



Boom time for TMT

National broadband networks, rising corporate IT expenditure and new software development opportunities are all adding up to an increased demand for legal advice. *ALB* investigates

Now is both a busy time and an exciting time for telecommunications media and technology (TMT) practices. New technologies and forms of communication are being developed at a faster pace than ever before, and it seems every advance is bringing with it a novel range of legal issues and opportunities. Yet this is only the tip of the iceberg.

Many businesses are overhauling their entire IT systems for the first time in a long time; new and traditional media companies are spending again; and privacy laws are being used (and abused) like never before.

With both the Australian and New Zealand governments at the start of their largest-ever technology projects, calling the current state of play simply a boom doesn't begin to do it justice. In the midst of such a massive increase in work, clients and lawyers on both sides of the Tasman are becoming more sophisticated and, as a result, expect more than ever from their legal advisers.

One of the main consequences of this is that the medium-sized and boutique firms seem to be gaining an increasingly larger slice of the TMT pie, while a group of big firms still dominates the major project and telecommunications space.

IT upswing a corollary of not spending

Sydney-based Gilbert+Tobin partner Peter Leonard thinks one of the driving forces behind the glut of legal work has actually been the longstanding unwillingness of corporations in the region to invest heavily in technology. "Most corporations in Australia have kept a tight lid on tech expenditure for the past six or eight years," he says. "Their reluctance to spend well and truly predated the GFC and meant that a lot of companies – including banks and financial services – went into the GFC significantly behind in the tech-refresh cycle."

The fact that the Australian banks emerged out of the global recession stronger than ever means they now have money to spend on a much-needed overhaul of their systems. And retailers and companies involved in e-commerce are now spending significantly more on technology, finally catching up to their North American and European counterparts.

Hamish Fraser of Truman Hoyle Lawyers points out that the average Australian already spends around \$1,000 online each year. "Not bad when you think only about 50% of Australian homes have broadband," he says. "And regulation and security issues for online shopping are only really just beginning."



Peter Leonard
Gilbert + Tobin

A spate of software development

Anyone who's seen the news lately would notice the enormous interest that Apple's iPad is generating. In fact, more than one lawyer we spoke to compared the race to develop new applications for that device – as well as for the more established iPhone – to the gold rushes of the 19th century. Some lawyers question just how long the current trend will last – and whether it will generate ongoing work for lawyers.

"Like all things the top ten is where the revenue is and the rest will fight it out," Melbourne-based Holding Redlich partner Dan Pearce says. "I think there's a hugely narrow tail and to succeed you have to develop a pretty compelling app (application)."

"Most corporations in Australia have kept a tight lid on technical expenditure for the past six or eight years. Their reluctance to spend well and truly predated the GFC and meant that a lot of companies – including banks and financial services – went into the GFC significantly behind in the tech-refresh cycle"

Peter Leonard
Gilbert + Tobin

That said, however, there is a lot of work being generated in software development generally, for everything from cloud computing (where shared resources, software and information are provided to computers and other devices on-demand) through to environmental programs aimed at monitoring and reducing companies' carbon footprints. It seems those law firms benefitting from the increased volume of work are often medium-sized and boutique – and not least because the developers are often smaller companies who are unwilling – or unable – to meet the fee expectations of top-tier firms.

NZ lawyer Wayne Hudson, who founded technology and IP specialist firm Hudson Gavin Martin, says there was no shortage of new ideas leading people to raise capital in the \$250,000 to \$500,000 range. In New Zealand, at least, he says this is being supported by a strong 'angel investor' network, while a lot of the R&D is funded by the universities. "The main work we're seeing is SaaS licensing, mobile application, iPad apps and GPS solutions," Hudson says.

NBN takes off while lawyers return

What seems to be missing from both countries – apart from serious mergers and acquisitions work – are really big software deals. But that doesn't mean the big practices aren't getting big ticket work. For the moment a lot of it is being generated in the telecommunications sector – especially as the Australian government launches its national broadband network and the Kiwi government its National Fibre Network. And that specialised work resulting from vast infrastructure projects is being gobbled up by an increasingly small field of specialist lawyers.

In New Zealand, Simpson Grierson commercial group partner Michael Sage was involved in advising the government on a plan to get ultra-fast broadband out to 75% of the country's population within the next decade. Sage has also been working on another major infrastructure project for the Kordia group, involving the building of a trans-Tasman optic fibre cable, which he says is complementary to the country's national fibre network. "There's an insatiable demand for broadband capability and there's no point having fast broadband operating in New Zealand if it's not operating elsewhere," he says.

Meanwhile, Corrs Chambers Westgarth's Sydney partner Andrew Messenger has been busy acting for NBN Co Limited, the company charged with providing the infrastructure for Australia's national broadband network. Messenger says the NBN is really the country's biggest-ever construction project. The advice Corrs has been giving ranges from trade practices-related issues such as consumer protection and pricing through to procurement and strategic advice concerning the current legislation, as well as proposed changes in the works.

Messenger has also been advising Vodafone Hutchison Australia (VHA) on major network projects and his practice has been giving a wide range of advice to large corporate clients, including the ANZ Bank, in relation to outsourcing and procurement. Corrs' TMT team has been so active that it's currently looking to supplement its staff with high-profile recruits from other firms – and that's in addition to the 12 partners and 55 lawyers the practice already employs.

Recruitment is one of the few areas that really has been affected by the



Fully featured Case and Matter Management system

Firm-wide Clause Library

Document production

Workflow

Extranet

Integration to eMail, PMS & DMS

Only pay for what you use

Scalable from a department or small firm to an entire multi-site enterprise

"Caseflow delivers on its promise of accuracy, reliability and integration. When you add it up, we have minimised risk and improved productivity"

Rob Cavaye, IT Manager, MacGillivrays

Caseflow is Case Management Redefined

www.caseflow.com.au

GFC and even then, at least for firms, it's been largely a positive thing. Almost all practices ALB interviewed say now is a great time to be hiring. As well, a flood of quality Antipodean lawyers are making their way back home from more depressed financial centres like New York and London, bringing their global experience back with them.

Social media: the new frontier

Practices of all sizes also reported a lot of work coming across their desks that was connected to social media, particularly in relation to privacy issues such as data collection and storage. "Privacy is an issue we're now dealing with almost on a daily basis," Melbourne-based HWL Ebsworth partner Nicholas Pullen says.

"Sites like Twitter and FaceBook just weren't that prominent – even two years ago – and the most companies had to worry about were bloggers. Now companies are much more exposed but there's also the commercial opportunity to exploit social media for B2B or

B2client consumers."

That's not to say more 'traditional' areas of media aren't also proving to be a fruitful source of work. Television is going through its own revolution with the rise of time-shift TV as well as internet-based television like GoogleTV – all of which throws up many interesting legal issues. Meanwhile, the rise of the iPad and other web-based book browsers means publishers seem to be facing the same threat newspapers were five or 10 years ago. And, believe it or not, production companies in this part of the world are starting to make local content again – not least because of the overwhelming success of Channel Nine's 'Underbelly' franchise.

Yet while TMT work continues to grow in importance, possibly the most significant trend all lawyers report is the rise and rise of the medium-sized firm – a factor which many also



Nicholas Pullen
HWL Ebsworth

attribute to the effects of the GFC. "I have a theory: in each recession clients get smarter. They differentiate between types of work and using a 'horses for courses' approach," G+T's Leonard says. "A lot of the day-to-day telco work is being absorbed in-house or by mid-tiers. That second-tier encompasses a lot of very competent lawyers in major telcos."

Holding Redlich's Pearce expressed the same view, saying that traditionally the top 100 companies stuck to the "mega-firms" for advice work. But now Pearce says he's seeing a lot of blue-chip clients come to his mid-sized firm. Big corporates, he says, increasingly see TMT as a discrete area and are willing to hive off that work to a specialist firm, instead of relying on the same full-service firm to cater for all of its legal needs.

Evolution

One firm that typifies the changing face of TMT practice in the region is Auckland-based Hudson Gavin Martin. Before it opened in 2007, the firm's

herbertgeer

"Herbert Geer really had our backs. They know how we work, they know our industry. They are an extension of our team."

Michael Malone, CEO iiNet



In Sydney contact:
Graeme Hodgkinson, Partner
(02) 9239 4502
ghodgkinson@herbertgeer.com.au



In Sydney contact:
Dan Brush, Partner
(02) 9239 4541
dbrush@herbertgeer.com.au



In Melbourne contact:
Graham Phillips, Partner
(03) 9641 8639
gphillips@herbertgeer.com.au



In Melbourne contact:
Paul Noonan, Partner
(03) 9641 8603
pnoonan@herbertgeer.com.au

Melbourne Sydney Brisbane

www.herbertgeer.com.au

three founding partners – Wayne Hudson, Mark Gavin and Simon Martin – all had partnership in New Zealand's top-tier firms. As a result, HGM has managed to keep a blue-chip client base, including one of the country's telcos, while still offering the flexibility of a boutique firm.

Melbourne media and technology lawyer Nic Pullen also sees the increasing willingness of large corporates to engage smaller practices. So, although he already had clients like Channel Nine and Hardie Grant on his books, Pullen moved his practice from TressCox to HWL Ebsworth, in part to strengthen the latter's base with the financial sector. He says that HWL's cost structure made clients happy because he could "maintain the same level of top-tier firms while having a cost structure in place that offers far greater value."

Pullen also says that his practice is geographically well placed, as Melbourne bridges the gap with Sydney as a base for media and technology law. "Melbourne is increasingly a place

"Sites like Twitter and FaceBook just weren't that prominent – even two years ago – and the most companies had to worry about were bloggers. Now companies are much more exposed but there's also the commercial opportunity to exploit social media for B2B or B2client consumers"

Nicholas Pullen
HWL Ebsworth

where decisions are being made – and as that happens the legal work will follow," he says.

Looking to the future?

In a field where the pace of change is so rapid it's impossible to predict what will happen next. However, most of the lawyers *ALB* spoke to all tended to feel that Australia's NBN and NZ's National Fibre Network were likely to lead to exponential growth in e-commerce in the short to mid-term, and that this would see an increase in businesses needing advice.

Several lawyers, including Hamish Fraser of Truman Hoyle, also argued

that cloud computing – where shared resources, software and information are provided to computers and other devices on-demand – was going to be a substantial growth area for legal advice. And G+T's Leonard also cited the Commonwealth government's '2.0 Taskforce Report' as a potential source for illuminating the way ahead.

"If it does 30% of what it says it's going to do, it will be a huge technological investment in government which changes the way it interacts with the population," he explains. Whatever happens though, TMT is one area of law that will only grow in importance to law firms. *ALB*



> next

TRUMAN HOYLE

As a highly regarded specialist law firm serving global corporations shaping the future of the world's economy, Truman Hoyle is the first point of call for those who need to know what's happening next.

Our multi award winning lawyers advise on the many legal, regulatory and policy developments and opportunities facing the new economy industries across the Asia Pacific region.

If you need more from your law firm in an ever changing world, contact us on **(+61) 2 9226 9888** or visit **www.trumanhoyle.com.au**

Winner 2009, Finalist 2010,
ACOMM, Telecommunications Industry Award for Excellence

CORPORATE | TECHNOLOGY | COMMUNICATIONS | MEDIA | ENERGY | INDUSTRIAL