



## **The Art and Science of Being Useful to In-house Counsel**

**Technology, Privacy, and eCommerce**



The Court of Justice of the EU recently ruled that the current US-EU Safe Harbor Certification Program is no longer a valid method for ensuring adequate privacy protection of data transfers between the United States and the European Union. Of course most privacy and legal professionals (especially in-house counsel) are embracing this new uncertain reality, turning to risk mitigation more actively and readily than ever before. To help with this effort, many legal vendors have been sending me alerts about Safe Harbor invalidation and ways to mitigate its impact.

Like most lawyers, I read virtually everything that somehow crosses my desk or any of my devices. After all, the written word to a lawyer is like free food to a college student — I just can't get enough of it even when it is poor quality. After reading multiple alerts and attending numerous webinars about Safe Harbor invalidation, I realized that my voracious readership must have landed my email address on every legal provider's distribution list. Flooded with information, I took the opportunity to compare the quality of alerts so I can prioritize certain sources in the future.

Legal providers often ask me what they can do to get attention of the in-house departments and how they may be more useful to in-house counsel. Although I am not going to reveal my rankings (that would be cruel and unfortunate!), here is a list of what I found helpful:

1. **Listing three to five action items** that can be completed the morning after to start mitigating risks, in a way that is easily explained to internal clients.
2. **Creating a summary** that can be easily understood by both lawyers and non-lawyers so information can be circulated easily to internal clients.
3. **Predicting and analyzing the direction of future changes** as well as what can be done now to mitigate the uncertainty.
4. **Assessing risks** in an client-size category or applicable industry to provide a wider picture of

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the situation.

5. **Industry-specific pragmatic advice** and what can be done to address the risks in the short and long terms.

Without naming names, here is a list of what I found unhelpful.

1. **Summarizing the news without any commentary** is not helpful. By the time I see the alerts I've already read most popular newspapers and likely at least browsed the underlying decision.
2. **Painting a doomsday future**, especially during the systemic changes or catastrophe, is not helpful. Scare tactics are not actionable or productive. Really, what should I do with a "the world is ending" prediction?!
3. **Repeating "this is not legal advice"** before or after every thought is unhelpful. It also makes no sense when your audience is composed of lawyers. Attorneys and legal vendors should stand behind their advice in the same way we demand that service providers stand behind their services during contract negotiations.
4. **Summarizing the history of a situation** or decision is also not very helpful unless it somehow helps to predict the future.
5. **Sending an alert over 24 hours after the event** is definitely too late, especially if the alert contains any of the other problems I've listed.

Any successful lawyer, in-house or otherwise, perfects the art and science of empathizing — the capacity to understand or feel what another person is experiencing from within the other person's frame of reference or the capacity to place oneself in the shoe of another — with a client or advice recipient. This ability to understand the needs of the recipient should guide all communications and actions. For example, it should help to determine what to advice to give, how quickly, in which format, at what level of detail, and other factors.

Alerts are no different. While technically not meant to be legal advice, they are still legal marketing communications that are meant to be timely and useful while showcasing the capabilities of a sender. Why not provide useful, actionable, relevant, and timely content? At the end of the day, every client expects that her lawyer will understand and meet her needs. In the same way, starting on the right foot in every communication sets the tone for a productive, long term partnership between legal providers and in-house counsel.

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Mack is also an award-winning (such as the prestigious ACC 2018 Top 10 30-Somethings and ABA 2022 Women of Legal Tech) general counsel, operations professional, startup advisor, public speaker, adjunct professor, and entrepreneur. She co-founded SunLaw, an organization dedicated to preparing women in-house attorneys to become general counsels and legal leaders, and WISE to help female law firm partners become rainmakers.

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She has authored numerous books, including *Get on Board: Earning Your Ticket to a Corporate Board Seat*, *Fundamentals of Smart Contract Security and Blockchain Value: Transforming Business Models, Society, and Communities*. She is working on her next books: *Visual IQ for Lawyers* (ABA 2024), *The Rise of Product Lawyers: An Analytical Framework to Systematically Advise Your Clients Throughout the Product Lifecycle* (Globe Law and Business 2024), and *Legal Operations in the Age of AI and Data* (Globe Law and Business 2024).