

# THE CHALLENGE CONTINUES

Intellectual property & data privacy are areas of law that have experienced a strong growth in the past years. As the threat of cyberattacks is still very present, companies need specialized lawyers who can give them the advice they need





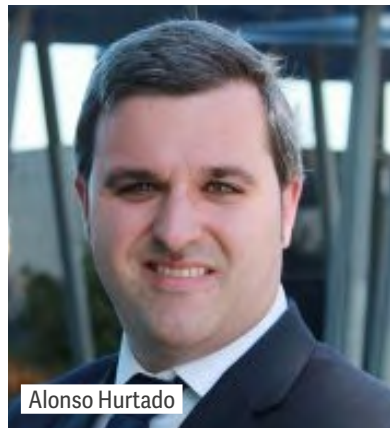
As technology keeps evolving daily, IP & Data Privacy are becoming more a more complex fields of practice. The General Data Protection Regulation (GDPR) was an answer to that technological evolution, and it has brought about tremendous amount of work for law firms and other advisors, and even brought about new professions, such as Data Protection Officer.

## DATA IS THE NEW OIL

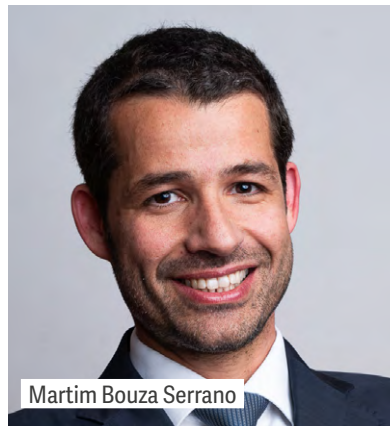
Although both in the intellectual property & data privacy worlds one can anticipate a continuous growth in work associated to trademarks, patents, copy-right, etc., **Ricardo Costa Macedo**, Caiado Guerreiro's Head Partner of the IP Law department, underlines that two particular areas seem to be the ones in which more opportunities may lie within those areas of law:



Ricardo Costa Macedo



Alonso Hurtado



Martim Bouza Serrano

trade secrets on the IP side, and cybersecurity on the data privacy side. "In relation to trade secrets, there is much room to advise clients on how to keep trade secrets secret and also to assist them in enforcing their trade secret rights. In relation to cybersecurity, it is said and known that data is the new oil, being that cybersecurity is about gaining access to a

person's or a company' data". There is, therefore, says Costa, much room for law firms to advise their Clients in seeking protection from cybersecurity attacks and to assist them in the event of a cybersecurity attack.

According to ECIJA'S IT & Compliance partner **Alonso Hurtado**, the irruption of on demand streaming platforms that operate through the Internet are transforming the audiovisual market. "This situation is causing a large demand for legal services, capable of covering new ways of producing audiovisual works and structuring increasingly complex productions worldwide", says Hurtado. At the same time, the Digital Single Market (DSM) implementation is increasing legal standards that must fulfil the industry operators requirements. "DSM is the preamble of a revolution in intellectual property-related business that we will be attending in the upcoming years" he says.

CCA Law's partner and Head of TMT & Data Protection Team, **Martim Bouza Serrano**, says it is clear that on-line based IP infringements present one of the biggest opportunities for law firms in the IP space. Lawyers, says Bouza, will be required to provide a technological tool for on-line IP infringement detection alongside their top shelf legal support. "We have seen how digital technologies have enabled new business platforms. However, these new technologies have also allowed a new wave of IP related infringements that are highly sophisticated and that



Margarida Leitão Nogueira



José Carlos Soares Machado

require a constant attention and monitoring”.

**Margarida Leitão Nogueira**, senior associate at DLA Piper ABBC says “the Internet of Things (IoT) is and will continue to be a significant opportunity”. This is mostly due to the increasing convergence of traditional sectors with new technologies, which has led to interesting and complex projects, states Leitão. “Also, investment in new digital technologies like artificial intelligence has grown significantly in recent years. This is particularly true in the health sector, which has harnessed artificial intelligence and machine learning to create efficiencies in the provision of health care services”.

**José Carlos Soares Machado** and **Natália Garcia Alves**, heads of SRS’ Intellectual Property

department, say that the struggle of Law to keep up with the fast development of new technologies in a timely manner, for example “3D printing that introduces a new perspective on the infringement and especially on who should be considered as an infringer”, or increased awareness of the need to determine a strategy for consistent IP protection, including protection across jurisdictions, are among the biggest opportunities for law firms in this area.

### GDPR ON THE SPOTLIGHT

The implementation of the GDPR continues to generate a significant amount of legal work, says **Luís Neto Galvão**, partner and head of SRS’ Data Privacy department. He adds that the challenge now for law firms is to help clients achieve compliance in light of developments from national and European regulatory authorities and specificities of local implementation laws. “This requires a higher degree of in-depth analysis and brings new legal challenges that we did not face before the GDPR came into application. Finally, data privacy is now a major concern for practice areas such as M&A & due diligence work, employment or general contractual matters, which has increased the quantity of privacy related work in law firms”.

Regarding data privacy, says Bouza, there is a vast universe of companies in Portugal that are not GDPR compliant and there are many others that formally implemented the GDPR but failed to embed



Natália Garcia Alves

an adequate privacy driven policy into their business. “This means that there is still an enormous work to be done regarding privacy awareness and companies really need to understand that the 26th of March 2019, (the day the GDPR came into force) was in fact a starting point for a new approach regarding privacy”. Hurtado highlights that one of the main opportunities for law firms in this sense will be advising on compliance with the E-Privacy Regulation (EU), through which the monitoring and profiling of online users through the use of cookies, pixels and other user monitoring systems for hyper-contextualised online advertising will be passed (still in the approval process) in a much more restrictive manner. Also “advising on projects related to Big Data and Machine Learning, in which the importance of guaranteeing privacy is vital”.

### STRENGTHEN SECURITY

The biggest challenges that clients currently face come from technology and the online environment, says Bouza, “IP related infringements are





Luís Neto Galvão

sometimes difficult to detect, offenders are harder to identify. The lack of specialized courts for on-line issues creates an enormous challenge for businesses that seek an effective judiciary remedy for their IP

related infringements”. Ensuring compliance with the EU General Data Protection Regulation 2016/679, mainly as it relates to data security, is another major challenge, says Leitão. She insists that despite the significant legal and technical adjustments organizations have had to implement, “there is still a significant number of organizations that do not have a robust cybersecurity culture. This results in both an increased vulnerability to cyberattacks and an unreadiness to respond to such potential incidents” “Cybersecurity attacks, which are known to jeopardize the credibility of large and small businesses and negatively

impact their reputation and ability to deliver their services are the biggest threat for clients”, says Costa Neto Galvão, highlights that nowadays, clients are faced with the challenge of complying with ever increasing requirements and cultural changes. The adoption of privacy rights management software, the definition of mitigation measures in connection with privacy impact assessments, the role of DPOs in the organization and what to expect from them, as well as the growing complexity of security requirements and the concrete implementation of privacy by design are major challenges for our clients”. 🇵🇹



ALICIA COLOMA

## POLITICAL CHANGES SUCH AS BREXIT ARE SET TO GREATLY ALTER THE WAY LEGAL FIRMS DEAL WITH ISSUES OF IP AND DATA PRIVACY

With great change looming in European politics, law firms must be prepared for a high demand in guidance for GDPR compliance from their clients

According to Broseta’s Privacy, IT, & Digital Environments lawyer Alicia Coloma, firms will begin to receive a higher demand for advice and guidance regarding GDPR compliance and data transfers, as European politics undergo great change. “The biggest opportunities for IP & Data Privacy areas in law firms are those related to the upcoming events such as Brexit, and the Irish Court’s questions referred to the Court of Justice of the European Union (CJUE) relating to the validity of two key data transfer mechanisms: Standard Contractual Clauses (SCCs) and Privacy Shield,” Coloma explains.

For example, in the event of a no-deal Brexit, transfers to the UK will only be able to take place under procedures approved by GDPR; namely adequacy agreements and standard contractual clauses, among others. As for the issues relating to the CJUE, “businesses which have been relying on Privacy Shields and SCCs for personal data transfer will have to consider alternative mechanisms, such as binding corporate rules,” Coloma adds.

Coloma predicts two particular business lines to thrive over the course of the coming year: blockchain and smart cities. “These are good opportunities for the data protection areas of law firms due to the newness of such a business, and the lack of knowledge on the requirements to comply with,” she elaborates. Privacy will prove a key issue particularly for smart cities, which require information in order to make effective decisions. All the data they collect should comply with privacy regulations; particularly with anonymisation procedures, when identifying data is not needed for its original purpose. The emergence of blockchain-related projects is also predicted to rise, which could redefine the way in which activities and services are managed in the future. “This will require a new legal approach. The lawyer must obtain not only an in-depth legal knowledge to combine the different regulations and recommendations issued by authorities worldwide, but also a technical awareness in order to understand the complexity of each project,” explains Coloma.