



eBook

What Tech-Savvy General Counsels Know That You Don't: *From Digital Naïve to Digital Native*

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TABLE OF CONTENTS

1. Introduction	3
2. Payback for IT investment	4
2.1 Knowledge sharing	4
2.2 Process efficiency	6
2.3 Cost control.....	8
2.4 Risk mitigation.....	9
2.5 Performance measurement	12
2.6 Value promotion	12
3. The modern-day IT platform	13
3.1 Should legal applications be located on premises or in the Cloud?	13
3.2 If in the Cloud, should this be a private or public cloud?.....	14
3.3 Should legal applications be purchased or licensed?	15
3.4 Can a single product do it all?	15
3.5 How can we best manage our work product?.....	16
3.6 What about the need for integration with other systems?	17
4. Deploying information technology to promote business transformation.....	17
5. Best structure for IT support.....	18
5.1 Role of corporate IT department in budget process	18
5.2 Role of corporate IT department in implementation process.....	20
5.3 Role of vendors and consultants	21
5.4 Best methods for ongoing IT support	21
6. The need for continuous improvement and innovation	22
7. Conclusion	23

1. Introduction

For today’s global general counsel, the proper administration and development of information technology should be considered a primary area of management oversight which needs both focus and understanding. Few people within corporate IT departments are highly familiar with or appreciate the unique business requirements and supporting

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technologies needed by general counsel and their legal teams in creating and running a high-performing legal department. As is often the case, technology serves as the mechanism through which both practice and operational best practices are achieved. Therefore, it is incumbent on the global

general counsel to have more than just an appreciation of technology; he or she must consider knowledge in this area to be a major competency and computer literacy to be a defining skill.

Establishing one’s credibility as a digital native and not a digital naïve has often proved challenging for the 21st Century general counsel. Fortunately, many forums now exist to improve one’s knowledge of the various software and systems that can improve legal practice and promote operational efficiency. Even so, the real obstacle for most legal departments is not the skill level of the general counsel and his legal management team, but the fact that many of these corporate executives will not personally exploit the software and systems they purchase to their fullest capabilities. This should not prevent things moving forward. The greatest impediment to technology use and success is not aptitude, but *attitude*. Where one sees oneself on the Rogers’ technology adoption curve (see Figure 1) is often determinant of the desired benefit the general counsel expects to achieve – and is willing to risk – in pushing forward with technology investment.

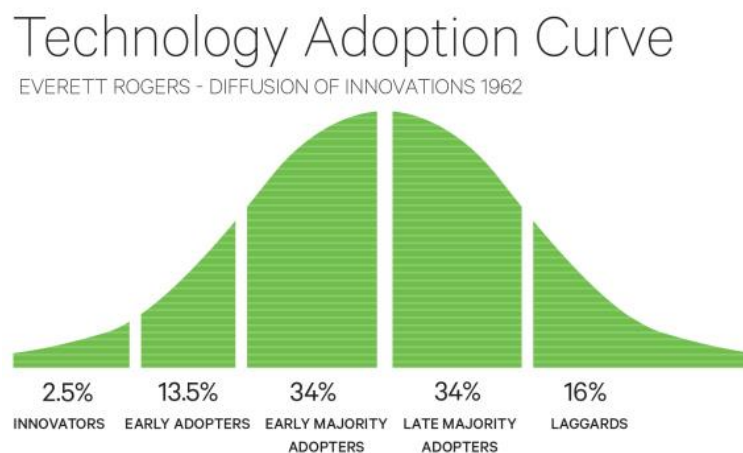


Figure 1: Rogers’ Technology Adoption Curve

Historically, general counsel too often position themselves as late majority adopters – even laggards – at the tailing end of the bell curve (although many think of themselves as being nearer to the front end). Certainly, the need for mitigation of risk and its resulting exclusion to information access promotes conservative legal *and* business practices. Yet, it is the general counsel who is willing to integrate technology tightly into legal and operational best practice processes – and not simply ‘repave the cow path’ – who typically sees the greatest return on investment.

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When strategizing on the role and positioning of information technology within their legal department, the general counsel should be familiar with, even appreciate, answers to many of the questions outlined below. Having thought

through and developed a well-crafted strategy or position in each of these areas will prove important in creating a roadmap for any future successful deployment.

2. Payback for IT investment

Regardless of aptitude or attitude, technology continues to prove important to legal departments as a primary instrument for ensuring collaboration, sharing knowledge, achieving efficiency, controlling cost, mitigating risk, measuring performance and promoting value. How the use and function of technology has evolved and will continue to contribute to the future globalization of the legal function will be discussed in the context of each of these objectives. Technologies in support of each objective are highlighted in **bold**.

2.1 Knowledge sharing

Creating a culture of contribution, collaboration and ‘oneness’ within the legal department

One of the goals of the general counsel is to create an environment in which people come together to share lessons learned and work product in an atmosphere of trust, and where everyone feels they are contributing to the bottom line. All general counsel desire to establish a cultural awareness that reflects and is in alignment with their vision for a high-performing legal function. But global general counsel have an even bigger challenge (as highlighted by the recent pandemic) – how to do so in light of disparate geographic, demographic and cultural differences.

Fortunately, a category of applications is being used by many legal departments today to centralize information and serve as an authoritative source repository through which staff – both within and external to the law department – can store, search, leverage and collaborate on work product. Information sharing can occur even in consideration of security access needs of individual practice groups or matter

types. This software is referred to as **document or content management systems**. A recent survey indicates that, in 2020, 57% of corporate legal operations professionals have plans to evaluate or implement a document management system¹. This is partly the result of recent price reductions in use of web-based, vendor-hosted (SaaS) solutions.

Another means of connecting those within the legal function is through the development and use of a **legal intranet** – typically a site within the overall enterprise intranet. These typically take two forms – client-facing and lawyer-facing. Client-facing websites are generally integrated into the solution used by all lines of business to communicate who they are and what they do. It can be an effective means for providing access to a company’s legal policies and protocols, as well as a directory of those within the legal department to whom requests for legal service can be made. Lawyer-facing websites are often referred to as **collaborative portals** or **knowledge management systems**, through which expertise can be shared and transferred between in-house counsel. This is a mechanism for use by general counsel to communicate happenings, expectations and results.

No matter the chosen product, developing a workable **matter-centric computing** platform should be the ultimate goal. The idea is to create an environment in which *all* information is centered on its related matter or project, and where lawyers can

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get what they need, where they need it, without much clicking from place to place. Creating such a platform has until recently proven problematic – particularly due to difficulties in linking structured and unstructured information. Most

have found the organization and management of unstructured (or text-heavy) data (i.e., documents and emails) to be much different to the management of a structured (or fielded) database.

Moving software to the web and data into the Cloud (i.e., **cloud computing**) has made – and will continue to make – it easier to promote knowledge sharing. Free from limitations of hardware, location and time zone, corporate counsel now have the ability to work from anywhere, at any time. General counsel can think of allocating work based on the best skill sets rather than the best access to technology. Data stores can represent the work product of everyone considered part of the legal function – all in a centralized repository. Corporate IT departments can reduce support costs while clients and vendors can become part of the information workflow process. In effect, ‘know-how’ can be pooled and distributed.

¹ 12th Annual Law Department Operations Survey, Blickstein Group, December 2019

2.2 Process efficiency

Streamlining and standardizing legal and business best practice processes

Provided it does not increase legal risk, the global general counsel is always looking to improve process efficiency. As a typical example, insurance companies often need to share claims information across multiple constituencies – the legal department and staff counsel offices. Often, legal information related to a claim is stored in

Software configuration – in consideration of privilege and security needs – should promote process efficiency through standardisation and transparency

separate databases, each with its own inclusionary security protocols. These siloed repositories can prove problematic, causing lawyers to have to exert significant effort in providing information access upon request or

when deemed necessary. These issues might be more about culture and protocol than they are about technology limitation; yet, this tolerance towards ‘need to know’ information sharing often flies against the general counsel’s desire to create a culture of openness within the legal team. At its extreme, such an environment can even lead to information hoarding. Should this be the case, the general counsel will be well served to remind others that everyone works for the same company (and law department), and that software configuration – in consideration of privilege and security needs, of course – should promote process efficiency through standardization and transparency.

One application that can help to bring efficiency to legal processes is a relational database management system. Commonly referred to as **matter management systems**, these tools can be used to enter data pertinent to a particular unit of work or project – called a ‘matter’ in legal parlance. Once entered, pieces of data pertaining to summary information, people, events, notes and strategies can be assembled, sliced and diced in any myriad of ways both to search and report on work performed. Relevant data can be accessed and manipulated in ways that greatly reduce lawyers’ time – for example, eliminating redundancy in work product creation and minimizing time spent in search of relevant information. Workflow functionality within these tools helps to move information from Point A to Point B (e.g., invoice approval) more efficiently and effectively than existing manual processes. Audit trails pointing to what changes were made by whom and when they occurred reduce the risk associated with having several people collaborating on a matter.

A matter management system is one of the core foundational technologies within a legal department and a tool the global general counsel often uses to oversee his internal and external teams, including outside counsel. It can be used to assess practice performance, identify direction and trends, and facilitate day-to-day operations management. With the additions of electronic billing and document

management functions, these tools are commonly thought of as ‘legal enterprise resource planning’ solutions, similar in nature to that of SAP or PeopleSoft to the general operations of the enterprise. In fact, Gartner coined the term ‘enterprise legal management’ when referring to this type of software.

A similar yet separate tool is the **enterprise contract lifecycle management system**. Although a matter management system can track contracts as a unique matter, agreements in this context are often those managed solely by the legal department and limited in volume. But what of the contracting process *throughout*

No matter the level of accountability, the general counsel should be concerned about efficiencies and risks associated with the global contracting process

the enterprise? At a minimum, it can be argued that the general counsel should provide guidance. More and more, general counsel are held to be directly responsible for all contracts from whatever source – at least in architecting and

developing appropriate processes and systems. No matter the level of accountability, the general counsel should be concerned about efficiencies and risks associated with the global contracting process. When thinking more holistically – for example, ‘buy-side’ agreements managed by the procurement department or ‘sell-side’ agreements management by the sales department – an enterprise contract lifecycle management system is designed to meet the needs of the entire enterprise, including the legal department. As solutions geared specifically to the contracting process, enterprise contract lifecycle management software contains features and functions in support of creation, storage, workflow, notification, search and reporting of contracts across their *entire* lifecycle (see Figure 2).



Figure 2: The Contract Lifecycle²

The latest generation of contract management systems are proving so advantageous, that a recent report indicates that 81% of organizations plan to implement or replace their contract automation technology in response to the 2020 pandemic.³

Irrespective of choice of solution, the traditional cost-sensitive and time-prohibitive nature of the painstakingly manual approaches to contract search have made business decision-making around contract negotiation, execution, maintenance and

Contract discovery can be used by general counsel to identify opportunities for revenue recovery, thereby turning the law department into an actual profit center

renewal difficult to achieve. As such, an emerging set of tools similar in nature to those currently used in evidentiary management will be used in identifying, processing, reviewing and analyzing document sets in optimization of

contract management. This new generation of **contract discovery and analytics** products is being used to identify, assess and migrate contracts (and associated metadata) into the contracts database. Their use to identify contract terms and provisions that are non-compliant with internal standards and external regulations will greatly assist in risk management and mitigation. Even more promising, contract analytics can be used by general counsel and their legal teams to identify opportunities for revenue recovery, thereby turning the law department into an actual profit center.

2.3 Cost control

Improving management of legal spend

Matter management and electronic billing systems are being successfully used to monitor legal spend, manage budgets and analyze performance. These tools help third parties (i.e., external law firms and other vendors) to deliver legal bills securely for review and payment. The result can bring significant cost savings and compliance with outside counsel guidelines.

The prevailing solution to managing this objective is the electronic billing – or **eBilling** – function within the matter management system. The tool has two primary functions: (a) the automation of invoice processing; and (b) the analysis and effective use of legal spend.

² ‘So, What is a Contract Management Solution Anyway?’, *Determine*, <https://www.determine.com/blog/what-is-a-contract-management-solution>

³ Managing Contracts Under Covid-19 Report 2020, *IACCM*

The push to automated invoice processing has become fairly straightforward; outside counsel are likely to have already been required to participate. In exchange for invoice information received electronically, and in an industry standard format (legal electronic data exchange standard or LEDES), invoices are processed faster and with greater precision. In return, law firms are paid faster, improving their cash flow. The general counsel obtains a wealth of financial information that can be used to manage matter, law firm and departmental budgets, assess law firm performance and make educated decisions regarding appropriate resource allocations.

Historically, the general counsel's use of this information has been more limited to monitoring and baselining legal spend. However, the promise of e-billing remains great and, in fact, these tools are constantly evolving to incorporate features and functions that truly can be used to minimize spend and change behaviour. Analytic engines are now more graphic (think dashboards), powerful (i.e., adoption of true business intelligence methods and architecture to analyze 'big data') and useful (e.g., pooling all spend under management of a software vendor to compare and contrast rates and performance). Many vendors cite a fairly quick return on investment (ROI) in purchasing these solutions. One thoughtful article states as follows:

*“The hard savings from adopting technology are fairly easy to project. For instance, departments that implement e-billing systems often experience savings through standardization of invoices, which allows validation against guidelines and comparisons of rates and fees. The data from recent studies show a yield of two to four percent within the first two years from correcting basic validation errors. But the data these systems generate can also spur initiatives that result in reduced costs through improved efficiency. Better access to useful data leads to improved reporting and analysis, which the department can use to find opportunities to reduce spend.”*⁴

The general counsel would thus be wise to consider both quantitative *and* qualitative assessments of success when determining the value brought through technology investment.

2.4 Risk mitigation

Reducing risk associated with decision making and regulatory compliance

Many perceive the general counsel to have greatest impact in his role of legal risk manager. In particular, executive leadership turn to general counsel to protect them

⁴ Robin Snasdell, 'Projecting the ROI of Technology', *Law Technology News*, December 17, 2014.

and the company from litigation resulting from bad business practices. When identifying and mitigating legal risks, the global general counsel has a key role to play. In particular, they offer:

- a direct and deep understanding of the organization and its objectives and business practices as a whole, since his work spans all functional areas;
- an ability to challenge operational practices on the basis of well-defined legal principals and precedent, and;
- the independence and detachment which come from membership in an independent profession and a fiduciary duty to act in an ethical capacity.

One important way in which general counsel can both monitor and assess risk is through implementation and use of technology. A legal department uses many tools to manage risk, but one of the most notable, and arguably where the greatest investment occurs – at least in the United States – is in the field of electronic discovery – or **e-discovery** – and litigation readiness. Litigation readiness is not just about having tools and processes to deal with major litigation. Quite the opposite, litigation readiness is about being prepared to deal with litigation-related issues (e.g., claims, incidents, investigations, as well as lawsuits) that you know are going to come through the door as part of the normal course of conducting business.

How and where a legal department chooses to invest within the electronic discovery reference model (see Figure 3) needs to be given serious consideration by today’s global general counsel. E-discovery processes and policies must be validated and/or engineered to ensure a legally defensible, forensically sound position that will hold itself up to scrutiny by the courts.

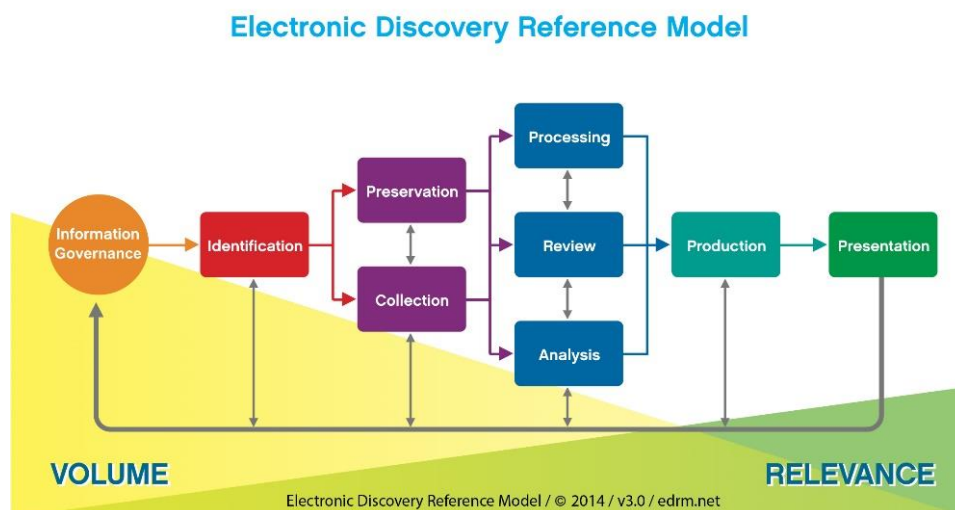


Figure 3: Electronic Discovery Reference Model

While most companies either have or are working on well-thought-out processes and policies in oversight of the left side of the electronic discovery reference model (information governance, identification, preservation and collection), the right half of the equation is typically left to outside or panel counsel to support and manage. The factors that determine the extent to which the entirety of the e-discovery process is managed inside or outside include:

- type of industry;
- size of operations;
- potential exposure resulting from claims; and
- risk profile.

As a general rule, highly regulated, large, exposed and risk-averse organisations have more investment in e-discovery methods and technologies. This can lead to the hiring of e-discovery support staff or the outsourcing of e-discovery functions – legal process outsourcing is now big business – and investment in data processing and production tools.

Whether or not reliant on outside vendors or law firms, two key areas of process focus should be in support of proper information governance, including **records management systems** and litigation holds.

The general counsel should act as a good corporate citizen, blazing the trail for others to follow in areas of document and records management

With emphasis on proper records policy, many legal departments use their document management systems to ‘manage in place’ the retention and destruction of corporate records in accordance with corporate records retention schedules. In this capacity, the general counsel can act as a good corporate citizen, blazing the trail for others to follow; this is important as the legal department often has a hand in drafting and developing records policy. As important, general counsel can leverage tools already used within the legal department to manage work-in-process documents as corporate records. It should always be remembered that a well-thought-out information governance strategy means that most documents never end up as evidentiary materials.

How best to manage **litigation holds** is usually a question of volume. A litigation hold (sometimes referred to as a ‘legal hold’) is a process used to preserve all forms of relevant information when litigation is reasonably anticipated. For those companies of a highly litigious nature, legal holds are frequent and the adoption of standalone software specifically designed to oversee the lifecycle of a hold is prevalent. For those companies where holds are more sporadic and infrequent, many matter management systems allow a distinct matter type to be established or have a separate ‘module’ through which litigation holds can be recorded, custodians notified and activity monitored.

Another area of risk for many companies has to do with proper use and leverage of intellectual property. **Intellectual asset management systems** are tools designed to manage patent, trademark and domain name portfolios. Although individual trademarks and/or patents can be managed through a matter management system, most portfolios of any size or complexity will require a separate solution. As intellectual asset management systems provide true portfolio management – including jurisdiction-specific rule sets – and workflow capabilities needed to support a high-volume IP practice, general counsel find these standalone products to be a worthwhile investment.

2.5 Performance measurement

Using analytics to assess practice and vendor performance

In the world of legal technology, analytics is *hot*. Similar to a corporation's manipulation and use of big data, the general counsel and his leadership team are shifting their focus from capturing data (i.e., invoice information) to aggregating financial, operational and performance information to spot trends, optimize resources and make business decisions.

Over the last several years, software vendors and legal consultants have geared up to help general counsel figure out how poorly they have been spending on legal services. There are now products and services galore designed to gather information

The burden needs to shift from the legal department being reactive in assessing spend to the law firm being preemptive in proposing pricing

already being tracked by the legal department and – using advanced analytic techniques – to paint a picture regarding how much is\should be spent relative to what other firms are charging for matters of a similar nature. But the

real question for every global general counsel should be: why are you not working with vendors *already* doing this on their own? If more emphasis was placed on evaluating and selecting vendors that can prove they have systematic processes and tools in place that give you greater insight into how they price services and manage your projects, you would be given the visibility – and certainty – needed to make better resource allocation decisions.

In effect, the burden shifts from the legal department being reactive in assessing spend to the law firm being preemptive in proposing pricing. Just maybe we can reduce the need for in-house counsel to also serve as financial analyst.

2.6 Value promotion

Selling the value of the legal department to clients and executive management

One of the greatest operational challenges faced by the global general counsel is proving the value of their legal department to executive management. In today's

world of ‘do more with less’, many general counsel are faced with having to justify headcount and legal spend. Everyone intuitively understands the need for lawyers, but how can this effectively be articulated? This is especially difficult when, as is often the case, one needs to prove a negative (i.e., that something very bad never happened because of lawyer intervention). How does one put a dollar value on risk avoidance?

Although one can quantitatively measure performance (see ‘Performance measurement’ above), often it is the qualitative expression of work effort that has the most resonance. By way of example, Kim Rucker, former executive vice president, general counsel and corporate secretary at Andeavor, had her lawyers periodically contribute to a report called the Value Tracker – a simple and easily constructed Word table in which each new row describes a value-based activity, monetary impact (cost savings or revenue generation), dates of occurrence and who should be given credit. She did not limit recognition solely to the legal department; anyone participating in these value-based activities was included. She did not make use of this report frivolously; it was something she could pull from her ‘back pocket’ whenever anyone questioned the efficacy of her legal team. As part of their performance goals, her staff understood the importance of maintaining this report – adding new line items and removing those that were dated – not as a means of measuring them but of demonstrating the value of the legal function as a whole.

3. The modern-day IT platform

With the prevalence of technology solutions in the marketplace, several questions must be answered in formation of an IT architecture that meets both business *and* technical requirements. Often, the global general counsel will enlist the assistance of his corporate IT department or that of independent technology consultants in defining an appropriate information architecture. Regardless of the architect, the general counsel must have an appreciation (at minimum) or understanding (at best) of an infrastructure’s impact on information access, management and data security. In fact, creation of a well-thought-out and strategic technology plan will include answers to the following questions.

3.1 Should legal applications be located on premises or in the Cloud?

Software **on-premises** is the traditional approach to information access. Hardware is built-out and on location in corporate data centers; software is installed and run

A cloud-based, ‘virtualized’ infrastructure can offer advantages over traditional data center build-outs in areas of performance, scalability and even security

on computers connected to those data centers. The customer is responsible for the security, availability and overall management of on-premises software, although vendors do provide

after-sales implementation and support services. Maintaining on-premises software is often more expensive than on-demand, internet-accessible software – software **in the Cloud** – because it requires in-house server hardware, capital investment in software licenses, in-house IT support staff and longer implementation time. However, on-premises software is considered more secure, as the entire instance of software remains on the organization’s premises.

3.2 If in the Cloud, should this be a private or public cloud?

Done effectively, a cloud-based, ‘virtualized’ infrastructure can offer advantages over traditional data center build-outs in areas of performance, scalability and even security. As organizations develop their strategies for implementing cloud computing, many corporate IT departments are facing a choice: to deploy a private cloud or leverage a public cloud. So what are the differences between the two and which is right for you?

Simply stated, a **private cloud** is infrastructure through which hardware and software is hosted and managed by the *company*; essentially, it is an extension of an enterprise's traditional data center and a non-shared resource. A **public cloud** is infrastructure through which hardware and software is hosted and managed by *vendors*, sometimes referred to as ‘software as a service’ or SaaS; it is available for use by other organizations, although in a highly secure manner (see Figure 4).

Public cloud	vs	Private cloud
<ul style="list-style-type: none"> • Hosted at a service provider site • Supports multiple customers • Often utilizes shared infrastructure • Supports connectivity over the intranet • Suited for information that is not private • Can be cheaper than private cloud 		<ul style="list-style-type: none"> • Hosted at either an enterprise or service provider site • Supports one customer • Does not utilize shared infrastructure • Connectivity over private network\fiber or the Internet • Suited for information that needs a high level of security

Figure 4: Public vs Private Cloud

Both public and private clouds have management implications. By choosing a public cloud solution, an organization can offload much of the management responsibility to its cloud vendor. In a private cloud scenario, there is significant demand on resources to specify, purchase, house, update, maintain and safeguard the physical infrastructure. Financially, deploying a private cloud can also create a large initial capital expense, with subsequent investment required as new equipment and capacity is added.

In a public cloud scenario, capital expense is virtually eliminated; the financial burden is shifted to a fee-for-service, often based on utilization and data volume. Maintaining and securing public cloud infrastructure is the responsibility of the vendor, enabling the customer to streamline IT operations and minimize time and money spent on system upkeep.

3.3 Should legal applications be purchased or licensed?

As a rule of thumb, a licensed or annual subscription pricing model is less costly in the short term and can be designated an operating expense, often avoiding a higher level of financial scrutiny by the finance or corporate IT teams. This model can also facilitate a shorter-term investment with fewer consequences should the legal department decide to move in a different technology direction. In addition, licensing generally means receiving the benefit of software updates as they come online.

However, the overall cost of licensing can be much higher in the longer term. Most vendors charge via an annual subscription pricing model that year on year will result in greater overall expenditure. Of course, this increased cost should be offset by the cost of not having to rely as much on in-house IT support for assistance (the license includes support as opposed to a separate charge).

3.4 Can a single product do it all?

As a starting point, legal departments typically rely on three primary tools to serve as the architectural foundation for their information management needs. Together, the use of matter management, e-billing and document management solutions are often referred to as enterprise legal management, or ELM (see Figure 5).

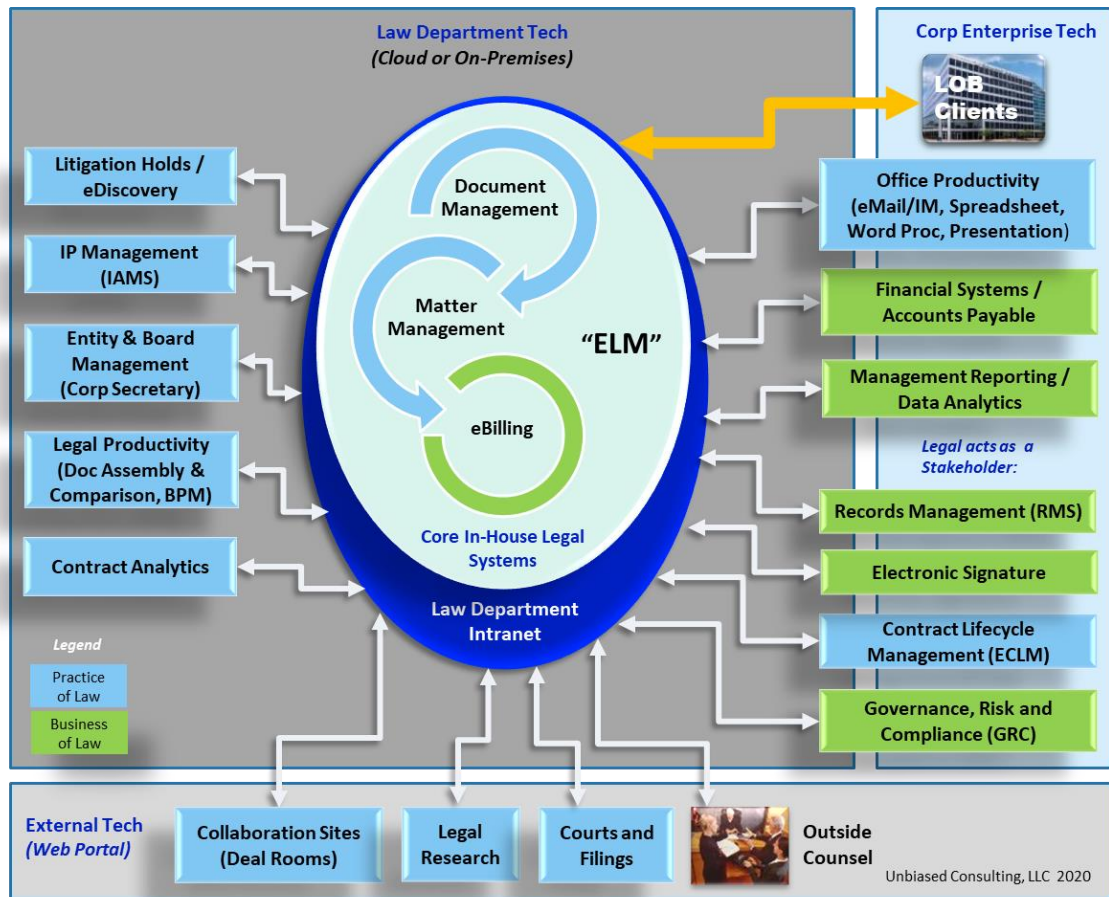


Figure 5: Typical Law Department Systems

The extent to which these three functions can adequately be found within a single product is dependent on the needs of each organization.

3.5 How can we best manage our work product?

While it is generally accepted today that both matter management and e-billing functionality are consolidated within one application (although stand-alone e-billing systems and billing review providers do exist), the management of legal content – e.g., email, documents, etc. – can be achieved in several ways, including through the use of the following systems:

- **Legal matter management systems:**
 - *Pros:* all data within one database; no additional cost;
 - *Cons:* usually a two-step process of saving a document and then importing into the system; limited functionality in comparison to a dedicated legal document management system.

- **Legal document management systems:**
 - *Pros:* documents are centralized and directly associated with their related matters ('matter-centricity'); robust functionality (including strong email management) and workflow geared to specific needs of lawyers (e.g., security, versioning and collaboration); familiarity by in-house counsel (used by most law firms);
 - *Cons:* may be different to corporate standard; another system needing to be learned by in-house counsel and maintained by the corporate IT department; more costly (investment in additional hardware and software).
- **Enterprise content management systems:**
 - *Pros:* in use by the rest of the organisation (resulting in potential for greater collaboration with others and easier maintenance and support by the corporate IT department); less costly (taking advantage of existing enterprise license);
 - *Cons:* no matter-centricity; workflow less geared to the specific needs of lawyers (e.g., security, versioning and collaboration); limited ability to force compliance with corporate records retention schedules and policy.

3.6 What about the need for integration with other systems?

There are two primary forms of integration: application integration and data integration. Application integration is a direct connection between separate software programs; often, this integration is provided through a vendor-developed and published application programming interface. While seemingly a simple form of connection, issues can arise when integrated products need to be updated or swapped out. A more holistic solution is data integration where data can be exchanged between – even among – applications, irrespective of the software. Creating a data layer through construction of data warehouses, data marts or some form of integration appliance or **middleware** can provide a more solid foundation for information exchange and analytics.

4. Deploying information technology to promote business transformation

Although the global general counsel may not need to be a technology expert, his ability to leverage investment in technology – often a significant spend – is dependent on his ability to effectively manage change. While many put tremendous effort and energy into defining system requirements and the selection and implementation of software, these activities

have little meaning if, at the end of the day, people are not using the tools provided. Policy around change management will play a critical role in determining user adoption and leverage of technology. In his capacity as project sponsor and champion, the general counsel can have the greatest impact on ensuring technology adoption and use.

By sheer force of authority, staff will make use of software if it is mandated by the general counsel (of course, the flipside is true – without said mandate, there is often little hope of adoption). Many, in fact, take this approach.

In his capacity as project sponsor and champion, the general counsel can have the greatest impact on ensuring technology adoption and use

However, should the general counsel prefer a lighter touch, there are – at minimum – two critical strategies that will help with user adoption and promotion of best practice

processes – what consultants refer to as ‘change management’. Falling under this designation are principles of anytime, anywhere access to legal information via use of cloud-computing and a focus on personal, real-time training and ongoing support.

5. Best structure for IT support

No general counsel and – by extension – legal department can effectively select, implement and support technology without input and buy-in from the chief information officer and – by extension – the corporate IT department. The degree to which they need to or should be involved is a question every general counsel must address, the answer to which may determine the likelihood of successful deployment.

5.1 Role of corporate IT department in budget process

Let us begin with the start of any technology initiative – the budget. In an optimum setting, budget for technology capital and expenditure is under the control and supervision of the legal department. In such a case, the legal department brings in

More legal technology projects have failed to get off the ground as a result of corporate IT department budget control than for any other reason

the corporate IT department to assist in assessing needs, defining requirements, selecting software, deploying systems and providing ongoing support post-implementation.

The relationship between the legal and corporate IT departments is of a partnering nature; the legal department defines its needs and wants and is willing and able to pay for them. The corporate IT department assists, making certain that technology expenditure is in alignment with corporate standards, but willing to deviate should the legal department show a reasonable business case for derivation.

Unfortunately, this dream state is just that – a dream. The more typical scenario is one where technology budget is under the control and supervision of the corporate IT department (not the legal department). In such a case, the following paths are likely to result from a request for expenditure:

- The corporate IT department communicates there is no legal department budget. There are several variations here, from allocating nothing to yearly budget cycle to pulling back at any point during the year. As the legal department is a corporate cost centre, it ranks relatively low on the budget 'totem pole' in relation to a business unit's technology requests for expenditure.
- The corporate IT department provides a preliminary budget. It allows the legal department to identify its needs, define its requirements and select software. Upon selection, final vetting and approval must be provided by the technology audit\authorization committee. The committee comprises a group of people who have yet to be involved in the evaluation and decision-making process, and thus have no contextual understanding for how conclusions were reached and decisions attained. The committee claims that similar software is being used in other areas of the company and thus does not approve the legal department's request for expenditure.
- The corporate IT department prefers more analysis to be performed and pushes the request further down the road. Wait until next year.

One would hazard to guess that more legal technology projects have failed to get off the ground as a result of corporate IT department budget control than for any other reason. Keep in mind that, at any point, the global general counsel, given his rank and role in the C-suite, can overrule the corporate IT department – and often the chief information officer. If – and this is a big if – they so demand it, it *will* happen. Yet, for many reasons, general counsel are often unwilling to invest the political capital needed to get their projects approved. Regardless of political affinity, there are some suggested rules of the road for getting final approval (see Figure 6).

1. Insist that the legal department be allocated and allowed to manage its own yearly technology budget – like every other corporate line of business.
2. Insist that the legal department leads efforts in identifying its own needs and development of a business case for technology expenditure. The general counsel should make known his personal desire to push the project forward and provide a projected ROI and realistic roadmap for completion.
3. Insist that the corporate IT department assigns a liaison to the legal department to serve as business and technical adviser to the project team. The chief information officer or decision-maker within the corporate IT department should periodically be apprised of progress throughout the project.
4. Insist that any request for expenditure follows the corporate IT department standards and protocols (if any). These must be identified and well understood prior to beginning any project.
5. Once request is made, insist that any decision regarding project viability be made within a reasonable timeframe. The corporate IT department should provide rationale should the project be rejected and not the other way around – that is, the legal department should not have to provide rationale for its acceptance (other than projected ROI, of course).

Figure 6: Ground Rules for Successful Technology Project Initiation

These suggestions may seem like common sense, but unfortunately, very few general counsel establish these ground rules.

5.2 Role of corporate IT department in implementation process

The intent here is not to bash the corporate IT department. Quite the opposite: successful technology projects begin and end by involving the corporate IT department in their implementation. In this capacity, the corporate IT department can play many roles – project manager, business and technical analyst, trainer, even help desk support. To achieve the most benefit, it is important that these roles are clearly explained and understood by all. The relationship must be an open and honest partnership. The legal department must feel it is getting timely attention and the corporate IT department must feel its advice is being considered and its contributions recognized.

A suggestion for getting the most from the partnership is to dedicate corporate IT department resources to the legal department, if only for project duration. Asking for assistance in defining goals, requirements and logistics – right from project

inception – is likely to increase the probability of gaining corporate IT department buy-in and advocacy as the project is pushed forward. Providing the corporate IT department a seat on the project steering committee is yet another way to validate their contribution.

5.3 Role of vendors and consultants

Often, bringing consultants onto the project team can provide many benefits and improve success rates. Independent consultants provide systems expertise and experience in understanding legal processes and system configurations that span many legal departments. Given that they do this type of work all the time, they bring a level of expertise that cannot be provided by corporate IT staff. Many times, the sheer fact that they are outside the company provides them a level of credence that no internal staff can provide.

The very best consultants not only have a deep technical understanding of specific tools but can also create and communicate a vision for how their use will forge a desired future state. To do so requires thinking holistically, across practice groups and geographic locations. It requires identifying the ‘big picture’ as well as developing a plan for getting others to buy in to its legitimacy. Thus, in selecting the right consultant, the general counsel would be wise to choose from among those who can be *both* strategic and tactical in approach.

5.4 Best methods for ongoing IT support

Once the project is completed, it may seem a bit daunting to have to deal with the myriad questions and issues that are likely to arise as a result of process and policy change. Fortunately, the global general counsel need not go it alone. Many general counsel form technology steering committees that meet periodically to review project(s) status, resolve support questions and confirm budget needs. Members include representatives from the corporate IT department who play a vital role in translating technical specifications into laymen’s terms. The technology committee often insists on service level agreements with the corporate IT department; these serve as an informal contract defining expectations relating to ongoing types of service, performance measurement, problem management and issue escalation procedures. It is also a good idea periodically to establish goals and review the performance of the corporate IT team as one would any internal member of the legal department.

6. The need for continuous improvement and innovation

In his book *Tomorrow's Lawyers*, Richard Susskind refers to a key challenge for legal professionals to identify and grasp the opportunities afforded by emerging technologies. He cautions against “irrational rejectionism” – the dogmatic and visceral dismissal of a technology with which the sceptic has no direct personal experience. Instead, he calls upon lawyers to go beyond automating current working practices that are not efficient: “the challenge is to innovate, to practice law in ways that we could not have done in the past.”⁵

One method for assessing how effective technology has been in achieving continuous improvement and innovation is comparison of capabilities relative to a proposed ‘maturity model’ of process proficiency (see Figure 7).

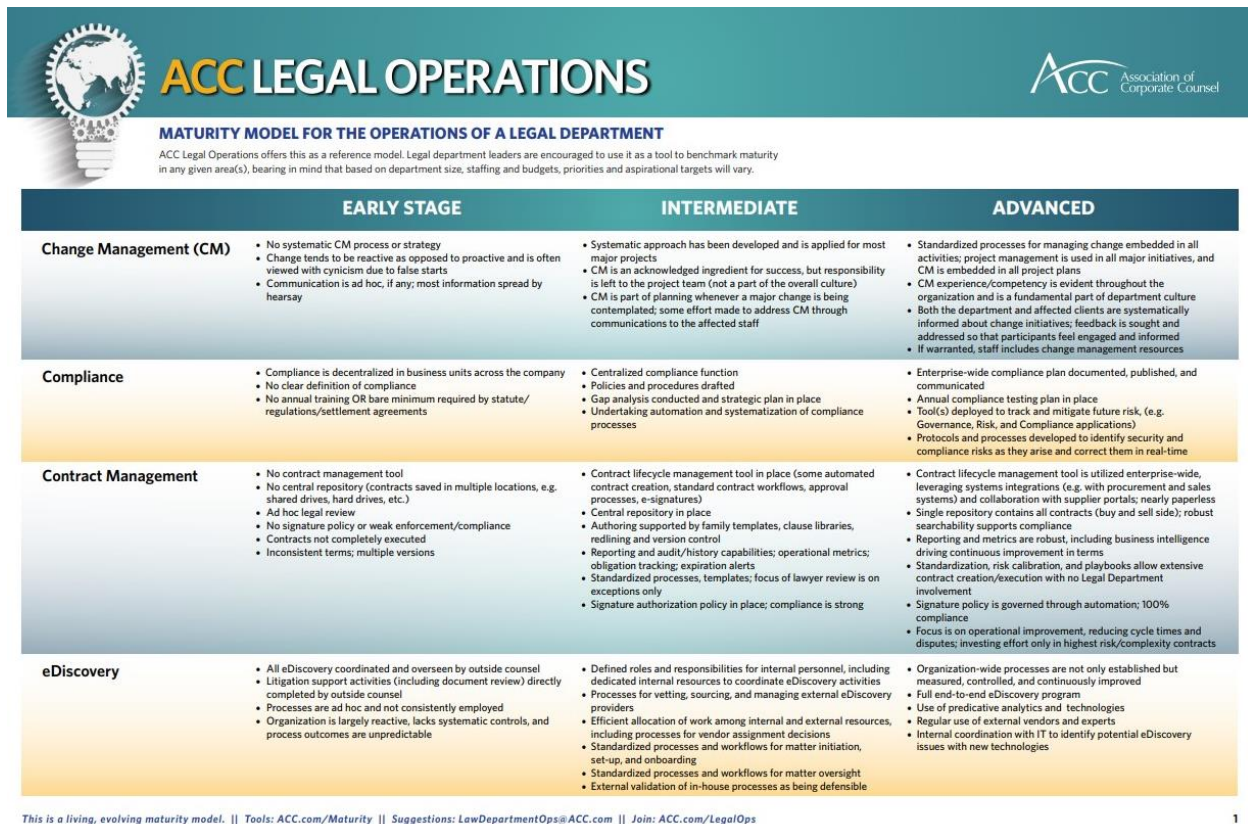


Figure 7: Example of Technology Maturity Model⁶

⁵ Richard Susskind, *Tomorrow's Lawyers*, Oxford University Press, Second Edition, 2017.

⁶ ACC Legal Operations Maturity Model, Pg. 1, Association of Corporate Counsel, <https://m.acc.com/maturity/>.

7. Conclusion

In summary, today's general counsel should take command of defining a technology roadmap that is both strategic in purpose and opportunistic in reach. Most importantly,

Today's general counsel should strive for long-term continuous improvement and innovation that is disruptive to both practice and business operations

they must not let perfect be the enemy of good.

There may be existing technologies that can be optimized or better leveraged. There may be process efficiencies that can quickly be brought to bear simply through project sponsorship and

vocalization of expected benefits. There could be significant and immediate cost savings to be made just by letting others know they are being watched. Whatever the near-term benefits, today's general counsel should strive for long-term continuous improvement and innovation that is disruptive to both practice and business operations. For, as Mark Chandler, former executive vice president and chief legal officer of Cisco, so eloquently stated: "The opportunity is there to recognize the business realities that will be driven by new technology. We can seize the chance to offer more value to clients. We can seize the opportunity for our own employees to be more engaged and productive. Our mutual success depends on it."⁷

⁷ Mark Chandler, Northwestern School of Law's 34th Annual Securities Regulation Institute, January, 2007.

“What Tech-Savvy General Counsels Know That You Don’t: From Digital Naïve to Digital Native” is authored by Unbiased Consulting’s Scott Rosenberg. The eBook is an excerpt from the book “**General Counsel in the 21st Century: Challenges and Opportunities**” (©2005-2016 Globe Law and Business Ltd.) to which Rosenberg was a contributor. It has been updated to reflect recent trends and opportunities in legal operations and practice management.

About the Author

Scott Rosenberg is Managing Director & Corporate Counsel of Unbiased Consulting, LLC. A lawyer and CPA, for almost 30 years Rosenberg has started and led corporate legal consulting practices and served in executive management positions at several industry-leading legal consultancies. He has also worked in-house, having led the legal operations team of a Fortune 100 company. Rosenberg works with general counsel and corporate legal teams to identify and translate practice management needs into strategic and actionable business and technology plans. His work allows clients to ‘do more with less’, creating improved process and organizational models to support operational best practices. He is also skilled at identifying and developing state-of-the-art technology platforms and implementing successful change management strategies to ensure user adoption. Rosenberg’s recognized expertise includes most areas of legal process, organization and technology know-how associated with improving operational efficiency and practice performance.

About Unbiased Consulting, LLC

Unbiased is a management consulting and technology advisory services firm launched in 2020 to help in-house legal teams and their law firms better manage legal portfolios, improve business operations and reduce legal spend. The company offers strategic guidance and tactical know-how in areas of financial spend, legal project management, process improvement, legal service delivery, organizational change and technology deployment.

Unbiased’s consultants and advisors, consisting of business leaders, former practicing lawyers and experienced consultants, have worked with hundreds of law departments and law firms to help them strengthen process, optimize resources and leverage technology to better manage the delivery and consumption of legal services.

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