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A LEGAL OVERVIEW OF BLOCKCHAIN

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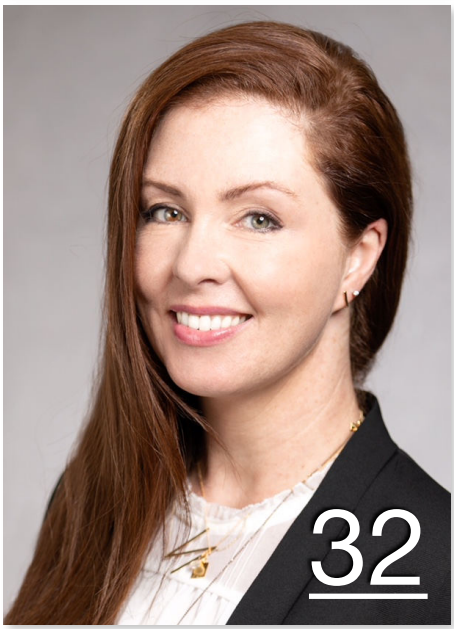

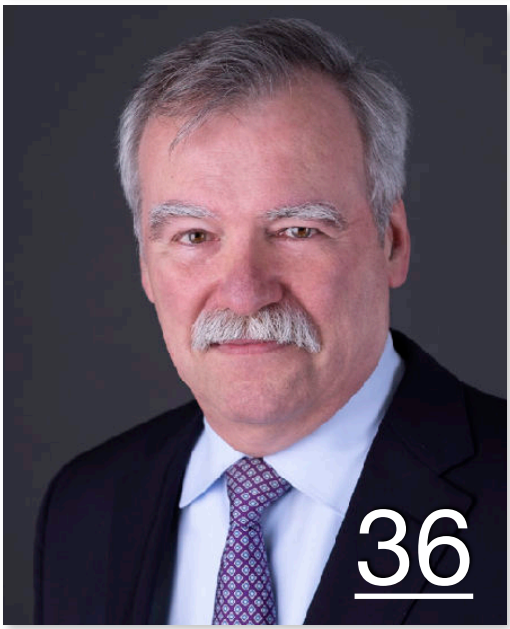

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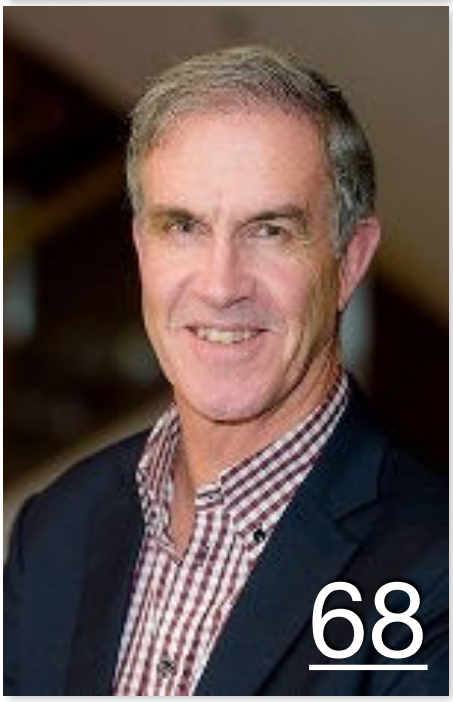

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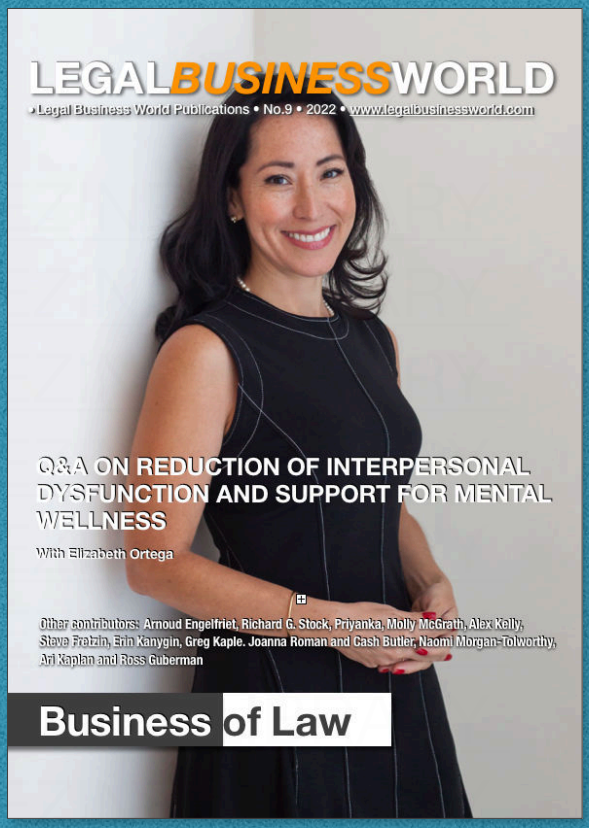

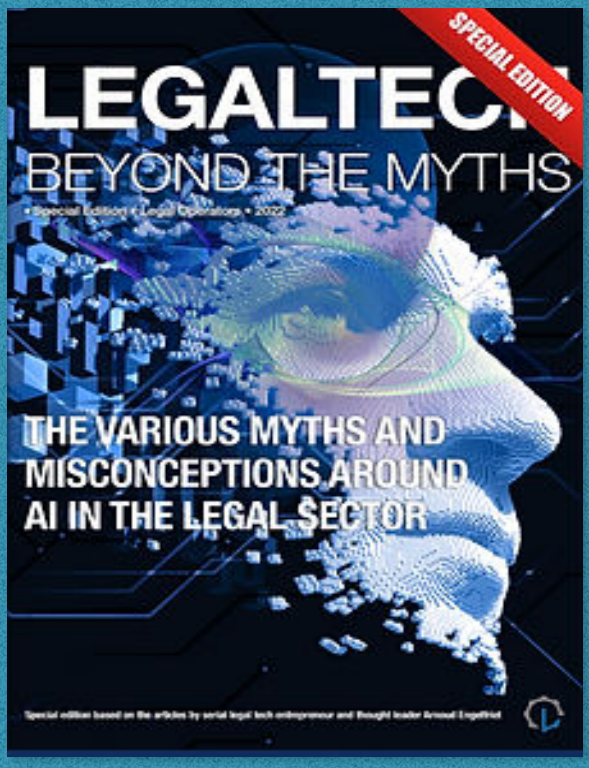

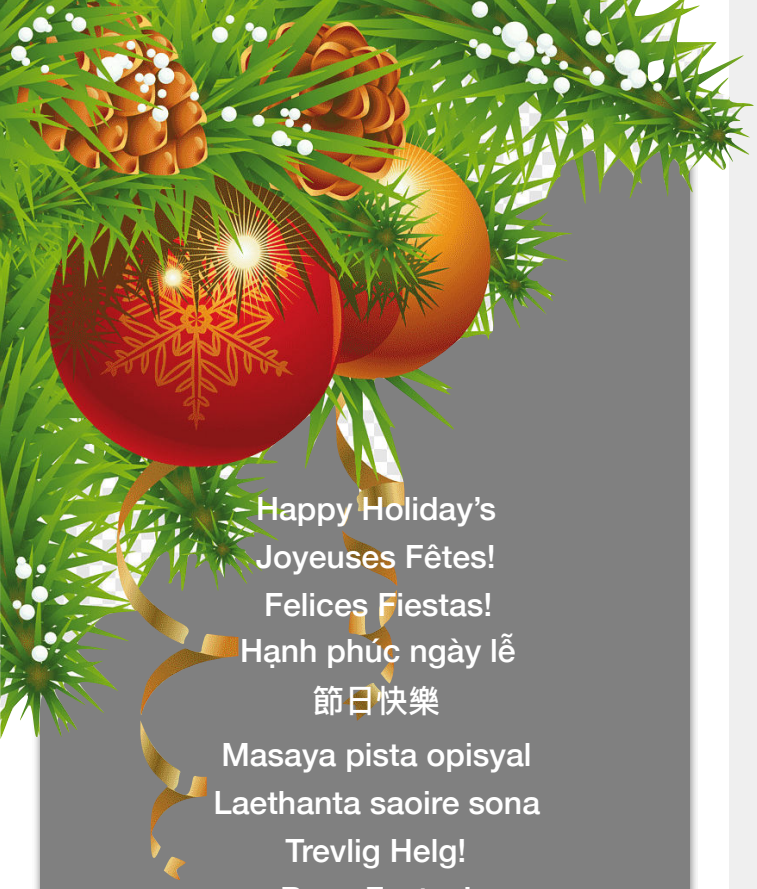

Happy Holiday's
Joyeuses Fêtes!
Felices Fiestas!
Hạnh phúc ngày lễ
節日快樂
Masaya pista opisyal
Laethanta saoire sona
Trevlig Helg!
Boas Festas!
Mutlu Bayramlar!
Sarbatori Fericite!
행복 휴일
Vesele Praznike
Selamat Hari Raya!
Sretni praznici!
Boldog Ünnepeket
Καλές δικακοπές! (kales diakopes)
Glade feriedage
Gëzuar Festat
Jie Ri Yu Kuai
Bones Festes!
Furaha likizo
幸せな休日
חג שמח
Buone Feste!
Forhe Feiertage
Prettige feestdagen
Hau'oli Lanui
Beannachtaí na Féile

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A Legal Overview of Blockchain

By Elif Hilal Umucu, Chainlink Labs

"The smallest part of your brain / is where something holy / resides:..." Sneha Subramanian Kanta

ABSTRACT

Contrary to what is known, cryptocurrencies such as bitcoin and altcoins have not only attracted the public's attention as new means of payment. This technology is driven by financial applications built on top of these currencies, potentially revolutionizing the consumer and investment markets.

The most notable and economically relevant of these applications are tokens sold through initial coin offerings (ICOs). The content and scope of these ICOs require a multidisciplinary view.

More than $6 billion in revenue has been generated through ICOs in the first quarter of 2018 alone. Entrepreneurs in the crypto-asset ecosystem sell tokens they have built on the blockchain. Investors receive tokens that can be understood as cryptographically secure coupons with a set of rights and obligations. But is there any law that will protect the investor? Or legislation?

This article discusses the European Union and the US Securities Commission (SEC) perspective on tokens, coins and ,other crypto assets developed on the blockchain. In particular, the content of the ICO process of a newly developed project in the web3 world is discussed.

Keywords: ICO, Initial Coin Offering, Blockchain, Smart Contracts, Whitepaper, Crypto, Crypto-assets, MiCA, Howey Test

1. Introduction

Although the concepts of Bitcoin and Blockchain have been mixed a lot lately, these definitions have slowly started to find their place in the regulations.

As blockchain-enabled products and cryptoassets have become more common, investors have turned to tokens and ICOs. In the Web3 world, investors have begun to receive cryptographically secure tokens with a set of rights and obligations. This process is usually done

online without the involvement of investment banks or professional venture capitalists and is usually completed within minutes for successful ICOs.

The easy structure that enables the distribution and collection of funds takes place on the Ethereum Blockchain, which we know as the internet of web3. The whole process is handled by smart contracts run on the Ethereum blockchain (or any other blockchain).

Understanding the workings of tokens is especially important for product developers seeking funding from ICOs: if they are under a legal obligation to issue a prospectus, but fail to do so, they are subject to full prospectus obligations with potentially major negative financial consequences. (This will be called a whitepaper in the following pages.)

On the one hand, there are entrepreneurs trying to develop projects and taking steps to develop blockchain technology, on the other hand, there are government institutions trying to protect investors and customers. Currently, courts will have to decide on the applicability of the prospectus/whitepaper arrangement regardless of the level of sanction imposed by public authorities. However, the link between ICOs and EU securities regulation depends, first of all, on a mantra at its current stage of development: things are complex and uncertain.

2. Developments from the World!

The European Union Banking Authority (EBA) released a Crypto Asset Report in 2019. According to this report, EBA evaluated crypto assets in 3 different categories: payment, swap, and currency unit

Later, they added 2 more categories to this classification:

- crypto assets with investment properties
- crypto assets that provide rights/benefits to the user

Later, the draft of European Union, -Markets in Crypto Asset Regulation- was published as a draft in September 2020; according to this draft, crypto assets were classified in 3 different ways:

- Asset-referenced tokens
- E-money tokens
- Utility tokens

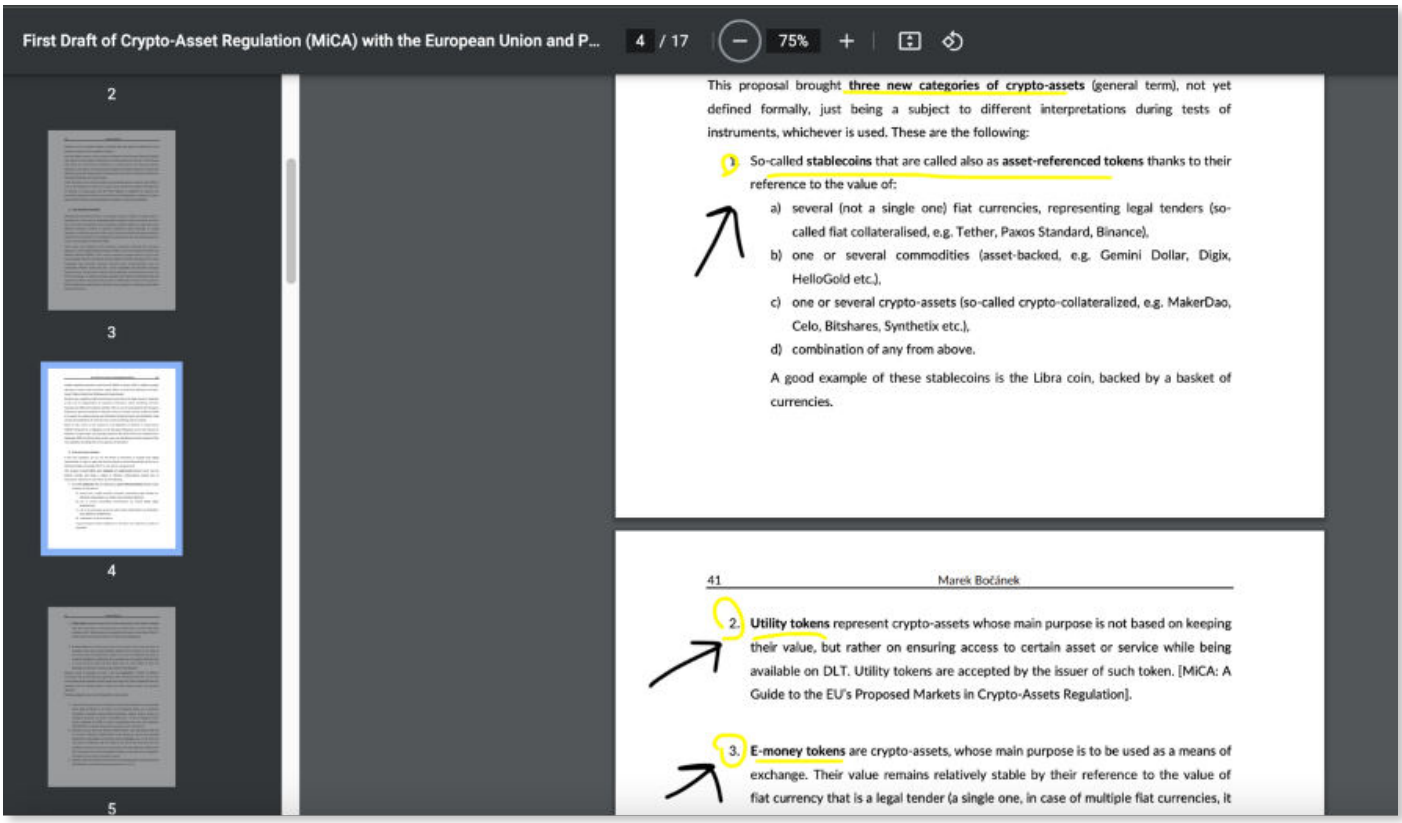
After these classifications, in July 2020, American national banks were allowed to store crypto assets by The Office of the Comptroller of the Currency (OCC).

3. After these classifications, in July 2020, American national banks were allowed to store crypto assets by The Office of the Comptroller of the Currency (OCC).

4. ICO's

This concept, which appears as an Initial Coin Offering, is used very similarly to an IPO (initial public offering). Since late 2016, ICOs have quickly become the primary focus of attention on financial regulators' priority list. An initial Coin Offering (ICO), also called Initial Token Offering ("ITO") or Token Generation Event ("TGE"), can be summarized as a new method by a group of developers or a

group of founders to raise money through offerings and sales. An ICO to people; provides an opportunity to get involved and invest in a



project before entering the stock markets. So what does this mean? One way to crowdfund a project in the cryptocurrency space (especially token projects) is an ICO. An ICO provides a source of capital to the project or startup.

Since its inception, many ICOs have been used for fraudulent transactions and for very wrong purposes. Because investors and entrepreneurs trust the project with the ICO process. There are too many fraudulent ICOs with the goal of using potentially innocent investors' money. But the truth is, if you invest in the right ICO at the right time, chances of becoming an early investor in the next Google, Facebook, or Bitcoin are a real possibility.

What do ICOs provide to investors? Crypto tokens can be "used to access the platform, use the software or otherwise participate in the project". Investors can even expect "return on investment" or "participation" from the returns provided by the project.

Once minted, virtual coins or tokens can be resold to others on a secondary market on virtual currency exchanges or other platforms. From a documentation perspective, the bulk sale of crypto tokens usually precedes the publication of a detailed document by ICO developers, often referred to as a 'white paper', which may look similar to a prospectus, defining the protocol, the targeted network. The purpose and technical description of the project, the rights associated with it and the use cases of the crypto token to be issued.

5. ICO Risks

Some ICOs offer huge bonuses and other incentives to attract investors. For example, you can get some tokens for free with your initial investment. While this encourages investors to enter an ICO, it poses a risk as some investors may sell the coin or token as soon as it is listed on an exchange, leading to a price drop.

Moreover, if you are a big investor in an ICO if the project claimed to give you some tokens and they didn't, there isn't much alternative you can go for. (MiCA regulation mentioned the necessity of a Whitepaper for these situations. There is now an alternative solution in Europe)

But there have also been very successful and promising ICOs. There is a concept in the blockchain ecosystem, DYOR, which means you have to do your own research and decide for yourself whether the project is trustworthy. Then it's up to you to invest or not. For example, do not make the mistake of investing by relying on someone else's word, even if it is a famous YouTuber or Influencer. ALWAYS make your own decision based on the information you have gathered for yourself.

The first way to understand ICOs is to scrutinize the words and understand the project. For a comprehensive understanding, there are a few points to consider when analyzing ICOs.

Two common mistakes made with ICOs should be avoided:

I. Crypto tokens generated on the Blockchain through an ICO should not be automatically viewed as equivalent to securities. The lack of clarity by regulators about potentially qualifying a crypto token as "security" has created a false belief among many that

crypto tokens have always been securities and that ICOs imply the issuance of securities. However, there are many types of markers. You can see these different types of tokens below.

- Usage Token
- NFT Token
- Community Token
- Equity Token
- Work Token
- Asset Token
- Utility Token
- Security Token

II. ICOs should be distinguished from public offerings. IPOs and ICOs are different and therefore have different procedures. An ICO does not automatically have to comply with traditional IPO regulations and therefore ICOs may not meet the same terms and requirements. As stated later, it will depend on the type of ICOs involved and the decisions of the relevant financial regulator. To understand this last point, a comparative study of law is required here again. The complexity lies specifically in defining what constitutes a 'token'. Also important is the type of assets that are sure to be tokens.

The legal status of the “token” is still unclear around the world and should be subject to many regulatory initiatives in the months and years to come. Each issued token will have its own characteristics and will give third parties exclusive rights to each ICO project.

6. ICO PROCESS

II. Advance planning process
III. Actual planning (Token, Whitepaper, Website, Communication, etc.)
IV. Before the ICO
V. After the ICO
VI. Managing the post-ICO project and sustainability

Advance Planning Process

This process is the first phase of an ICO project. There are a few questions to consider first:

- What is the purpose of your token? Is there any utility you want to do with the token project?
- Are you sure you want to do an ICO? And are you ready for the risks involved?

Token

- What is the purpose of your token?
- What function or purpose will you serve
- Who will benefit from it?
- Is the token a must for your project or is it absolutely necessary? Or can your project go into effect without a token?
- Why does your project need to be on the blockchain? Or does it have to be on the blockchain?
- Can you describe a viable economic model for the project?

It would be useful to add a small footnote here. If your project doesn’t need to be built on a blockchain protocol, you should think hard before moving forward. For example, the computational costs of building a project or app on Ethereum are much more expensive than something like AWS.

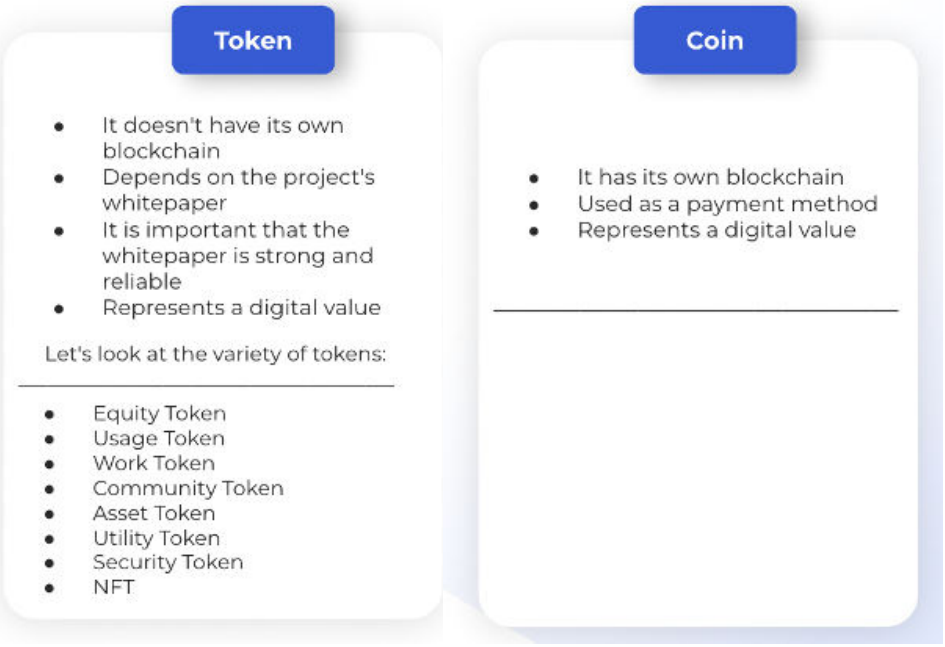
You better have a strong reason to build a

decentralized app versus a centralized app.

When you are ready and committed to an ICO, the key components of planning are:

- offer
- whitepaper
- token design
- legal status/type
- serious measures against inevitable hacking attacks
- preparation for communication (website, loose, social, press, interviews...)

Token & Coin



When a classification is required, the most common issue, even in regulation studies, is the classification of the asset in question. When the crypto asset is a token or a coin, different paths are followed. That's why it's really important to know this distinction.

As it can be understood from this title, Token and Coin expressions are different concepts from each other. They belong to different classifications. They may show common features, but they are different.

A small classification is below with an image, but the diversity in this list is increasing day by day, so this is not limited to just that.

Blockchain technology is a huge universal cluster. When we look at this set, we encounter too many subsets. Tokens and Coins can also be expressed as two separate subsets of this set.

Although these two terms are sometimes used interchangeably, it is important to remember that they are different in meaning and functionality.

TOKEN

In the simplest and most concise terms, the concept of Token also appears as Jeton. So what exactly do we mean?

•Digital crypto assets representing a certain value or utility on a blockchain
•A digital tool created by blockchain technology
•Some kind of crypto asset

- Transferable digital properties on the blockchain

It is possible to add many more definitions to this list, but it is important to understand the gist here. The important thing is to understand what it does and what it is used for.

Now, besides the above, I will introduce a

technical definition. Then it will be very easy for you to grasp the distinction between coins and tokens.

Token is a crypto asset that does not have any Blockchain infrastructure of its own and therefore uses the Blockchain of another Coin (existing on another chain).

There is also the purpose of use, of course, here we will learn the concept of Whitepaper. The explanatory report, which is expected to write the features of this token by the entrepreneurs who make a Token project using blockchain technology, is called a Whitepaper. (It also has an incredible importance in regulations).

The extent to which the Token is used is specified in the Whitepaper where the issuer (producer) of the Token is introduced. I

n other words, details such as the function, usage functions, content, roadmap, supply, use cases of any token should be explained and written by the founder of the token project in the Whitepaper.

Let me tell you about the importance of this, for the buyers of the token, trust is required. Why do people invest? Because they trust the project and the future of the project. One of the best ways to ensure this is to take the whitepaper seriously and write it honestly. Especially for buyers and investors, the reliability and honesty of the project are important.

COIN

You will remember this concept from Bitcoin. The words Coin and Token are used for very similar meanings. I explained the main difference above. Crypto assets traded on their own blockchain are coins. How is Coin defined?

- Digital representation of value that can be used as a payment method
- Currency-like digital value with its own blockchain
- Crypto assets produced with a cryptographic encryption method and have purchasing power

While the token exists on another blockchain (eg Ethereum) Coins have their own chains.

After the first cryptocurrency and crypto asset bitcoin emerged, thousands of projects emerged. Some as tokens, some as coins. These crypto assets that have different functions and duties after Bitcoin are called altcoins (alternatives).

Token Types

- Usage Token
- NFT Token
- Community Token
- Equity Token
- Work Token
- Asset Token
- Utility Token
- Security Token
- …

The Security Token is a type of token that will appear continuously from now on and can be separated more easily from the others in terms of regulation. Because thanks to the SEC and Howey testing, it is easy to detect. The SEC defines whether an asset is a security token by asking only 4 questions 🙂 On the other hand,

the security token constantly appears in lawsuits as it is considered to be real money/ stock.

Regulatory Challenges?

Classification

It is still unclear how to classify it, especially if there is a dispute regarding crypto assets, for example, are cryptocurrencies movable? Is it a security? is it money? Is it a capital market instrument?.... We can multiply such questions. For example, is it more correct to evaluate crypto assets with money characteristics according to the provision of electronic money instead of qualifying them as goods?
As you can see, there are too many question marks and uncertainties about classification even at the very beginning. 😒

Not Local, Global

Another problem is that crypto assets emerge on an international rather than national scale.

- A crypto asset project developed in Turkey can be recognized all over the world within three weeks. Or the opposite could be said. For example, it may be possible that a crypto project produced in Singapore or Estonia will soon be recognized by the whole world and started to be traded ✌🏻

- When it comes to custody services of crypto assets, appointing certain institutions is actually against decentralization, which is a completely different problem in essence.
- The first state to tax crypto assets in 2018 was the state of Ohio in the USA. but when we look at the general picture, these assets will need to be classified again in terms of taxation. for example, they may qualify as money, investment vehicles, securities, commodities, or otherwise.

When we think within the scope of tax law, in order for an asset or a transaction to be taxable, its legal nature must first be revealed.

There is a great report published by IOSCO in 2020. I am attaching this report here.

In the report, IOSCO makes a great point and says that even when talking about crypto assets, the thing to remember is that it is not just one kind of asset. In other words, there are many different types and functions of crypto assets. For this reason, when it comes to regulation or legislation, the type, function, structure, task, and scope of the crypto asset should be examined.

As I mentioned in previous articles, even when we say tokens, dozens of tokens come to our minds. Or to put it simply, even though Bitcoin and Ethereum did not appear to have the same function, they have many different features from each other.

For this reason, it is best to evaluate a crypto asset on its own axis and categorize it on a case-by-case basis.

- For example, the first team to attribute value to crypto assets is actually the whitepaper writers, in a way, to what extent and to what extent will they be responsible?

- Austria, Canada, and Indonesia describe crypto assets as commodities, while Spain,

- Sweden, Switzerland, and the UK refer to them as intangible national assets. In the US, there is already no common cross-state consensus.

- The concepts that will take the discussion to another point are hot and cold wallets. If it is decided to tax crypto assets, the storage and transfer features of wallets will be on the agenda again.

Or another point, the earnings that are defined as income according to the Income Tax Law are as follows:

- business earnings
- agricultural earnings
- fees
- self-employment earnings
- real estate capital gains
- securities
- other earnings and revenues

Howey Test and SEC

SEC is United States Securities and Exchange Commission. The Digital Assets Framework, the SEC's long-awaited guide to blockchain projects, is only eleven pages and has been written using plain English to make it user-friendly and accessible. In this article, I will be discussed the content of this framework, the decisions of the SEC, and most importantly how the Howey Test is used to find security tokens.

The Howey test, named after William Howey, who was sued by the SEC in 1946, appears as a Regulation that sheds light on the ICO and web3 ecosystem. Pursuant to Section 2(a)(1) of the Securities Act of 1933, securities such as stock exchanges, notes, books, debentures, and stocks that qualify as "investment contracts" shall mean all securities (produced, invested, sold. .) must register with the Securities and Exchange Commission (SEC) in the US.

Howey was a citrus magnate. In addition to large orange groves in Florida, guests had a hotel in the area where they drank a lot of orange juice. Guests would receive a glass of orange juice upon check-in. In addition, clients had the opportunity to invest in some of Howey's orange groves.

If you bought a "share" in the orange groves, Howey's workers would tend the orange trees, pick the oranges and sell the produce. They claimed that as the price of oranges skyrocketed, the land would become more and more valuable, so customers began to see it as a great long-term investment. However, no client has mentioned this to the SEC or gone and informed about this investment.

On the one hand, this seemed reasonable. People always invest in real estate with the expectation that it will increase in value, right? On the other hand, something looked suspicious! Like the promise of future profits and the fact that they offer customers nothing but orange juice?

Regardless, the SEC argued that it's not a real estate investment, it's more like a stock investment. The Howey test was first introduced in 1946 in the Supreme Court, SEC v. W.J.Howey Co. was the subject of the case. And it has continued to be used ever since.

The Howey test says that an "investment (stock) contract" exists if these conditions exist:

Especially during the ICO process, the SEC spends serious time on projects and examines which project aims for what. For example, whitepapers have a very important aspect. This is exactly what we call "information asymmetry". In other words, the SEC examines whether the planning specified in the whitepaper and the timeline of the project in real life are compatible.

For example, if investors and managers are making reports to hide their massive losses, that's a problem. For example, this information-asymmetry issue by giving a great example. Roadmaps are shared to eliminate hesitations and build trust while starting and progressing the ICO process.

As the previous SEC chairman and current SEC chairman have pointed out, they view many ICOs as securities offerings. IEO's are only ICOs on exchanges and IDOs are only ICOs on DEXs, so they all carry the same regulatory risk in the eyes of the SEC.

Type	SEC Risk	Everything else
ICO	High	Fantastic
IEO (ICO on exchange)	High	Fantastic
IDO (ICO on DEX)	High	Fantastic
INO	High if NFT is security; Low if not	Fantastic
Airdrop	High if token is security; Low if not	Fantastic

INOs (Initial NFT Offerings)

Modern NFTs looked more like art or products to me than securities. However, this doesn't mean that many of them will not be considered securities in the future. The SEC spends a lot of time and effort on this right now.

The SEC seems to be trying to have as broad coverage as possible for NFTs, airdrops, and ICOs.... If I were an ordinary person who hadn't looked at the SEC, I would say NFTs are

clearly not securities. However, the SEC is being very meticulous about this and we may soon see some NFTs on the SEC's radar as well.

What Was EU Crypto Asset Regulations Before MiCA?

Before the MiCA was adopted in the EU, a few key points in the DRAFT text were as follows:

- The regulation will directly apply to all 27 existing EU Member States.
- It will not need to be enforced in national law.
- It will also affect any firm, company, or start-up that wishes to do business in the EU; Customer research from anywhere outside the EU (including, for example, the US, UK, and Singapore) will be considered a regulated activity.

Before MiCA was the main legislation to deal with crypto assets, the EU's revised Financial Instrument Markets Directive 2014/65 and Financial Instrument Markets Regulation 600/2014 were the most important (collectively known as "MiFID II").

The provisions of MiFID II provide requirements and regulatory obligations for "investment firms" that provide financial instrument-related services.

— Legal Entities Qualified as Investment Firms

In fact, to qualify as an investment firm under MiFID II, a business will be involved in certain investment activities related to financial instruments. Therefore, it is crucial to evaluate on a case-by-case basis whether a crypto asset qualifies as a financial instrument.

If a particular crypto-asset is found to qualify as a financial instrument, the issuer (and any entity involved in the provision of services or activities related to that crypto-asset) will likely be subject to a number of regulatory requirements and obligations.

— Evaluation of a Crypto Asset as a Financial Instrument

When assessing whether a crypto-asset qualifies as a MiFID II financial instrument, the recommendation issued by ESMA is to consider "the precise facts and circumstances of the crypto-asset (nature, rights attached to it, negotiability in the capital market, etc.) and national law."
Also, in January 2019, ESMA published a study on how and when EU regulators interpret crypto assets as categorized as financial instruments. The research explained what the functionality of a particular crypto asset looks like. For example, this research includes explanations such as how the key factor is taken into account of a particular coin looks. Additionally, while certain crypto assets may not begin as MiFID II financial instruments, they may qualify as such later in time as a result of their use or function.

In light of this, the assessment of when a crypto-asset becomes a financial instrument may be different at the beginning and different at the end. The fact that there are also different categories of financial instruments (for example, dozens of different tokens) complicates such assessments.

— Financial Instrument Categories

While a comprehensive list of those classified as financial instruments under MiFID II can be found in Annex 1, Part C of the Financial Instrument Markets Directive 2014/65, common examples of financial instruments covered by MiFID II are as follows:

1. transferable securities (such as shares, bonds, and other securities giving the right to buy or sell such transferable securities)
2. money market instruments;
3. units in collective investment undertakings
4. Options, futures, swaps, and other derivative contracts

If a crypto-asset qualifies as a financial instrument, any person or entity providing investment services related to that crypto-asset would likely need to be authorized under MiFID II and regulated by its provisions.

— Interpretation Difficulties Between Member States

As explained, there are several categories of financial instruments that a particular crypto-asset can fall into (most likely unintentionally). Complicating this situation is the sheer abundance of more than 17,000 crypto assets, according to a recent publication (March 2022) by the European Supervisory Authorities.

In particular, it is possible for a crypto-asset to display components of hybrid, multi-purpose, and simultaneously different categories of crypto-assets. For this reason, it is very difficult to classify crypto assets.

BUT THESE WERE TALKED BEFORE THE MICA DRAFT WAS ACCEPTED, MICA CHANGED MANY THINGS.

The definition of a crypto-asset as a financial instrument or a transferable security depends on how the concept of a 'transferable security' is applied in the Member State concerned.

Therefore, it is possible for the same crypto-asset to be considered 'transferable security or other financial instruments in one jurisdiction and another. Such a situation manifests itself as market fragmentation in the so-called EU single market. Aiming to harmonize crypto-asset regulation across the EU, the MiCA regulation is a great method and resource for solving these problems.

Regulating Securities Tokens Under Proposed MiCA Regulations

MiCA's assessment (published by the Commission in conjunction with MiCA) explains the definition of 'security tokens', defined as crypto assets that qualify as financial instruments under MiFID II. This assessment states that crypto assets that qualify as financial instruments will continue to be regulated under current Union legislation, regardless of the technology used for their issuance or transfer after the MiCA comes into force.

What Are Other Existing Legislation Related to Crypto Assets?

Crypto Assets Covered by the Electronic Money Directive II (EMD2)

MiFID II is not the only piece of legislation that can fall within the scope of crypto assets.

Some crypto-assets, so-called stablecoins, may qualify as electronic money under EMD2 if they meet all the elements of the definition in the directive (especially if they offer users a product directly on the reserve that supports the 'stable coin'). In such a case, launching these crypto assets in the EU requires an e-money license.

Crypto Assets under the Second Payment Services Directive (PSD2)

The other current legislation crypto service providers should be aware of is the Second Payment Services Directive (PSD2). A crypto-asset service provider operating regulated payment services may require authorization as a payment institution under PSD2 (or as an EMD2 electronic money institution, depending on its business model), unless there is an exemption from regulation.

Expected Regulation MiCA (European Union Crypto-Asset Markets Regulation — Markets in Crypto-assets Regulation

MiCA stands for Markets Regulation in Crypto Assets. This regulation is a recommendation by the EU Commission, largely in response to calls from the crypto world for a regulatory framework.

As part of the EU Commission's "Digital Finance Strategy", MiCA proposes a comprehensive and harmonized framework for digital assets. There has been a draft for MiCA for years and finally, MiCA has published a magnificent Regulation recently.

On June 30, 2022, after two years of debate and arguments, EU officials announced that they had reached an agreement on landmark Crypto Asset Markets (MiCA) regulations!

This legislation focuses on regulating crypto-assets such as stablecoins and crypto-asset service providers called CASPs (crypto-asset service provider SO here actually includes Exchanges). Meanwhile, the Financial Action Task Force calls CASPs VASPs, preferring to use them as virtual asset service providers. Let me share an incredibly useful document about VASPs and FATF right away.

MiCA defines CASPs as "any person whose profession or business is to professionally provide one or more crypto-asset services to third parties."

MiCA's definition of CASP has some similarities with FATF's definition of VASP. however it has been broadened to allow it to encompass more entities, yet know that they are still trying to explain the same concept in different ways.

MiCA has 4 broad goals in the accepted draft:

1. To draw legal clarity and demarcation for crypto assets not covered by current EU financial services legislation
2. Establishing uniform rules for crypto asset service providers and issuers at the EU level
3. Changing existing national frameworks applied to crypto assets that are not covered by current EU financial services legislation
4. Establishing special rules for so-called 'stablecoins', including when e-money

MiCA has defined three Crypto asset types :

1- Entity-based tokens: These are tokens that aim to maintain a stable value "referring to several currencies that are legal tender, one or more commodities, one or more crypto assets, or a basket of such assets."

2- E-money tokens: This is another name for single-fiat stablecoins. These are crypto-assets of stable value based on a single fiat currency that aims to operate similarly to electronic money. Stablecoins, for example, are meant to be integrated into gold, dollars, or other assets.

3- Utility/service tokens: These are issued for non-financial purposes to provide access to an application, services, or resources digitally and are accepted only by the issuer of this token. These tokens have a non-financial purpose related to the operation of a digital platform and digital services.

While MiCA broadly covers cryptocurrencies along with stablecoins, it does not apply to central bank digital currencies (CBDCs) and does not issue security tokens that could qualify as securities or other financial instruments!!

While there are discussions about emerging technologies such as decentralized finance (DeFi) and immutable tokens (NFTs), both are excluded from this version of MiCA.

The most important things we need to know:

Global standards are set with MiCA. Understanding the state of crypto-assets has brought transparency and clarity to the industry regarding the scope of regulations.

The final adopted version of the law is aimed to enter into force in 2023! In addition to this situation, it is also said that additions and subtractions will be made with innovations.

Agreed that any asset-backed stablecoin issuer should write WHITEPAPER, publish it, notify the authorities of the situation and KEEP RESERVES AT INSTITUTIONS LIKE BANK.

The most important result, in my opinion, is the whitepaper here!
Also, after local authorities approve a crypto business according to EU regulations, this CASP (exchanges) will be able to expand their operations to other EU countries without having to obtain additional licenses, a process called passports .

CASP Approval
CASPs, aka global crypto exchanges, will face capital requirements and will need to establish policies and procedures to allow the trading of crypto assets on its platform. (Let's think about it this way, it is aimed to prevent the increase of cases such as fraud in the stock market and to protect investors/customers)

According to the announcement, "According to the interim agreement reached today, crypto asset service providers (CASPs) will need the authorization to operate within the EU. National authorities will need to issue permits within a three-month timeframe". Therefore, the expectations are that the CASP approval and registration process will not be a long and difficult process.

Also, one of the most controversial points came when Ernest Urtasun, a member of the European Parliament, tweeted that the agreement would impose a strict limit on the use of stablecoins.

According to Urtasun's tweet, "large" stablecoins will be limited to €200 million in daily trading volume. The exact nature of this remains unclear, but regardless of how exactly it is implemented, such a cap would drastically change the way stablecoins are used and could have a negative impact as well. To put this in perspective, as of July 1, 2022, Tether's global 24-hour trade volume was $53.5 billion. So there are doubts about its applicability.

About the Author

Entering her Blockchain and Technology Law career with cryptography, Elif Hilal developed her own encryption method when she was only 10 years old.She then began to learn encryption mechanisms and the science of cryptography. She found the way to communicate with computers by learning to code, she learned to code when she was a freshman at university.

While she was a university student, she had the chance to work as a blockchain researcher in the Digital Transformation Office of the Presidency of the Republic of Turkey. In addition, she was elected as the Microsoft Turkey Student Ambassador and represented her country many times in the international arena.

Elif Hilal, who has been working on Blockchain for about 6 years, is currently working on Blockchain at Chainlink Labs.

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Other articles By Tech Expert Elif Hilal


Solidity : Smart Contract Language or Legal Contract Language?


Face Recognition Systems and Biometric Data


Elliptic Curve Cryptography in Blockchain Technology

Future of Legal Work

By Jackie Donner, CEO and Co-founder LawFlex

An eruption is happening in the way we work.
It isn't a sudden eruption - it has been happening under the surface, for years. The plates have been shifting slowly for the last few decades. The plates of employee dissatisfaction, of long working hours, the erosion of unions, and the rising gap between employees and the elite upper echelons, the plates of work life balance, of changing priorities, of remote working tools, the plate of wanting to" be my own boss", and the plates of job stability and aging populations.

And now dissatisfaction with being an employee has been fueled further by the options presented by the pandemic - of flexibility and remote work. Covid 19 is the

fault line along which this eruption is taking place. People got used to working remotely and experienced the freedom flexible work has to offer.

They experienced the removal of office politics, the end of the long soul-destroying commute and the removal of time-consuming meetings from their daily lives. People realized that they want to work less, not more. On work that gives them more meaning, on projects that give them more autonomy, on work that gives them more control over their lives.

A sign that a big change is coming is that the data regarding jobs is going haywire. The data doesn't make sense (at least to me). Tech companies are firing 10% of their employees, but yet, the same companies are still on a hiring spree. There is a recession coming, and yet there is "the great resignation" – people are resigning from their jobs on mass. Inflation is high, but unemployment is low and there are now two jobs open for every job seeker in the US. The data is clashing. This mayhem suggests an eruption in the way we work.

More and more people are becoming independent, because becoming independent addresses many of the grievances of modern-day employment. One of the biggest advantages to being an employee has always been job stability, but now surveys are showing that people feel more confidence in job stability when they are independent.

Also, the pandemic validated the "seize the day" mentality of the younger generation, now making up a majority of the work force. Sacrifices that we were willing to make as young associates at law firms, no longer seem worthwhile, and work-life balance is not just a nice to have, but a must have. It's a pre-requisite for interviewing for a job. Companies are unable to find sufficient staff – from airports to restaurants to law firms. In response, companies and law firms alike are already changing their talent model, by adopting a hybrid of permanent staff and contract workers and by adjusting conditions for employees. The Thompson Reuters Report "Alternative Legal Service Providers 2021" reveals that 79% of Law Firms are using ALSPs. Although numbers are not yet published, I predict the percentage to be higher for 2022.

This is validation that Law Firms are largely taping into the world of contract lawyers to fill in for staffing gaps that they have. This hybrid is true across industries. Law Firms are also changing their approach to employment – some of them allow for unlimited leave, remote work and signing-on bonuses. On the other hand, many companies and law firms alike have reacted to this change by hanging on to the past.

For example, Elon Musk has demanded that Tesla employees must spend 40 hours a week in the office or resign. He has been quoted as saying "They should pretend to work somewhere else." There is push back to the change in the way we work. Companies that are pushing back, and still remaining attractive to employees, however, will have to over-compensate in other ways, such as with good old-fashioned high salaries. I doubt, however, that this will be enough to stop the change.

The contractor model still has its problems, and many companies undoubtably take advantage of the saving they make on employer/ employee benefits. Well known court rulings are trying to protect independent workers from being "used" by large corporates.

More legislation has to come in to protect contractors. Independent workers need to be held liable for paying their own pensions so that they are forced to factor this into their pricing. Real employees should not be contractors and the rigid tests to differentiate between the two should be upheld.

But the law also needs to recognize the psychological and genuine value of independence, and of very simply put - *not having a boss*. The law needs to recognize that the old employment model doesn't work for everyone and that sometimes, being an employee is just not worth it. With burn out rates on the rise, and lawyers hemorrhaging from law firms, the value of independence goes beyond economic upside.

Employers need to wake up to the fact that **they are no longer competing with their competitors for talent** – they are competing with the very real, and very attractive option that a worker has of being independent. This is competition far fiercer than what they have faced in the past. In order to

win this competition, they are going to need to make sacrifices and changes that will hurt. Employers for example are offering employees the four day work week (and I mean four days from home). Employers are hiring Chief Wellness Officers to take care of the non-quantifiable needs of employees.

Mental health is being taken seriously (and it's about time). Law Firms need to move fast and creatively in order to retain talent. Employers should start to realize that the future of work looks like a combination of freelancers and employees and that freelancers can be a permanent and stable part of their work force too. Relying on freelancers should be built into their business model. Law Firms and legal departments that don't tap into this ~~growing pool of talent~~ will be at a disadvantaged, and will be left behind in the battle for talent.

About the Authors

Adv. Jackie Donner is the Co-Founder and CEO of Lawflex (https://www.lawflex.com/), a global alternative legal service provider. She is an Oxford graduate and has been a lawyer for 15 years at top firms in London and in Israel.

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Law's Delayed Future

By Mark A. Cohen, Thought Leader and CEO of Legal Mosaic

"The future is already here—it's just not very evenly distributed" observed William Gibson, the noted science fiction writer. He was not referring to the legal industry but could have been. While there is no shortage of self-proclaimed "disruptors," "innovators," and "visionaries" in the legal space, the industry is a digital laggard, misaligned with the needs of business and society.

Law is an analog function in a digital world.

Why is the legal industry clutching the short end of the future stick? After all, lawyers are highly educated, trained to think critically, and high-achievers. They have well above-average IQ's, are focused, and have a strong work ethic. Most are aware of the convergence of macroeconomic changes that are transforming lives, business, and the planet. Can the myth of legal exceptionalism,

hubris, and other denial mechanisms convince lawyers that what they do is somehow immune to these seismic changes? For some it can. Others, notably many legal "leaders," are either "too busy to change" and/or unclear about how.

The lawyer mindset has been forged by legal education, indoctrination, and time served in the profession.

Most lawyers have been economically rewarded and, until recently, have seldom been questioned about how, why, with whom, and at what cost they deliver their services. Until recently, lawyers sold to other lawyers, so buyers and sellers had a tacit understanding not to question the process. Law's insularity has produced a cosmetic brand of legal change that is more for show and internal efficiency than paradigmatic change that positively impacts clients, business, and society. *That* is what will raise the curtain on law's future.

The legal profession's collective stasis raises several ethical issues. Lawyers commit "to seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession." They swear an oath to protect and defend the Constitution *in all situations*. They also commit "to improve the law and the legal profession and to exemplify the legal profession's ideals of public service." Discharging client and societal obligations are the cornerstones of the profession and what it means to be a lawyer. So too is *service* to clients and society. Many lawyers are not discharging these non-delegable duties, and the

profession is failing to take concerted action to ensure that they do.

Lawyers Embrace Change—For Others

Lawyers are not resistant to transformative change *provided that it does not involve their professional activities*. Most lawyers have embraced transformative change as consumers but continue to resist it as providers of legal services. Why do lawyers make data-backed decisions, rely on peer reviews, gravitate to companies that value transparency and consistently provide superior end-to-end customer experience as buyers but resist the application of those practices to their professional roles? Why do they patronize disruptive-model companies but not emulate what they like about them as lawyers?

There are many explanations: mindset, culture, legal education and indoctrination, greed, short-term horizons, fear of redundancy, hubris, the myth of legal exceptionalism, and professional blinders (myopia), to cite a few. Lawyers are trained to adhere to precedent and to avoid making mistakes, not to challenge paradigms and innovate.

Law has operated like a professional cult; it is insular, homogeneous, lives by its own standards and rules, controls admission, and has resisted influence of the "outside" world ("non-lawyers). Lawyers have been ingrained they are uniquely qualified to determine what is a "legal" problem, how it should be managed, valued, and billed. They have used self-regulation to thwart competition, proscribe ownership, and retain control over not only the practice of law, but also the business of delivering legal services.

Law's future has been delayed by the legal profession, not by the absence of tools, resources, and a digital transformation roadmap. What other trillion-dollar industry shares law's dearth of performance metrics and standards, transparency, lack of data agility, collaboration, multidisciplinary workforces, innovation fragmentation, and customer-centricity?

Law's legacy stakeholders—tenured law school faculty, firm partners, regulators, and the judiciary—have staid the legacy course, each operating separately—not collaboratively—in its own self-interested fashion. They have been the judge and jury of their own performance and have, over time, lost sight of the purpose of law and lawyers, not to mention its social compact with society. The legal industry *as a whole* has failed to coalesce around its purpose and to adapt—using available resources— to the changing needs of its customers and society. Law is not an ecosystem; it is a collection of fiefdoms. In a world with challenges that require scalable solutions, law remains artisanal.

The legal profession's purpose has been shrouded in hubris, self-interest, and greed. It is manifest in its institutional stasis that has not served the profession, clients, or society well. This has contributed to an erosion of the rule of law and a threat to democracy. The legal profession is well-aware of its "wicked problems" but has failed to take concerted action to address them. Here is a partial list of those unmet challenges.

- "The court of public opinion" is undermining courts of law;
- Backlogs of civil and criminal cases, an alarming rise in pro se litigants and default judgments, and the slow, costly, opaque and

anachronistic judicial process is no longer responsive to societal needs.

- A worsening access to justice crisis —even as an array of tech resources, processes, automation; self-help tools, multidisciplinary resources, and new model legal delivery options have come on line—further erodes the rule of law.
- Law schools fail to produce "market ready" grads and create a fiscal sink hole from which many newly-minted lawyers cannot escape from.
- The legal profession's opposition to re-regulation designed to open up markets to competition, capital, and multidisciplinary practice that would benefit legal consumers and society evidences its protectionist stance.
- The opacity of legal language and procedure, high cost and unpredictability of legal services, dearth of data agility, and lack of empathy and humanity have further distanced law from the society it purports to serve.

The foregoing problems have metastasized because of neglect, a patchwork of ineffective palliatives, complacency, and a fragmented collection of legal factions unable to coalesce even as to their purpose. These challenges are no longer law's headaches; they are incapacitating societal migraines. That is one of many reasons why business is taking the reins and will lead the legal function into the future.

Business Will Usher Law Into The Future

If lawyers do not lead the legal function's future, business will. Business is pragmatic. It is keenly aware of the threat that climate change, war, social upheaval, and other geopolitical risk places on supply chains, the ability to conduct business, and the stability of capital markets.

It has a vested interest not only to protect its workforce, but also its shareholders and the societies it operates in. The legal function should play a key role in preserving respect for the rule of law, honoring contracts and trade agreements, and a host of other commercial functions. Without the assistance of business, it may not to be up to the task. That is why business engages in "commercial diplomacy" and other measures to backstop Governments and lawyers.

This is not to suggest that business minimizes the importance of law. To the contrary, it is beginning to recognize the latent potential of the legal function. It no longer regards law as a self-contained "legal" resource operating as a cost-center. Instead, business sees law as a business function—part of a larger enterprise whole— comprised of integrated, data-sharing business units.

Business is encouraging—in some instances demanding—legal teams to operate proactively, predictively, quickly, efficiently, collaboratively, and in data-backed fashion. The expectation is that the legal function will morph from self-contained cost center to collaborative catalyst for enterprise and customer value creation.

This is law's future. It's not as far off as some might think. For example, a recent study by The Digital Legal Exchange revealed the C-Suite is expanding its remit for legal beyond financial and operational issues. The research found that 97% of business respondents said

they wanted the legal function's success metrics to be aligned with business goals. Nearly three-quarters (74%) of business respondents said it is important/extremely important for legal to create revenues and new market opportunities.

To achieve the elevated expectations of business, the legal function must undergo a mindset change. Legal must function as an integrated team internally and with its supply chain. Then, it must integrate, with other business units that have already begun their digital journey. That transition requires the legal function to replace its insular lawyer-dominated, narrow "legal" role with a far broader, business and customer-oriented, multi-disciplinary, cross-functional one. The transition requires a holistic, end-to-end re-imagination of the legal function *from the enterprise, end-user, and societal perspectives*. That means asking questions such as:

"What do customers and society expect from the legal function and what differentiated role can we play?"

"What kind of talent do we need to meet and exceed those expectations?"

"What kind of culture and workplace must we create to attract the talent we need?"

"What is our purpose and how do we create a culture that will attract, retain, up-skill a digital workforce, supply chain, and strategic partnerships necessary to drive positive business impact and experience for our customers? "

The legal function's latent value will be extracted when it ceases to operate in isolation and aligns with the enterprise and its customers. The end result will be a legal team that collaborates with and positively impacts numerous business units across the enterprise (like technology). The legal function will help to detect, deter, mitigate, and accelerate solutions to business challenges and capture opportunities. It will be a proactive, positive force in the enterprise, not a reactive, "department of no."

Driving impact to business and its customers is one part of law's future. The other is the reclamation of its purpose to better serve clients, those in need of its products and services, society, and the rule of law. Paradoxically, law's transformation will take it back to its service and "higher purpose" roots.

Law's impact on its clients and society will be driven by human behavior and adaptation. It will be enabled and scaled by technology, data, process, agility, integration of law with other functions, multidisciplinary collaboration, customer-centricity, and a commitment to constant improvement for the benefit of clients and society. These change components are inter-connected and interdependent. Law's future is a mosaic, not a disparate collection of isolated elements.

Conclusion

The legal maxim "Justice delayed is justice denied" is apropos. To further delay law's future is to deny society a reimagined legal function that will better serve us all and the democracy so many take for granted.

All articles by thought leader Mark A. Cohen are also published at Forbes.

About the Author

Mark A. Cohen is the CEO of Legal Mosaic, a legal business consultancy. He serves as Executive Chairman of the Digital Legal Exchange, a global not-for-profit organization created to teach, apply, and scale digital principles to the legal function. He also served as the Singapore Academy of Law LIFTED Catalyst-in-Residence, held Distinguished Fellow and Distinguished Lecturer appointments at Northwestern University Pritzker School of Law and Georgetown Law as well as at numerous foreign law schools including IE (Spain), Bucerius (Germany), and the College of Law (Australia).

The first thirty years of his professional career were spent as a "bet the company" civil trial lawyer--decorated Assistant U.S. Attorney, BigLaw partner, founder/managing partner of a multi-city litigation boutique, outside General Counsel, and federally-appointed Receiver of an international company conducting business across four continents. Mark pivoted from the representation of clients to 'the business of law' approximately fifteen years ago.

He cofounded and managed Clearspire, a groundbreaking 'two-company model' law firm and service company. The Clearspire model and lessons learned from it are the foundation upon which his current activities are fused with the practice portion of his career.

Follow Mark on Twitter or LinkedIn. Check out his website.

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Establishing Readiness for Document Management Software Implementations

By Nicola Shaver, CEO and Co-Founder of Legaltech Hub and Lewis Bretts Group Managing Partner LOD + Syke (US)

Document management is widely acknowledged as one of the most useful software systems for legal teams dealing extensively with documents. Such systems provide features that make it easier for legal teams to create, edit, and save documents. They also allow users to track different versions of the same document, identify more easily which version is the final or most recent version, and find work more easily.

In order to implement a document management system or DMS, there are some key precursors that a team must have considered and put in place in order to ensure readiness for this type of software. This article will provide a framework for establishing readiness for document management

software implementation and is based on the contributions of Lewis Bretts, Group Managing Director USA at LOD + SYKE.

Key characteristics of a document management software

A document management software should have a comprehensive user interface that is easy to use; regardless of how feature-packed a document management solution can be, without a comprehensive user face, it will not be enthusiastically adopted by the team.

The specific features required differ in a law firm versus legal team context. Law firms require a document management tool that is akin to a practice management tool aligning with their professional services model. In contrast, legal teams have more straightforward requirements, including security, taxonomy and versioning. The tool should provide structure and taxonomy to documents they are working on while providing flexibility to be used collaboratively with internal and external clients.

Since legal documents are often sensitive documents, having a platform with security features that enable the ability to collaborate on documents with granularity over permissioning is essential. The platform should enable users to make folders accessible to a few people or to a broader group of people.

Within that, users should be able to make a

document available to a group of people or another document available to a few people.

Version control to easily retain older versions of the documents or track changes is an equally important characteristic. Additionally, the tool should easily integrate with the company architecture, whether that is G-Suite, Microsoft, etc. Other classic characteristics to consider are how documents are imported and organized within the software, the document search functionality, or workflow automation.

While most document management software includes all the features listed above, some offer better variations of the features. One software could offer greater flexibility with document organization, more customizable document workflow options, greater security features, or better sharing functionalities. Regardless, the migration to document management software is generally driven by larger business objectives. The best time for a legal team to invest in document management software is when a must-have requirement that can't be met with their existing software has been identified.

Establishing Readiness

Before a document management implementation is feasible, having a clear idea of the corporate taxonomy is essential to establish readiness. Clearly defining how documents and the repository will be structured, as well as current workflows is a critical foundation for document management implementation. Teams will often embark on a document management project and only then begin to reflect on the taxonomy, which in turn is inefficient. The taxonomy should be kept simple and focused on the essentials. Additional actions to establish readiness include:

- Clearly define the functionality required and the current gaps in your existing software architecture;
- Define the necessary and nice-to-have features;
- Consider if you will require additional features or integrations in the future;
- Consider how future technology decisions will impact the document management software (e.g., replacing or adding practice management);
- Define your budget and consider how many seats are required for the license. Most document management software applications have a ‘per user per month or year’ pricing model;
- Consider your data model and how it will fit with the proposed implementation;
- Reflect on the most effective document migration process for your team;
- Consider the software used by the rest of the team and your outside counsel; and
- Define how you will measure success at the end of the rollout to maximize the return on your investment.

Implementing document management is not a small feat; a team of five to six stakeholders is generally recommended. To establish readiness within your team specifically, it is recommended to have discussions with stakeholders or users, and to involve them in the software analysis and decisions. Afterwards, the rollout should obviously be supported with onboarding and training sessions for the team to familiarize themselves with

the tool; significant process efficiency and overall productivity gains from the software investment are noted when the implementation is supported by a well-thought-out implementation strategy.

Software implementations generally require technical expertise, which often require a consultant or external help as document management technical expertise is not something that most organizations have in-house. Aside from the technical expertise, having a consultant to discuss soft aspects of the implementation can be helpful to understand best practices. In this context, consultants can also advise on leveraging other people's experience for a more successful implementation.

About the Authors

Nicola Shaver is the CEO and Co-Founder of Legaltech Hub, a resource combining a comprehensive directory of legal technology with legaltech jobs listings and high value content aimed at enhancing transparency in the procurement of legal technology. Prior to her work with Legaltech Hub, Nicola was the Managing Director of Innovation and Knowledge at Paul Hastings. She has 20 years of global experience in the legal industry, many of which have been spent driving positive change in legal service delivery. Nicola is an advisor to law firms, corporate legal departments, and legal technology vendors, a regular speaker at conferences around the world, and a frequent writer on topics such as digital transformation, legal innovation, change management and adoption.

Lewis Bretts is the Group Managing Partner (US) for LOD + Syke. LOD + Syke delivers top quality interim legal talent, outstanding managed services, and market leading legal operations and technology consultancy across the United States.

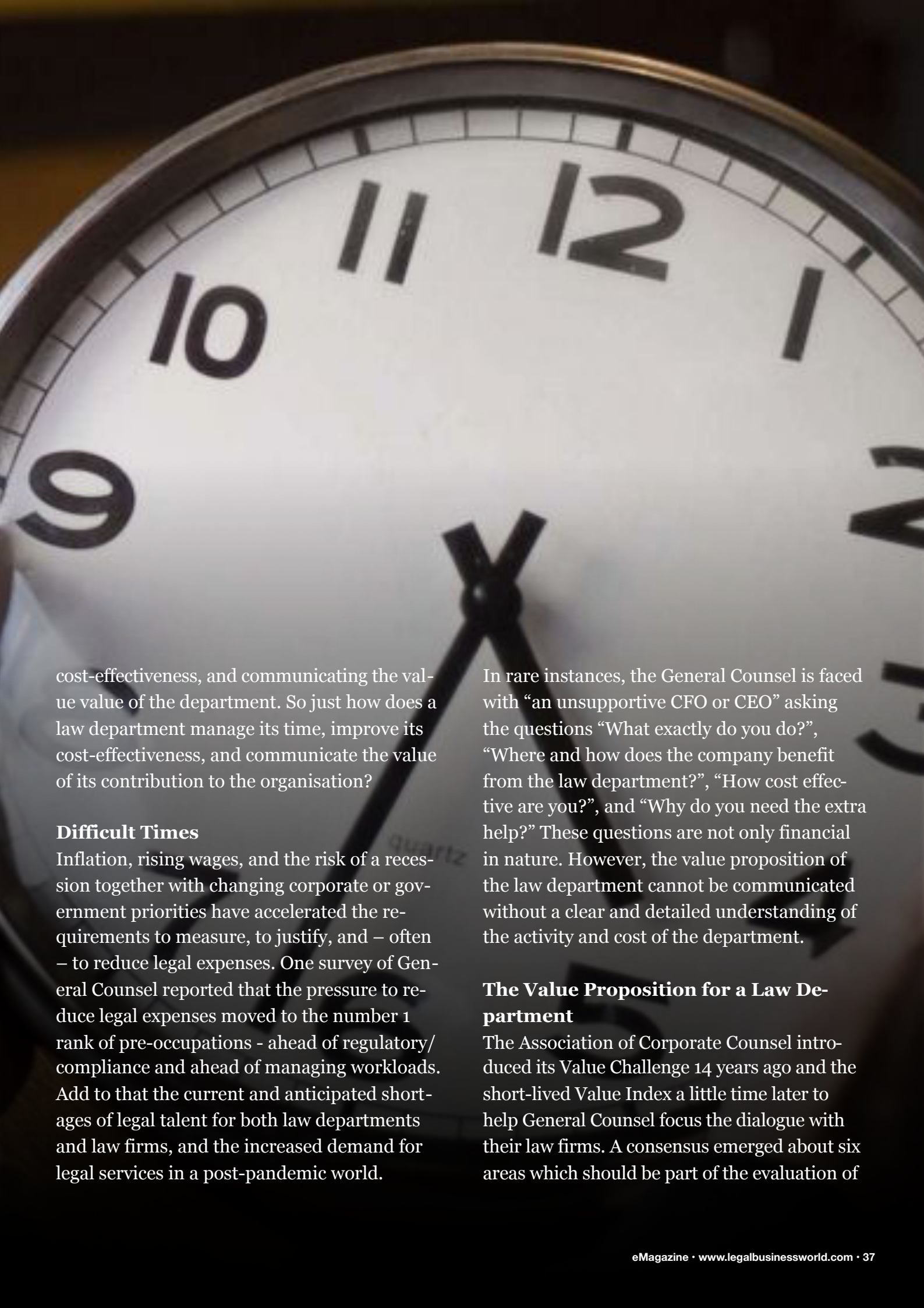
Does Timekeeping Have a Place in Law Departments?

By Richard G. Stock, M.A., FCG, CMC, Partner with Catalyst Consulting

This is the thirty-ninth in a series of articles about how corporate and government law departments can improve their performance and add measurable value to their organizations.

It has been more then 10 years since I have seen articles which refer to timekeeping by law departments. An Australian survey of 209 public and private sector counsel found that only 22 % were using time recording or time sheets. I recently asked the same question of 11 law departments and found that only four recorded time primarily for chargeback to business units. One law department set a timekeeping threshold that was only 75% of available time for each lawyer. This suggests that time recording is not perceived to be an appropriate measure of the value that in-house counsel add to their organisations.

Another piece on timekeeping by inhouse counsel raised a few good questions but did not go as far as recommending that law departments adopt timekeeping and time-reporting practices. The questions dealt with productivity,



cost-effectiveness, and communicating the value value of the department. So just how does a law department manage its time, improve its cost-effectiveness, and communicate the value of its contribution to the organisation?

Difficult Times

Inflation, rising wages, and the risk of a recession together with changing corporate or government priorities have accelerated the requirements to measure, to justify, and – often – to reduce legal expenses. One survey of General Counsel reported that the pressure to reduce legal expenses moved to the number 1 rank of pre-occupations - ahead of regulatory/compliance and ahead of managing workloads. Add to that the current and anticipated shortages of legal talent for both law departments and law firms, and the increased demand for legal services in a post-pandemic world.

In rare instances, the General Counsel is faced with "an unsupportive CFO or CEO" asking the questions "What exactly do you do?", "Where and how does the company benefit from the law department?", "How cost effective are you?", and "Why do you need the extra help?" These questions are not only financial in nature. However, the value proposition of the law department cannot be communicated without a clear and detailed understanding of the activity and cost of the department.

The Value Proposition for a Law Department

The Association of Corporate Counsel introduced its Value Challenge 14 years ago and the short-lived Value Index a little time later to help General Counsel focus the dialogue with their law firms. A consensus emerged about six areas which should be part of the evaluation of

law firms. I believe that most of these can be applied to law departments as well:

- understanding objectives / expectations
- legal expertise
- efficiency / process management
- responsiveness / communications
- predictable cost / budgeting skills
- results delivered / execution

It is easier for a lawyer to evaluate the technical aspects of the performance of external counsel then it is for a company to evaluate the legal skill of its law department.

In addition, legal budgets tend to be centralised and individual users of legal services are rarely concerned with predictable costs at the matter level. We found that only 18 % of Australian law departments charged all their costs back to the business unit, 57 % charged none, and the remainder charged some. However, what is important for the law department is its ability to predict and budget its *total legal spend* on a company-wide basis.

The six evaluation criteria can be readily condensed into a practical definition of value or "cost-effectiveness " for the law department. Thus, Value or Effectiveness = Quality (Service and Results) plus Price. The relative importance placed on service + results + price in legal services varies by company and by matter. Over time, the importance shifts. There is no tolerance for generalisations and theory. Legal leadership must find ways for the law department to measure, discuss and report on each element of the value proposition. A few suggestions follow.

Service

Fewer than 20 % of law departments formally survey their primary users for service each year. A series of 8 – 10 questions dealing with accessibility, efficiency, process improvement and deadlines will generate a key performance indicator (KPI) expressed as a single index for service. Some departments target all users which require at least 50 hours of legal work each year. A 75 % participation rate is advisable for such surveys.

Results

This KPI is by far the most important one for law departments today because it requires an alignment of department resources with specific users and specific projects. In the case of litigation, the results (win or a settlement with a target cost / time frame / probability of achievement) should be planned. There is much attention given to service levels and to costs in legal services but too little to defining the results from and expectations of the law department. Law departments are introducing KPIs to capture their contribution to strategic and operational priorities in such a way that key users are now jointly accountable to set clear expectations. This makes reporting on the "result" component of effectiveness much more straightforward. Otherwise put, the law department mantra should be about "getting business done".

Price

There is no escaping the need to report on the cost of legal services. It is straightforward to demonstrate that the fully loaded cost of one hour of legal work in a law department is usually about 45% of the hourly rate for the same work from a law firm. "Total legal

spend" is a more accurate way to capture the cost (price) of legal services to the company. External counsel costs should be tracked segregating legal fees from disbursements and taxes. Internal legal costs should include all payroll, benefits, law department direct costs and a share of indirect costs, even if these are not budgeted in the law department. Legal leadership should be evaluated on its success in budgeting and meeting approved total legal spend targets as well as in meeting targets for the reduction of unit costs.

Even comprehensive cost reporting does not go far enough since law departments seldom accurately report on the amount and cost of the substantive legal work it delivers. Surveys suggest that more than 65 % of corporate counsel work 46 or more hours per week. How much of this is advisory, preventive, administrative or other work which can never be referred to a law firm and how much is legal work comparable to that done by external counsel?

Few departments track time at the detail or matter level. Some activity tracking with matter management systems does provide valuable insight so that legal leadership can better allocate legal resources. A few law departments do track time for the same 3 months (not year-round) each year to help lawyers improve their time management practices and to better understand the mix of substantive "chargeable" legal work and other valuable functions which corporate counsel carry out. Some time tracking is a useful way to establish the cost of a fully loaded legal hour delivered by the law department. But the pain must be worth the gain especially when service and results are great, measured, and reported.

About the Author
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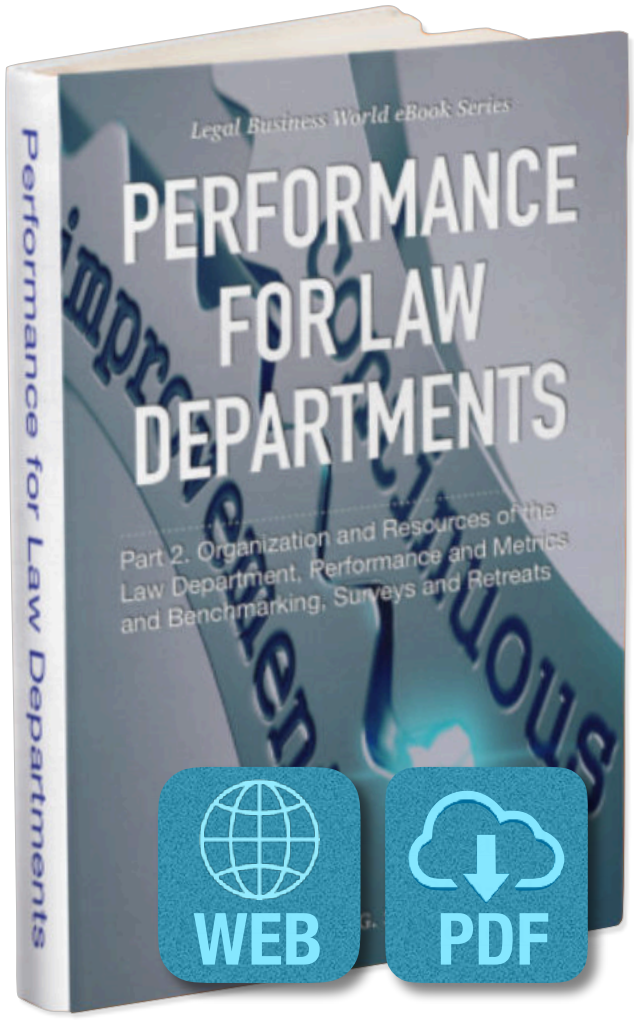
Part 3 Coming Soon



India's Data Privacy Framework: What we can decide, we can undecide

By Zisha Rizvi, Associate Manager at Morae

But stare decisis teaches that we should exercise that authority sparingly.

"In this world, with great power there must also come—great responsibility"
Cf. S. Lee and S. Ditko, Amazing Fantasy No. 15: "Spider-Man," p. 13 (1962) Kagan, J. , Kimble vs Marvel, US Supreme Court

The fate of India's proposed Personal Data Protection (PDP) Bill came to the crossroads of accountability, policymaking and doing business with ease. Alas, the Bill never saw the light of the day.

On 3rd August 2022, Government of India withdrew the Personal Data Protection (PDP) Bill - a decision that has stirred a

fresh discourse around data protection and the right to privacy. For the novice, India's proposed PDP legislation was years in the making. When 81 amendments to an already 99 clause bill were proposed by the Joint Parliamentary Committee (JPC) and the stakeholders, the Government deemed it fit to scrap the bill and start over from scratch. Only time will tell whether this was the best move or not. For now, we must reassess where we are with regards to data protection legislation in India.

Let us start by understanding what is 'personal data'?

Personal Data is any information that identifies, describes or relates to a natural person and can include amongst other things, name of a person or an online identifier like email address or IP address. Personal Information must not be confused with confidential information.

While this may seem like a straightforward definition of Personal Information, there are many nuances surrounding Personal Information. For instance, some types of data if leaked, may be misused or potentially cause harm to the concerned individual, like the sexual orientation of an individual. Such types of data are classified as 'sensitive personal data' under major data privacy legislations.

An individual or a household may be identified directly through its personal information

like in the case of a person's name or address. In other cases, an individual can be indirectly identified if different sets of data are used together. Broadly, information like ethnicity, race, sexual orientation, criminal proceedings, health information will fall into this category. The latter creates a complex problem because it means that general data which may be viewed as 'non-personal information' may be used in different combinations to find personal information. For example, early research by Arvind Narayanan and Vitaly Shmatikov at University of Texas at Austin where they worked on de-anonymizing Netflix data showed that such data when combined with other data sets, such as timestamps with public information from the Internet Movie Database (IMDb), could reveal personal movie choices.

Why is there a need for any data privacy law at all?

There was once a point when a US Congressperson stated that controlling the internet was like nailing jello to the wall. However, today's reality is a paradigm shift from that perspective. The cyberspace landscape is changing globally and free flow of data is not a reality anymore. Today, there are new sets of national legislations stemming from economic and security concerns that have led to a growing fragmentation of the internet. Therefore, nations must do more to keep pace with this changing reality and key concepts like 'data localization', 'digital trade agreements', and the right to 'data privacy' have to be addressed more openly at the policy making level. India, with a growing offshore market and a humongous consumer base cannot afford to be oblivious.

Now to understand in simpler terms what does data privacy mean, let us look at a 2019 case study. To understand the case study, consider an instance where you may have had a discussion and then subsequently observed relevant ads popping up on your social media pages. Whether or not this has actually happened to you, it's a common experience of many and should help you relate to the central theme of the case study.

CASE STUDY: LA LIGA

La Liga, the Spanish football league, has its own app, available in both android and iOS versions. It was alleged that the android version of the app came with a bonus feature – it allowed the microphone of the user's mobile phone to turn on during live matches in order to listen to a special audio signal during televised matches. La Liga argued that this was because they wanted to cross reference the audio linking with location data to figure out what restaurants or pubs were broadcasting the match without paying a license fee. La Liga further argued that they lost almost 170M USD annually to piracy and needed a mechanism to curb the problem.

The Spanish Data Privacy Authority found that La Liga failed to obtain proper 'consent' from the users and therefore fined La Liga 250,000 Euros.

The above case study precisely addresses the power that 'control' over data affords to the 'controller'. The reason there is a growing discussion on concepts like data privacy, consent, control, processing and accountability of data is because in today's world it is this data that can be used to help mold consumer behavior,

influence political discourse and so much more. Data is the new oil and businesses increasingly understand this, so do governments, and so should individuals.

What is the current privacy landscape in India?

Most companies doing business in India that have global operations understand the extra territorial reach of the GDPR and its implications. This means on the face of it, most companies process personal data responsibly. Even for such companies though, we must ask whose data is being processed responsibly? GDPR is applicable to EU subjects. This means that data of Indian citizens does not necessarily get processed the same way. Other companies (barring specific sectors) that lack global operations but do still handle personal data of Indian subjects possibly may not fall under any regulatory net at present.

India has recognized the right to privacy as a fundamental right, which means that the right to privacy has constitutional protection. In simpler terms, one can approach the higher judiciary under Article 126 and 226 in case of a violation of this fundamental right. However, in the absence of any well-defined legislation, the judiciary is left to apply principles of natural justice, rule of law and precedents. Even then, the fate of such complainants will be determined on a case to case basis. There is no shame in admitting that in a high population country like India, the judiciary is clearly overburdened and understaffed for this task. Therefore, the need is pressing some form of unified data protection legislation.

That said, there is no complete lacunae when it comes to data protection in India. There are examples of sectoral regulations and the Criminal Procedure Code (CrPC), which do govern the data protection to some degree. However, an analysis of these bring to light some inherent problems.

For example, specific sections of the IT law apply to only corporates, which means that the government's use of an individual's personal data is still not regulated.

On the other hand, the CrPC has different processes of accountability for private and public players. This brings us to Schrems II. Clearly, the wide-ranging rights of access and control by Indian authorities does not pass the standards set out in Schrems II.

What went wrong with the proposed PDP Bill?

There is not a single direct answer to this question. However, the most logical interpretation of the entire fiasco would seem to revolve around the words 'accountability', 'data localization' and 'enforcement mechanism'. If we look closely at the different models adopted by the major players – the EU and the US – there seems to be one striking dissimilarity. This is with regards to self-regulation and rights of the government authorities.

This issue was also discussed in the *White Paper Of The Committee Of Experts On A Data Protection Framework For India*, which looked at the different models of enforcement currently in play. It summed up three models: (i) self-regulation model, (ii) command and control model, and (iii) co-regulation model. The paper advocated for a co-regulation model.

But the issues were deeper in terms of the added regulatory burden and the cost of doing business in India. In a way the government has taken a step back because it is mindful of the impact a PDP legislation will have on businesses. There is no denying that some major offshore centers have sprung up in India and are catering to global businesses at a fraction of the cost. Bringing in a robust system while pacifying the needs of Indian data subjects would likely have a significant economic impact. At the same time, it would reduce the autonomy of the authorities.

Way forward

No matter which way this goes, the underlying principle is that the compliance burden on businesses will be huge, particularly with higher costs, which will likely hit start-ups the hardest. So withdrawing the Bill in totality can also be seen as a tactical move by the authorities to wipe the slate clean. Experts say that the recommendations of the JPC may now result in two separate legislations being created, one that overhauls the existing IT laws by bringing in a Digital Trade Act and a second one that addresses the regulation of data privacy. From the lens of businesses operating in India, there may be a short sigh of relief and an opportunity to work on some degree of self-regulation, in order to not end up on the wrong side of the law, once (and if) the new laws do come into effect.

Morae has been supporting global businesses and their compliance functions, specifically with regards to data privacy laws compliance across North America, Europe and Asia. If you operate a business in India and wish to understand more about how to maintain global best practices with regards to data privacy, get in touch with us.

Update: India has recently introduced the revised PDP Bill, watch this space for insights into the new law.

References

Articles and News

1. Why anonymous data sometimes isn't, (Bruce Schneier) (12 December 2017, the Wired)
2. Court upholds Spanish football league's GDPR fine (Bethan John) (09 May 2022, Global Data Review)
3. India Is Moving To Replace Two Decade Old IT Act With New Digital India Act (Viiraj Gaur) (11 April 2022, the Quint)

Case law

4. Kimble v. Marvel Entertainment, LLC, 576 U.S. 446
5. Justice K. S. Puttuswamy (Retd.) and Anr. vs Union Of India And Ors. ((2017) 10 SCC 1)
6. Data Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems (C-311/18) (Schrems II)

Statues

7. Information Technology Act 2008, Section 43, The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021
8. General Data Protection Regulation (EU GDPR) Regulation (EU) 2016/679

Reports and Papers

9. India Justice Report by Tata Trusts (2020) (available at here)

10. White Paper on Data Privacy in India by the Ministry of Electronics and Information Technology (available at https://www.meity.gov.in/writereaddata/files/white_paper_on_data_protection_in_india_171127_final_v2.pdf) (Page 34, 3.2)

About the Author

Zisha is an Associate Manager in the Legal Managed Services Group at Morae. She works closely alongside Morae's clients in the corporate legal departments, largely focusing on commercial contracts advisory and policy making.

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E-Discovery Unfiltered Special: *2022 Trends Impacting the Industry in 2023*

Ari Kaplan speaks with Marc Zamsky, the CEO at Cimplifi, an integrated legal services provider that aligns e-discovery and contract analytics for corporate legal departments and law firms, for a special E-Discovery Unfiltered edition of the Reinventing Professionals podcast.

Ari Kaplan
Tell us about your background and your role at Cimplifi.

Marc Zamsky
I practiced law in Philadelphia as a commercial litigator for four years and have been in the legal services industry since 1996. As the CEO of Cimplifi, I am responsible for operations, sales, client satisfaction and delivery, and helping grow our new contract analytics and contract lifecycle management division. I report to the board of directors and the leadership of our parent company, System One.

Ari Kaplan
As you know, from February 14, 2022 through March 7, 2022, I interviewed 30 professionals responsible for e-discovery, mixed equally from law firms and law departments for the 2022 E-Discovery Unfiltered Report. How has e-discovery changed over the course of this year?

Marc Zamsky
First off, the report is so fantastic. I refer back to it all the time, and I really enjoy using it as a resource, so I really appreciate you doing it year after year so that there are results that we can track and look back on.

In terms of e-discovery, it has really changed in so many ways. First, the movement to the cloud has completely matured. It is the laggards that are really behind that are wondering about how the security of the cloud. Most are really moving towards the cloud. Second, it is not only pandemic-driven data sources like Zoom and Teams, but new data sources, in general, are proliferating. Today, properly managing email and Microsoft Office files is table stakes. We are all trying to understand the newer data sources, such as chat messages, where there is no such thing as a document. In fact, cell phone collection and

efforts to retrieve other forms of data are changing the entire landscape. And then, of course, everything from information governance initiatives all the way through document review is AI-driven. There are three key themes that are driving e-discovery forward: platformization; ecosystem; and, interoperability. People are looking for a single source to better manage, understand, and work through their data, whether it's for an investigation, litigation, or internal data management. All three developments encapsulate the current perception of data.

Ari Kaplan
There were a number of really positive perspectives on Cimplifi's work and its approach. Cimplifi changed its name from Compliance in early 2022 while I was conducting this research. How have you navigated that shift in branding?

Marc Zamsky
First, we have the most amazing marketing department. I appreciate everything they do and they have made this change seamless. Second, we have been in business since 1997. Compliance was originally established by two antitrust lawyers performing Hart-Scott-Rodino work, who leveraged workflows, project management, and teams of attorneys to keep clients in compliance with their HSR second requests. As the company matured and expanded into e-discovery and contract analytics, the field of compliance evolved into a distinct sector, and the name created confusion. In rebranding as Cimplifi we wanted to maintain the C for Compliance and use CI for our signature compliance integrations and innovations. It is also a play on words because we are always trying to simplify complex legal challenges for our clients.

Ari Kaplan
In the 2022 E-Discovery Unfiltered report, I asked the participants about expected pain points and business challenges. How do you see the changing e-discovery landscape shaping how companies approach their matters in 2023?

Marc Zamsky
I think companies are highly focused on IG initiatives and managing data to address risk, opportunity, litigation, and investigations, among other needs. In addition, the technology necessary for cell phone collections is changing so rapidly that e-discovery providers are actively working to stay ahead of these developments. As a result, cell phone collections are becoming more difficult, which the array of updates to Slack and Teams further complicates. Collecting data is taking longer and is becoming much more intricate. Data reuse is becoming huge, as are data lake repositories. As we apply AI and algorithms in more complex ways, we need additional skills to adapt.

Finally, we are seeing a huge influx of contract analytics matters, which reflects the convergence of the technology and workflows that we used in e-discovery now being applied to contracts. Instead of extracting a paragraph or keywords in an email for e-discovery, we are identifying clauses within an agreement to understand critical obligations.

Ari Kaplan
80% of the participants in the 2022 E-Discovery Unfiltered report advised that they are using artificial intelligence in their document review. Why are they doing so and how do you see that usage evolving?

Marc Zamsky
The data sets are just too big and the AI is becoming very effective. We now have tools that effectively engage in continuous active learning, measure recall behind the scenes, and filter documents. We're seeing applications at the earliest stages of e-discovery. If we can reduce the cost of review, we can bring down overall cost, get to and understand our data faster, and focus on the most critical, relevant documents. The advancements in AI algorithms make them too good not to use.

Ari Kaplan
When I spoke with e-discovery professionals about the qualities that matter most when they're working with an outside provider, they highlighted things like transparency, trust, elegant problem-solving, customer service, and accountability as key elements of that relationship. As your organization grows, how do you maintain your commitment to those fundamental factors for success?

Marc Zamsky
Those are such incredible qualities for any one company or any one individual that is dealing with clients to embrace. We use Microsoft's Power BI, which we now call PowerCI and CI Spend, to be completely transparent about all of a client's data, where it sits, how much it's costing them, and what our project managers are doing. If we make a mistake, we leverage data to understand why we made it and immediately speak to our client about it. We focus on setting expectations about what our clients want to see and have two teams interacting with that data. One is a higher-level project management consulting group that helps clients understand search term reports, analytics that we generate, and our unique approach. The other is a technical data operations team. Together, they help us deliver eloquent solutions to complex problems that are consistent with our brand - Cimplifi.

Ari Kaplan
I found that 80% of the respondents are insourcing more of their e-discovery, with 88% of corporate law department representatives acknowledging that change. What factors are empowering their self-service capabilities?

Marc Zamsky
This trend validates the ecosystem that have we built in that we buy the software, host the technology, create integrations and innovations to produce the necessary interoperability and platformization that I spoke of earlier to empower our clients to manage as much of the process as they can. Instead of just collecting data and then giving it to outside counsel or to an external provider, our clients are increasingly building their own in-house teams and working directly with their IT departments because we help them connect collections and legal holds into their system so that they can manage them proactively. In fact, a lot of your report focuses on managing data, streamlining collections and legal holds, and internally processing and filtering information prior to enlisting outside support. This is an important development because many organizations are unfamiliar with their entire data landscape. Platformization offers a central repository and a single point of access that enhances metrics, data remediation, and security.

Ari Kaplan
77% of the E-Discovery Unfiltered participants advised that they have created a

standardized workflow to transform their e-discovery process. Why is that so important?

Marc Zamsky
We work on playbooks each and every day with all of our clients, not only encouraging them to start drafting them, but to update them regularly to ensure consistent processes and results.

Ari Kaplan
80% of the participants expect remote document review to remain permanent. What advantages does that offer teams?

Marc Zamsky
With remote review, we have access to a diverse pool of talent that is able to work more efficiently from home. The accessibility and security around these reviews are also increasing. For example, we use a hardened Citrix platform that monitors the reviewer, tracks metrics, and secures the data. Companies are more comfortable with it and realize their data is being protected, receiving assessments from a broader array of talented professionals, and yielding better results. We are seeing less data needing more review, so a better pool of more talented reviewers reviewing more difficult data.

Ari Kaplan
What issues do you see most profoundly impacting e-discovery in 2023?

Marc Zamsky
Advancements and applications of AI in review, continuously emerging data sources, and information governance challenges. Overall, people want to control their data and as part of that ability, we will need to look more at complying with privacy and security regulations, not only throughout the US, but around the world. So, one of the more difficult tasks is not only locating information, but clearly understanding the contents of a given data set to better protect personally identifiable information, trade secrets, and privacy in general. Privacy and security issues will further expand as data sources become more elusive and as data continues to proliferate.

About the Author
Ari Kaplan (http://www.AriKaplanAdvisors.com) regularly interviews leaders in the legal industry and in the broader professional services community to share perspectives, highlight transformative change, and introduce new technology at http://www.Reinventing-Professionals.com.

Listen to his conversation with Marc Zamsky here: https://www.reinventingprofessionals.com/e-discovery-unfiltered-special-2022-trends-impacting-the-industry-in-2023/

Also By Ari Kaplan: *Adapting to How Lawyers and Legal Professionals Approach Discovery*

Ari Kaplan speaks with Parkash Khatri, the founder and CEO of Intrepid Managed Discovery, an e-discovery managed review and deposition services provider.

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Mental wellness. The unknown priority for law firms and legal professionals

By Marco Imperiale, Head of innovation at LCA Studio Legale

Introduction

As head of innovation for law firms, I am frequently asked about the most important trend in the field. Legal Innovation? Legal tech? Artificial intelligence? Well, I believe that it is mental wellness. And I believe it will significantly impact our profession in the future.

Speaking about mental wellness in our world seems unusual, but the more I delve on it, whether through research, seminars, or simple conversations with practitioners, the more I understand its impact in our daily work.

And this not only for the rising rates of alcoholism and substance abuse, but also considering its impact on key-issues like burnout, talent retention, and quite quitting.

In this article, I will focus on the risks of underestimating mental wellness, also introducing some measures that can be taken by law firms and professionals to limit the damages.

Data

When we look at data related to mental wellness in the legal profession, the numbers are mesmerizing.

According to a recent study provided by Axiom on inhouse counsels, 78% of the participants reported that they were feeling stressed on burnout, 70% experienced mental issues during the pandemic, and 47% mentioned that they were “extremely” or “very” stressed or burned out [1]. Moreover, in the United States lawyers report almost three times the rate of depression and almost twice the rate of substance abuse as other Americans [2][3].

That said, burnout, stress, and constant pressure seem just the tip of the iceberg. If we

analyze trends like great resignation, great reshuffling, or quiet quitting, for example, it is difficult not to find an instant connection with mental health. The latest Future Ready Lawyer Survey provided by Wolters Kluwer, for examples, shows that 70% of corporate lawyers and 58% of law firm lawyers say they are very to somewhat likely to leave their current position in the next year [4]. Bloomberg Law Analysis regarding the future of legal industry, on the same wave, stresses the relevance of quiet quitting and the perceived worsening of legal professionals' wellbeing [5].

Behavioral Factors

Most of the negative consequences of professional-related stress are connected to our behavior and our role as lawyers. While mindfulness lunch-talks, evening yoga sessions, and early morning corporate runs can represent a good starting point to address the issue, the problem is way more structured. It seems, indeed, that suffering, struggling, and the ubiquitous stress are a core part of our profession - more than an issue that needs to be addressed. While there are multiple factors which are related to this kind of behavior, I believe that the following ones are the most important.

Firstly, we like to consider ourselves available 24/7, and we deal on a daily basis with tight deadlines, constant pressure, and a never-ending state of alert. This is complicated by three elements: our expanding range of action (whether as lawyers or in-house counsels), the huge amount of legal updates we face on a monthly – sometimes weekly - basis, and the necessity to provide quick answers to complex challenges.

Secondly, we tend to avoid delegating, asking for help, or simply saying no. For an associate, it could be the risk of disappointing a senior professional; for a partner, the risk of losing an important client. In any case, research shows that an indefinite and always evolving number of tasks in our bucket-list leads to procrastination, sense of inadequacy, and anxiety.

Lastly, we tend to manage multiple priorities at the same time. And this not only because of reasons related to the corporate structure of our firm, but also because of clients' requests. It is very interesting that most of the associates I know consider staffing, work organization, and internal communication as key-factors on their positivity and serenity.

Post-pandemic scenario

The post-pandemic scenario, unfortunately, complicated the situation, and this for many reasons. Firstly, most of us have not been able to proper recovery from the great and unique form of stress that the pandemic induced us. Among the most impactful effects, we can notice information overload and mental fatigue. We are surrounded by numbers, words, data, information, inbound emails, WhatsApp notifications, alert, etc. This rises our levels of exhaustion and impacts our attention span and ability to focus.

Secondly, the constant state of uncertainty we are facing both at personal and professional level, is a "brainkiller" on itself, especially in a profession that is by definition risk averse and not inclined to flexibility. Even simple changes in our daily routine, like working from home or using a new tech tool, are significantly

challenging our balance, affecting our mood and requiring new skills and a constant sense of adaptation. Needless to say, the less the resources that we have, the harder the task.

I would also stress the unusual relationships that we started developing with news. Waking up and watching articles and videos regarding pandemic, war, nuclear crisis, inflation rising, social inequality etc. affects both are conscious and subconscious systems in a relevant matter.

What can we do?

Assuming that mental wellness, and – I would add – a proper emotional balance are core issues that need to be addressed, the key question is how to face them. The good side of the coin is that we can intervene on that. The bad side is that it takes time, effort, and consistency, Moreover, it is difficult to rewire our brains and put our hopes on neuroplasticity while dealing with hectic agendas and constant pressure. Personally, I would start limiting the damages. Neither of us are expecting law firms to be healing centers (in that case, I would go to a yoga center or book a vacation in Bali), but it is certainly possible to manage our wellbeing and the ones of the professionals working with/for us. The following ones are some quick and simple strategies that we can start implementing.

A) Being aware of our status

Bruce Lee was used to say that every form of knowledge starts with a knowledge of ourselves. The meaning of these words is that our behaviors and experiences are shaping the way we relate to information and people. For this reason, a basic reflection – whether at a personal or corporate level - in terms of serenity, levels of stress, sleeping patterns etc., can represent a good starting point. Luckily for us, we can also rely on external assessments. We can ask a physiotherapist to look at our muscular tensions, go to our personal doctor to make a professional cardiovascular check, or take a test to look at our cortisol level (this could be also done in our company or law firm). We can take a look at our daily diet or water consumption, monitor the time we spend at the desk and look at our levels of physical shape. This can seem trivial, but it is impressive to notice how much the awareness/acknowledgement of certain issues could represent a boost factor for our personal improvement. Putting the rug under the carpet not only won't solve the problem, but in most of the cases it will complicate the scenario.

B) Redefining our relationship with technologies

Even if we live in the 21st century and experience daily the positive aspects of exponential innovation, we cannot forget that our brain – primitive as it is – is not programmed to technology. This means that it is not used to constant exposure to information, data, alert etc, which are proven to rise anxiety, damage our focus, and affect negatively our performances. Furthermore, the constant dopamine release caused by social media scrolls, email messages, and push notifications, has a direct relation to our motivation and willpower. Considering a total detachment from smartphones, tablets, and laptops an impossible solution, I would suggest including in our agendas deep work sessions. Another strategy could be pre-select email and/or social media

chunks in our daily schedule to avoid watching compulsively our phone and scrolling pages like slot-machines in a casino. The core is being proactive and not reactive. In a world were everybody is proud of being busy, the real value is being focused.

C) Asking for help and being ready to share our experience.

The profession – brutal as it is – can be way more welcoming than we think, and sharing our own experiences and struggles with colleagues, friends, or seniors could have a positive impact not only on us, but on the profession as well. I would also stress that associations like IBA, UIA, or ABA, started focusing on mental health and wellbeing, whether with events, local chapters, or reports. If you are interested in the theme, you can attend the conferences dedicated to mental health, read the dedicated papers, or participate in a working group. If the local chapter of your bar, company, or organization has not done anything yet, it can be a great opportunity to start being involved actively. The more I speak about this topic, the more I notice how much it resonates. I am quite confident you could find a lot of support and collaboration in your colleagues.

D) Redefining our purpose and potential impact

One of the most interesting research outcomes I found is that purpose and impact are directly associated to productivity, retention, and sense of belonging. Moreover, reports provided by several consulting firms[6] or companies such as Snapchat[7] are showing how much new generations are attracted by impact and purpose. . I am aware of the fact that in several countries the salaries are still the best way to incentive associates or in-house counsels working for a company and the strongest retention tool, and I am also aware that the rising inflation is a strong argument for this thesis, but in the long term, the sole focus on money without taking into account dynamics like ESG, diversity, and inclusion won't be a successful strategy - especially considering that our professional side and our personal one are not two separate entities.

E) Thinking about mental health as a competitive advantage

Sometimes we forget that our competitors and counterparties are facing our own challenges. They struggle with client pressures, endless bucket-lists, and demanding schedules. They face multiple deadlines, mental fatigue, and priorities to be managed. This is why it is necessary to consider mental wellness and emotional balance as an asset. If we are able to do 10 or 20% better than our competitors in terms of wellbeing, support and work-life integration, it will be good for the profession, for ourselves, and for our resources as well. Moreover, it will represent a strong element of talent attraction.

Conclusions

Innovation is teaching us that the paradigms of yesterday are not valid for the world of tomorrow. If some years ago the driving factors of the profession were billable hours, money, and the race to become partnership/GCs, we are starting to notice that the system is not sustainable in the long-term. Moreover, despite our tendency to overestimate our physical capabilities, we are slowly realizing

that mental wellness and emotional balance are directly related to our professional results and the way we relate with clients and colleagues.

How about considering personal wellbeing as a new years' resolution?

Notes

[1] The report is available at the following website https://www.axiomlaw.com/blog/decrease-lawyer-burnout

[2] Sue Shellenbarger, Even Lawyers Get the Blues: Opening Up About Depression, available at https://www.wsj.com/articles/SB119751245108525653

[3] For further information on the topic, I would suggest to look at the following article: Deborah L. Rhode, Managing Stress, Grief, and Mental Health Challenges in the Legal Profession; Not Your Usual Law Review Article, 89 Fordham L. Rev. 2565 (2021)

[4] Available at https://www.wolterskluwer.com/en/know/future-ready-lawyer-2022

[5] https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-more-quiet-quitting-less-hustling-next-year-in-legal

[6] I would suggest the ones from EY and Deloitte, available respectively at https://www.ey.com/en_us/news/2021/11/ey-releases-gen-z-survey-revealing-businesses-must-rethink-their-plan-z and https://www2.deloitte.com/us/en/pages/consumer-business/articles/understanding-generation-z-in-the-workplace.html

[7] Available at https://forbusiness.snapchat.com/en-US/blog/snapchat-generation-authenticity-close-connections

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About the Author

Marco is Head of Innovation at LCA, a leading Italian law firm, and visiting researcher at Harvard Law School. He has extensive experience in legal design, legal tech, and in the interplay of copyright law and the entertainment industry. Whenever he finds time, he also works as mediator, teaching fellow, and mindfulness trainer. He is a frequent public speaker and the author, together with Barbara de Muro, of the first Italian book on legal design.

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Stepping Up Business Development During the Holidays May Be a Lawyers Secret Santa

By Steve Fretzin, President Fretzin, Inc

In speaking and working with hundreds of lawyers, I've heard my share of excuses as to why legal business development during the holiday season is a waste of time. Mostly it's misperceptions about the holidays, which I call the Santa Claus Blues. Even though the holidays may bring cheer to many, it brings nervousness and potential despair to the lawyer looking for some year-end business.

Some of the things I hear include: ·

"Everyone is away on vacation, so no one will meet with me."
"These holiday parties are all the same- a huge waste of time."
"I'm too busy (with the shortened month) to develop new business."
"Why bother!"

While these statements might be true for you in the past, I'd like to offer up some suggestions for improving your outlook this holiday season.

Steve's Holiday Tip #1: December is the perfect time to schedule meetings

While many lawyers believe that everyone is away on vacation, the reality is that most are sticking around. The General Counsels, CEOs and other decision-makers are not only around but are typically slower than usual and may be more open to meeting then you think.

I would suggest making a short list of 10 to 15 people to email to obtain a lunch or coffee meeting. Think about your most well connected relationships and write their names down. It will only take you a few minutes. Once you have the list completed, open up your calendar and schedule an hour this week to make these calls. Do yourself a favor and take 10 minutes to do this directly after reading my article.

In my experience, you will be able to schedule 3 or 4 meetings, while also leaving another 10 email messages to people who will reply later today or tomorrow. The goal here is to schedule

5 to 10 meetings in December that you normally wouldn't be scheduling. When properly executed, these meetings will open up doors for up-selling, cross marketing and quality introductions to new clients.

Steve's Holiday Tip #2: Effectively working a holiday party

While it might be fun to attend holiday parties for the food, drink and merriment, you may be missing opportunities to uncover new potential clients. This isn't to say that you need to be a shark circling its prey. Rather, you might think about three things to help make your time more useful during the party.

The first thing I recommend is communicating with the host regarding the people you'd like to meet. Simply call up the host who invited you and ask, "While I'm at your party, who are some good people I should be sure to meet?" Or simply share the type of people you're most interested in visiting with and ask who might fit that description. Once she's given you a few names, follow it up with, "That's great. When I arrive, would you mind walking me over to them during the party to introduce me personally?" Just a few extra steps can make each event more worthwhile.

The second suggestion would be to prepare a few good business questions to ask when meeting new people. This might take away the awkwardness of what you should and shouldn't say or to help eliminate a lull in the conversation. As you know, people love talking about themselves. All you're doing is directing the conversation to better understand their business or personal life at a higher level. A few questions that I've used include:

- What type of business are you in?
- How did you get into it?
- How did your business/industry handle the pandemic?
- What are some of the challenges that you face on a day-to-day basis (my personal favorite)?

It's also a good idea to ask one of these questions, listen and then ask a deeper follow-up question.

he point here is that by focusing on the other person first you not only understand if they might be a good prospective client or strategic partner, but you might disqualify them as someone you should move away from quickly. Moving someone into the "no" column can be just as valuable for your time as moving someone forward to a "yes."

My last suggestion is to follow up quickly with the people you've met. Again, we might be inclined to wait because of the holidays. However, there's nothing wrong with following up the next day and trying to schedule a meeting in December or early next year. By following up right away you show interest, good communication skills and it's more likely that people will remember you. In some cases I've built rapport to the point where we scheduled an appointment on the spot for the following week. Both parties were open to taking out our phones and getting the meeting on the books. Sometimes you just need to make the suggestion.

Steve's Holiday Tip #3: A failure to plan is a plan to fail

One of the best ways to utilize any down time during the holiday season is to take stock of what happened this past year. Really look at your activities and the corresponding results. Then ask yourself the following questions:

- How many clients did I meet with this past year?
  - Did I do anything to ensure client satisfaction or loyalty?
  - Was I able to open dialogues with clients relating to upselling, cross-marketing or asking for quality introductions?
- Who were my best strategic partners/referral sources?
  - What industries are they in?
  - How did I give back to my best referral sources?
  - What did I do to find more strategic partners this year?
- What did I do that worked to obtain new business and what didn't work?
- What did I do this year to improve my business development skills?
- Do I have a written plan for next year?

Based on your answers you either have a Cheshire grin on your face or you're beginning to perspire. If it's the latter, don't fret. It's only December and you can still make plans to improve things for next year. One important element in planning for next year is developing a solid SWOT analysis. This is an old school marketing acronym, but it still works well today. SWOT stands for one's internal strengths and weaknesses, as well as their external opportunities and threats.

We can break this down further by defining them and providing a few examples of each. ·

- Strengths: what are your strengths as a person and as a legal practitioner?
  - You are a socially charged person with a huge network
  - You have the uncanny ability to read people
  - You have written 10 articles on one legal subject and no one knows it better
  - Weaknesses: what are your weaknesses as a person or legal practitioner?
    - You are highly introverted and shy
    - You are new to practicing law and don't have much experience
    - You are a generalist and no one really knows what you do ·
- Opportunities: what opportunities are open to you in the marketplace?
  - You are specializing in a new area of the law, like medical marijuana
  - You see an opening in a networking group where you will be the only lawyer included
  - You have hundreds of clients and haven't tapped into cross-marketing yet
- Threats: what are the threats to you in the marketplace?
  - You are a residential real estate attorney and closings are all driven by the lowest rate
  - Competition in your area is out of control. There are 100 attorneys for every deal
  - Your firms name is not well known

Going through your SWOT analysis and asking

yourself the tough questions can be a truly eye opening experience. By being honest with yourself, you can realize what, why and how to improve yourself and your situation for next year. Einstein said the definition of insanity is doing the same things over and over again and expecting a different result. Make the important changes and take responsibility for last year's successes and failures.

The key to having a successful year-end is to not sit on your hands and let the time pass. December can be an incredibly productive month if you focus on planning and getting some quality meetings- with quality people. For more information about FRETZIN, Inc, please go to our website at www.fretzin.com

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About the Author

Driven, focused, and passionate about helping lawyers to reach their full potential, Steve Fretzin is regarded as the premier coach, skills trainer, and keynote speaker on business development for lawyers.

Over the past 18 years, Steve Fretzin has devoted his career to helping lawyers master the art of business development to achieve their business goals and the peace of mind that comes with developing a successful law practice.

In addition to writing four books on legal marketing and business development, Steve has a highly-rated podcast called, "BE THAT LAWYER."

When not busy helping ambitious attorneys to grow their law practices, Steve enjoys fishing with his son, playing many racquet sports, and traveling with his wife.

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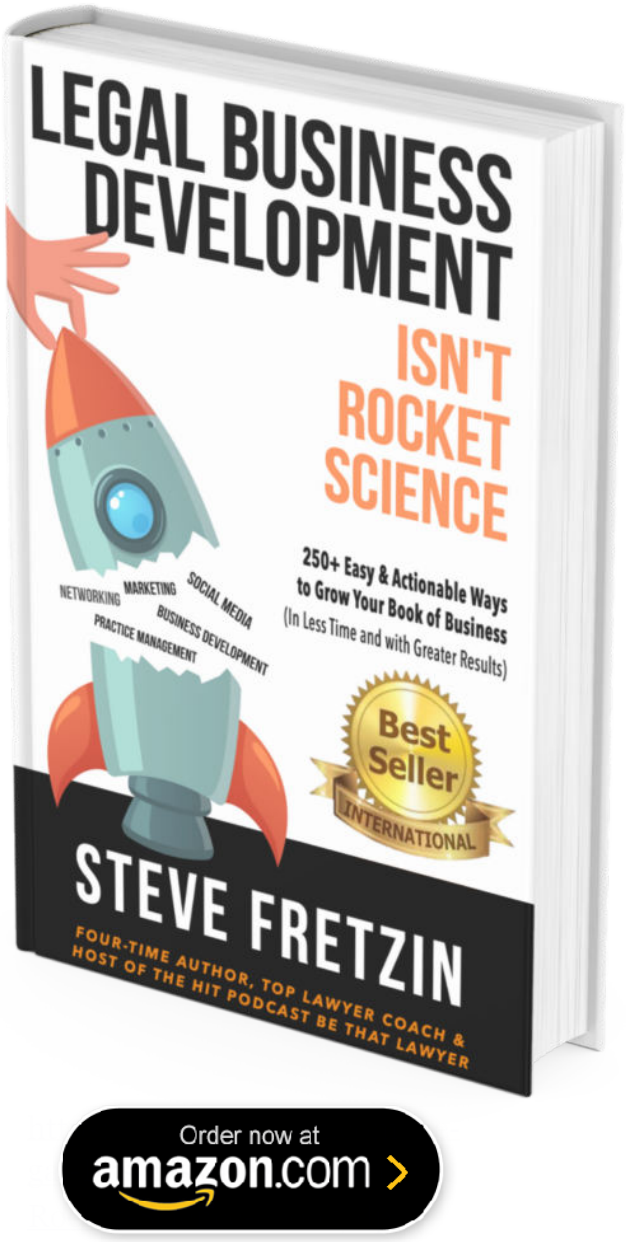

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196	40	72
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Knowledge Management Focus Areas in 2023?

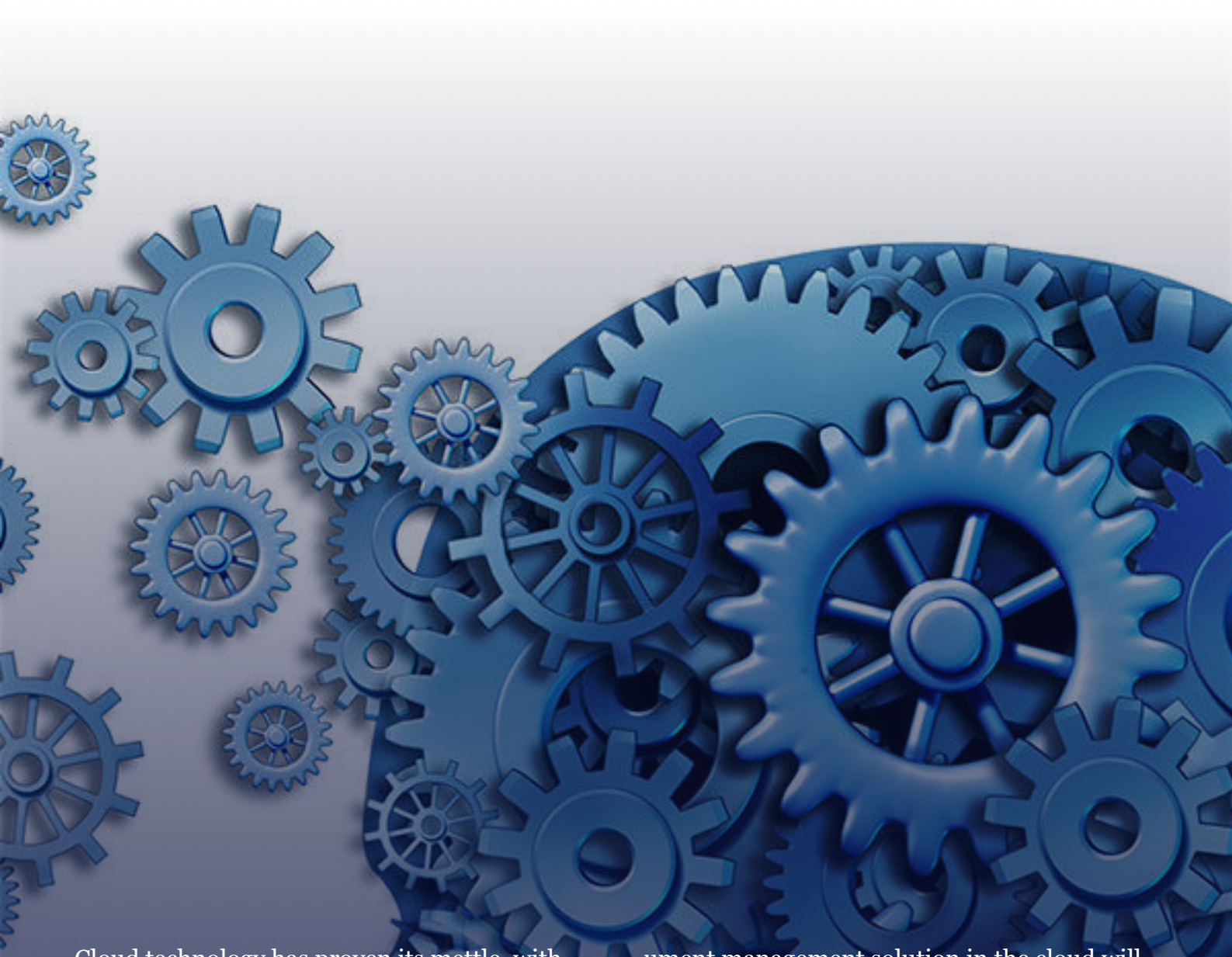
Cloud, Advanced Redaction and Experience-focused Search

By Javier Magaña García, Chief Technical Officer at Lexsoft Systems

It wouldn't be a stretch to say that after lawyers, data is a firm's next most important asset. Data offers all manner of insight at a business level, but from a lawyer's standpoint, that data also holds business-critical knowledge, which is typically hard to get access to. In a hybrid working environment, access to this knowledge has become even harder. Lawyers' ability to collaborate is also impacted.

Knowledge management in the cloud a functional priority

Since the pandemic, adoption of a software as a service model for business-critical systems, has become a major priority for most firms.



Cloud technology has proven its mettle, with the number one perceived issue previously preventing firms from adopting the technology – i.e., data security – fading away. Firms that were already in the cloud, or were able to transition to the cloud quickly during the pandemic, experienced far lesser operational issues.

As a result, with firms now truly adopting a cloud-first and mobile-first IT strategy – and especially for document management in a decentralised working environment – adopting a similar approach for knowledge management makes a lot of business sense. An on-premises knowledge management system with the document management solution in the cloud will greatly diminish the value of the KM function for the firms.

With the document management system in the cloud, users can access the solution from anywhere, on any device and at any time. This ease of access means that there are no barriers that they have to overcome to get to the information residing in the document management system. Typically, knowledge management tools integrate with document management systems. If the former is only available on-premises, whilst the latter is in the cloud, access isn't seamless, so sometimes, a search in

Google, might potentially be the easier option for lawyers. The consequence? Poor user experience leads to limited adoption, in turn resulting in minimal contribution of content to the knowledge management system – and you have a vicious cycle that will become difficult to break.

Automatic redaction, a solution for compliance with data privacy laws

The complexity of complying with, not just the European Union's GDPR, but also with all the competing country-specific data privacy laws worldwide, is increasingly challenging professional services firms. Countries are tightening data privacy – already 137 out of 194 countries have put in place legislation, and another 17 have draft legislation.

Cloud-based knowledge management (as opposed to on-premises installations) offers tremendous potential for sharing and repurposing the collective knowledge and expertise of the firm for competitive advantage – which is the reason firms adopt this function. At the same time, however, successful compliance with all the numerous data privacy laws makes seamless and intuitive sharing of information extremely difficult. There's a need for an operational solution that embeds compliance with all the jurisdictional data privacy regimes across the multiple cloud-based business functional systems and web services deployed in the organisation – so that knowledge is accessible and yet secure, per the dictates of the various laws.

Legal technology providers and law firms alike are working to address this issue, which is complex and honestly a way off yet. But, in the meantime, deploying automatic redaction to help ensure data privacy and confidentiality serves as a wholesome option in the interim.

With automatic redaction, firms can anonymise data based on their contractual obligations to clients whilst enabling the different departments to share case and matter-related closing folders, bound volumes, and other similar document libraries. Once anonymised, the content of documents can be passed through third party AI and web services for information extraction – i.e., clauses, legal references, links to legal databases, digital bibles, and so on. The major advantage of this approach is that firms continually enrich the internal knowledge sources, in turn making them extremely valuable overtime.

"Experience" a key deliverable of knowledge management

Knowledge management as a business function has significantly matured over the last three years. Searching for specific documents is a core functionality that is typically used by professionals in their knowledge management systems, but in a now well-embedded hybrid working environment, users need their technology solution to surface the firm's "experience" in areas of law, subject matters or any other related aspect of their professional work.

For example, a professional working on a M&A matter – in addition to searching for a specific type of document in this area – may also want to identify experts in the firm in the M&A space, say in a different vertical to the industry the current case is relating to. This means that knowledge management systems need a level of intelligence to provide search

results that span multiple and even contextual sources.
Similarly, some more functionally mature law firms could even begin to use their knowledge management systems to draw "experience" on operational matters, such as project pricing, matter management, business development, and so on.

In 2023, we will see the above mentioned trends as key areas of focus for the knowledge management function in law firms.

Ultimately, the more embedded knowledge management is in the workflow of lawyers and legal professionals, the more value the function will deliver to law firms. Cloud technology has accelerated this trend since the pandemic, across business functions.

About the author

Javier Magaña García is responsible for the successful completion of all customer projects, overseeing everything from project design and troubleshooting through to delivery of ongoing support and services. He is reputed in the wider technology community for his experience in delivering technically complex projects to some of the largest and most demanding global businesses.

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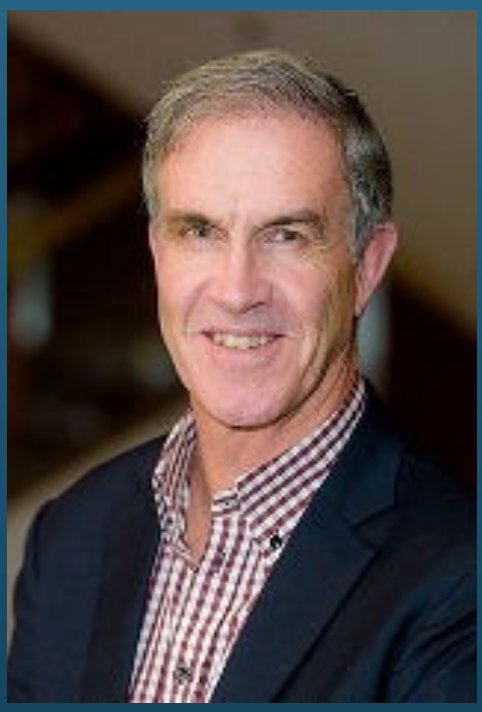
New Book Series by Peter Connor:

THE T-SHAPED LAWYER

This article is from the introduction to Part 1 of the series: A New Vision for Corporate Lawyers



INTRODUCTION

The highlight of my 25-year career working as a lawyer was receiving the 2003 Sun Microsystems Business Leadership Award. I was one of six people, and the only lawyer, in the company to receive this award from the CEO, Scott McNealy. To receive this sort of recognition as a lawyer is rare and extremely satisfying especially because there was a prize of some Sun shares. Sadly, the shares never became worth that much soon after the dotcom crash!

However, there was an even better reward, although I did not appreciate it immediately. Going through a process of being interviewed for the award by members of the company's executive committee, made me think a lot more

about what work I was doing and how I was doing it. I was told by these executives that what I was doing was different to what they expected from a lawyer and that it had significant impact for the company. Spoiler alert - this work that I was being recognised for was not legal analysis or contract drafting. In fact, it was not legal work at all!
The more I thought about it, the more I realised that:

- I thought of myself as a businessperson not just a lawyer
- doing different kinds of work - not just 'legal work' - was more fulfilling for me
- my 'clients' valued this 'other' work more than they valued my legal work
- much of work that many corporate lawyers do is not that fulfilling for them and is often not recognised as impactful from the perspective of their clients
- having discovered this alternative way of working, more by accident than by design, there is almost no theory to guide lawyers how they could work to have a greater impact on their client's business nor how they need to change to achieve this outcome.

After my career as a lawyer, I formed AlternativelyLegal and distilled my experiences into a range of theories, programs and frameworks designed to fill this void. I have shared these in workshops with thousands of lawyers working in legal departments and law firms all over the world over the last eight years.

In the course of my work, I discovered that almost all lawyers are interested in becoming better lawyers and they engage in various levels of professional development to enhance their legal knowledge and skills. However, when it comes to real change in ways of working - and by that, I mean what work they do and how they do it - lawyers tend to fall into one of three broad categories:

- those who have no interest whatsoever in changing their way or working. That may be because they are largely unaware of the changes happening in the legal/business world or because they are simply content with continuing their current way of working
- those who may not be well informed about all the changes happening but who know, and care, enough about these changes to feel that maybe they should change more than they are currently doing. Alternatively, they may not be completely content with their current way of working and are interested in exploring how they could change
- those who are aware of many of the changes happening, are enthusiastic about changing and are hungry for guidance on how to change.

This book will be of interest to anyone in the second or third category. It may not be of interest to those in the first category unless they are leaders of firms or departments with lawyers who fall into the second or third category.

I should also point out that this book refers specifically to corporate lawyers. By that I mean any lawyer who works for a corporation directly - an in-house lawyer - or one who works for a law firm or other organisation that provides legal services to corporations. The ideas in this book may also be relevant to students, academics and government lawyers.

The book is intended to provide a perspective on the following questions:

- why should a corporate lawyer want, or need, to change their way of working?
- is incremental improvement/change sufficient or is something more required?
- is it necessary for corporate lawyers to have a new vision?
- what new vision is compelling for corporate lawyers, legal departments, and firms?

Focus on human transformation not just digital transformation

These are crucial questions to be considered if you are interested in human transformation. By that I mean how individual lawyers can fundamentally change themselves and their capabilities so that they can work on different things and in different ways. To do that lawyers need to change many things beyond just skills and knowledge.

Most changes made by legal departments and firms do not necessarily result in significant changes to *people* but rather involve changes to *something* like a process or a system. Digital transformation and process improvement can be important, and these are the primary focus areas of discussion and action on change in the legal industry. Typically, process and technology change primarily benefit the department or firm and the impact on clients is often minimal. By contrast, focusing on people - human transformation - has the potential for significant impact for clients and, at the same time, for lawyers as we shall explore in more detail later in the book.

Historically, the professional development of lawyers has primarily focussed on legal knowledge and skills. Recently there has been an increasing recognition that lawyers should develop non-legal skills, often referred to as 'soft skills'. However, when this is done it is usually in a highly random fashion and without a clear vision for how lawyers might use these new skills. As a result, these lawyers may have a few new skills but, in general, they do not use these skills to do different work or to work in fundamentally different ways.

The T-Shaped Lawyer series is intended to address this problem. The first book proposes a new vision for corporate lawyers and subsequent books in the series will suggest frameworks for how individual lawyers, legal departments and firms might implement this new vision in a structured way.

Ideally a new vision for corporate lawyers should not just apply to one part of the corporate legal ecosystem. It should be capable of application to all key stakeholders at an individual and team level. It should apply to junior and senior lawyers and to lawyers in specialist and generalist roles irrespective of their primary practice area. This is precisely what the vision proposed in this book offers to corporate lawyers.

This book is not about the law itself. Rather it is about the practice of law or, as I prefer to call it, the way of working for lawyers. There are no quick fixes, surveys, case studies or pretty pictures. Instead, it attempts to translate my experience and thinking into theories written in a practical way designed to help lawyers readily understand this new vision. The underlying theories and the factual claims

are based on the very best kind of empirical evidence: my own experience as a global corporate lawyer and from the many in-person and remote interactions in my workshops with thousands of lawyers all over the world.
The first two chapters of this book focus on 'the why' and chapters 3-7 focus on 'the what'. Assuming there is sufficient interest in this book, then I plan to write a series of follow-on books to share my views on how to achieve this new vision through my frameworks:

- Part 2: The T-Shaped Lawyer Framework – for individual lawyers
- Part 3: The T-Shaped Legal Department – for legal departments
- Part 4: The T-Shaped Law Firm – for law firms and other legal service providers.

My aim in writing this book is to share more broadly than I can through my workshops, the first instalment of some key insights that have helped me and my AlternativelyLegal clients to have more fulfilling careers and to grow professionally. Whether you are a general counsel, a law firm partner, or someone who works as a lawyer in a department or firm, I hope that this book provides the inspiration and guidance for you to adopt this new vision and to adapt it to your unique situation.

From the editor
The first volume of the series consists of 8 chapters in which Peter talks about:

Chapter 1 - The changing landscape for lawyers
Chapter 2 - The change imperative
Chapter 3 - Defining a new vision for lawyers
Chapter 4 - The Businessperson Mindset
Chapter 5 - Business Partnering
Chapter 6 - Business Leadership
Chapter 7 - Business Development
Chapter 8 - The T-shaped Lawyer Frameworks

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Sweet Potato, Rwandan Rain and Lessons in LegalTech

By Conan Hines, senior legal technologist for Clifford Chance

In September 2022, I traveled with colleagues from the UK and Spain to Rwanda as part of Cornerstone – Clifford Chance's award-winning pro bono initiative. This five-year program aims to create sustainable change among the poorest communities in the country's capital, Kigali. The projects undertaken range from education to food security, wildlife conservation to mental health, and business financing.

One theme that struck me immediately was how Rwandans make tremendous use of their resources. It's kind of the opposite to what we observe from developed countries. We have so much, yet waste so much. Do we, westerners, really need the most modern things? We certainly think we do in the world of LegalTech. The hype around technology, and the need to innovate absorbs attention from those of us who have predominantly one goal - improving

the experience of providing and consuming legal services.

In Kigali, rain barrels are common. Every house has one. Each school has several. They are simple to install and maintain. They power handwashing stations and gardens, while reducing the risk of runoff and flooding.

In the Kinunga neighborhood, Regis Umugiraneza makes sweet potato bread and biscuits. Sweet potato is high in nutrients and easy to produce but has a stigma of being unappetizing, and lower class. Regis changes hearts and minds because his product is delicious. In order to scale up his operations, he built a brick house with a layer of charcoal that is kept moist between the outer and inner walls. Now he can store his potatoes
for up to six months with zero energy costs.

All around the city, merchants and consumers are transacting money through SMS. By using MoMoPay, anyone with a flip phone can pay bills or buy groceries. It's secure and egalitarian.

Data and Cost Efficiency

On reflection, I thought about what we are not doing well with our current, pedestrian tech. From a strategic perspective, let's look at data. There are a lot of players out there selling us on data analytics and business intelligence software. To be clear, I'm a proponent of these endeavors, but ask, "Is your firm ready for it?" The marketing function requires data to pitch experience; Knowledge needs it to train lawyers; and Finance uses data to price work. Those juicy, valuable business insights demand investment in data management. *The science doesn't work if the Petri dish is polluted.*


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VITA
Vivacious
Nutritious Bread
Ingredients
Orange fleshed Sweet Potatoes
Wheat Flour, Salt, Margarine, Yeast

But this is a cultural shift. Firms must first build a community around their data; uncover what's important; incentivize contributions; and then, and only then, hire data scientists to derive formerly inaccessible insights.

Want to keep energy costs down for lawyers? Be more proficient in MS Office tools. We are often focused on the periphery of Microsoft, and not enough on the inside. Do we, as an industry, truly understand the value lost by not being efficient with Word, Outlook, Excel, Powerpoint, OneNote, and Teams? Future lawyers should be thoroughly trained in the aforementioned; a session on Styles, one on creating an Excel workbook ready for data analysis; sessions for Animation and Presenter Mode; Outlook Rules; running a meeting in Teams; using OneNote as your catchall; throw in keyboard shortcuts and you may have created a Master Chef of legal efficiency. Take that AI chatbot!

An Easy Win (In Your Backyard)

Who likes submitting or reviewing timesheets? I know everyone hates the billable hour (we're coming for you next carpenters!), but in the meantime let's make one of the most important things we do, easier; Timekeeping! Are we investing enough in this ubiquitous legal activity that impacts solo practitioners through to BigLaw? On a matter-by-matter basis, it may not be perceptible, but when aggregated across the industry and the world, there is major inefficiency at play. It is up for debate whether "old technology" can solve this problem, and there are some intriguing "new technology" players in the market, but investment in this space lags behind automation and AI tools. If timekeeping is a sweet potato, how do we reimagine it as a nutritious, tasty treat?

While Rwandans do the best with what they've got, this is not a reflection of a modern, developed world. Utilizing old technology is not prima facie worse than using the latest modern innovation. In fact, it challenges us to know and understand where modern technology can best serve humanity – or lawyers and our clients. It challenges us to get the most out of the resources that we already have, and not think that the latest software can overcome our inability or unwillingness to dig into the fundamentals of how we conduct business.

About the Author

Conan Hines is a senior legal technologist for Clifford Chance in New York. He divides his time between advising lawyers and clients on how to use tech, and developing new solutions for the practice. Conan's passion is in justice tech and supports several pro bono initiatives within the Firm. He is also a longtime tech advisor for ICAAD (International Center for Advocates Against Discrimination). In his free time, Conan struggles to maintain his vegetable garden and raise three diva chickens.

Adapting to How Lawyers and Legal Professionals Approach Discovery

Ari Kaplan speaks with Parkash Khatri, the founder and CEO of Intrepid Managed Discovery, an e-discovery managed review and deposition services provider.

Ari Kaplan
Tell us about your background and the genesis of Intrepid Managed Discovery.

Parkash Khatri
My background is in Information Technology Auditing. Early in my career, I worked for CareFusion which was a spinoff from Cardinal Health. I was responsible for establishing the in-house e-discovery division, including building the infrastructure, selecting software, processes, and managing outside counsel, among other tasks. I spent about four years there before becoming a consultant with the goal of starting my own company.

And, in December 2019, the impending birth of our of our first child inspired me to launch Intrepid, which itself is a homage to my late father, who taught me that Intrepid means fearless.

Ari Kaplan
You mentioned starting this company in late 2019. How did you overcome the challenges of starting a business during a global pandemic?

Parkash Khatri
If we had known the pandemic was coming, there is a high likelihood we would not have started Intrepid, but we dealt with the cards we were given and it actually turned out to be a very good opportunity. Driven by my in-house experience, I wanted to create really efficient workflows and maximize our human talent to leverage technology that fuels automation. I also did not need a physical office anymore with the acceptance of fully-remote teams. At the outset, we focused on automation and streamlining processes to serve our clients more efficiently, which differentiated us immediately.

Ari Kaplan
How has the pandemic and industry consolidation affected the way lawyers and legal professionals approach discovery today?

Parkash Khatri
The pandemic, of course, accelerated the adoption and use of remote technology, including remote collections for e-discovery, and as the mindset about the physical location of document reviewers shifted, it created many new opportunities, particularly for a startup. In terms of consolidation, often the biggest challenge is maintaining client service, especially in e-discovery where service is often the driver behind buying decisions. Initially, people might buy on price, but they eventually realize there is a cost for good service. As a smaller, nimble company starting out in the middle of a pandemic, our objective was to differentiate ourselves to our initial clients and consolidation has been helpful because we are so focused on customer success.

Ari Kaplan
What distinguishes your approach to e-discovery and managed review?

Parkash Khatri
Specialization is key, such as the type of projects you manage or the industry vertical you serve. In my 10 years as a consultant, my specialization was in pharmaceutical litigation, so we continued that focus at Intrepid in the beginning. We have since expanded into patent litigation more broadly, employment matters, and DOJ investigations. Our skill and experience in these discrete disciplines give us the ability to make predictions and offer thoughtful guidance on which our clients can rely.

Ari Kaplan
How do the deposition services that Intrepid provides align with its e-discovery offerings?

Parkash Khatri
We started evaluating deposition services in mid-2021 because depositions are an important part of the discovery process. With the goal of becoming an end-to-end service provider, adding depositions complements our portfolio. We realized that Zoom lacks the ability to securely share exhibits, annotate in real-time, mark records for witnesses, and several other critical litigation-specific tasks. So, to gain a competitive advantage, we white-labeled a leading remote platform that was well-suited to the needs of our clients. It combines the convenience of video with the sophisticated features for exhibit sharing necessary for modern advocacy. 95% of the people who see a demo love it and decide to use it.

Ari Kaplan
What can service providers do to better persuade their clients and prospects to adopt either new technology or a new approach to an existing process?

Parkash Khatri
With any purchase in legal, the key is understanding the level of risk involved. Our goal is to emphasize the ways that the technology and approach that we recommend reduce that risk. It is also important to emphasize that a given strategy does not introduce any additional risk.

Ari Kaplan
How do you effectively manage a remote team?

Parkash Khatri
Managing a remote team begins with hiring well. Leaders must ensure that their team is enthusiastic, committed, and qualified.

And, now, if you give talented professionals the freedom to work anywhere empowered by technology, they will generally produce excellent work. We use fully-secure remote workspaces that provide an equivalent or higher level of security as a brick-and-mortar business, which protects our clients and supports our staff.

Ari Kaplan
How do you see the eDiscovery market evolving in 2023?

Parkash Khatri
We expect to smaller providers to thrive in a resource-constrained climate and although there is some discussion of a recession, we are not seeing any slowdown. In fact, we are growing.

About the Author
Ari Kaplan (http://www.AriKaplanAdvisors.com) regularly interviews leaders in the legal industry and in the broader professional services community to share perspectives, highlight transformative change, and introduce new technology at http://www.Reinventing-Professionals.com.

Listen to his conversation with Parkash Khatri here: https://www.reinventingprofessionals.com/adapting-to-how-lawyers-and-legal-professionals-approach-discovery/

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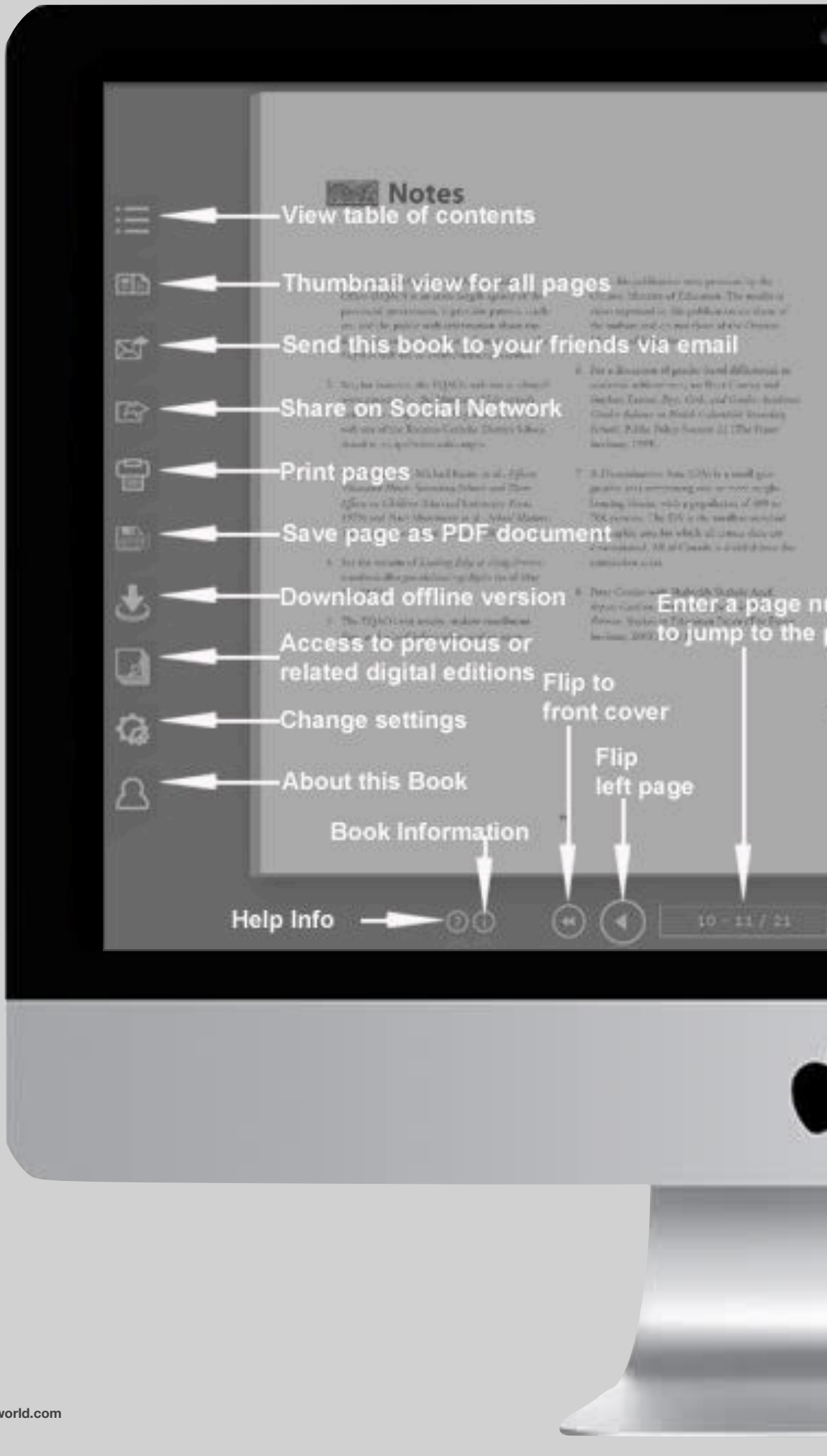
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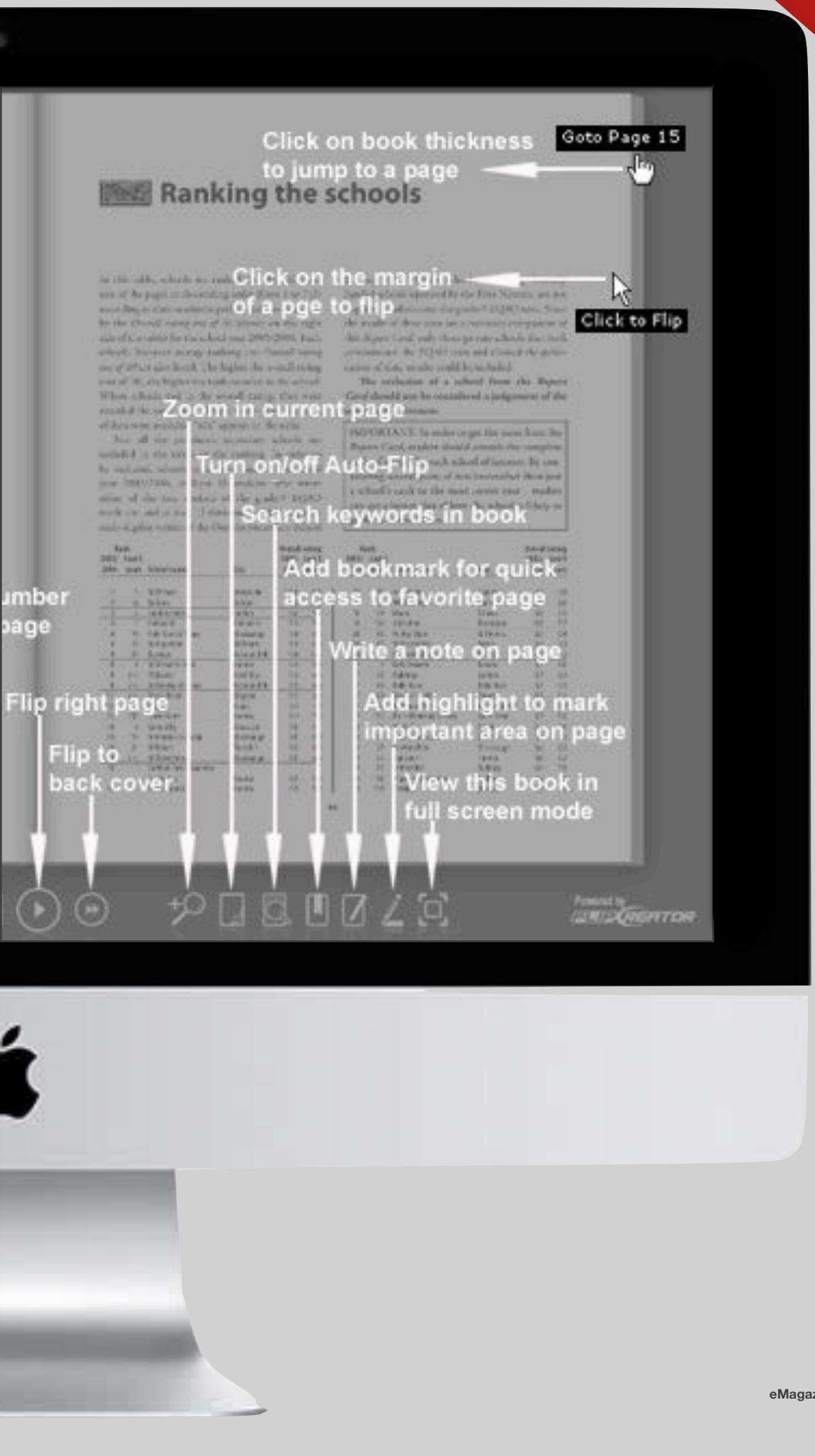

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WE WISH THEM A WONDERFUL 2023

And may 2023 bring happiness and joy to you and your family