

Overview

“We have vaulted five years forward in consumer and business digital adoption in a matter of around eight weeks.” McKinsey Digital, May 14 2020

“Industry 4.0” or the “Fourth Industrial Revolution” has been in motion for a while but COVID-19 has clearly propelled digital transformation and accelerated its importance to business as there is an increased pressure to do “more for less” and to make business easier to do remotely. As Harvard Business Review points out, a company’s competitive advantage will increasingly be defined by its ability to shape and control digital networks. The companies that excel at connecting businesses, aggregating data and extracting its value through analytics and AI will have the upper hand. In other words, digital transformation will drive the overall future value of an organization. To compete in the ever-increasing digital space, companies need to understand how to adapt their current operating models to embrace technology now more than ever.

Lawyers must collaboratively enable digital changes rather than be seen to be creators of barriers to innovation. And as your organization looks to accelerate its digital plans – Dentons has identified key themes for general counsel and the legal function to consider to support their company’s digital transformations. These themes demonstrate how in-house legal teams are shifting their focus from evaluating risks of new technology investments at their companies through digitalisation of the business to positive engagement in their own digital industrial revolution.

The themes to be discussed in this Focus on Digital are:

- Developing a digital strategy for the legal function to support the business
- Implementing the legal function’s own digital strategy
- Assessing whether to adopt artificial intelligence solutions for legal processes - including understanding AI, its cost, purpose and relevance in the aftermath of COVID-19

Developing a digital strategy for the legal function

Traditionally, in-house legal teams have viewed their roles as largely one of protecting the organization from risk. In our toolkit on supply chain issues, we explore the key resilience and vendor management challenges the in-house legal team will need to address, particularly in relation to technology procurement.

Why should a digital strategy be on the general counsel’s action list?

General Counsel are now commonly the company’s chief legal diagnostician as well as legal purchasing agent - determining the company’s legal needs and how these fit into the company’s overall strategy and goals.

However, as in-house legal costs rise, the legal team is under pressure to find lower-cost options to the work

performed in-house or which is outsourced to external lawyers. With workloads getting larger and technology constantly changing, innovation by the legal team is necessary.

It should come as no surprise that General Counsels are spearheading their own deployment of the same accelerators for productivity as their corporate employers are using to generally reduce costs and drive productivity across the business. Legal innovation may be achieved by outsourcing or offshoring low-value repetitive legal tasks to independent entities or by engaging in a digital transformation of the legal function. The focus of this article is on that latter strategy - the digital revolution of the in-house legal function.

With the rest of the world (and your organization) likely talking about increasing focus on 'digital' – it is important the legal team also leverages this point of focus for two reasons:

- to demonstrate to your organization your commercial awareness of how increasing investment in technology could bring efficiency and service improvements to your stakeholders – and possibly your customer base too; and
- to campaign for a share of the digital budget directed toward digital initiatives in the organization as it emerges into a post pandemic era.

What is a digital-first strategy?

Every legal department is part of a broader entity that itself is on a digital journey. The legal team should not be an outlier on that journey and must pave its path in coordination. Broadly speaking, digital transformation for many legal functions means the integration of digital technology across the function to assist with solving the organization's issues, managing its risks or delivery of goals.

A digital-first strategy is much more than the automation of certain tasks to enable efficiencies. It is also more than understanding information technology, privacy law, or using technology to perform the role of in-house counsel.

A digital-first strategy will set forth the vision and philosophy of the legal department toward more general digitization of the department's work and operations, while defining the specific goals and timelines for making strides in digital transformation.

To develop a digital strategy, the key is to think creatively how the legal team can bring greater benefit to its internal and external clients – perhaps through clarity and execution. Your organization should put the customer at the heart of its digital strategy – and the legal team should do the same.



What are the key components of a digital strategy?

At a minimum, the strategy should include the following three components.

1. Develop digital skills:

Legal departments will need to consider how they are digitally skilled - that is able to support the company's digital project initiatives. Preparing a legal function to skill up for digital transformation within the wider organization should result in lawyers who are able to manage their role within various large stakeholder groups. Other benefits include an in-house team who are able to understand the technology to be deployed and its risks, and to consider data flows and networks - whether within the company, or more widely with external service providers engaged in the digital transformation.

As business technologies change, the nature of the legal work will also evolve. This means that legal skills

development is not simply a matter of recruiting an expert technology lawyer. It is ensuring the entire legal team has a foundation of understanding where and how the company plans to invest in technology - and how lawyers can service those initiatives.

Contracts are the mainstream of legal work. As business transactions are digitalized, contracts must be created to accompany them. Gaining a basic understanding of how legal technology contracts work - their common clauses, market positions and how service level agreements operate would be a solid start for a legal skills development program. We explore some of the key issues to consider in our chapter on Supply Chain issues. It is important that the legal team and business stakeholders both understand that new vendors come with risk - they have not yet withstood the rigor of extensive compliance reviews and the test of time with your organization.

2. Develop digital networks

A company's digital transformation is unlikely be achieved without the IT department or other key operations stakeholders. Breaking down the barriers between the legal function, operations and the IT functions is a necessary part of the digital industrial revolution.

Each function aims to minimize risk - whether security risks, operational/commercial risks or legal risks. Fostering networks with IT and other stakeholders through regular project meetings and coordinated management is an important step to promoting the legal function's role as an enabler of digital transformation. It is also critical the team is engaged at the beginning of projects to minimize the risk that the company's IT investments do not address fundamental issues. These decisions often require data be reviewed on a holistic basis, which needs cross-functional coordination to assess the balance of costs and benefits. The legal function must work with the various IT and operations stakeholders in a collaborative way if information related risks are to be appropriately understood and managed.

3. Assess how legal technology can assist legal processes and budget for it

Many in-house counsel are overworked and have too much administrative work with few tools to assist. Support on the adoption of technology should be part of any digital first strategy. Benchmarking your issues and solutions against the technology choices of your peers is a useful start. Most teams will need to build a business case - and most business cases focus on how technology can reduce legal costs or support wider strategic initiatives of the company. A digital strategy will need to evaluate the costs of performing various tasks and how technology can reduce costs, increase speed, manage risks, etc. Understanding the value of processes and the fit of the technology solutions is the necessary start to getting the budget for the investment.

Your starting position is to understand the available legal technology

A lack of digital awareness and understanding of the transformative effect of legal technology is a serious issue. Digital transformation of the legal function is not just artificial intelligence, data or platforms. Gaining a better understanding of internal clients and analyzing interactions with them to get insight into their needs will be the first steps to take to find new, more efficient, ways of working. Technology should be selected for its capacity to transform how work is done internally, or how it improves productivity or collaboration. If the right technology is coupled with change management and culture change, then the legal function can transform how they operate.

1. As artificial intelligence ("AI") continues to evolve, it will become a more effective enabler of legal services as a capable tool to be used by lawyers providing complex legal advice and work product – not a replacement for lawyers.
2. Not all legal technology is based on AI. There is other great technology that provides real value, some of which has existed for some time. Much of the legal technology solutions do more than enable more efficiency for paper processes - they allow, for example, electronic files, sharing of documents, self-service platforms for advice, or other solutions that disrupt the way of doing the business of law such as solutions to automate form filling.
3. You do not need to use the latest and great legal technology to be innovative, but you should be knowledgeable about the possibilities technology can bring. Some systems provide platforms to streamline document management, collaboration, management or workflows. Others improve knowledge management - which can accelerate productivity and facilitate better decisions.

Mapping a digital strategy for the legal function

No digital transformation journey should commence without robust change management processes. Making sure your

legal teams are sufficiently prepared for the new technology adoption is crucial to its success. Getting buy in from the beginning will assist you to achieve the goal.



Problem Statement



Current and Future State



Clarify your vision



Prioritize



Road map and budget

Problem Statement

It is important to understand what problem or pain points you are trying to solve. Where are the greatest inefficiencies across the team or bottlenecks preventing the optimal delivery of legal services to the business? Be very specific and intentional about the problem you are trying to solve with technology and you are likely to have a highly successful experience with new technology.

Connect with peers about their experiences with technology or talk to Dentons about supporting you to get an overview of these tools and key providers, or explore the market and talk to vendors to get a sense of cost, the purpose and benefits of these tools.

Current and Future State

It is a best practice to first review and optimize processes before embarking on an automation journey. There is little value in automating inefficient processes. You should understand the current process and what you envision for the future state. As part of this process, you will want to understand what technology you may already have available, either within the law department or across your organization.

Think about seconding someone in your team to this project to help you with this assessment and to provide you with facts and a fresh perspective on what you have, its potential, how it is/isn't being used – and the associated costs (if you are paying annual license fees for something no one is using).

Research Tips

1. Internally

- Understand what pressure/pain points exist currently within the team
- Where is there obvious inefficiency?
- Do process, technology or behaviors need to change? It is not appropriate to assume all issues may be solved by technology.

2. Externally

- Understand what legal technology is available and how it can be applied to your specific problem(s).
- Management information (to facilitate better understanding of your legal spend/project cost allocation/management of law firms/ management of team)
- Work intake processes – to help triage requests from the business and assign the work effectively internally/externally
- Document management and sharing
- Knowledge management – ranging from precedent documents to 'help yourself portals' for business stakeholders
- Workload management, including using document automation to reduce workload

Prioritize

Do not try to fix everything all at once. Start by prioritizing – you may wish to include a number of factors in your prioritization, for example some of the evaluation tools we reference in the chapter on Scenario Planning.

Clarify Your Vision

A digital strategy should start with the internal assessment described above, but it also must identify stretch goals and long-term vision for the department. It must be a future-looking statement of where the department wants to be. More importantly, it has to define HOW the department will get there, WHO should be involved and WHAT are the biggest areas of opportunity.

1. HOW: How will the changes be managed, and how will those changes impact the department?
2. WHO: Which additional skillsets and capabilities does the legal department need to successfully assess and implement technology?
3. WHAT: What is the biggest area of opportunity to reduce pain points and increase effectiveness with technology?

Draw a roadmap – and indicative budget

You may need to look at securing additional budget or resources to support your vision. It is a much easier conversation if you:

- Understand what you have or don't have available
- Have a vision
- Have the reference points you need
- Can clearly articulate the rationale and benefits

Assessing if AI is right for you - springboard from the Dentons experience

In 2016, AI-for-legal burst onto the scene with promises of ultra-fast, super-accurate contract review that would be replacing lawyers more quickly than you could say 'limitation of liability'.

Alas, what followed was more of an 'AI winter', as the aforementioned promises did not bear out. Fast forward to 2020, and there is more of a middle ground – and many law firms and in-house counsel are now coming to grips with a realistic understanding of what AI can bring to the table and how to use the underlying technology.

At Dentons we use all of the main legal AI platforms in the market – Luminance, Kira, Leverton and more.

Here are six insights to help accelerate your AI understanding based on our experience at the leading and largest law firm in the world.

Set-up timeframe

As with all procurement, it will take a week or two to get all of the paperwork and IT security in place. As all of these providers are cloud based, there is no need to build or Set-up maintain any of your own IT hardware which makes it quite a painless process to get up and running. Document uploads themselves are relatively quick with all platforms – but to be safe we often leave our datasets processing overnight so we can be sure they'll be ready to start the review the next morning.

What is the charging model – per document or GB?

All the main AI platforms come at a cost. Some charge per GB of data in the platform per day, while others simply charge per document uploaded. The actual prices will vary What is the per customer but expect to see around \$63 per GB of data or \$12-\$19 per document. In our experience, the disparity between these pricing models means that for shorter-term per document or projects the data model can be less expensive than for longer-term projects where the documents will need to be in the system longer.

There are some rules of thumb regarding size

So, if the platform is charging per GB – what does that actually mean? Well, a typical 30 page PDF contract is around 5MB (although there can be a lot of variation) – so around 200 of those makes up 1GB. Note that the pricing models that charge per document are the same flat rate for 1 page or 500 page documents.

Are use cases right for your circumstances?

Despite the different cost models, we use these tools in the exact same way – to put the relevant contract information in the hands of our lawyers faster so they can carry out their legal analysis without the manual drudgery of having to open multiple documents. We try not to delegate any decision making to the AI as there is a reliance on both the

correct extraction of the data and the applicable logic. The outputs are simply extracted clause text or datapoints that may be filtered in a number of ways. We recommend our lawyers run keyword (or other) searches alongside the AI recognition to make sure nothing has been missed.

Return on investment - COVID-19 example

In the context of the above – how has AI been helpful in a COVID-19 context? There are the obvious benefits of scanning all of your contracts for potentially relevant clauses like rights to terminate for convenience or force majeure. Now might also be a good time to identify which contracts expire when, or which have break clauses - as there may be potential for renegotiation. AI should be able to help with this, significantly reducing the time it would take to get that information.

Assessment of language and governing law can be useful

When you upload a large dataset, it can be really interesting to see the languages contained and the governing law within them. However, there is a difference between the platform identifying what a language is and understanding what it means. While the tools can correctly identify most languages, the governing law feature requires the contract to be written in a language that the AI understands (typically English, German, Spanish, Italian and French), so the outputs may not be a true representation of your dataset. For example, AI platforms should correctly identify the governing law behind 100 contracts in English. Similarly, it would recognize the language itself if the contract were in Mandarin – but because the AI does not understand Mandarin, the program would not be able to detect the governing law behind those clauses and there would not be any results.

Conclusion

In conclusion, legal functions are now proactively leading their own digital transformations to drive value for their organizations. Dentons has seen proactive engagement and advancement of the legal function through leveraging advances in legal technology - including artificial intelligence and other legal process automation

COVID-19 has propelled digital transformation and there will be even more pressure, post-pandemic, for the legal function to do more for less. Dentons is seeing the shape of the legal function changing as more legal counsel adopt a digital first mind-set

In this article, we have covered the forces that will push lawyers into collaboratively enabling digital changes - and how the legal function can develop and implement their own digital industrial revolution. We have also discussed Dentons' own experiences with artificial intelligence solutions for legal processes to enable our clients to short circuit their own learning.

In short, the lawyers who are engaged with digital transformation or ready to ramp up quickly to become more proactive and innovative will lead the pack.

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About Dentons Nextlaw In-House Solutions:

Leveraging the experience of former General and in-house counsel, the team provide consultancy and support to GCs and legal teams on a wide range of strategic and operational issues. Lucy Bassli (former Assistant GC of Microsoft) and JoAnne Wakeford (Chief Client Officer of Nextlaw In-House Solutions) can help you develop further the digital strategy for your team.