

Digitally Fueled Innovation in France: A Legal Perspective

“ The French State should not move too quickly to regulate AI ”



Bradly Joslove, Partner at Franklin Law Firm, joined Frank Casale, Founder of the Institute for Robotic Process Automation & Artificial Intelligence (IRPA AI) to discuss how data protection in Europe will be affected by new technologies (like: RPA, AI and digital services), what companies must do to prepare, which industries will be affected the most, and what unprecedented legal issues (if any) will come from digitally fueled innovation in this 3x1 (3 questions, 1 expert) interview.

Q You're a highly regarded legal expert in the field of new technologies, and more specifically in IT, telecommunications and Internet law. In fact, you've been recognized by Who's Who Legal, as one of the 10 most highly regarded internet, e-commerce and data protection lawyers in the world, and ranked by Chambers and Partners as a leader in both information technology and telecommunications law. In your experience, how is automation, artificial intelligence and digitally fueled innovation impacting companies? Do you see certain industries being more affected, than others?

A I work with companies in a great variety of industries, from insurance to energy to food to cosmetics. They are all affected by the movement toward digitally fueled innovation and AI. They are all advancing (more or less quickly) on their digital transformation projects. They all realize that AI has the potential to tap into the huge latent commercial value of the data in their possession. For certain industries, we are at the outset of a transformation. Car manufacturers, for example, are becoming mobility service providers in competition with Uber, Google and Bla Bla Car. To have a chance at winning that battle, the car manufacturers have to deepen and broaden their customer relationships and the key to that is better exploiting the data they have or could have about their customers. AI will be a key to that.

Q

You were on the Board of Directors of the International Technology Law Association and participate in other new technology trade associations. Do you think the rise of digitally fueled innovation will result in unprecedented legal issues that we've never seen before? And, do you think companies are currently prepared to deal with these legal issues?

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Digitally fueled innovation will raise legal challenges, but I think these challenges are not unprecedented, they are simply different in degree, with new facets of age-old issues. With the rise of the Internet, many worried that "cyberspace" would be a new, lawless Far West. Most of these fears were unfounded. Over time, lawyers and the courts applied traditional legal concepts to these new technologies and found that they mostly worked. Where they didn't, the legislators and regulators stepped in. There is certainly no shortage of French laws and regulations dealing with e-commerce and the Internet. As was the case with the Internet, my wish is that the French State not move too quickly to regulate AI. They should wait for the technology to mature and for the courts to have had time to try to find solutions using the current regulatory framework. Among the legal issues that are currently confronting digitally fueled innovation are protection of privacy (more on this below), liability for "decisions" made by AI and liability for data breaches. The last issue risks being the most costly for companies, because an IT system is only as secure as its least secure link. Much of today's and tomorrow's innovation will come from the pairing of IoT and AI, as the myriad of sensors used in IoT will feed massive quantities of data to AI algorithms that will harness that data to produce new value for companies. The problem is that today most of those sensors are not very secure. They are likely to be a vector through which hackers, pirates and unethical competitors can penetrate and damage IT systems and steal, reveal or corrupt the data collected by those sensors. The legal liability under the new legal regime brought by the GDPR (including fines of up to 4% of worldwide turnover) is likely to be considerable.

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How will new technologies, like: RPA, AI, machine learning, and other digital services, affect data protection? How should companies prepare?

A Beyond the issue of data breaches discussed above, these new technologies all involve collecting and processing massive amounts of data, much of which is personal data. Through machine learning and AI, the data users (whether governments or private companies) are already able to learn an enormous amount about each of us, our likes, habits and activities. This “profiling” of individuals is considered in Europe to be in conflict with the fundamental human right of privacy. At the same time, European legislators do understand the economic and societal value of such profiling. As a result, the GDPR tries to find a compromise solution that allows profiling, but subject to limits and a much greater amount of transparency than generally exists today. Complying with the GDPR’s rules on profiling and the new principles of “privacy by design” and “accountability” will require important and costly changes to products, services and the ways that companies interact with data. All companies interacting with European source personal data should carry out a GDPR compliance audit and begin remediating any gaps they find before the entry into effect of the GDPR on May 25, 2018.

Bradley is participating in a panel discussion about digitally fueled innovation, where he'll discuss these topics in more depth, at IRPA AI's Automation, AI and Digitally Fueled Innovation Event, on March 13th at Frankl'in on 26, Avenue Kléber, Paris.

This event will delve into topics, like: the power of RPA and AI, what's working and what's not, and digitally fueled innovation. [View the agenda to learn more.](#)

About Bradley Joslove



Bradley L. Joslove (Juris Doctor 1986, Harvard Law School); member of the Bars of Paris, Washington, D.C., and Massachusetts, is the partner in charge of the ITTI (Information Technology, Telecommunications and Internet) and Outsourcing Departments of the Franklin law firm. Mr. Joslove also heads up the Firm's India Desk – the first of its kind in France and the only one that has brought into its Parisian office an experienced Indian attorney.

He was recognized by Who's Who Legal, as one of the 10 most highly regarded internet, e-commerce and data protection lawyers in the world, and ranked by Chambers and Partners as a leader in both information technology and telecommunications law.