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Advance Directive and Advance Technology, Developments in the Field of Patent-related Injunctions,Cybersecurity and Personal Data Protection,Lethal Autonomous Weapon System etc, by Carlos Li(Hong Kong SAR), Math Heckman(Netherlands), Juan Pablo Gonzalez(Chilie), Halil Murat Berberer(Turkey), Tianze Zhang (China), Fei Zheng(China), Fred Kokeyo(Uganda), Udomo Ali(Nigeria), Muhammed Tawfiq Ladan (Nigeria), Lin Zhang (China)

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# Let's head up for the new decade with ILTIA

For me, I would describe 2019 as a fruitful and incredible year, thanks to many people giving me their hands to help me move forward. In the sphere of law and technology, I would like to express my sincere and special gratitude to International Law and Technology Interoperability Association ("ILTIA") which unreservedly and generously gave me countless opportunities to learn novel things, acquire new knowledge and meet new friends.

In 2019, ILTIA held numerous fantastic events and one of which was definitely ILTIA Global Meet. The ILTIA First Global Meet was held on 17 February 2019 in which I met many legal experts, practitioners and professors from different countries and the topics presented therein were very intriguing and inspiring. Following the first meeting, the second came in May, the third in September and the fourth in December. Through the discussions in these meetings, I gained deeper insights into the relationship between law and technology. Probably the last meeting was held in previous month, I still remembered that Mr. Zhang offered his unique insights on "Ban on the Lethal Autonomous Weapons (LAWS)? Review and Challenge", Dr. Heckman shared his view on "The challenges of the EU Commission in relation to the Digital Single Market and Artificial Intelligence" and Prof. Ladan introduced his topic of "Developments on Admissibility of Electronic Evidence and Data Protection in Nigeria 2019 and 2020 Proposal". Apart from the online meetings, ILTIA also published the first issue of ILTIA Global News on 31st July 2019 which enabled me to be updated of the latest development of law and technology in different corners of the world.

Indeed, "Funding and Finance" and "Regulatory Framework and Infrastructure" are two of the key factors to the successful entrepreneurial ecosystems. In order to advance the progress of research and development in technology, many countries have allocated a tremendous amount of resources to cultivate the innovative and technological ecosystems.

Nevertheless, technology per se also imposes a profound impact on society and some people describe such an impact as disruptive to the extent that it would radically change the traditional business models and human behaviors. Therefore, corresponding rules and regulations should be in place to ensure the sustainable technology development and, as such, ITLIA could be said as an ideal platform where lawyers, practitioners, entrepreneurs, researchers and government officials can join together to exchange ideas and come up with ways to pursue sustainability in the territories of law and technology.

What comes next after a great success in 2019? Last Sunday, I was so happy to meet Mr. Zhang in Hong Kong when we also discussed the plan of ILTIA for 2020. Based on what ILTIA did last year, an attempt would be taken to organize a conference in Hong Kong in November 2020 and the venue would ideally be in Hong Kong Convention and Exhibition Centre. The aim of this conference is to bring experts from all over the world and make a real connection between private companies and legal professionals. What's more, a timetable of regular meetings would be fixed so as to maintain our connections and keep all of us updated of one another in respect of legal technology development in our own living places. Through the continuous attempts and efforts, it is hoped that ILTIA can gradually enhance its international reputation and eventually establish its leading position in the world.

The year of 2020 has already come. I wish ILTIA a successful and prosperous new year and also send my warmest greetings to everyone. Thank you very much.

CARLOS LI

***LI Carlos,*** Attorney at Law, Ph.D. Candidate at Chinese University of Hong Kong

# ADVANCE DIRECTIVE AND ADVANCE TECHNOLOGY


Life has different stages whereby people have different needs in their different life stages. Since the aging population has become a pressing issue, the Hong Kong government has rolled out multitudes of end-of-life healthcare services to meet various need of aging people and one of which, in term of legal services, is advance directive. An advance directive ("AD") is a statement, usually in writing, in which a person indicates when mentally competent what medical treatment he or she would refuse at a future time when he or she is no longer mentally competent. Its object is to spare the burden of making difficult decisions by heath providers, family members, caregivers or lawyers on the patient's behalf.

There are three occasions where the AD may be triggered, namely 1) terminal illness, 2) persistent vegetative state or a state of irreversible coma and 3) other end-stage irreversible life limiting conditions. Pursuant to the standard form of the Hospital Authority, a patient can elect either AD 1 or AD 2 for which he or she should also pay heed to six common legal advice from his or her lawyer (if any). The current legal status of the AD in Hong Kong is merely under common law framework on which the doctrine of consent is based in way that the patient's consent to receiving medical treatment is required to make a validly-made AD. Nevertheless, there are two legal concerns expressed by medical practitioners, namely 1) the lack of legal protection for healthcare profession and 2) conflict with other statutory provisions such as the Fire Service Ordinance (Cap. 95) and the Mental Health Ordinance (Cap. 136). To relieve these concerns, the government is considering the legislation of the AD under the present circumstances.

"We can rebuild him; we have the technology". So far, there have been numerous medical breakthroughs such as the world's first drugs curing cancer coming into existence soon. Advance technology can upgrade the conventional AD planning to the electronic AD planning ("E-AD Planning") of which the five pertinent categories are Basic E-AD Planning, Enhanced E-AD Planning, Interactive E-AD Planning, Integrated E-AD Planning and Social Media & E-AD Planning. Just-in time (JIT) AD is premised on the use of advance technology to avoid excessive ADs and to reduce times within the production system as well as response times from healthcare practitioners, lawyers to family members.

Crossover advance directive (CAD) is tantamount to advance directive (AD) multiplying advance technology (AT) whereby AT-related factors such as medical breakthroughs, E-AD Planning and JIT AD should be taken into consideration prior to the execution of the AD. In essence, the CAD lies in the use of the AT to increase and advance the recoverability, reversibility, foreseeability and legal certainty and to come up with a more precise and bespoke AD, which is legally binding, legally recognizable and legally enforceable.

## THE LAW SOCIETY OF HONG KONG ROLLS OUT "INNOTECH LAW HUB"

LI Carlos

The hub pulls data from law firms and solicitors through Innovation Value Chain Survey and pushes the consolidated data to HKSTP's Global Acceleration Academy Programme for architecting optimal legal-tech solutions.

In 2019, the Law Society of Hong Kong has established InnoTech Law Hub ("ILH") which is a program of its InnoTech Committee for legal practice innovation. The ILH aims to find technology-based solutions to address the problems of law firms and solicitors, build a community of innovation advocates, enhance the legal profession's technological awareness and competency and connect lawyers with business decision makers.

With the enhanced efficiency and effectiveness, the ILH can facilitate law firms to deliver better legal services and easier access to justice to the community. To achieve these goals, the guiding principles of the ILH are to cultivate cross-disciplinary collaboration between lawyers and technologists, engage multiple stakeholders to approach the challenges of innovation and coordinate better access to impactful solutions in the delivery of legal services.

Recently, the ILH has conducted an Innovation Value Chain Survey in an attempt to grasp and paint a clearer picture about the actual problems legal practitioners may face at various stages of the value chain of legal service sector in Hong Kong.


In the meantime, the Law Society collaborates with the Hong Kong Science and Technology Park Corporation ("HKSTP") on a Global Acceleration Academy ("GAA") Program for architecting legal-tech solutions based on the data collected from the survey.

Indeed, GAA is an intensive business acceleration programme led by HKSTP to connect some high-potential startups with world-class leaders such as the Law Society in this case and help them localize their innovative solutions in Hong Kong, Asia and beyond. Products and services incubated from the programme seek to respond and provide solutions to the various challenges in different sectors and regions. Apart from HKSTP, the Law Society may further consider collaborating with some universities such as Chinese University of Hong Kong and other partners like International Law and Technology Interoperability Association (ILTIA) etc in a bid to nurture a long-term innotech law ecosystem in Hong Kong.

## AMAZING VR EXPERIENCES AND THE FUTURE OF E-SPORTS ARBITRATION IN HONG KONG

It's a timeout from your busy work. Have your ever tried any virtual-reality (VR) experiences of immersing yourself into a completely new world where you can escape yourself from mundane affairs for a moment? In Hong Kong, there are many terrific VR experiences to try in VR gaming venues where you simply wear the VR googles and dive yourself into the virtual worlds right away. You may choose to try a wide array of VR experiences from zombie pirate ships, VR-centric party rooms to E-sports arcades. This year, HK has opened a new multimillion e-sports complex in Mong Kok, the largest one of the same kind in Asia. What's more, the HK government has allocated HK$100 million to Cyberport to cultivate the e-sports ecosystem in terms of hardware like the buildup of a HK$50 million competition venue and software of nurturing start-ups talents. Hence, it seems that e-sports not only can give you a timeout of escaping reality for fun but also may be an alternative professional career if you like it.

In the discussion paper dated 19 April 2019 for the Hong Kong Legislative Council Panel on Administration of Justice and Legal Services, its Paragraphs 21-26 deal with the issues pertaining to sports arbitration. In a nutshell, sports industry is a growing and promising sector where it is anticipated that there is a huge demand on resolving disputes arising from various sports. At present, the Court of Arbitration for Sport (CAS), which was established in 1984, is the main institution designated to settle sports-related disputes by means of arbitration or mediation. CAS opened its first alternative centre in Shanghai in 2012. In Asia, the Asian International Arbitration Centre (AIAC) in Malaysia is another institutional body dealing with sports arbitration in Asia. In the circumstances, in light of the competitive edges of HK in respect of its arbitration and mediation, it is believed that HK could leverage its advantages to serve the needs of dispute resolutions in the upcoming Olympic Games in Japan in 2020 and Winter Olympics in Beijing in 2022. Then the next issue would be how to extend its dispute resolution services to e-sports and VR gaming competitions in the region.


# HONG KONG SAR :O2O MARKETING CHANNELS AND SFC'S GUIDELINES ON ONLINE DISTRIBUTION AND ADVISORY PLATFORMS IN HK

In online-to-offline (O2O) commerce, online and offline marketing channels are viewed as complementary rather than competitive that enables companies to cross-promote their messages to their target customers. From the legal perspective, however, alignment of online and offline marketing channels may give rise to some potential legal issues and one of which would be the online sale of some risky financial products such as wealth management products for which the prevailing laws and regulations may not render sufficient protections to customers.

To address the abovementioned issue, the Securities and Futures Commission of Hong Kong (SFC) gazetted the Guidelines on Online Distribution and Advisory Platforms (the "Guidelines") on 6 April 2018, which came into effect on 6 April 2019. According to the Chapter 2 of the Guidelines, there are six core principles with which platform operators should comply in the course of operating their online platforms and those principles include 1) proper design, 2) information for clients, 3) risk management, 4) governance, capabilities and resources, 5) review and monitoring and 6) record keeping. In respect of risk management, platform operators should also refer to SFC's "Guidelines for Reducing and Mitigating Hacking Risks Associated with Internet Trading" to ensure the reliability and security of their online platforms including cybersecurity and data protection.

**TIANZE ZHANG**
CHINA

# CHINA: TWO YEARS AFTER THE INTERNET COURTS AND THE DISAPPEARING LAWYERS

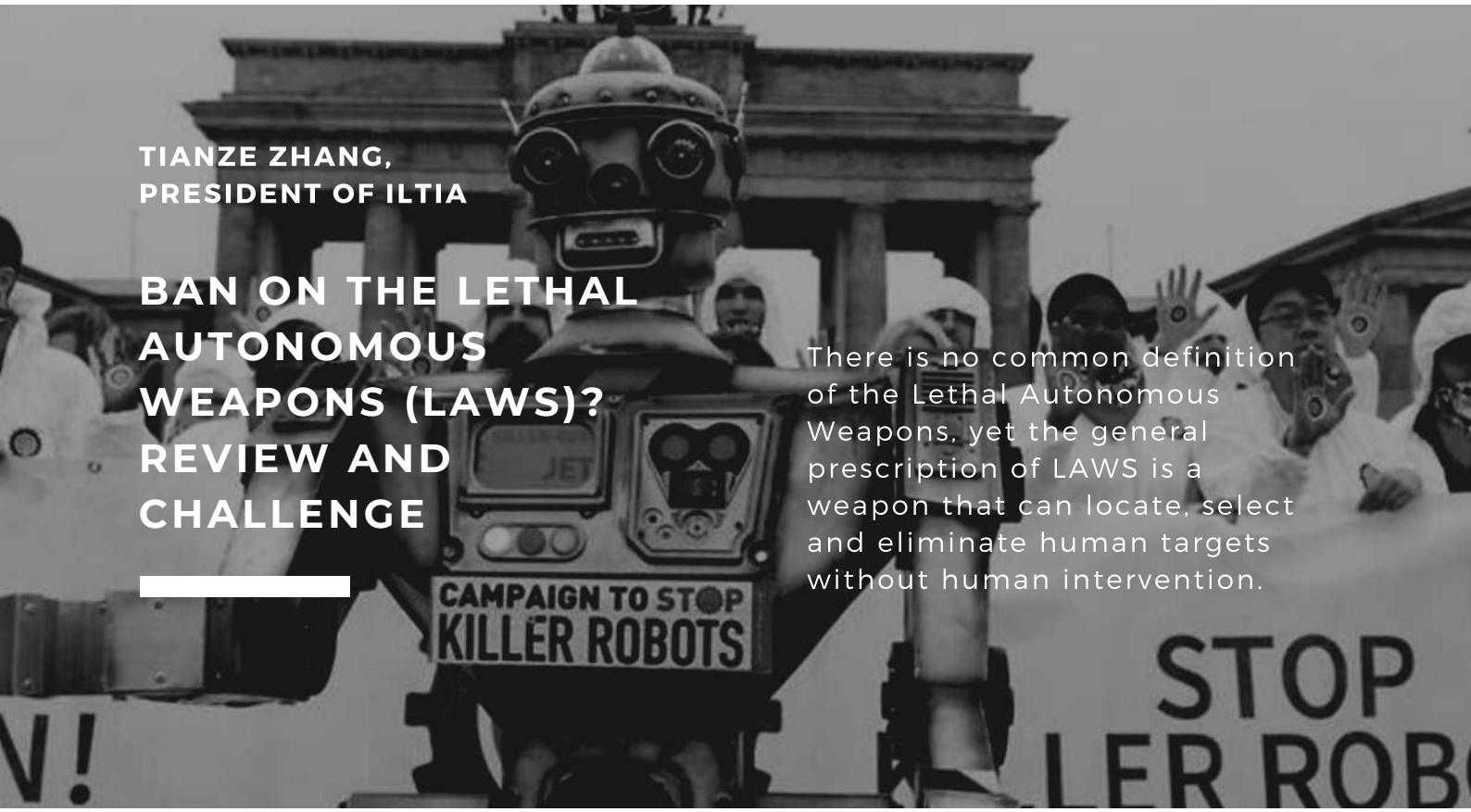
**TIANZE ZHANG**
**PRESIDENT OF ILTIA, CONSULTANT AT UNITED NATIONS**

The first Internet Court in the world was established in Hangzhou, China, 2017. In the hometown of Alibaba- the world largest retailer. The Hangzhou Internet Court was created to handle specific internet-related cases, such as a copyright dispute, online shopping, internet loans, domain name disputes. Throughout the process, neither the plaintiff nor the defendant needs to be presented physically in the courtroom. One year after the establishment of the Hangzhou internet court, the Beijing and Guangzhou internet court was established.

The case submitted to the internet court must be one of those 11 types of cases previously supposed to be heard by the basic people's courts, including Internet copyright ownership, infringement disputes, online shopping and service contract dispute and so on. The subject of the case can be up to 100 million RMB (14.5 million USD) dollars[1]. The efficiency means that the cases can be filed and delivered online at a 24-hour basis and 365 days per year. With the assistance of the instrument generation system, the pleadings, mediation agreement and acknowledge of delivery address will be generated automatically. As of April 17, 2019, 31,396 verdicts documents had been generated automatically by the system in Beijing alone. The average hearing time is reported below 30 minutes. Moreover, most cases were streamed and recorded online, which is accessible by the public.

The parties can, therefore, expect the trial--- other than to be analyzed by the lawyers as before. As reported by Xinhua net in July 2019, the AI judge, "based on intelligent synthesizing technologies of speech and image, will help the court's judges complete repetitive basic work, including litigation reception, and thus enables professional practitioners to focus on judicial trials". There is not a certain number yet on the number of litigants involved in the Internet Courts hired professional lawyers, but it is estimated that at least half of the cases were trailed in person.

NOTE:
[1] The discretion of choosing the internet court falls in three parties. The plaintiff has the initial right to submitting the case to the internet court. During the pre-trial mediation, if the defendant expressly refuses to use the internet court or is unable to be contacted, the plaintiff needs to file the case through the traditional way. After filling the case, if the judge feels necessary, the litigation can also be conducted through the traditional court. Starting from September 2018, the internet courts have exclusive jurisdictions over those 11 cases, meaning that general cases fall within those 11 categories in these cities should be trailed by the Internet Courts.




**TIANZE ZHANG,**
**PRESIDENT OF ILTIA**

# BAN ON THE LETHAL AUTONOMOUS WEAPONS (LAWS)? REVIEW AND CHALLENGE

There is no common definition of the Lethal Autonomous Weapons, yet the general prescription of LAWS is a weapon that can locate, select and eliminate human targets without human intervention.

The concerns of LAWS focus on the immoral use of the technology, responsibility of LAWS. that most AI researchers have no interest in building AI weapons — and do not want others to tarnish their field by doing so, potentially creating a major public backlash against AI that curtails its future societal benefit. International law requires the individuals are criminally responsible for violations of international humanitarian law amounting to war crimes, it would be almost impossible to identify the responsibility of LAWS.

On April 2019 Group of Governmental Experts on Lethal Autonomous Weapons Systems (GGE) meeting was held in Geneva, the core of the debate was on the degree regarding principle Human Control.

Instead of making moral judgments, the nature of AI's ability is to determine the best course of action to achieve its goals in a wide range, which is how we measure a system's Intelligence. The LAWS, therefore, is designed for achieving the purpose of the war in the lowest cost.

During the 2019 GGE meeting, it has been confirmed that the potential use of weapons systems based on emerging technologies in the area of lethal autonomous weapons systems must be conducted in accordance with applicable international law, in particular the International Humanitarian Law. However, there will still be a long way to go in 2020. In 2020, the international community shall work together to create operational and institutional collaboration, especially through institutionalizing exchange of policy and practice among States.

# The German Healthcare system is catching up with digitalisation

Eda Zhuleku, Senior Associate at Allenovery, Germany

For 15 years, Germany has been tinkering with the telematics infrastructure and the implementation of the electronic health card. Regulation of Germany's health system is generally delegated to self-governing associations of health insurance companies, physicians and pharmacists. This principle has also been applied to setting up the country's health telematics infrastructure. To accelerate the process, however, the Ministry of Health has recently strengthened its leadership role and some advancement, such as the introduction of telemedicine for remote treatment, has been made. One of the aims of Jens Spahn, the German Federal Minister of Health, is to "promote the digitalisation of healthcare internationally". Accordingly, the New Law for More Safety in the Supply of Pharmaceuticals in Germany ("Gesetz für mehr Sicherheit in der Arzneimittelversorgung" - GSAV), which has been in force since 16th August, states that the necessary arrangements for the use of the electronic prescription have to be ready within the next months.

**"Health Apps" on prescription**

Furthermore, physicians are soon going to be able to prescribe so-called health apps such as diabetes management applications and mobile electrocardiographs. Hence, the costs for the prescribed application are being reimbursed by the health insurance. This results from the draft law for the Digital Assistance Act ("Digitale-Versorgung-Gesetz" – DVG), which will pass the German Bundestag in September 2019. The exact date of entering into force is not yet known.

The Federal Office for Drugs and Medical Devices (Bundesamt für Arzneimittel und Medizinprodukte – BfArM) certifies the apps regarding to security, data protection, transparency and user-friendliness. The term health apps include applications that evaluate fitness data or help with the application of medication. The decisive factor is the distinction between a pure lifestyle and a medical device with a medical purpose. Besides the medical purpose, a possible prescription requires that the apps concerned are registered with the BfArM after an evaluation process. The manufacturer has to prove positive impact on the patient care within a year and notify this to the authorities.

# THE IMPACT OF TECHOLOGY IN THE APPLICATION OF TAX LAW IN ITALY

**LUCA CERIONI**

LECTURER IN TAX LAW, SCHOOL OF LAW, UNIVERSITY OF EDINBURGH

Over the last decade, the application of tax law in Italy has been increasingly reliant on technological solutions, whose use has been made mandatory both for the tax authority and for the taxpayer. In a jurisdiction historically characterised by a high degree of tax evasion ad tax avoidance by businesses and self-employed professionals, the use of technology was seen as instrumental for allowing the tax authority to counter these tax savings behaviours. Initially, a specific methodology introduced in 1993 (Law Decree n. 331/1993 and Law n 427/1993) – named "sector studies" ("studi di settore") – was aimed at targeting businesses, sole traders and self-employed professionals of every economic sector who allegedly reported amounts of profits or income which were inconsistent with the amounts which would be regarded as "normal" for their own sector.

A technological solution, which consisted of a sophisticated software, was elaborated and introduced for use by both the tax administration and these taxpayers to determine – though the collection of data on the activity of each concerned taxpayer – the amounts of profits or income that were regarded as "normal" for their own sector. As this technological solution had the effect of allowing the tax authority to mainly focus the tax auditing activity on those taxpayers who reported amounts that were not "normal", it unintentionally encouraged taxpayers earning above the "normal" amounts to merely report the normal amounts and drove taxpayers earning less than the "normal" to report the normal anyway.

This outcome was certainly inconsistent with a basic constitutional principle of tax law, namely the "ability-to-pay principle" (whereby the higher the income or profit gained, the higher the income or profit to be reported and the tax to be pad). In 2017 (Law Decree 50/2017 and Law n. 96/ 2017), these "sector studies" were deemed to be replaced by a new methodology – referred to as "reliability indexes of taxpayers" ("indici d affidabilita' fiscale", ISAs) – which was introduced as of 1 January 2019.

Once again, the methodology relies on a new sophisticated software, which gives concerned businesses, sole traders and self-employed professionals a score of 1 (completely unreliable taxpayer) to 10 (maximum reliable taxpayer), on the bases of specific data and features related to their activities. In turn, the score given by this new technological solution ends up leading to a better treatment, in terms of possibility of avoiding tax audits too, for taxpayers achieving the highest score. The ultimate effect may well be that of driving a number of taxpayers to explore, before submitting their tax returns, potential ways to improve their scores. In this first year of application, however, there has been some technical issues in the elaboration of the software, and these issues have induced the Government to postpone – for taxpayers subject to ISAs – even the deadline for tax payment.

This evolution – to which several other examples could be added, among which the introduction of "electronic invoicing" for businesses and professionals - shows that the relation between tax law and technology is being progressively reversed. Although technology was initially considered as instrumental for a proper application of tax law consistently with its basic ability-to-pay principle, the adaptation of the tax administration to an application of tax law increasingly reliant on the outcome of technology, is producing the opposite outcome. In other words, tax law provisions are becoming instrumental, as a (further) justification, to the use of technology itself.

**BERNARDO CORTÉS ARAUJO**
MEXICO

# MEXICO: RECENT CASE LAW ON "OPEN ACCESS" TO SOCIAL MEDIA OF PUBLIC SERVANTS

**BERNARDO CORTÉS ARAUJO**
**SENIOR ASSOCIATE OF DENTONS LOPEZ VELARDE**

Social media (especially Twitter) has become a relevant platform for exchange of political ideas in Mexico, whereby political actors and citizens have engaged in announcements, criticism and discussions on public policies.

While the use of social media was a common practice in previous administrations, one may say that this new administration has been the most active within the public debate generated in social media. President Lopez Obrador has even used these platforms on a daily basis in order to forecast his daily morning press conferences (known as "mañaneras").

In some cases, this new form to make politics have resulted in public servants blocking users of social media when they are insulted or simply do not agree with the comments received in such electronic platforms (this has happened since the previous administration). Therefore, such blocked users (probably inspired in the decision issued in US courts that impedes President Trump from blocking his critics on Twitter) have resorted to Mexican courts in order to seek relief - i.e. being unblocked – based on the freedom of information right recognized in the Mexican Constitution.

Because of such proceedings, the Mexican Supreme Court of Justice[1] have recently issued non-binding[2] court criteria in order to prevent public servants from blocking users from their social media.

The Mexican Supreme Court has conditioned this constitutional veil of protection upon non-abusive behavior by the users of social, so to the extent the users do not insult, threat or slander the public servant, the latter would be prevented from blocking the former.The criteria adopted is very clear that any criticism or other type of expressions that may hassle or bother public servants should not be considered as abusive behavior.

This court criteria basically provides that blocking of users from social media accounts of public servants violates the constitutional rights of freedom of speech and freedom of information; provided, however, that (i) the social media accounts are used to share information related to their governmental actions, and (ii) the block is made "without justified cause".

This case was a good example of how two human rights related to technology may be in conflict: by one hand the freedom of information and on the other the privacy rights of public servants. The standard established by the Mexican Supreme Court may bring certainty for both citizens and public servants: if the social media is used to share information related to the public actions undertaken by the public servant, then the relevant account is subject to open access by any citizen.

NOTE:
[1] Amparo appeal 1005/2018.
[2] Mexican judicial system requires having five different cases resolved with the same criteria (and with super majority votes) in order to be deemed as mandatory criteria for lower courts, otherwise, these precedents are only considered as "isolated criteria" until they reach the number of cases with the voting required. There is no stare decisis.

# MEXICO: PUNISHING THE UNFAIR OR UNAUTHORIZED USE OF IPRS IN WEBSITES' CONTENT

*Emmanuel Alanís G,Alanís,* Alcalá Abogados - Attorneys

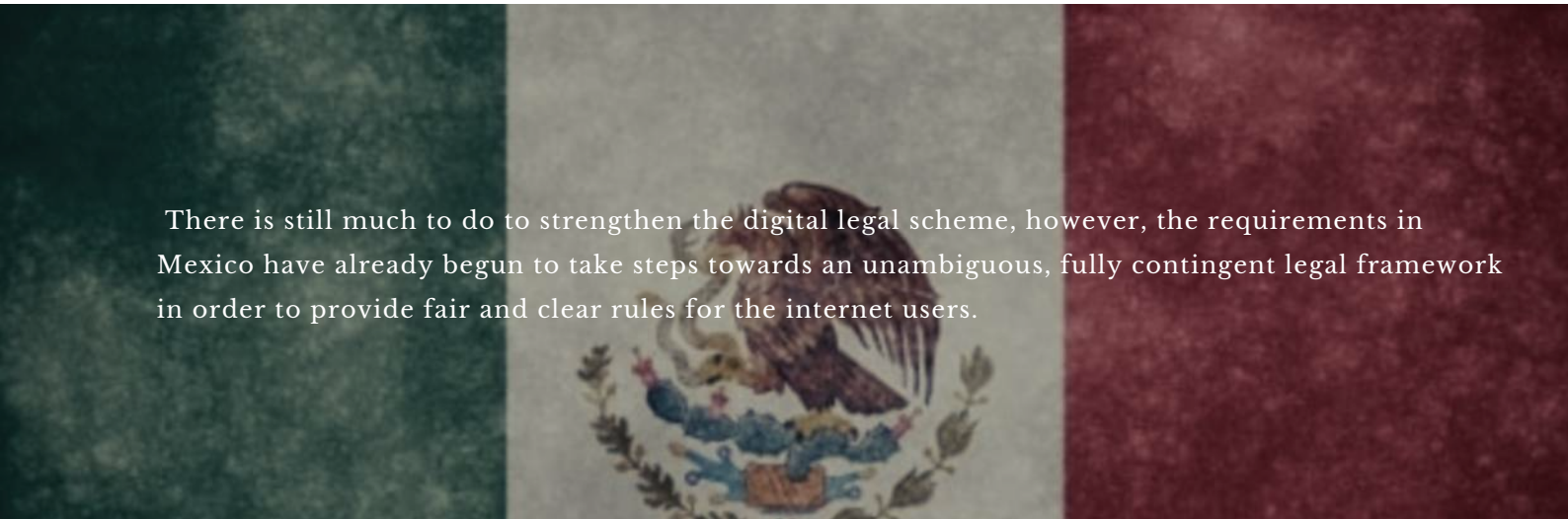
Leaving aside disputes over domain names and trademarks, cases in which some national users use sites with domain names of their own brands, that simultaneously contains trademarks and copyrights of third parties have arosed. Along with the legal implications, the inclusion of the infringed brands and slogans in digital media campaigns, such as Google AdWords, that cause confusion in Internet consumers.

It is possible, but there are still few lawyers that know the international regulations and local practices to get the authorities to impose fines on the infringements and claim the payment for damages caused by the unfair or unauthorized use of trademarks, copyrights, among other IPRs on websites.

Firstly, complaints about website content are outside of Internet Corporation for Assigned Names and Numbers (ICANN) scope and authority, so it is necessary to enforce the disputes in accordance with national jurisdiction.

Under these circumstances, although it is true that the administrative authorities of Mexico already have avant-garde measures to impose sanctions on offenders who use the internet, it is also true that these resolutions have been supported by physical material and inspections of establishments.
On the other hand, domain name registrars offer privacy services that prevent the identity of the ownership of the infringing sites for linking them directly in a lawsuit.

Consequently, this leads us to request the registrar companies to reveal their data, a situation that sometimes is not possible due to the protection of their clients, forcing us to request the intervention of the cyber-police, which does not have trained personnel to determine the way to proceed and practically has to be guided by the plaintiffs lawyers.The improper and unauthorized uses of IPRs are increasing and given the lack of specialization of the authorities, the sanctionability of these actions is inefficient and costly.



There is still much to do to strengthen the digital legal scheme, however, the requirements in Mexico have already begun to take steps towards an unambiguous, fully contingent legal framework in order to provide fair and clear rules for the internet users.

**MATT HECKMAN**
THE NETHERLANDS

# NEW DEVELOPMENTS IN STANDARD-ESSENTIAL PATENT INFRINGEMENT CASES IN THE NETHERLANDS: PHILIPS V WIKO

**MATT HECKMAN**
**PRINCIPAL LECTURER ZUYD UNIVERSITY OF APPLIED SCIENCE**

The Hague Court of Appeal took recently an interim decision in a case that Philips started against WIKO SAS. This decision clarified to some extent the position of the Dutch courts in relation to the definition of FRAND-terms in standard essential patent (SEPs) infringement cases. After the Huawei/ZTE decision of the CJEU, the Netherlands only had one case dealing with FRAND, which was Archos v. Philips ( 8 February 2017, http://eplaw.org/nl-archos-v-koninklijke-philips-frand). The Hague Court of Appeal found on 16 April 2019, the Philips patent to be valid and infringed by the French company WIKO. The patent was recognized as essential for the UMTS-standard. In its decision of 2 July 2019 (Case no. 200.219.487/01) the Court of Appeal rejected the FRAND-defence of WIKO. WIKO had behaved as an unwilling licensee, and only made a counteroffer to Philips after the current proceedings. The German Landesgericht Mannheim had earlier this year accepted the FRAND-defence of WIKO. Based on art 29 and/or 30 EEX regulation, WIKO tried to use the same reasoning in the Netherlands, which was not accepted since the Court held the opinion that the case at hand dealt with different jurisdictions and different patent rights.

Furthermore WIKO accused Philips of abuse of dominance which the Court of Appeal in the Hague did also not follow, since WIKO could be qualified as an unwilling licensee.

The decision seems to follow the earlier Philips v Archos decision. The Hague Court again stated that FRAND is a range and refused to set a FRAND royalty rate. The Court stated that abusive behaviour of the patentee could consist in not negotiating actively. The Court is willing to rule on substantive arguments with regard to the calculation of a FRAND offer. An objection by the SEP implementer regarding the FRAND calculation methods, may backfire. The Court holds that such objections could have been raised during the negotiations, hence the SEP-user can be seen as unwilling during the negotiations. Regarding the defendants' obligations, the Dutch courts mainly ruled on "willingness" and seem to take a more patentee-friendly approach. In general, Dutch court will hold a pre-hearing on SEPs and then continue to discuss the technical part of the cases. First, the courts discuss FRAND and then consequently start the case. Patentee must show that the offer is FRAND. The Dutch court will accept the advice of an economist on the FRAND-rate. In this case WIKO based her licensing offer on the strength of Philips patent portfolio within the standard. The Dutch court concluded that the argument of royalty stacking could not be used and that the actual licensing terms that were applied by Philips were actually fair and reasonable.

# Dutch Court denies preliminary injunction in a FRAND-case due to lack of urgent interest

Matt Heckman

It is often stated that Dutch courts have a favourable approach towards the holders of Standard-Essential Patents (SEPs). The recent decision of the District Court in The Hague ( 1 August 2019) hints at a possible change (C/09/573969 / KG ZA 19-462 (EP 536) en C/09/574487 / KG ZA 19-487 (EP 997). Sisvel, a company that specializes in the management of IP rights, declared as ETSI member that several SEPs would be licensed under FRAND-terms. Already in 2013 Sisvel approached Xiaomi to take a license on FRAND-terms. This offer was repeated in 2014 and 2015 but Xiaomi did not agree to the proposed licence. This year Xiaomi started to sell its products in the Netherlands and consequently Sisvel started proceedings against Xiaomi related to the patents EP 536 and EP 997.

Sisvel filed for a preliminary injunction to stop the sale of Xiaomi products in the Netherlands. The District Court in The Hague dismissed the request based on a number of facts. Firstly, the Dutch Court held, (the considering very short time available) the opinion that Sisvel could await the decision of the UK High Court of Justice on what the worldwide FRAND-royalty pool fee should be. The two patents are part of the MCP patent pool and are both disputed in the proceedings between Sisvel and Xiaomi in the Netherlands and the UK.

The Dutch Court considered that a preliminary injunction that would deviate from the UK proceedings could result in severe legal uncertainty. More importantly, the Court concluded that there was a lack of urgent interest that would justify the preliminary injunction against Xiaomi. The Court declared that determining a FRAND license fee is very complex, especially in the short time that was available.

Furthermore it was not clear why Sisvel could not wait for the proceedings on the merits in the UK and Dutch court cases. Also, Xiaomi's business interests would be better served by the longer deadlines provided by the case on the merits. Since Sisvel wants a decision on the global FRAND fee, the Dutch Court held the opinion that the proceedings were: " a way to force Xiaomi to the negotiation table and maybe even force on it a royalty rate that will not be necessarily FRAND" (par. 4.6 of the decision).

Interestingly, the District Court The Hague applied the urgency criterion in a supranational context considering the impact on and the relation to the proceedings in the UK. Secondly the court found that a FRAND-decision in summary proceedings is very complex and time-consuming. Finally the claim for unconditional preliminary injunction by Sisvel, did not consider the possible heavy impact on the business interests of Xiaomi.

# THE CHALLENGES OF THE EU COMMISSION IN RELATION TOT HE DIGITAL SINGLE MARKET AND ARTIFICIAL INTELLIGENCE

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The new EU Commission identified new priorities in relation tot he technological sovereignty of the EU and the “Green Deal”. In relation to these new priorities it is questionable whether the current system of intellectual property rights (IPRs) fully supports and encourages the EU competitiveness?

The current European IP-regime might not be “fit for purpose”in relation tot he new business models that have been created and supported by means of the implementation of Artificial Intelligence (AI) and the Internet of Things (IoT).

Implications of AI in the field of IP protection can be related to access of IP, how to invest in strategic value chains and the enforcement of IP.A stronger use and registration of IP rights by small and medium-sized enterprises (SMEs) will also be crucial for the efficient implementation of AI in the European Union.

IP for the future, where does the EU want to go? AI is directly linked to big data sets that enable the training of the AI algorithms. The use of AI does provide some challenges for the current patent system. Since the AI core technology consists of mathematical methods it can not be patented (art.52 (2) EPC).

At the moment the most substantive issue seems to be the access to “training data”. The ownership of the training data is concentrated at some EU industries (Siemens, BMW, Daimler). As a consequence AI will almost automatically intensify the discussion of AI standards and standard essential patents. An interesting route might be that AI generated content can also be protected by industrial design rights.

In relation to inventions created by AI several interesting questions still remain to be discussed. The first problem: is the use of AI for a skilled person obvious, is it still inventive?

Second problem: who is the inventor? The programmer and the data-trainer could both be seen as a co-inventors. The position of the owner of the data or AI itself as e-person are more difficult to define. At the moment it seems that AI is not strong enough to process the complete invention. Hence there is no singularity of AI and therefore no direct need for an e-person. From a competition law perspective it should ne noted that a general patentability of AI could create monopolies since only very few companies are capable of using AI at the moment.

Although the challenges presented by AI tot he legal system seem to be manageable at the moment, AI will soon change from a powerful technical tool into a more disruptive technology. The EU legal system faces a serious challenge in anticipating these future development in the field of la wand technology.

# Russia: Big Investment, Little Sense: Building Sovereign Internet in Russia

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In early 2019 the Russian Parliament adopted a law according to which the Russian Internet should be isolated from the global network. The official Kremlin's motivation is keeping the critical Russian infrastructure safe in case other countries decide to "turn the internet off" jeopardizing Russian national security. However, it can hardly be called a reasonable concern calling for an expensive and questionable policy of internet isolation. No country tried to "switch the Russian internet off" before, doing so would be expensive, time-consuming and will require an approval of multiple international organizations. The only time any nation mentioned a cyberwar against Russia was October 2018, when London said that as in case of war it would not be able to respond to the Russian military aggression without using nuclear power, it would respond with a cyberwar instead.

It is not even clear weather the Russian government has technical capacity to actually isolate the "Russian" internet. In previous attempts to block Telegram, a messenger refusing to cooperate with the Russian state authorities, Russian authorities blocked many random websites while Telegram itself continues working to this day.

When the Government required companies to store personal data of their clients in Russia, the initial plan included buying more hard drives that exist / can be produced worldwide. Almost unrelated, but in November 2017 "Soyuz 2.1b" rocket could not accomplish its mission as it was launched from a wrong spaceport, costing the Russian economy several billion rubles.

Parallels are often drawn between the Russian plans for Internet isolation and China, but it would be very hard for Russia to replicate the Chinese experience. China did not just isolate the internet, it replaced major western online services with national analogues and created an attractive investment infrastructure for supporting Chinese startups. Doing so in Russia would be hardly possible (or reasonable) not only because it would be very expensive but also due to the Russian business climate that suffers from high political, legal and other risks.

It is true that cyberattacks represent a potential threat and are capable of causing significant damage. However:

- o Attacks on critical infrastructure are very not likely;
- o Critical infrastructure is protected by special mechanisms that function properly;
- o Not only would isolation of the Russian internet require an enormous investment and will inevitably result in corruption, but it will also be damaging for the business climate and reputation of Russia.

Clearly, the people in Russian legislature are very far from both reality and technology. It is still very important for Russia to demonstrate its power to the world. Notwithstanding having deep internal issues, the country is ready to spend lots of money to prove to the rest of the world that it is capable of responding to any threats, even if such threats are rather hypothetical. Is it though?

## WHAT HAS THE LAW ON PROTECTION OF PERSONAL DATA BROUGHT TO TURKISH LEGAL SYSTEM?

Yunus Çelik

Every technological innovation has its genuine legal issue, but they also have something common that its impact on persons resembles each other. For instance, new methods of leasing or utilizing car or mobile taxi as recently promoted systems require regulation in the sphere of law of obligation so as to ascertain whether the contract is formed or fulfils the conditions of it, etc. whereas usage of unmanned aircrafts such as drones requires regulation mostly in administrative law like flying or undertaking permissions, etc. What they have common, on the other hand, is their influence on personal freedoms.

For instance, drones by flying over houses, and leasing contracts by using credit card information or location services involve into the private sphere of persons, personal data. Thus, governments are in search for enacting framework legislation on personal freedoms of persons. Though first three generations of human rights are widely accepted, so-called new category of human rights, which are brought by technological advancements such as rights on human genetics, and rights related to data of persons, etc. are subjected to greater debates.


In this regard, several adjustments transpired in Turkey for protection of certain rights regarding these new types of human rights categories too, yet most current one is related to personal data protection.Concerted efforts for bringing uniform practices and ensuring all citizens to benefit from these rights across Europe by the European Commission has brought its result on Turkey progressively. In this respect, Turkey by regulating personal data protection in its criminal code in 2005, has taken one significant step. Following that, the 2010 amendment of the Turkish Constitution has brought to protection of personal data constitutional guarantee. Nevertheless, most importantly in 2016, law numbered 6698 on Protection of Personal Data, has been enacted. It was regarded as revolutionary, since by integrating with the criminal code it possesses heavy criminal punishments including prison sentences whereas it also possesses administrative fines to parties, processing personal data reaching up to 1,000,000 TL

As a rule, personal data can only be processed if data subject explicitly gives consent thereto, save a few exceptions enlisted in the code. The code does not search for explicit consent if the law enables so. Possible problems may appear in the future as to city surveillance cameras. For the safety of traffic, the Turkish government, as so many governments do, has been placing above mentioned cameras across the country.

Therefore, new adjustments should be considered, despite its having possibility of causing a conflict of interest between persons' right and security of the state.Though its chief objective is to safeguard the safety of traffic, thanks to improvements caused by Artificial Intelligence, the cameras will play a diverse role in future, such as via using cameras, authorities will be able to detect and actively monitor every citizen in the future, which might cause distress among public as to their being monitored in every step.


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# UAE: THE NEW "REGULATIONS LAB" IN THE UAE: THE WAY FORWARD

There is a growing need for laws and regulations that preemptively anticipate future technological developments. These developments include driverless vehicles and 3D printing. There is a need to harness the opportunities that the new technologies are creating.

In this context, the UAE enacted federal law authorizing the UAE Cabinet to grant temporary licenses for testing innovations that use future technologies and its applications such as Artificial Intelligence. The law aims at providing a safe test environment for legislation that meet the technological revolution. This is done in collaboration with "Regulations Lab" that was set up in January 2019 in Dubai Future Foundation. The Regulation Lab is designed to anticipate and develop future legislations governing the use and applications of technologies.

The purpose of the "Regulations Lab" is to create a reliable and transparent legislative environment, introduce new legislation or develop existing legislation, regulate the work of advanced technology products and applications, and encourage investment in future sectors by providing a secure legislative environment.

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# UGANDA DATA PROTECTION & PRIVACY ACT 2019: A RIGHT STEP IN THE RIGHT DIRECTION

The new law has forty sections which was divided into eight parts. Part one which contains section 1-2 deal with the preliminary application and interpretations; part two which has only section 3 explains the principles of data collection; part three whose sections run from 4-19 discusses data collection and processing; part four has sections 20-23 which deals with the security of data; part five explains the rights of the data subject under sections 24-28; part six examines the data protection register as seen under sections 29-30; all issues relating to complaints are addressed in part seven from section 31-34 and issues relating to offences are taken care of in part eight from section 35-40.

The duty for the protection of privacy and security of data by the State and the right to enjoy same by the data subject are provided for and recognized at the national, regional, continental and international level. At the international level, Article 12 of Universal Declaration of Human Rights and Article 17 of International Covenant on Civil and Political Rights (ICCPR) provide for data and privacy protection. In fact, general comment no. 16 of the ICCPR, paragraph 10 refers to State obligation to put in place measures that allows data subject at request to have their data corrected or deleted. At the continental level, the African Union (AU) Convention on Cyber Security and Personal Data Protection 2014 which was signed by fifty-five member States is based on the need to protect data and privacy.

As a State party to the above mentioned instruments and in compliance with Article 27 of its Constitution, the Ugandan President signed the Data Protection & Privacy Act into law in February 2019. The overall objective of the law is to protect the privacy of the individual and of personal data by regulating the collection and processing of personal information; provide for the rights of the persons whose data is collected and the obligations of data collectors, data processors and data controllers; regulate the use or disclosure of personal information and other related matters.

Whereas, Uganda as a country has substantially legislated on issues relating to freedom of expression and privacy as seen in the Access to Information Act 2005; Regulation of Interception of Communication Act 2010; Computer Misuse Act 2011; Uganda Electronic Transaction Act 2011; Electronic Signature Act 2011 and Uganda Communication's Act 2013. However, all these laws are not elaborate and do not adequately protect personal data, hence, the need for the new law.

This law if judiciously enforced will address the rampant cases of unlawful access to personal data, several reported cases of hacking and leaking of emails, internet bully and blackmail and above all, non-consensual sharing of intimate images including but not limited to 'revenge pornography'.

By signing this law, Uganda as a country has demonstrated its commitment in protecting and promoting the privacy and personal information of its citizens; grants substantial control to the data subject on how his information should be used, by who and for what purpose; punish violators; provide compensation for victims and most importantly the new law confirms Uganda's commitment to continental and international laws and obligations. Whereas, the law in its current form is not perfect, but it is a good step in the right direction.

# Uganda: The East African Community Treaty As A Panacea To Solving The Challenges Of Law And Technology In The Region

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The treaty establishing the East African Commun ity was signed in 1999 by the three traditional member states (Kenya, Tanzania and Uganda). However, Rwanda, Burundi and South Sudan were subsequently added as members. Understanding their peculiar limitations, the need for cooperation and collaborations and realizing the need to form a formidable, prosperous, competitive, secure, stable and politically united regional block with vibrant economy, the East African countries (Republics of Burundi, Kenya, Rwanda, South Sudan, the United Republic of Tanzania and Republic of Uganda) during the 5th Extra-ordinary Summit of the EAC Heads of States established the East African Science and Technology Commission (EASTECO) in 2007. The objective of the Commission is to enhance cooperation in the development of regional science and technology policies; encourage joint mobilization, use, management and development of both human and material resources; and to promote scientific and technological innovation within the partner States.

\In furtherance of one of its objectives which is to strengthen the legal and technological ties of member states, EASTECO in collaboration with UNESCO organized a two day workshop in Kampala, Uganda in June 2018 with a view of developing a Regional Science, Technology and Innovation Policy for the Region.

So far, the Community has recorded significant achievements which include the establishment of a functional East African Legislative Assembly; East African Court of Justice; Common Market and Common Standard Travel Documents for free movement of people from one member state to another.

Whereas, there are challenges facing the Community such as corruption and bureaucracy in working together for the common good of the region, the achievements recorded so far cannot be underestimated. With teamwork and maximum cooperation among member states, the east African community will become a force to reckon with, not only in Africa but among the committee of nations.