

LEGALXCHANGE 2018 EXECUTIVE SUMMARY

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Introduction

The legal industry is at an inflection point.

Yes, we may still be discussing some of the same challenges that surfaced years ago in the legal ecosystem, but now we have a sense of “vuja dé” – seeing something familiar with a fresh perspective – a viewpoint that allows us to gain new insight from old problems.

Everywhere we turn, change is afoot, and our industry is no different. In fact, disruption is accelerating in the practice of law. Both law departments and law firms are facing concurrent challenges, with companies and clients demanding improved services at a lower price. Lawyers everywhere need to reconsider their approach, adopt a more businesslike model, and innovate with new services and tools.

Despite the pressure to adapt, trained as they are to rely on precedent and tradition, many lawyers are reluctant to embrace transformation. Unfortunately, those who cannot or do not change will find themselves playing catch-up as technology and new delivery models gain traction.

“We are at a critical moment in the lifecycle of legal services.”

In all the areas we discussed at LegalXchange — legal operations, cybersecurity, the public cloud, data analytics, artificial intelligence (AI) and blockchain — enormous innovative opportunities await, if we are ready to overcome the substantive challenges. Understanding these opportunities and their associated challenges will allow us to make better strategic choices as we reinvent our organizations.

We hope that our conversations, and this summary, will help you navigate the changing landscape of the legal industry in the coming years.

Legal Operations

It is a critical moment in the lifecycle of legal services.

Most mature law departments now have legal operations teams to manage their day-to-day business — those non-legal tasks that present opportunities to improve efficiencies and to make the most of the departmental budget. (Fifty-eight percent of respondents to the [2018 HBR Consulting Law Department Survey](#) reported having a dedicated legal operations manager.) The legal operations role now includes strategic planning, financial management (both internal and external), vendor management, internal resource management, technology management, process improvement, knowledge management and metrics and analytics measurement.

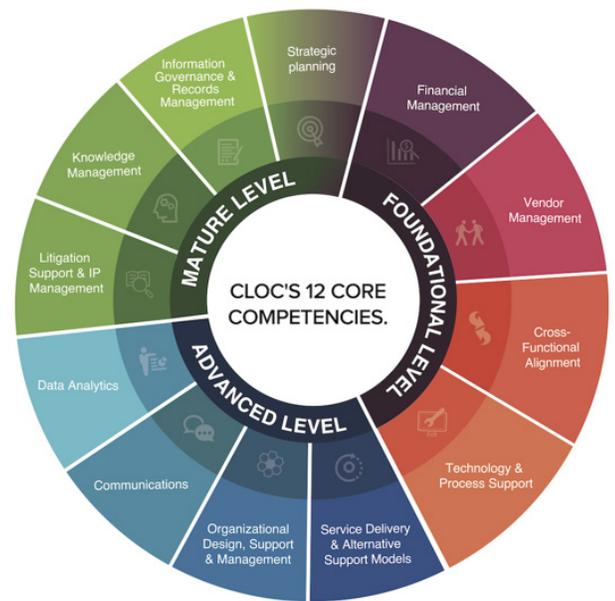
Yet law firms, while increasingly focused on operations, continue to trail in this regard. There is a clear disconnect between law departments’ perception of how law firms are meeting client expectations and law firms’ response. Frustrated with the lack of change in legal service delivery, law departments, in particular legal operations, are now proactively attempting to drive change in the legal ecosystem.

Challenge: Connecting the dots

To date, law firms have not created sufficient integration among themselves, their clients and alternative legal service providers. This gap presents an opportunity for someone else to step in to help law departments connect the dots — a role that the Corporate Legal Operations Consortium (CLOC) is beginning to fill.

Opportunity: Following CLOC’s lead

CLOC started in 2010 as an informal meeting of around 40 professionals; today, the global association boasts more than 1,800 members representing more than 900 companies, including 34 percent of the Fortune 500. Members hail from 44 states and 42 countries. The organization has grown faster than anticipated and, in the spirit of fostering greater collaboration among constituents, plans to add a category for law firm membership soon.



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“I am more excited about solving tomorrow’s problems today than yesterday’s problems.”

CLOC is attempting to build greater definition and enhanced best practices into the growing legal operations industry. For instance, CLOC has published a maturity model, the Core Competency Legal Operations Reference Model, which describes 12 core competencies. Each competency represents an area of focus that every law department must manage to have a disciplined, efficient and effective legal function. Read like a clock, they also delineate the maturity of a law department’s operational function: foundational, advanced and mature. A law department can use the model competencies to compare its growth to others in the industry and to plot a systematic path for improvement and growth.

Opportunity: Collaborating is the key to success

Six main players populate the legal ecosystem: corporations, law firms, legal service providers, technology companies, regulators and law schools. The key is building collaboration among these participants; legal operations solutions will not work to their full potential unless all the players are innovating and growing together.

Opportunity: Facilitating change

One participant mentioned the astute observation of a law department leader noted for innovation: “Change is uncomfortable for most lawyers, but becoming irrelevant is worse.” Law firms are slow to adapt, as are law departments; after all, lawyers are trained to follow precedent and respect traditional systems. Before agreeing to change, lawyers typically ask who has already successfully implemented the new approach. In the absence of a clear trailblazer, projects often stall.

For example, one problem that law firms need to solve is how to navigate outside counsel guidelines: how can they more efficiently ensure they are doing all the right things to remain in compliance? Some law firms are building their own internal systems and there is opportunity for other solutions.

The reluctance to embrace transformation is the reason that change management is so critical when it comes to accelerating the pace of change. Too often law departments lead with the tools and processes rather than first focusing on change management. The key is to advertise up front precisely what is about to change — providing the appropriate tactical marketing that gets lawyers hooked on the benefits they will reap from the coming change. Yet, change management initiatives remain underinvested in many organizations. Some attendees viewed obtaining buy-in for this type of investment as 90 percent of the battle.



The client’s voice is the persuasive “juice” that can incentivize lawyers to adopt change.

Fortunately, CLOC, and organizations like it, can help legal operations facilitate change. The attendees agreed that the client’s voice is the persuasive “juice” that can incentivize lawyers to adopt change. Legal operations professionals should leverage their clients’ perspectives to their advantage as they begin to advocate for transformation.

Cybersecurity

Cybersecurity and data privacy are fundamental issues that law firms and their in-house counterparts are facing today — and they also profoundly influence other innovative technologies addressed in this LegalXchange, including data analytics, blockchain and artificial intelligence.

The concept of cybersecurity comes down to two critical factors. First, lawyers have to protect their data from security breaches or hacking attempts. Second, even with the best possible encryption, lawyers must manage the identities of those accessing the data.

Challenge: Protecting the data

Vendors in the legal space have been slow to catch up on protecting data behind internal firewalls. Lawyers need to make security the norm, but how?

The answer is security by design. If developers build security into the product from its inception with an understanding of the way that lawyers work, they can lower the friction levels associated with security measures. This, in turn, can prevent lawyers from creatively circumventing security protocols.

One key pillar of security is the “least privilege principle.” The principle, founded on the realistic yet somewhat pessimistic idea of zero trust, states that organizations should only give people access to the data that they directly need for their core work. Applying the principle requires a multi-layer approach. That is, the zero-trust principle should apply not only to people but also to networks and applications — essentially, everything that data touches.

The application of this principle can be difficult in the practice of law for several reasons. Lawyers expect to be able to reuse data — and indeed, they should be able to do so, to avoid inefficiently recreating the wheel for every case. To reconcile this conflict, other firms take a modified approach, restricting access to those who are representing similarly situated clients or who have a similar need.



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Challenge: Managing identities

When it comes to handling identities, the bare minimum requirement is strong multi-factor authentication. An additional critical precaution is raising awareness of the potential risks through training, supplemented by retraining. It is helpful, if a bit ruthless, to raise the level of paranoia among lawyers to encourage them to remain vigilant. One law firm ran secret internal phishing tests to improve lawyer and staff awareness of potential threats.

Built-in email security tools can also step in to fill any gaps. For example, in confidential mode, Gmail encrypts messages and their attachments. Gmail can also send emails with expiration dates that automatically self-destruct after a designated period.

“Cybersecurity, compliance and privacy are fundamental to anything we talk about today.”

Opportunity: Reducing the data

When organizations can limit the amount of data that they store, they correspondingly reduce the amount of data they need to protect, putting them in a better position from a cybersecurity viewpoint. Records retention can play an important role in helping law firms and law departments eliminate unnecessary records, mitigating the potential risks in the event of a breach. Companies and law firms are now asking not only whether they need to keep their data but, if so, also whether they should store it on their network or elsewhere, such as in the cloud.

Of course, information governance can be complicated, as the rules are dictated in part by the client and in part by the location of the data. This means that a one-size-fits-all approach will not work at an organization or firm with global offices. And soon, this uniform mindset may not even work in the United States, as a new privacy initiative in California, which mirrors many of the terms of the EU's General Data Protection Regulation, has kick-started a national conversation about data privacy.

Public Cloud Adoption

More and more lawyers are migrating to public cloud platforms, including Amazon Web Services, Microsoft Azure and Google Cloud. The number of lawyers using cloud platforms grew by more than 40 percent from 2015 to 2016, jumping from 37 to 52 percent, according to the ABA 2017 Legal Technology Survey. But most of these relatively early adopters are solo practitioners and smaller firms; large firms have been more reluctant to take the plunge.

Moving to the cloud has many benefits for legal organizations, including scalability and ease of management. However, migrating lawyers to the cloud is not all sunshine and roses. Here are some hot-button issues triggering concerns at some of the firms and organizations at the forefront of the industry.



In law firms, the consensus was that IT should serve in the role of a facilitating, collaborative project manager.

Challenge: Overcoming barriers to adoption

While it can be easier to encourage cloud adoption in a law department, which must follow the lead of its business units, a law firm is a different animal. In law firms, where lawyers are the ones calling the technology shots, it can be difficult to convince decision makers that moving to the cloud can solve real problems.

And, in some firms, lawyers are still resisting changes that the firm implemented five years ago. Why should anyone expect them to embrace new changes? If lawyers simply refuse to move their active files to the cloud, then the cloud's functionality and purpose wane.

The good news is that, in many firms, generational shifts are beginning to force change. Younger associates want — or even demand — alternative working environments. While they value working remotely, they expect all the tools and functionality of a traditional office at their fingertips.

Some firms are beginning to respond by changing how they construct their IT systems. In the past, they designed systems and processes to meet the needs of the masses. Today, they are focusing on the new way of doing things and dealing with the outliers who are reluctant to change on an exception basis. As one participant observed, “Invariably, everyone complains no matter what shift you make, so why tie yourself into knots? Once you implement the technology, lawyers will complain, but they will learn how to use the base functionality. Six months later, they will forget they were ever complaining.”

Challenge: Redefining the role of IT

The rise of the cloud has also raised questions in law firms and law departments about the appropriate role of IT. In other words, should IT be an enforcer or an enabler?

In law firms, the consensus was that IT should serve in the role of a facilitating, collaborative project manager. As the “protector” of data security, IT inherently must encourage user adoption. However, IT must also confirm that the proper processes are followed to ensure that the implementation of the cloud service meets the security needs of the firm or business.

Of course, individuals may also subscribe to a new software-as-a-service (SaaS) application to test it out without notifying IT, mistakenly believing they are too early in the decision-making process to do so. In the blink of an eye, that single user can balloon into 20, yet no one alerts IT to their usage of the unauthorized software, raising serious data privacy and security issues. In that sense, IT must also serve as a controller, so that practice groups do not implement technology that could jeopardize an entire firm or organization.

“Moving to the cloud can shift resources to be more about innovation than about the platform.”

Opportunity: Using the carrot-and-stick approach

Sometimes maximum change demands using both reward and punishment simultaneously. The carrot that may entice law firms and law departments to migrate to the cloud is that the cloud frees IT from worrying about whether their technology is up to date or whether the infrastructure is sufficient to manage demands. Sharing the load with a trusted cloud provider allows them to shed the burdens that can slow them down. Instead, they can focus on partnering with the business to accelerate innovation.

The stick, by contrast, is the fear factor that accompanies abandoning the known. One helpful factor that may mitigate the fear is that the organization remains responsible for its data, regardless of its location — meaning it must take steps to protect its data whether it is stored on premise or in the cloud.

The key to speeding acceptance among naysaying lawyers is for IT to build trust. One way that IT has fostered transparency in some firms is instituting a communications blitz supported by marketing communications. That way, lawyers know what the expectations are, and there is no ambiguity. And because there are no surprises, lawyers are more willing to work with IT.

Data Analytics

Until recently, it has been difficult for lawyers to tap into their data and glean actionable insights from it, because the tools to store and analyze that data simply were not available. But with the emergence of data visualization and analytics tools, combined with cloud computing, it is now easier and faster than ever for lawyers to access and mine their data for useful insights, allowing them to predict outcomes more accurately.

Challenge: Collecting no data or the wrong data

All too often, lawyers rely more heavily on “anec-data,” knowledge drawn from their own direct practice experience and expertise, in predicting the potential outcome of a matter and forecasting the appropriate case strategy. As the matter progresses, lawyers must continually re-examine the facts and law with the information unearthed during discovery. Sometimes, they fail to reassess; other times, their initial prediction, strategy and cost estimate will change as new information comes in.

Data-driven approaches yield superior results earlier, but too many lawyers fail to choose the right way to go about collecting meaningful data and end up discouraged, scrapping their projects altogether. The key is to develop a better understanding of the questions they want to answer. Knowing what they seek to measure before starting to collect data avoids the risk of spending needless time and resources gathering and analyzing the wrong data. They can then identify any gaps in the data and decide how best to fill them, using their own experiences and those of others at the law firm as a source of rich supplementary information for their clients.



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Challenge: Maintaining data hygiene

Analytics tools are only as good as the data that law departments feed them; if the data going in is garbage, the results will be the same. Problematically, the data that legal practitioners need may be stored in siloed databases or in off-the-shelf commercial applications that do not interface with each other, or it may be maintained by departments that do not interact or collaborate with each other. To yield meaningful insights, data must be complete, clean and reliable. Data stored piecemeal may be none of these things once collected. Data cleaning and organizing activities may be necessary to convert the data into a usable form.

Challenge: Bridging communication gaps with dual-purpose staffing

Lawyers and data scientists notoriously do not speak the same language. Therefore, it is imperative to find someone who can bridge the communication gap. The staff in this role can do more than improve day-to-day communications; they can build trust and relationships between departments and individuals that have not previously seen eye-to-eye. Firms and organizations must start hiring staff who are fluent in both law and technology.

“Today, lawyers use “anec-data” to advise on how a matter will go and what strategy we should use. Data analytics lets us take unstructured data, structure it and uncover irrefutable facts of who did what when and, in some cases, why.”

Challenge: Overcoming lawyer resistance

Lawyers are often reluctant to be the first to try something new. If that is the case in your firm or department, start with low-hanging fruit to increase buy-in. Begin by looking at data with a tangible impact on the bottom line, such as information about time-keeping, effective rates, revenue and costs. This data is likely readily available from time and billing systems, and its correlation with profits is easily demonstrated. If the data offers valuable insights in one area, leverage that quick win to get the green light from the powers that be for more complex projects. Also, spread the news about the positive outcome so more of your lawyers start to get on board.

Opportunity: Performing data-driven analysis

Today, lawyers can use data analytics to dive into previously unstructured or obscure data, structuring and organizing it to uncover the inarguable, “true” facts of a matter. For example, lawyers can use data to inform the best approach for a persuasive conversation with a judge or jury, drawing a visual map, as it were, of what happened in the case. Alternatively, they can use that data to engage in informed settlement arbitration.

By completing a data-driven analysis of the facts of a matter at the outset, lawyers can construct a sound litigation strategy and a reasonable budget. Meanwhile, law departments can use analytics to capture and report on dashboards how much matters should cost, effortlessly passing this information on to their outside counsel in real time.

Opportunity: Choosing a more effective billing model

Likewise, data is enabling law firms to move away from the billable hour system, which bears an inherent conflict between outside counsel’s desire to bill more hours and the client’s desire to minimize and control costs. Firms that effectively use data to understand their case inputs and the structure of a matter early on can realign their pricing models. They may offer clients a flat fee or a success fee, or perhaps both, based on the value of the work plus some level of margin on top. For example, in a single-plaintiff case, the law firm and client might agree on what constitutes success, define success for each phase and set a fee for each phase that diminishes as the case moves forward, with a success fee at the end of the case to avoid disincentivizing the firm.

Artificial Intelligence

Today, lawyers have more data at their fingertips than they can possibly use. Fortunately, AI and data analytics, particularly in combination, can play a significant role in helping legal organizations manage their information.

Now that lawyers have access to their data and the proper tools to decipher its hidden meanings, it is time to figure out what questions they want technology to help them answer. As they travel down this road, they need to be mindful that the goal is not to automate decisions or remove humans from the equation entirely. Rather, AI algorithms ought to play a supporting role; they help to narrow the field of decision, not necessarily to zero in on the single correct answer.

“The dirty secret about AI is the human mix in the training mechanism.”

Challenge: Navigating the human mix

AI cannot, in fact, stand alone; the “dirty little secret” is that human training is always required for quality results. Few people understand how time consuming this can be. Given the volume of training that is necessary, the product of any AI must offer a substantial return on an organization’s already significant investment, or it is, quite simply, not worth the effort. The AI must replace a task that is subject to enough repetition to make its training investment worthwhile over the long run.

Most law firms lack — or at least believe they lack — the critical mass of work that makes for a cost-effective implementation of AI. Then again, the alternative legal service provider model has already changed the traditional law firm model, proving that today’s cutting edge is tomorrow’s commodity model. It is incumbent upon the legal ecosystem to see around that corner, so law firms and corporate counsel can anticipate how the current model might change in the future. Law firms have the capacity to lead innovation in this area, but whether they will seize the opportunity remains questionable.

Challenge: Displacing legal careers

Generally speaking, there is a concern among lawyers that adoption of AI will reduce the scope of legal work to be performed and cannibalize existing business. But, used appropriately, intelligent technology will yield more business while saving time for more thoughtful, higher-level work. The key is to position AI as an opportunity, so it feels less threatening.

For now, the tension among legal professionals about using AI remains palpable due to the inefficiencies in the current business model. Indeed, AI has the potential to transform how lawyers work and how lawyers charge for that work, but that potential has yet to be fully realized. If AI algorithms can take hours of work off lawyers' plates, we must mindfully decide what law firms are going to do to level up their services, so they continue to offer more strategic value to their clients.

Opportunity: Applying data in a new way

Notwithstanding the perceived threat to legal jobs, we can only imagine the power of AI when lawyers apply it to the hiring process. Law firms and in-house counsel alike can study data from the most successful lawyers to try to isolate attributes that will indicate future success, whether those are grades, LSAT scores or personality quirks, and whether that success is best found in candidates from top-tier schools or otherwise.

Law firms can also study the data of successful shareholders to make more informed decisions about lateral hiring. Additionally, AI systems may make a difference in how firms train associates and choose candidates for promotion to partner. The key is for legal organizations to get ahead of the transformation curve, however they choose to use their data.

Opportunity: Capturing greater value

Every law practice has aspects that are highly commoditized. When implementing AI, it is important for law firms to build into the model the ability to capture the benefits of AI's efficiency. One way to do this is to incorporate the productivity of AI into fixed fees. The more efficient the work, the happier the client — and the better the margin.



AI must replace a task that is subject to enough repetition to make its training investment worthwhile over the long run.

Blockchain

The entire world is connected, thanks to the Internet, with ideas streaming in moments instead of months or days. Blockchain, the technology underlying cryptocurrency, is developing even more rapidly, thanks to the pervasiveness of open-source platforms and new techniques built around the technology. Blockchain is, at its core, a distributed, encrypted digital ledger, maintained transparently and publicly, yet securely, across networked systems.

With two recently released stablecoins on the market, the Paxos Standard and the Gemini dollar, we now have the ability to digitize all kinds of assets, including traditional currencies, in blockchain-connected systems. For every token representing \$1, Paxos and Gemini can attest that there is literally \$1 in the bank. Still, blockchain applications beyond cryptocurrency remain nascent.

The hardest part of the conversation about blockchain — aside from basic education on what it is and what it can do — is determining where to start. It is likely that the current techniques and trends will really only come to fruition over the next five years. That said, the legal system, if engaged early in the design and engineering of systems, may find abundant opportunities in blockchain, provided it can avert potential challenges.

Challenge: Establishing a user's digital identity

From a regulatory perspective, it is essential to preserve and encrypt the digital keys that protect and encrypt blockchain transactions. If an owner loses that digital key, he loses his digital asset. The implications of that loss are bad enough for currency applications but potentially worse for other types of logged information.

As blockchain applications move beyond cryptocurrency, we must determine how we can provide proof of work and incentivize that work to ensure sufficient distribution of the blockchain. With currency-based assets, people are incentivized to mine: they stand to earn currency, and they trust the ledger because it is widely distributed. But with assets that are not currency based, it is not as clear how to incentivize people to participate if the proof of work is essentially the concept.

Ethereum, one of the two largest public cryptocurrencies, is already starting to move away from proof of work and toward proof of stake — a move that is highly controversial in the cryptocurrency world. But relying on proof of stake may inadvertently create a “whale” problem. Whales, or big players in the cryptocurrency market, can have a disproportionate effect on the market if they coordinate themselves and move in concert. This can co-opt the system, because neither wealth nor power is distributed.

One potential solution is underway through the nonprofit Sovereign Foundation, which is working to build a global digital identity network. The plans for the network include a governance board that will be held accountable for setting blockchain policy around the world, including a key recovery model.

Challenge: Building a regulatory framework

Security, potential anonymity and the ease of cross-border transfers explain why the newfound cryptocurrency markets have remained bearish so far. Because of the way ideas about cryptocurrency are exploding and evolving worldwide, regulators are responding at a faster rate than anyone has witnessed before. In essence, regulators are striving to identify a way that the same techniques that enable these technologies may also serve to facilitate their effective regulation. A similar regulatory framework for other blockchain applications will likely be equally challenging to craft.

“It is important to engage earlier than ever in the technology cycle.”

Opportunity: Negotiating early entry

One of the fundamental features of blockchain, whether private or public, is that the entire universe of players agrees to a consensus mechanism — a record transaction across a shared public ledger — that creates a higher degree of trust in the accuracy of that transaction.

Using smart contracts within blockchain shows how effective legal tools can be when they are engaged early in system design and engineering. With early involvement in digitizing assets, legal can help refactor risk. Similarly, if lawyers get ahead of the curve, they can add in a layer of privacy by design.



The legal system, if engaged early in the design and engineering of systems, may find abundant opportunities in blockchain, provided it can avert potential challenges.

Conclusion

To reap the full potential of the innovative tools and technology that lie before us and overcome the roadblocks along the journey of transformation, we, as an industry, must embrace change.

Although law firms may have missed the window to drive the changes that CLOC and others are now leading, it is not too late for firms to become proactive and differentiate themselves. In some emerging areas, firms may have the chance to leapfrog from being behind the curve to a position ahead of the norm. In other areas, collaborating directly with clients that are themselves transforming may be a differentiator that helps a law firm maintain and grow business.

Indeed, the need to collaborate is one of the most important takeaways we have derived from our time together. To successfully navigate this time of change, collaboration is critical, whether it occurs among colleagues at gatherings such as LegalXchange; with similarly situated organizations through collectives such as CLOC; or among individual law departments, law firms and others in the legal ecosystem.

As many of us in attendance at LegalXchange observed, we are moving from a scary, uncomfortable time to one that is more hopeful. If there is ever a time to be optimistic, it is now.

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