

Trends That Tech Lawyers Should Keep An Eye On In 2024

By **Sonia Baldia** (January 11, 2024)

2023 was a notable year for technology, although not as notable as some may have anticipated.

And for IT lawyers, the technology spending for IT services and software in corporate America remained buoyant, despite the downdraft of the Federal Reserve's sharp interest rate increases against stubborn inflation injecting caution into markets and budgets. This left many businesses shifting focus from greenfield investments in next-generation technologies to cost savings and revenue growth through operational efficiency.



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The explosive enthusiasm for ChatGPT and all things generative artificial intelligence, along with continuing growth in cloud-based services and edge computing for the Internet of Things, infused the market with transactional activity throughout the year. On the other hand, user adoption of metaverse and non-fungible tokens failed to live up to the hype, and the collapse of FTX Trading Ltd. threw a wet blanket on cryptocurrency.

With 2023 behind us, according to various analyst forecasts, worldwide technology spending is projected to grow and remain strong in 2024, with double-digit growth in IT and software services spurred by AI-driven solutions. As we enter 2024, here are a few key trends expected in the new year that technology and IT lawyers may find of interest to inform their practices.

Generative AI Integration in Software Offerings Poised To Accelerate

As generative AI use cases increase and mature, generative AI is poised to become an integral part of enterprise software in 2024 due to its transformative power for businesses. But this opportunity is not without risk.

As providers leverage generative AI to grow revenue streams, and customers scale generative AI to boost competitive advantage and user experience, key stakeholders on both sides of the table will need to fully comprehend the implications of generative AI to their operational strategy and appropriately mitigate risks and challenges in order to harness the potential benefits of this highly transformative technology.

In particular, businesses will need to ensure that generative AI is deployed responsibly and ethically, factoring in consent, inherent bias, security and infringement risks, as well as risk of disinformation, among others.

As the AI debate unfolds globally due to its implications for national security and economic competitiveness, new regional and national rules and regulations governing AI and AI platforms are anticipated in 2024 that are likely to affect generative AI's adoption rate.

In December 2023, the European Union Parliament and Council reached agreement on the EU's landmark Artificial Intelligence Act that establishes sweeping rules for the use of AI, which is slated to become EU law in 2024.

Similarly, in 2023, China rolled out generative AI-focused regulation mandating certain

monitoring and content control obligations for generative AI providers, including registering algorithms with the official algorithm registry and disclosing training datasets. In the U.S., many states are taking the lead to regulate AI use cases.

Given generative AI's crucial reliance on public data sources for training models and the growing AI and data regulation as well as the recent uptick in copyright infringement claims against generative AI product companies, customers will require greater visibility into the legality and quality of data used for training and will attempt to shift compliance and infringement risk to providers through contractual indemnities and liability provisions, particularly in customer-facing or regulated use cases.

Data security will remain a top concern for businesses. It will be critical for providers and customers to manage risk in a rapidly emerging market for generative AI, and a key first line of defense will be technology contracts that are based on and reflect a deep understanding of the risks and issues, and address them effectively.

New Markets and Alternative Licensing Models for Data Monetization Likely To Proliferate

Current generative AI and large language models products heavily rely on public sources of data for training. Application programming interfaces will continue to play a pivotal role in generative AI by facilitating real-time data flows and interoperability of diverse data sets between disparate generative AI systems and products.

Organizations that are adept at augmenting these tools with their own data assets will be well placed to capture additional value from this transformational technology.

Businesses will be further incentivized to move beyond traditional data analytics to advanced data-monetizing approaches that combine edge computing and AI capability with organizational data — both internally and externally acquired — to generate powerful and actionable real-time insights.

While most organizations today recognize the immense value of their data assets as core to their own business, greater emphasis will be placed on defining and refining organizational data monetization strategy to leverage data assets externally. As such, alternative licensing models beyond the traditional data-as-a-service model will continue to proliferate as businesses look to monetize data via external partnerships and other data sharing models such as data pools, cross licensing and application programming interface-driven open ecosystems.

Key business and legal risks and issues for data licensors and licensees will circle around collection, disclosure and use of data, treatment of co-mingled data, compliance with data regulations, and allocation of liability for data usage. The growing body of AI and data regulation in the U.S. and other countries is likely to complicate the risk-reward analysis for stakeholders in the data ecosystem.

Digital Transformation To Remain Center Stage

As cloud services mature and scale, businesses are increasingly embracing customer-facing digital platforms to enhance the user experience and drive revenue, in addition to a historical focus on cutting costs through back office efficiency.

As providers incorporate automation, AI, edge computing and other disruptive technologies

in their offerings, traditional IT contracts and outsourcing agreements — including traditional approaches to pricing methodologies, service level agreement metrics and contractual risk allocation — are being reassessed and reconfigured to address the unique risks and challenges, as well as dramatic productivity gains, presented by digital platforms and disruptive technologies.

Businesses are also tuning into the environmental effects of the Internet of Things and digital solutions and the growing need for sustainable technology. The deal terms are increasingly complex and multilayered — with stretching contract negotiation cycles — as platforms incorporate multiple third-party products, tech stacks and hosting environments that customers are likely to have little control over or even visibility into.

Given the risk of offshore service delivery models for business sensitive functions particularly involving regulated or customer data, there is greater demand for onshore cloud infrastructure in such digital transformation initiatives, which is expected to continue in 2024, particularly in the financial services, healthcare and retail verticals. This puts a premium on IT and outsourcing contracts that are appropriately restructured to capture the value and nuances of services increasingly provided over digital channels and via consumption-based models.

Renewed Interest in Global Capacity Centers To Build Talent While Reducing Costs

In 2024, businesses will continue to prioritize cost optimization while building internal talent in new tech domains, leading to increased interest in the global capability center service delivery models.

As organizations ramp up their digital transformation efforts and leverage new technologies, many are prompted to reexamine their sourcing strategy and reconsider the build-versus-buy analysis, balancing business continuity, agility and resilience against cost and control levers, and risk diversification.

Global capability centers that struggled with business continuity or demand slowdown during the COVID pandemic are potential targets for restructuring, consolidation or divestment. Conversely, many organizations are opportunistically establishing new global capability centers or repurposing existing ones to achieve transformation and diversify operational and geographic risk to deliver value to the broader enterprise.

As market-entry barriers and capital outlay requirements have lowered over time, the newer global capability centers have become easier and faster to establish, and vary in scale compared to the legacy captives employing thousands of employees in offshore locations.

In recent years, the sourcing market has witnessed a steady increase in U.S. companies establishing new-generation global capability centers in nearshore/offshore locations like India, the Philippines, Mexico, Costa Rica, Ireland and Eastern Europe.

Mounting pressures to cut costs and rebuild revenue via digital transformation will propel more U.S. businesses to closely consider the global capability center option in the near future. Setting up a global capability center can yield enormous strategic benefits, but it is a complex undertaking that raises critical operational, business, financial, legal, regulatory and other cross-border considerations for the organization that should be assessed and addressed upfront to avoid costly mistakes down the road and maximize the organization's return on investment.

Vendor Consolidation To Pick Up Steam

Organizations have historically adopted a multivendor strategy relative to their IT and business process services environments.

While the proliferation of the everything-as-a-service model has enabled organizations to procure from a plethora of niche vendors, it has tipped the scales toward vendor sprawl, with organizations facing a patchwork of products and data silos across the enterprise having questionable interoperability and poor vendor management, among other inefficiencies.

Organizations are also realizing that multiple vendors create fragmented security and vulnerability gaps for cyberthreats as well as loss of bargaining leverage and economies of scale.

The concept of vendor consolidation gained steam in 2023 and is expected to continue into the next year as more organizations rationalize and optimize their vendor ecosystems to reduce the number of vendors in their environment. As organizations consolidate and offboard vendors, many of the vendor contracts would either be terminated or restructured to meet the business needs, thereby presenting opportunities for renegotiating pricing and other concessions, including exit clauses and termination fees.

Looking Ahead

2024 is gearing up to be an exciting year for technology and IT lawyers as enterprises continue to unlock the potential use cases of generative AI and other disruptive technologies, drive digital transformation for operational efficiency, explore ways to optimize data assets, and deploy new service delivery models to reduce costs while building talent in new tech domains to propel their businesses in the new year.

Businesses and their legal departments that laser focus on their goals in this competitive but open-ended environment, and leverage the right expertise to move toward those goals in this sector, will be a step ahead in navigating the challenges and possibilities of 2024.

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