

Technologies & IP



OUR EXPERTISE

Our Technologies & IP group handles Information Technology, Media & Communications and Intellectual Property legal matters. The convergence of these closely related but cross-disciplinary practice areas and the IP issues inevitably raised while doing business in ever evolving and innovating technology sectors naturally led us to organize them in a single group of expertise. The group's most precious strength is probably its cutting edge understanding of the technical aspects which allow us to give informed, comprehensive and expert legal advice.

We also help our clients to find pragmatic solutions as regards many regulatory issues, including Data Protection, and handle Litigation connected to any of the above sectors and related activities, such as contractual issues and IP infringements.

Our Technologies & IP group - one, or maybe the biggest of the teams dedicated to this specific practice in any law firm in Luxembourg - has experience in advising private domestic and multinational companies, notably US and UK based, and governmental bodies in both contractual and regulatory matters, should they be active in or dealing with technologies. Our close collaborative work allows us to mutually share our information and experience and to raise awareness upon various questions that may arise within our practice.

The Technologies & IP group closely works with the Private Equity, Corporate Structuring and Employment groups to assist in multidisciplinary transactions requiring a complementary collaboration, such as for example the financing of IT projects, the setting up of transnational corporate structures that will involve IP, employment and corporate aspects of IT outsourcing projects.

Our position as leaders in this respect is recognized locally and internationally and our IT and IP practice is recommended by The Legal 500 and Practical Law Company.

Information Technology

MNKS is proud of its comprehensive expertise in the field of Information Technology law, which is of central importance to our clients in all sectors, such as diverse IT and Internet service providers, Telecommunication operators, financial institutions, and many others. Practitioners in these groups are familiar with the particular requirements of businesses in the IT sector and the challenges they face.

Contractual assistance

IT and communication systems, specifically developed hardware and software and their subsequent maintenance are an example of some of the countless challenges that businesses face. For us, each of these challenges is unique and thus we use our strong experience to create tailor-made agreements.

Protection and licensing

Developing or obtaining reliable IT products and proprietary software involve important investments. Our expertise in Intellectual Property notably aims at ensuring that the interests of our clients are protected as much as possible, by fixing, among other things, proper ownership of or access to source codes and drawing adequate licensing solutions.

Outsourcing

We have a well-built up experience of advising companies in implementing outsourcing projects as well as service providers offering such services. With a sound understanding of the technical aspects, we advise on technology and employee transfers, Data Protection, SLAs, IP and related regulatory matters (including the setting up of Support PFS). In the Luxembourg financial sector context, outsourcing involves strict organizational rules. The financial sector regulator imposes high confidentiality and security-related requirements, which we are very familiar to us.

Security

Security is the underlying mechanism to ensure confidentiality, a fundamental requirement of any IT system in today's world. Therefore, we have developed expertise in advising our clients on the legal aspects of various security issues: identity management, PKI infrastructures and certification practice statements, computer forensics, and intrusion.

Regulatory

Players in the IT sector increasingly face new regulatory challenges, such as Data Protection and environmental rules. We help them to find pragmatic solutions to comply with these requirements.

Internet & e-Commerce

Our technology-minded group is at ease at advising clients on many aspects of Internet and e-Commerce related businesses.

Web sites

We regularly advise Internet web site promoters and well known international providers and merchants in relation to a very wide range of legislation, directly or indirectly connected to electronic commerce, in order to protect their rights (including Intellectual Property rights) and ensuring their compliance with all applicable regulations. This exercise implies a good understanding of the specific business that is carried out (e.g. online financial services offers).

Our advices include drafting of terms of use, Data Protection disclaimers and numerous types of agreements with vendors, suppliers, customers or consumers.

Internet service providers

We assist Internet service providers to draft specific access, hosting and maintenance agreements tailored to meet their particular needs. This also includes domain name registration services, sponsoring and advertising agreements, security policies and many other aspects of Internet-related services.

Use of Internet and e-mail

Clients often ask us to assist them having a better knowledge of the legislative framework governing the use of Internet and e-mail at the workplace. In this respect, we also assist in drafting Internet and e-mail policies or corresponding contractual provisions for their standard employment contracts.

Intellectual Property

Our Technologies & IP group has a strong knowledge and experience in advising clients from protection to related litigation, through exploitation of IP rights.

Thanks to a vast network of correspondents with which we work regularly, we manage large international registrations and litigation as well as any other actions before local intellectual property offices.

Protection of IP rights

We advise our clients on the possible strategies to adopt to ensure the protection of their IP rights and assist them when required for local (Benelux) or international registration of their brands, domain names, designs and inventions. We use the most effective ways for protecting their works, databases and semiconductors topographies and have recourse to escrow services in certain circumstances. This is often the case as regards protection of computer programs.

Effective registration of IP rights secures the legal title of its holder, important in the event of litigation as well as group restructuring.

Exploitation of IP rights

Our Technologies & IP group can assist in maintaining and increasing the value of IP rights by drafting any kind of contract with specific attention to the protection of the legal ownership.

We have experience in drafting all documentation relating to intellectual property assets, such as assignments and license agreements, notably in the context of IP and corporate group restructuring.

Enforcement of IP rights

With IP rights being a real relevant asset of companies, we at MNKS believe that it is imperative to protect these IP rights at the first sign of infringement. We have experience of assisting our clients with IP-related litigation on a national and international level and advising on cross-border litigation strategies.

We frequently assist our clients in negotiations aiming at buying domain names or recovering them by judicial or other means.

Data Protection

Together with the technologies blast, data protection is becoming a very hot legal topic. Dealing with personal data requires acute understanding of the underlying legal rules and principles. Moreover, the gap between the liberal US and European legal approaches is not easing transatlantic transfers of personal data.

We have an in-depth experience in implementing systems, processes and procedures relating to personal data processing, involving the employment and HR management fields (stock option plans, surveillance in the workplace, Internet and e-mails policies). In this respect, our group has regular contact with the Luxembourg authorities such as the National Commission for the Protection of Data. This improves our reactivity and allows us to find pragmatic solutions complying with the requirements of the law.

Personal data processing

We advise our clients on the different strategies to adopt concerning the processing of personal data and assist them in complying with the Luxembourg law relating to the protection of individuals with regard to the processing of personal data as well as with other fields of law. For example, we have built up a practical experience of the processing of personal data of employees notably concerning their rights, the proceedings and the data transfer issues. We also intervene on data protection matters relating to stock option or share purchase plans.

Notification and prior authorization

Our team can assist in filing the notification or prior authorization request required by the Luxembourg data protection law to process or transfer personal data. We set up solutions to ease the process as far as possible and have drawn-up templates to accelerate the use of official forms. We use the electronic format to submit notifications to the National Commission for the Protection of Data.

Data transfer

We have developed an extensive expertise relating to the transfer of personal data from Luxembourg to other European Union countries as well as to countries outside the EU (such as the US and India). We deal with the implementation of Corporate Binding Rules projects in international groups, allowing them to transfer personal data even to countries that do not ensure an adequate level of protection according to EU legislation.

Media & Communications

Its flexibility, dynamism and international outlook made of Luxembourg one of the leading European centres notably for the communications and media industries.

MNKS advises on both contractual and regulatory matters relating to all aspects of electronic communications and media sectors. Our Internet & e-Commerce and Intellectual Property practices are closely related to these sectors.

Electronic communications

We closely follow the results of the liberalization of the telecommunication industry and look at the multiplication of digital content.

- **Implementation of the European "*telecom package*"**
We have an unparalleled knowledge on how the "*telecom package*" was transposed in national law, of the definition of the markets by the regulator to assess whether competition within these markets is effective and the resulting national and European consultation process.
- **Notifications to the national regulator**
Provision of electronic communications networks and services are submitted to a general authorization regime under which a notification to the regulator must be filed. We assist clients with such filing process.

Media

Luxembourg hosts the world largest satellite operator as well as Europe leader television group and has a very good cable network. Moreover, Luxembourg became an attractive centre for filmmaking in Europe. All sectors in which we advise our clients.

- **Audiovisual investment certificates and selective financial aids**
In particular, we provide assistance in applying for the benefit of the advantageous financial support system drawn up by the Luxembourg Government to assure the growth of the media sector, especially for the production, the co-production and the distribution of audiovisual work carried out, at least in part, in Luxembourg.

IP/IT Litigation

IP-related litigation

The fight against counterfeiting is a difficult one and enforcement of European judgments against manufacturers of forged goods is very difficult, if not impossible, to obtain.

One could ask how Luxembourg, a small country mainly well known for its expertise in financial services, can be involved in such anti-counterfeiting activity. It is because transportation also constitutes one of the country's most dynamic sectors. One of the largest airfreight common carriers in the world is located in Luxembourg. The perverse effect of Luxembourg constituting an extensive transport and transit platform is that Customs frequently uncover products infringing, mainly, trademarks and design rights of varied products such as baseball caps, mobile phone covers as well as luxury watches and apparel brands. We are therefore frequently asked to assist our clients to protect their rights.

Therefore, we are helping large well-known international companies, essentially active in the telecommunication and apparel industries, to put in claims counterfeiting activities uncovered by Luxembourg Customs.

IP-related amicable settlement

Because we think certain conflicts may be brought to an end more rapidly and more cost effectively than before courts, we encourage, whenever possible and suitable, amicable settlement as opposed to litigation. This is particularly true as regards trademark or author rights infringements and in relation to domain names registrations.

Further information on Noble & Scheidecker's Technologies & IP practice and the experience of the members of the team can be obtained from the contacts at the back cover of this brochure.

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