



“ Handling data breaches and cyber security are among the biggest issues, not only for telecom operators and companies operating online but for any corporation, as IT is at the heart of the operations of most of these organisations. ”

Javier Fernández-Samaniego
Bird & Bird

of privacy, says João Gonçalves Assunção, a Senior Associate at Ábreu Advogados. “The responses of the judge will be very important from the point of view of individual users of data and their right to privacy.”

The ‘Cookies’ Laws continue to raise issues as companies must obtain users’ prior consent to the use of cookies and similar technologies that collect personal data through websites. The laws are unclear as to actual implementation, say lawyers, and operators are more aware of the importance of data compliance, protection and breaches – fines can reach up to €5m.

The fast rate of adoption of cloud computing demonstrates the importance of this new solution, say lawyers, prompting a need for companies to review their systems, third-party provider contracts and security solutions. Cloud computing is liable to generate significant economic benefits for its users, since there are no installation costs but only on a pay-as-you-use basis which reduces economic risk, but raises several issues and concerns regarding data protection, says Leonor Chastre, Head of IP, Media and IT at Cuatrecasas, Gonçalves Pereira, Portugal. “The proliferation of this technology represents a challenge in terms of data protection, due to the risks associated with the lack of control over the data and the lack of sufficient information on how, where and by whom the data is processed.”

The future creation of a unified patent system in the EU, with the Unified Patent Court, will also represent a new challenge and a new area of business for legal firms, says Vera Lúcia Madeira, Head of TMT at Raposo Bernardo. The rules, due to come into force in January 2014, aim to reduce costs by approximately 80 percent, say lawyers, provide uniform EU-wide protection, and make the EU more competitive with jurisdictions such

as China and the US.

The Spanish Government has also proposed reforms to its IP Law to adapt it to recent changes in business models and in the services demanded by users. “It is necessary to introduce measures to encourage the generation of ‘lawful’ content,” says Rafael García del Poyo, Partner in the Digital Business Department

at Osborne Clarke Spain, “as only by developing legal measures related to the management of the so-called ‘private copying’, the establishment of anti-piracy measures, or addressing a more detailed regulation on rights management entities can we put Spain in a position to compete with the industries of other countries in a globalised economy”.

Competitive advantages

TMT’s principal role for clients is to take advantage of cost efficiencies and reduce company infrastructure costs, increase competitiveness, ease access to users and faster manage customer relations through social media resources and improve productivity and immediateness, explains Heckh at Deloitte Abogados.

Lawyers believe we are on the verge of an industrial revolution, given all the new products and technologies that are flooding the market. And as we rapidly move towards an Internet-based economy, TMT plays a fundamental role in the innovation and growth of any business.

From e-health, e-payments and mobile applications to entire factories and industrial processes being controlled via iPads, tablets or even smartphones – the sky’s the limit when it comes to the possibilities for businesses.

TMT now provides unprecedented levels of business acumen to IT-savvy small and individual entrepreneurs, says Luis Manuel García, Corporate Partner at Lupicinio Abogados International Attorneys. “They can use tools that large corporations would have only dreamed of a few years ago, at very affordable prices. And new technologies and tools seem to be appearing every day, for example, the possibilities enabled by Google Glass – like products or by 3D

assumes and how these will be developed.

The common concerns are the prevailing criteria within the new Regulatory Body – effective regulation and fair competition, says José Ramón de Hoces, a Partner at Pérez-Llorca, as well as the distribution of powers between the various Governmental TMT Ministries and the new CNMC.

The creation of the CNMC has created huge expectations in the legal sector.

However, it remains to be seen how exactly it deals with the different TMT sectors, particularly telecoms and media, concludes Airhoa Veiga, a Partner at Araoz & Rueda.

The new ‘super regulator’

In Spain, a key development is the recent unification of the telecommunications, energy and competition regulators under the National Markets and Competition Commission (CNMC), explains Javier Aparicio, a TMT Partner at Cuatrecasas, Gonçalves Pereira, Madrid.

And the first challenge is to see how the new CNMC will work, and the hope is that the union won’t cause any delays or interruptions to the regulator’s current work.

“The transition seems to have been carried out quite smoothly,” says

Paloma Bru Aros, Of Counsel and Head of Government Regulation (TMT) at Jones Day, Madrid, “however, we feel that there is a risk that the way the different bodies are managed will mean some changes in the criteria applied that could affect the workings of the various bodies.”

“The EU wanted a more independent regulator in Spain,” adds Torre de Silva at CMS Albiñana & Suárez de Lezo, “but what we have done with the new Super Regulator is quite the opposite”. Lawyers agree that there is a great deal of uncertainty among clients regarding this new regulator, the functions it