

The Investment Conundrum

In this edition of the GMCQ we survey a diverse range of developments across the global media and communications industry.

Andreas Gruenwald, Dan Brenner, Jun Wei and Claudette Christian examine structural evolution in the mobile industries of China, Europe, North and South America whilst Winston Maxwell updates us the implications of one approach European telcos are taking to the net neutrality conundrum. Meanwhile we take a close look at the latest developments in online copyright infringement across key European jurisdictions and finally take a dive into the world of satellite contracting.

Individually each of these areas is critical to the future of the global industry. Together they exemplify a fundamental challenge facing the industry, its regulators and those who fund it.

This is a challenge which is already inescapable across the increasing reach of the Hogan Lovells industry team. Over the next decade it will represent the undercurrent to everything we, and our clients, do.

As Steve Kaufman and Randy Segal remind us the overriding characteristic of satellite projects is their combination of high value, extended timescales and complexity. The planning-to-payback cycles would daunt many industries.

Satellite however is not alone in this. Much of the infrastructure which powers our industry, including the fixed and mobile networks which form its backbone, also demonstrate similar dynamics.

The world of content and online copyright infringement could not provide a greater contrast. Here, fast moving, ultra-flexible operators increasingly independent of any specific platform or infrastructure are rapidly becoming the norm. Innovators (legal and piratical) move as quickly; even the industry's behemoths find they must follow suit simply to survive. Any sense of stability, predictability or a long term investment cycle becomes increasingly challenging.

Yet these two worlds cannot live apart. Each is essential for the other to survive and prosper. Content may be king but, if it cannot reach its consumers, it is like the metaphorical leaf falling in the forest which no one sees or hears – robbed of any meaningful existence and so any value. But infrastructure without content is equally worthless – a road without cars.

There is a fundamental tension here and one which has the potential, at the very least, to cause massive inefficiencies. At its worst it has the potential to delay, or to seriously disrupt, the relentless onrush of progress.

What makes this challenge all the more acute is our global interconnectedness. Whilst rising to the challenge may be driven in part by competition between different governments and regulators to secure the best outcomes for their respective constituencies, ultimately the challenge does not lend itself of local solutions. To the contrary, there are increasing risks that discordant national and regional approaches will only add to the underlying problem.

The role of the lawyer in this may not immediately be obvious but it is critical. As our contributions illustrate, across the endless breadth of our practice covering the globe and every part of the communications and media industry, we see signs of the same tensions.

In the world of satellites those tensions manifest themselves in the need for contracts to be ever more flexible.

With the networks it is characterised by the search for flexible structures – cooperation is increasingly the watchword rather than the simplistic mergers of old – and new business models. The challenge for lawyers is to help deliver flexibility through dealmaking skills; for regulators it is to respond to these developments in a way which recognises they are essential whilst still ensuring compatibility with the most fundamental of regulatory principles.

Finally in the world of content we continue to pursue similar objectives but from precisely the opposite

direction. Freedom of speech, freedom to innovate, freedom to change are the watchwords here. But how do we protect these fundamental values whilst at the same time protecting the investment – in content as well as in infrastructure – which ultimately is essential to drive the entire industry forward?



Peter Watts

T +44 20 7296 2769

peter.watts@hoganlovells.com

It promises to be a fascinating decade.

