



HL INFLUENCERS: DIGITAL TRANSFORMATION TRANSCRIPT

CHARMIAN AW
MARK BRENNAN

Leo von Gerlach	00:00:37	Hello everybody and welcome to another edition of The Influencers, our podcast conversation on digital transformation and law. I'm Leo von Gerlach and with me today are my Hogan Lovells partners, Mark Brennan and Charmian Aw. Mark is Hogan Lovells' global managing partner for digitalization, located in Washington, D.C., and Charmian is one of our leading data and cyber law expert for the Asia-Pacific regions, based in Singapore. Both Mark and Charmian share a tremendous experience in advising tech clients on all aspects of AI and data law. Today, we want to speak about a particular aspect of their work, and that is how to navigate tech clients in a world that is splintering and more fragmented than ever. With that, Mark, Charmian, welcome to the show.
Mark Brennan	00:01:38	Thank you, Leo.
Charmian Aw	00:01:38	So good to be here, Leo. Thank you.
Leo von Gerlach	00:01:41	Let's dive right into it. Mark, some initial thoughts about the current AI race, mainly between the US and China, but also more broadly.
Mark Brennan	00:01:57	Leo, thank you. And again, delighted to be here and thank you for having me. We often hear comments around the AI race. Sometimes it's focused around different jurisdictions competing with one another. In practice, there are at least three separate races happening alongside each other. The first is about frontier capability. Who can push the model boundaries? The second is about infrastructure, who controls the chips, cloud capacity, and even energy sourcing. And the third is around the applications, taking the models and solving specific problems. Scale still matters, but what we're seeing is that those who are making ground in these races increasingly are the ones who can combine the capabilities with credibility. They're solving real challenges. They're making tools that are easy to use and adopt, cost-effective solutions, and providing AI technologies in a way that supports customer trust and safety.

Leo von Gerlach	00:03:00	That makes a lot of sense, Mark. And now that you touched on the technical and the business aspects of that raise, perhaps also a word on law and regulation. To you, Charmian; does law and regulation play any role in this or is this just a sideshow?
Charmian Aw	00:03:21	<p>Thanks, Leo. I think that's an excellent question and one that I'm particularly passionate about. I think if we want to take a step back and think about the role that law and regulation play, two words come to my mind. The first is calibrate and the second is enable. So, with calibrate, what do I mean, right? So, the definition of calibrate is effectively to adjust. So, what are we looking to adjust for? So, if we, again, take a step back, think about economic theory, right? Free market forces. So, the days of Milton Friedman, if we allow AI to be unchecked and unregulated, what are the harms that could arise? What are the outcomes if we don't regulate AI?</p> <p>So we're talking about identifying these recognized harms. For example, unfair bias, inaccuracies, privacy, safety, and intellectual property violations. And there is extensive literature on this, but I'm going to pause there and switch to the second word, which is enable. And it's not a very intuitive word when you think about AI regulation, perhaps, because people tend to view regulation as hampering or hindering AI innovation and development. And we oftentimes think of this as more of an overregulation, right, of AI. So, I agree that if you overregulate AI or if you prematurely regulate AI in an incorrect manner, you could hamper its innovation and development.</p> <p>But really, I think the analogy that is much more accurate, that really talks about enabling AI development, is the airplane. So, when we first, right, saw the first plane in the sky, there was very little by way of regulation. There wasn't a lot of developed regulation in that sense, but now it's much safer to fly, right? I mean, they say that it's much safer to fly than to drive a car on the roads because of what regulation has done to that industry. So, I'm going to pause there and flip it over to you, Leo.</p>
Leo von Gerlach	00:05:36	That's terribly interesting, and particularly your analogy to aviation, where regulation is an absolute necessary ingredient to make the industry and the whole traffic work. With that in mind, Mark, turning to translating regulation and legislation into legal advice, what is the general approach you would take before we go into any further detail?
Mark Brennan	00:06:06	To me, one of the most important things is to make sure that we are not only keeping up with our clients, meaning that in the tech space in particular, it's an incredibly fast-paced environment. Our clients are trying to make decisions quickly, get new products to market and react to other developments and be responsive if

		<p>regulators are making inquiries. And not only to keep up with our clients, but also to be thinking ahead and this is where it's incredibly important to be staying close with our global teams and staying on top of developments across different key markets, understanding how different frameworks in different jurisdictions are similar to one another, how they are harmonized, where some of the outlier requirements are, and really being able to hone in for clients on the specific impact to them and their business from each new development.</p> <p>Another thing is to make sure that we are staying close in understanding our clients' key business strategic objectives, understand the business and company culture with how they operate, how they work, how they make decisions, so that we can align our support to how they operate. When it comes to support on AI matters specifically, a few concrete steps that we see in many instances. So, understanding in the first instance a good use case inventory for AI use cases where clients are looking to adopt governance models, developing risk tiering, aligning controls to the various risks for specific use cases in AI, making sure that it's not a one-size-fits-all policy.</p> <p>And then separately, making sure that the governance program has tools to provide those checks on operations while at the same time making sure that you're supporting the business, again, on the key objectives. And then finally, many companies don't want bespoke compliance in 10 different countries. So, you're constantly looking for the ways to leverage the work that's already been done to comply with one jurisdiction, or sometimes you can leverage work that's been done to comply with a different issue. Maybe it may be some steps that the team took to comply with privacy or IP legislation, and now you can leverage some of that into the AI space.</p>
Leo von Gerlach	00:08:30	<p>Mark, your point on keeping pace with the clients and their development, to really stay on top of things, to provide the up-to-date advice totally resonates with me and the same goes for just giving a global picture to a client that typically also operates on a global stage. With that in mind, Charmian, would you still see any need for differentiation or differences when it comes to advising clients from different regions, say from the US, from China, or possibly any other technology developing country?</p>
Charmian Aw	00:09:14	<p>I would say yes and no, Leo. I think the yes comes from the fact that laws are state-specific. So laws, you need to identify, you know, which markets you're in and whether they apply. The principles remain the same, but the frameworks will differ and diverge. So let me give you an example. In the EU, with the EU AI Act, deepfakes are classified as limited risk, right? So they only</p>

		<p>trigger transparency requirements. Then if you were to switch to Singapore, which is where I'm based, we don't have a standalone AI law, sure. But deepfakes are criminalized if used in the context of elections or some scam. And certain platforms, so we're talking about mobile app stores, social media outlets, these tech clients or tech companies can be ordered to remove infringing content and as well to take other corrective actions. Flipping over to China, there is a prescriptive watermarking requirement for deepfakes and in fact, if certain systems can be capable of affecting the social stability or even pose a risk to their national values, which are circumscribed as socialist core values, then the system is prohibited altogether. So there are differences there. But then going back to your question, why do I also say no, there are no differences, because I guess, when we're looking at tech clients in particular, regardless of whether you are US or China-based, you are very likely to be multi-jurisdictional and sometimes even global. So, we often get asked, how do we navigate, how do we map out a compliance strategy given all these disparate requirements around the world? And here, you know, we would like to offer three recommendations. The first is, it's important to do a heat map of the regions and the countries in which you operate. Number two, I would actually start by looking for commonalities and common ground. For example, it may be a smart way to tackle the EU AI Act first. And then finally, to ascertain any gaps or distinctions that you need to address with regards to the remaining jurisdictions. And I think that is a strategic and effective way of mapping out the laws that you might be confronted with.</p>
Leo von Gerlach	00:11:44	<p>Wow, there was some very good advice in there. So, I get heat maps, finding the common ground and doing some gap analysis. So, I have noted this down. And with that, Mark, I would like to draw the discussion back to where you started at the beginning, this kind of ensuing AI race and whether that for in particular a multinational client does require to take any sides, whether they need to just put their marker down in a specific battleground, whether that same may or may not apply to legal advisors to these clients, and any views on that important question?</p>
Mark Brennan	00:12:27	<p>It is a great question, Leo. My sense is that this is an area where it's helpful to really try to see as many of the developments in the market as you can. As an advisor, I think it's helpful to be keeping track, not only of the latest legal developments but also other broader geopolitical developments and how they intersect with AI. So, we've seen over the course of recent months an intersection with AI, not only with things like privacy and IP, but more broadly, significant multinational supply chain and trade and import export issues that have popped up and many other areas. And as advisors, you know, I think there can be any number of circumstances where it helps to have a global or multi-jurisdictional</p>

		<p>perspective. There are issues on AI where it's really helpful to have deep expertise in a particular jurisdiction with one specific agency and one elected official. So, it's this constant flow of going broad versus going deep on different expertise and I think it remains fluid. So, as with other areas of practice and other key client challenges, I think ultimately the more that you can see, the more you can learn, the more that you can stay on top of, allows you to draw different experiences. And then one other point, we work regularly across different industries. And so, what has been very valuable in our advice to tech clients, but also other clients at the firm, is how we're able to benchmark scenarios and examples across different industries. So, I will routinely receive questions from our tech clients that might be very novel scenarios in their industry, but it might be something that we have seen come up regularly in the banking space or in the energy space and being able to apply those benchmarking examples and understand how other, for example, regulated industries addressed analogous challenges has proven to be highly valuable and clients appreciate that.</p>
Leo von Gerlach	00:14:39	<p>That makes a lot of sense. So, Charmian, perhaps the same question to you about the need for alignment of businesses themselves and the legal advisors and perhaps also on the point that similar considerations apply across different industries.</p>
Charmian Aw	00:14:55	<p>Yeah, sure. Coming back to your original sort of question to Mark around the race between, frankly, US and China in particular, I think it's important to also ascertain the client's role in the supply chain and geographically where their footprint is. What I mean by that is, are they a price taker or a price maker? Are they looking to enter a market where they have a strong foothold there and, you know, frankly, they are dominant or they have a huge market presence with very few competitors, or is it actually quite a saturated space that they're looking to operate in? So I think it's really just going in with a very open mind and a very open inquiry process with each client, because no two clients will be alike. It's trying to understand the business problem that they're looking to solve for. It's trying to understand the intended use case of AI in the context of what they're looking to do, understanding their sector. As Mark mentioned, we work with clients across different industries and different sectors and the use cases and the applicability of AI regulations and the business interests of clients definitely span the gamut depending on the sector. Finally, I think we do need to really spend some time to understand how we can come in as partners, right, and support them. Sometimes it is a multi-stakeholder conversation that needs to be had. I don't think that we should only be speaking to the legal counsel or the risk managers or even the AI officers, but it really should be a dialogue that involves multiple users.</p>

Leo von Gerlach	00:16:49	So that's very, very clear and makes a lot of sense in all fairness to take a nuanced approach and to be mindful for details. And I see this kind of a reinforcement and resonation of what Mark just said earlier, that we need to be mindful of the context and the specific situation. That may lead to a final question to you, Mark. When it comes to the substance of regulation and legislation and how that can support the beneficial progress of the technology and its business transformation, any word on where we as a legal advisor should help driving the agenda and, if so, into what specific direction?
Mark Brennan	00:17:41	This is an important question, and it drives a lot of how we think about some of our policy and regulatory efforts in the space. And one thing that has become more and more apparent in recent years is that whether a particular path or strategy or advocacy route is ultimately viewed as political, is often something that's in the eye of the beholder. And so, I mention this because we've seen an evolution in recent years that certain ways of advocacy are being tied with particular political aims or maybe perceived as political, even if that may not have been the intent and that can have its own set of side effects and ramifications, including on a global scale. So increasingly, we're trying to think through with clients all of the different areas that a particular outcome or proposal could be received by different audiences and so, I start with this notion of trying to make sure that we're thinking through the possible political effects of any particular strategy. Now, within that, certain principles that we see as common among different tech issues, AI legislation, is for looking to support principles around technology neutrality. It's often helpful for our clients if a government or regulator doesn't select the winners of the competition in advance or try to tilt the frameworks where there is competition in the market. Also looking at making sure that frameworks are clear. So, there can be policy decisions around what any laws and regulations should be but once those decisions are made, it's ultimately helpful to consumers as well as regulated businesses to make sure that whatever the rules of the road are, are clear and that there's a shared understanding among regulated entities. Otherwise, you have the risk that different companies may take different interpretations of the requirements, and that can sometimes lead to different costs for consumers, or frankly, confusing outcomes. You know, one company may take steps that allow additional rights or protections under the rule, and another may not, and consumers ultimately might just be confused as to what the framework requires or what their rights are. So, clarity and making sure that, again, there's a shared understanding of what the rules require. Finally, we often see a desire to have ... you know, if there's going to be frameworks, if there's going to be enforceability, my view is making sure that companies have a path to allow for mistakes. And so, we think of

		things like opportunities to cure, warning letters, citations, things that ultimately will provide notice to a company that it's the regulator's view that they may not be complying with a particular requirement and an opportunity to discuss. My view, it helps nobody when regulators engage in what I think of as gotcha enforcement, where the first time the company finds out about the enforcement action is via a headline in the news rather than having some opportunity to discuss beforehand. Because what we actually see as those play out, in many instances, the regulator's interpretation is only one possible interpretation and ultimately, the company may have its own valid, reasonable approach to how they had complied. So, it's just very helpful to have that dialogue with regulators as part of the implementation.
Leo von Gerlach	00:21:21	That's very clear. So, thank you for that extremely good advice and, thank you, Charmian, as well for your extremely good insight into this complicated picture of different businesses at different locations trying to make their mark in an ever-growing complexity of this world.
Charmian Aw	00:21:43	Thanks, Leo.
Leo von Gerlach	00:21:45	And thank you, actually, everybody for tuning in and I hope you will join us again for the next edition of The Influencers, which will be coming up soon. For now, take care.