

2018 European Conference Milan, Italy | October 17 – 19, 2018

Conference Summary

Written by Silvia Casu, Università Statale, Milan, Italy

Disrupting technological innovations are revolutionizing not only our way of acting and our ethics, but they're also upsetting the legal and economic global framework. The European Conference of ITechLaw gave lawyers, jurists, and professionals from all over the world the opportunity to share their experiences and discover the incredibly extended implications of the latest technologies. Artificial Intelligence and IoT are evolving fields which in some ways are both inspiring and worrying society. Although electric vehicles, automated cars and electronical medical devices are undoubtedly huge progresses and contribute to the scientific development (i.e. environmental protection, increased safety, more accurate diagnosis etc.), there's still a spread mistrust about their use, because of the lack of human intervention required, and of the possible misuse of data, or the poor warranties offered by such innovations. The aim of law professionals is to create as much harmonization as possible, in order to have a common legal base that fully regulates the issues coming from the new technologies. The GDPR has made a great step in this direction, even though local laws still exist and flexibility clauses allow States to derogate from the Regulation itself. During the conference, experts addressed the subject of Blockchain and its broad implications in crypto finance, in cooperating with Health Organizations data; speakers also drew the attention on the importance of the legislation concerning the data protection, as well as Intellectual Property rights, and (new) Human Rights that will possibly derive from technology. The debate around legal policies and rights deriving from such innovations is still ongoing, and ITechLaw Conference has surely offered an interesting place of debate.

Session 1: Fashion Tech: How New Technology (May) Solve Old Issues in the Fashion Industry

Summary written by Antonella Sergi

Curator: Gianluca Massimei, NCTM

Moderator: *Joanne Vengadesan*, Penningtons Manches

Dorella Concadoro, Bottega Veneta

Meredith Halama, Perkins Coie

Daniele Sommovilla, Certilogo S.p.A.

Julia Sutherland, Seyfarth Shaw LLP;

This panel was focused on the importance of implementing cutting edge technologies in the fashion industry. *Dorella Concadoro* opened by discussing aspects related to supply chain system: a very important phase in a company concerning many important legal issues to be addressed such as environmental sustainability, social responsibility standards, impacts on logistic suppliers and agreements.

Meredith Halama, as a privacy lawyer, further discussed the issues that come up with those technologies involving general privacy and GDPR. *Daniele Sommovilla* continued the presentation introducing Certilogo, an application that empowers brands and helps customers with a smartphone or computer to easily and reliably assess if a product is authentic. *Julia Sutherland* concluded discussing the legal issues faced by brand owners online like the unauthorized sale of fake products (i.e. counterfeit goods) and parallel imports, the sale of genuine products not authorized by the brand owner. in the light of recent case law the emphasis was placed on what can brands do to protect individuals and preserve the quality and luxury image of the goods.

Session 2A: Hype or Hope: Preparing for the e-Mobility future

Written by Silvia Casu, Università Statale, Milan, Italy

Curator: Barbara Sartori, CBA Studio Legale E Tributario

Moderator: Jasvin Bhasin, iic group GmbH

Barbara Sartori, CBA Studio Legale E Tributario

Labros Bisalas, Systems Sunlight S.A.

Lorenzo Sessa, Iren S.p.A.

Alessandro Tommasi, LimeBike

Electric mobility is an opportunity that presents benefits not only from the ecological point of view, but also in the interests of public transportation, long-term cost savings and safety. Reducing the dependence on oil coming up with sustainable solutions is a target for ourselves, and for future generations. Four disruptive trends today affect the transport industry: connectivity, autonomous driving, shared mobility and electrification. In many cases it's a combined collaboration of these trends that helps us move towards this e-Mobility future. Sustainable mobility projects are being carried out by IREN S.p.A. and LimeBike. Lorenzo Sessa outlined the offer provided by IREN, which includes a wide range of e-vehicles, charging stations for public and private entities with a 100% green energy supply. Alessandro Tommasi presented the brand Lime, which aims to create a global smart mobility fleet. Alessandro pointed out how efficient sharing devices is, in comparison to an expensive ownership. Because it feels safer for the user, it's a matter of getting used to this new kind of devices and better understanding how people use it before drafting a new regulation.

Barbara Sartori pointed out the legal aspects of e-mobility: the aim of the European legislation is to ensure common measures to develop e-mobility, providing fiscal incentives and establishing technical standards to ensure interoperability across Europe. The contract (which is not only a supply contract, but mostly a partnership) will regulate both the aspect of the charging station and customization of the hardware, and the aspect of the license of the platform and of the app. Labros Bisalas took into consideration the market of batteries and energy storage systems, where lithium-ion battery plays an important role. Despite this, this kind of source creates issues because of cost, safety and resources reasons. Sources like hydrogen are supposed to gain more and more importance in this sector in the next years.

Session 2B: The Open Banking Revolution: How to Manage it and What is Next

Summary written by Antonella Sergi

Curator: Laura Liguori, Portolano Cavallo

Moderator: *Phil Catania*, Corrs Chambers Westgarth; Melbourne, Australia;

Chris Hill, Kemp Little LLP

Matteo Concas, Beesy

Charles Kerrigan, CMS London

Enzo Marasà, Portolano Cavallo

In this panel, *Chris Hill* opened by introducing the basics of open banking, the system that makes data and payments systems available for financial institutions. With a brief overview on the introduction of PSD2 in Europe, he described the main differences and the main features of the Account Information Service Providers (AISP) and Payment initiation service provider (PISP).

Matteo Concas continued focusing on the business opportunity between FinTechs and financial institutions. Today Fintechs can collaborate with banks developing services on top of their current offering quickly and with the ability to test and adjust depending on market feedback and opportunities.

Afterwards, *Charles Kerrigan* focusing on the relationship between banks and technology companies, explained the payment services and the intermediation of capital as both information problems solved by information technology. *Enzo Marasà* concluded defining the relevant Fintech markets and the blurred lines between fintech service making it challenging to define relevant markets, particularly as to quantification of current or potential size, value and number of active or potential competitors.

Session 3B: Embracing the Evolution of E-Health

Written by Silvia Casu, Università Statale, Milan, Italy

Curator: Claire Bernier, ASTDO

Moderator: Peter McLaughlin, Burns & Levinson

Tony Fielding, Gowling WGL

Marcello Ienca, ETH Zurich Switzerland

Sharda Balaji, NovoJuris Legal

Over the last few years, connected care has increasingly come to the fore. There's a rapid increase in the number of directed consumer applications of e-health devices that can record and monitor electric activity in the brain in a non-invasive manner, but we have to be also mindful that human mind is often considered the fundamental site of absolute freedom and of personal identity. Together with HR lawyers Marcello Ienca has individuated possible HR provisions that may be specific to the mental dimension, such as mental privacy, mental integrity, psychological continuity and cognitive liberty. The public debate is still ongoing, and recently lawyers suggest that such "neuro-rights" should be added to international treaties. As Tony Fielding suggested, Blockchain is an innovation that can actually "transform" healthcare ecosystem, where health organizations give direct information to the Blockchain, transactions are completed and uniquely identified; health organizations and institutions can directly query the blockchain, and patients can share their identity with health organizations. Despite the numerous advantages and benefits, this also involves certain risks, such as privacy, data security, cybercrime, access issues & control and deficient regulatory frameworks. Sharda Balaji focused on the vulnerabilities of medical devices, that are increasingly worrying the patients and healthcare organizations since the risk's consistent. Issues like the lack of standardization, security vulnerability, poor stakeholder communications and manufacturing inadequacies are threatening the e-health's development. The current needs in order to avoid this kind of problems are identified in: best practices for securing legacy devices, adopting threat-based defence and sharing of threat intelligence, ensuring a common risk framework for security and safety, that can only be reached through a combination of industry self-regulation and a legislative framework to address cyberattacks of medical devices.

Session 4: Law Enforcement Access to Data

Written by Silvia Casu, Università Statale, Milan, Italy

Curator: Reinoud Westerdijk, Kennedy Can der Laan

Moderator: Patrick Wit, Kennedy Van der Laan

John Frank, Microsoft

Tania Schroeter, European Commission

Chris Mills, UK Home Office, Office for Security and Counter-Terrorism, National Security

Directorate, Investigatory Powers Unit

Law Enforcement access to data and e-evidence are latest topics that cannot go unnoticed in the technologic legal landscape. Today, more than half of all criminal investigations involve a cross-border request to obtain electronic evidence. Currently cross-border requests are processed through: Mutual Legal Assistance Treaties, European Investigation Order or voluntary cooperation. According to Tania Schroeter, this system isn't fit anymore for today's requests. The European proposals include a Regulation and a Directive that build on existing principles of mutual recognition and provide faster, more efficient procedures, harmonised rules, legal certainty, transparency, accountability and strong protection of fundamental rights. The new legal framework is rapidly moving to cloud computing; John Frank showed how Microsoft filed a lawsuit that had far-reaching implications for law enforcement, which relies on access to emails and other data in criminal investigations and the US tech industry, which needs the trust of foreign governments to operate globally. An innovation was brought in the U.S. by the Stored Communication Act of 1986, that protected electronic communications punishing unauthorized access of electronic communication. The SCA has been amended by the U.S. Cloud Act, which establishes a framework for bilateral executive agreements with foreign governments. Christopher Mills brought a UK perspective of the access to data and e-evidence. US and UK propose a series of bilateral agreements between jurisdictions which will create a less bureaucratic conduit for cross-border requests and recognise common, high standards of rule of law and judicial independence. The agreements will also lift legal barriers to compliance where requests are made under an agreement and provide a dispute resolution mechanism. It is also suggested a future US/EU agreement, despite the existing significant practical barriers, such as the Cloud Act.

Session 5A: Trial in Errors: Lesson Learned from (Still More) Failed ERP Implementations

Written by Silvia Casu, Università Statale, Milan, Italy

John Beardwood and Eugene Weitz: CIS General Insurance v IBM UK: More Lessons Learned from another Failed Agile Project

John Beardwood (from the perspective of the vendor) and Eugene Weitz (from the perspective of the plaintiff) analysed one real life lawsuit of failed ERP implementation regarding CIS General Insurance v. IBM UK. The case was originated by the fact that CIS embarked upon business transformation programme to change its operating model, including implementing new “end-to-end” IT solutions for sale / servicing of general insurance products, and selected IBM as the supplier. The project was characterized by chronic delays, and CIS considered that IBM unlawfully terminated MSA for non-payment of invoice which was not properly issued. This constituted repudiatory breach, which CIS accepted, and wilful misconduct (due to the rendering of invoice in breach of the terms of the MSA). On the other hand, IBM believed it had properly exercised its right & lawfully terminated the MSA, while the delays were due to CIS failures to perform key customer obligations for the agile project. CIS claimed that IBM wasn’t entitled to terminate the MSA because it had not served a Final Notice, and because the right to terminate was only exercisable ‘immediately’ upon the expiry of 15 days from service of a Final Notice. Furthermore, IBM argued that CIS had a choice whether to accept such “repudiation” or to affirm the MSA and insist on the performance. However, it was charged of not warranting that there were no risks associated with the performance of the MSA. The failure key factors consisted in the not clear concept of “out of the box” and, among the others, the perils of having an overly completed governance framework. The main role of a lawyer is, in this case, making sure that the clients really understand the demands and that the vendor is really agreeing and not just attending.

Session 6: Legal and Policy Challenges of Artificial Intelligence

Written by Silvia Casu, Università Statale, Milan, Italy

Curator: Massimo Donna, Paradigma

Moderator: Marilù Capparelli, Google Italy

Matia Campo, Accenture

Carole Piovesan, McCarthy Tétrault

Roberta Di Nanni, Luminance

This panel analysed the legal and ethical implications of the evolving field of Artificial Intelligence. Carole Piovesan suggested a definition of AI as a system which analyses data for training and prediction, recognizes speech and images, makes decision, solves complex problems and is capable of self-teaching, without human intervention. Customer-facing activities including marketing automation, support, and service in addition to IT and supply chain management are predicted to be the most affected areas by AI in the next five years; as a result, there's a global race to innovation. We also have to consider the obstacles to a greater AI integration, such as data readiness, talent and skills gap, trust in the technology, lack of a clear regulatory environment and lack of AI strategy. In addition to problems of algorithmic transparency, there are legal issues which affect the nature, purpose and control of the AI system (e.g. questions of privacy, IPR, contracts, competition). Matia Campo focused on the role of Virtual Agent, that is, a smart assistant that interacts with people and machines, harnessing the power of AI to inform, support and advise the user, through the use of images or animated Avatars, interaction recording, guided dialogue, live chat support, feedback management and analytics. Despite the V.A.'s development is only at its beginning, technology will create new opportunities for chatbots in customer care. Roberta di Nanni pointed out how machine intelligence has encouraged lawyers to look beyond tradition, but at the same time has to gain full confidence. AI is today capable of loading documents, recognizing standard clauses through rote learning, identifying patterns, anomalies and deviations instantly, suggesting alternative forms of clauses to the jurist. The advantages of such systems in terms of reduced costs and real-time collaborative working are significant in the future legal landscape.