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Top 5 trends in legal tech and privacy for 2019

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DECEMBER 2018

For the last few years, privacy and data security has been the "hot" area of legal practice. In fact, the 2018 edition of Chambers Associate's practice guide, which helps law students and associates plan their careers, recently instructed its readers that "privacy, data security and tech feature highly [in the career development category] because they are among the hottest topics of 2018 in the U.S. and globally, and the work lawyers do this year will make their careers."

The career-making work being done in this field is defined by increased demand, in terms of scale (i.e., as businesses evolve, more and more industries are thinking about digital privacy) and substance (there are more privacy rules and regulations to consider).

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While more well-heeled traditional practice areas, such as financial services, corporate and health care, continue to report strong revenues and greater numbers of attorneys focusing on them, no practice can boast greater demand or more explosive growth than privacy. All indications are that these trends will continue in the coming year.

The American Bar Association officially recognized privacy as a field of specialization in February 2018 and has managed applications for the credential in "rounds" since April.

Similarly, the International Association of Privacy Professionals is seeing membership grow exponentially and estimates that, in the corporate world, there are positions for an estimated 75,000 chief privacy officers — roughly double the organization's current worldwide membership.

Just behind privacy, "capital T technology" — that is, legal services geared toward the technology sector and the technological aspects of business — is another growing line of business for lawyers and firms. The work here includes elements of cybersecurity, as well as technology transactions and traditional IP licensing/protection.

In fact, "emerging technologies" is likely to develop as a sub-specialty or even as a stand-alone practice area, as attorneys work on transactional and regulatory matters related to blockchain/token sales/initial coin offerings, artificial intelligence/machine learning, the internet of things, augmented reality/virtual reality, and semiautonomous and autonomous vehicles.

As technology shapes what kinds of legal work being done, it also impacting how legal work — of all kinds — is getting done. Hardly a day goes by without an article, conference or webinar about "innovation" in the legal services market and how technology is driving that innovation.

Law firms are investing heavily in software and services meant to automate and streamline their work, while other professional services firms are acquiring alternative legal services provides that promise to replace lawyers with artificial intelligence and other tools.

Unsurprisingly, the number of legal tech startups looking to feed this appetite for innovation is up, with the business and legal media buzzing about each new product launch and funding deal.

So, with all the excitement around so many aspects of law and technology, what real changes and developments can lawyers, law firms and clients expect to see in 2019? Here are some educated guesses.

1. PRIVACY AND DATA SECURITY COMPLIANCE AND TECH TRANSACTIONS WILL REMAIN STRONG

Corporate executives and general counsel already routinely list cybersecurity as being among the top concerns keeping them up at night. "Compliance," which inevitably includes privacy, also regularly tops the business leaders' worry lists. That won't change any time soon.

Where we will see change, though, is with respect to the level of enforcement activity related to privacy compliance. In other words, 2019 might well be the year when nightmare scenarios start becoming reality. Europe's General Data Protection Regulation went into effect May 25, 2018. Until now, there have been few enforcement actions, but that won't be true in 2019.

The U.K.'s Information Commissioner's Office, one of the most active EU data protection authorities, on average takes between 270 days and a year to issue a formal response to a complaint.

As a result, we can expect to see an uptick in GDPR enforcement in early- to mid-2019, which is bad news especially for companies in social media, marketing, health care and financial services — all

Top 5 trends

1. Privacy and data security compliance top the worry list.
2. Legal tech and legal ops remain a focus.
3. Newer lawyers push firms to adopt cloud/remote work options.
4. Legal artificial intelligence is not ready for prime time.
5. The legal technology market continues to expand.

of which tend to catch the ire of regulators more often than companies in other industries.

Also lurking on the 2019 regulatory horizon is the EU ePrivacy Regulation, a proposal for a Regulation on Privacy and Electronic Communications. The ePR would repeal the Privacy and Communications Directive of 2002 and would apply to any business that provides any form of online communication service, uses online tracking technologies or engages in electronic direct marketing.

The regulation is intended to supplement GDPR by addressing electronic communications that include or qualify as personal data, like the requirements for consent to the use of cookies and opt-outs. Many commentators have predicted that the ePR will go into effect in 2019, though there its effective date remains uncertain.

Next year might also see a change in Privacy Shield enforcement. In July 2018 the European Parliament passed a nonbinding resolution calling for the suspension of the EU-US Privacy Shield Framework — an agreement that allows more than 3,000 U.S. companies to lawfully transfer personal data from Europe.

The current administration's trade war and isolationist policies might further strain U.S.-EU relations, potentially pushing the European Commission to terminate Privacy Shield and unleash a wave of enforcement actions around the data transfer practices of multinational companies.

Similarly, EU and U.K. negotiators are both sounding warning bells about the possibility of a "no-deal" Brexit — a scenario likely to create substantial uncertainty not only in Europe but also for multinational U.S. corporations. A new or changed regulatory structure for bilateral dealings with the U.K. could create different compliance requirements for the U.K. market.

Stateside, companies are also bracing for the California Consumer Privacy Act, Cal. Civ. Code § 1798.175, a landmark privacy law enacted in 2018 that is being compared to GDPR for its strong individual privacy protections, broad and affirmative approach to compliance, and extraterritorial scope.

The CCPA, widely viewed as well-intentioned but deeply flawed, was rushed through the California Legislature to avoid a ballot initiative. Though it has already been amended, significant work remains to improve the legislation, which is now scheduled to go into effect by July 2020 (or perhaps earlier if the California attorney general promulgates rules in 2019).

Though lobbying efforts are underway for federal legislation to preempt the CCPA, companies may need to begin to prepare for the CCPA as early as January 2019 thanks to a provision that allows for a 12-month "look back" period in response to consumer requests.

In other words, barring federal intervention, companies need to begin data mapping and implement record-keeping programs now. This is because once the law becomes effective, they will be required to disclose personal data collected, sold or disclosed during the previous 12 months in response to consumer requests.

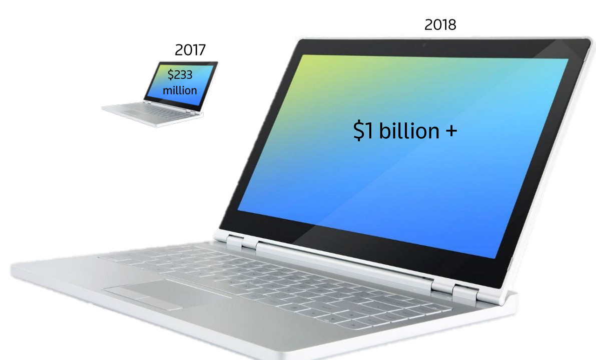
All of this regulatory uncertainty stands out against a backdrop of new investment in technology intended to leverage data and improve customer experience for competitive advantage. In other words, technology transactions and corporate adoption of emerging technologies is likely to remain hot despite any associated regulatory and compliance risk.

2. LEGAL TECH AND LEGAL OPS WILL REMAIN A FOCUS

Corporate legal departments are likely to continue to demand new and improved technology solutions and alternative legal services offerings, as in-house lawyers, driven by corporate priorities, seek to become more efficient and effective.

While many corporate departments have adopted at least some new technologies and lean processes, in-house legal departments still largely depend on internal hiring, costly

Growing investment in legal technology companies



Data source: LawGeex, Dec. 3, 2018

outside lawyers, inefficient processes and reactive thinking ("Which fire is the biggest?!") to manage their work.

An entire industry — "legal ops" — has arisen to offer services and solutions to improve the delivery of legal work in the business setting. The industry's goals: to better understand, forecast and control spending, manage risk, and help other business units execute their core missions.

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Legal tech and alternative legal services providers are offering a range of solutions to help achieve these goals. And the market is responding with enthusiasm.

Legal tech startups have raised $1.79 billion in 152 deals over the past few years, demonstrating strong market demand. Likewise, alternative legal service providers have cut into law firm market share by as much as $74,000 in lost revenues per attorney over the last decade (by some estimates).

These trends will continue. Corporate legal departments have discovered that many of their traditional legal services providers — primarily law firms — lack the flexibility or creativity to empower the internal change required.

As a result, they will continue to look to technology or low-cost staffing alternatives to perform mundane, repetitive and/or standardized tasks. This will especially be true as millennials begin to come into their own as attorneys, which leads us to the next point.

3. CHANGING DEMOGRAPHICS WILL LEAD TO MORE CLOUD ADOPTION/REMOTE WORK OPTIONS

The first members of the millennial generation are now in their mid-30s, meaning if they are lawyers, they are now in jobs like associate general counsel, senior associate or junior partner.

As more millennials enter these roles and advance their careers, the changing demographics of the legal services industry will push law firms, legal tech providers and alternative legal service providers to offer more cloud-based services.

Already motivated by the economic factors driving the growth of legal ops discussed above, in-house legal counsel, now surrounded by their tech-forward colleagues, are more willing than ever to embrace the cloud.

This presents challenges for law firm and legal tech providers who have traditionally shied away from cloud-based platforms due to concerns over privacy, data security and attorney-client privilege.

To remain competitive in 2019 and beyond, law firms and legal tech companies will have to embrace the cloud.

For law firms, the challenge is not limited to profitability. Instead, leveraging technology to make legal service more collaborative, enable remote work and provide innovative solutions to clients may be a matter of survival.

A Dell and Intel Future Workforce Study found that more than 80 percent of millennials said workplace technology impacts whether they accept a job offer, and over 70 percent said advanced technology and smart offices are crucial to collaborative, productive and efficient work environments.

These views don't come only from new law school graduates. This sentiment reflects the views of the in-house lawyers who will soon be making decisions about which law firm to hire, if they aren't already.

As the legal ops trend accelerates and millennials continue to expand as a portion of the overall workforce, expect "gig economy" type technology solutions to be in even greater demand at law firms and among in-house corporate legal departments.

Though there is a great supply of legal tech and an increasing demand for it, it's not at all clear what results the adoption of legal tech will yield. Some legal tech is still more promise than practice.

4. ARTIFICIAL INTELLIGENCE STILL ISN'T READY FOR PRIME TIME

A quick internet search for "legal AI" finds headlines from Forbes and The Atlantic announcing that artificial intelligence is fundamentally changing the way law is practiced and warning of the rise of "robolawyers." Despite the sensational headlines, the reality is that legal AI is not ready for prime time. It is still a long way off.

To understand why, one must appreciate what AI is, and what it isn't. Of the useful tools currently being characterized as "AI," most use simple automation, predictive analytics or perhaps some rudimentary machine learning.

E-discovery solutions that allow users to translate images of text into electronic text (OCR) and search/flag documents containing certain keywords, for example, mostly just automate doc review with better search algorithms and functionality. This is efficient, but it's not world-changing.

Predictive analytic systems are slightly further upstream. They extract information from existing data sets to determine patterns. Based on the patterns, the systems attempt to predict future outcomes and trends. While a solution that searches for keywords and predicts the likely relevance of a document based on the frequency and proximity of keywords is useful, it is not really AI.

Machine learning, which is an early branch of AI, involves deploying algorithms in software to receive input data, use statistical analysis to predict outcomes, and update the algorithms or outputs as more data becomes available.

To the extent legal tech products are using AI, it is probably machine learning. Take LawGeex, for example. LawGeex is a relatively well-known contract review automation tool that claims to use AI to read and analyze contracts and suggest edits based on predefined legal policies.

Note the requirement that attorneys feed the software predefined policies. Contracts that don't align with the predefined policies are kicked out of the system for editing and approval by living breathing lawyers.

If the LawGeex solution contains algorithms that can improve the contract review process over time based upon past performance, that might constitute "machine learning," but it is a far cry from robots replacing lawyers.

True artificial intelligence — namely, the ability to perceive information and retain it as knowledge to be applied toward adaptive behaviors within an environment or context — is still a long way off. That said, law firms especially should not breathe a sigh of relief.

For decades, the Big Law model has been predicated on inefficiency and brute force, so even simple automation of ordinary tasks presents a threat.

That same LawGeex solution that probably does not include "real" AI was also able to review five nondisclosure agreements to 94 percent accuracy in 26 seconds (according to the company). It took 20 human lawyers an average of 92 minutes to complete the same review with an average accuracy score of 85 percent.

That's probably why Deloitte has predicted that legal tech will eliminate 100,000 legal roles through automation by 2036.

It probably also explains why law firms, private equity, entrepreneurs and venture capitalists are jumping into legal tech with both feet. AI won't be disrupting the legal industry in a major way in 2019, but it is coming.

5. THE LEGAL TECH MARKET WILL CONTINUE TO EXPAND

In 2017 startup, early-stage and emerging legal technology companies secured $233 million in funding across 62 deals. Through three-quarters of 2018, investment in legal tech companies stood at $926 million, on pace to easily top $1 billion for the year — a likely 500 percent or more increase over last year's numbers.

At the top of the legal tech market, more established companies are consolidating, a sure sign that the market is maturing. For example, DocuSign completed a $220 million acquisition of SpringCM in September 2018. The deal enabled DocuSign to complement its electronic signature solution with a system for preparing and managing agreements, creating a potentially market-defining suite of legal automation technology.

This growth will likely continue in 2019, as more and more startups look to disrupt the legal services industry and capture a portion of the $854 billion global legal services market.

In sum, 2019 will see a continuation of some of the key trends at the intersection of law and technology. Privacy will be an even larger concern for corporate clients, so attorneys and firms will see additional work in that area, especially as enforcement actions pick up around midyear. As this area of law continues to grow, the ecosystem around it, from legal education to marketing initiatives, will grow as well.

Client priorities will also drive continued growth in the legal technology industry, forcing firms to adopt systems that support greater efficiency.

Lawyers who are savvy in both the legal implications of technology and the application of technology to the practice of law will see their fortunes rise, while those without such skills will face an increasingly tougher competitive landscape.

This article appeared in the December 12, 2018, edition of Westlaw Journal Special Report.

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