a set of qualifications. To give them a glimpse into that future, we have been building long-term relationships with local high-profile businesses through a variety of initiatives for the past 15 years.

Key among those initiatives is the Career Academies programme, which we set up seven years ago. Around 90 students – that's 40% of our sixth form – are on the programme at any one time. Members receive a number of benefits, including, as Yousuf has, a personal business mentor for their two sixth-form years.

The icing on the cake is a six-week paid internship with a business partner at the end of Year 12. The internships are

challenging and involve real work with high-profile businesses such as GE, McKinsey, Santander and Olswang. This summer, we sent 43 interns into businesses across London.

A child transformed

The transformation our young people undergo through this experience is phenomenal. They leave us as youths and come back as accomplished young men and women.

Working alongside senior business partners and graduates from leading universities makes them more confident, more articulate and more career-ready. They realise that they are as able to achieve those careers as anybody else, and that changes the way they value themselves.

Of those who were unsure about university, almost all of them decide that they do want to go as a result of their work experience. In fact, the majority of our Career Academies graduates have gone on to higher education.

The relationships that they form during those internships stay with them even once they've moved on from Haverstock. Once they have graduated from university, many of our students have gone back to work for the companies where they were interns.

The Career Academies programme and other collaborations with business have had a wider impact on our academic performance. We have seen our exam results improve consistently over the past five years and virtually all of our Year 13 students – around 98% – go on to university, many of them to do business-related courses.

Working with businesses helps our students to visualise what their future could look like. When they can see a concrete outcome, they're motivated to work harder. Spending time in a business environment teaches them to work smarter, too; they get better at time management, for example. What's more, this change in behaviour has a ripple effect throughout the school: the students become role models to our younger pupils, who aspire to follow in their footsteps.

A special kind of business

It takes a special kind of business to partner with a school successfully. Young people are astute and will lose faith in work experience that is light-touch or tokenistic. Companies that are committed to building long-term relationships with schools, and invest in the time and resources to make that happen, are the ones that will succeed as partners.

For us, Olswang is a good example of this. From starting as a Career Academies business partner, its relationship with Haverstock has grown to include many more initiatives (see box, right). It works because there is a genuine commitment from Olswang to young people. It's not something it has to do, and it does it very well – we both benefit.

For business partners, the rewards of collaboration can be immense. Haverstock's pupils come from a diverse and disadvantaged community. Collectively, our students come from 61 countries; they speak 47 different languages; around 35% are refugees; a large number have special needs; and 80% qualify for free school meals. Many do not have the same opportunities outside school as their more privileged peers.

By helping our students to aspire, our business partners can help to right some of the inequalities that these young people face.

Our side of the deal

To make business collaborations work, schools need to do their bit too. We have invested in a small team that is dedicated to managing our business partnerships and making them a priority. We help businesses to understand how they can help by making our needs tangible – promoting opportunities for girls in the workplace, for example. And when problems arise, as they sometimes do, we are tenacious about solving them. We also celebrate our successes – not only because it's important to do so, but also because it motivates all those involved to do more and to do better.

Most importantly, business collaborations are not an add-on; they are integral to our long-term objective to prepare our students for progression beyond Haverstock. We do this through our careers education programme, which starts in Year 7 and continues through to the end of Year 13.

The ceilings that young people put on their lives are often self-imposed. Business partnerships help schools to raise those ceilings bit by bit each day, ensuring that students such as Yousuf dare to have their dreams – and achieve them.

The Olswang-Haverstock partnership

Career Academies
In addition to offering paid internships and volunteering for the Partners in Business mentoring programme, Olswang participates in 'Guru Lectures', delivering talks on topics such as how a law firm actually works.

Lawyers in Schools
Olswang lawyers and barristers from Blackstone Chambers work with Year 10 students to help them learn their legal rights and responsibilities.

Art Award
Olswang runs an annual art competition for Year 12 art and photography students. The entries are auctioned for the benefit of Haverstock's art department and Olswang's charity partner.

UCAS mentoring
Olswang helps Year 13 students to fill out their university application forms over the course of three sessions.

Access project
Olswang volunteers tutor motivated students in GCSE and A-level subjects to help them secure places at top universities. Olswang also funds 50% of the project.

The Olswang Business Experience
This comprises week-long work experience placements for Year 10 and Year 12 students. Olswang collaborates with clients including Microsoft and ITV, enabling the students to receive an even broader experience.

Strategy input
Two senior members of Olswang staff sit on the Career Academies Local Advisory Board. The board ensures that the Career Academies programme adheres to high standards of governance, leadership and delivery. A senior Olswang partner is also a Haverstock governor and sits on the Haverstock Finance Committee.

Funding
Olswang provides funding for a number of discrete projects that are nominated by teachers, governors and students.

We are Olswang

We are a full-service international law firm famous for our expertise in technology, media and telecommunications.

We are collaborative. We are innovative. We are responsible. We are Olswang.

Offices

Belgium
Dirk Van Liedekerke
+32 2 641 1271
dirk.vanliedekerke@olswang.com

France
Guillaume Kessler
+33 1 70 91 87 23
guillaume.kessler@olswang.com

Germany
Dr Christian Schede
+49 30 700 171-120
christian.schede@olswang.com

Singapore
Rob Bratby
+65 9832 2898
rob.bratby@olswang.com

Spain
Pablo Bieger Morales
+34 91 187 1922
pablo.bieger@olswang.com

United Kingdom
Michael Burdon
+44 20 7067 3273
michael.burdon@olswang.com

Practices

Commercial
Iain Stansfield
+44 20 7067 3195
iain.stansfield@olswang.com

Corporate
Fabrizio Carpanini
+44 20 7067 3354
fabrizio.carpanini@olswang.com

Finance
Charles Kerrigan
+44 20 7067 3437
charles.kerrigan@olswang.com

Intellectual Property
Paul Stevens
+44 20 7067 3306
paul.stevens@olswang.com

Litigation
Richard Bamforth
+44 20 7067 3641
richard.bamforth@olswang.com

Real Estate
Jonathan Lewis
+44 20 7067 3577
jonathan.lewis@olswang.com

Stay in touch

www.olswang.com
@Olswang
@Olswang_Asia
@Olswang_France
@OLSWANG_Germany
theguardian.com/media-network/changing-business
theguardian.com/media-network/olswang-partner-zone

Our blogs
fashionistaatlaw.blogspot.co.uk
blogs.olswang.com/datonomy
constructiveblog.com
singaporeinternationalarbitration.com
blogs.olswang.com/budgetblog
robbratby.com

Blogs we contribute to
ukscblog.com
thespcblog.blogspot.co.uk
inforrm.wordpress.com

FSC
www.fsc.org
MIX
Paper from
responsible sources
FSC® C001785

This document is printed on FSC® approved stock using vegetable-based inks.

O! www.olswang.com