



Leveraging Law Department Metrics to Become the Department of Go

Law Department Management



CHEAT SHEET

- **Keep it consistent.** Managing contracts through standardization can lead to increased productivity for the company.
- **Watching the fight.** By keeping extensive records of litigation processes, general counsel can gain important information and lower the average total resolution cost.
- **Quality over quantity.** Extrapolating the quality of a company's intellectual property assets is an essential step in increasing efficiency and revenue.
- **Road to improvement.** The TE Operating Advantage provides a framework that makes corporate processes lean, efficient, and continuously improving.

Since the advent of electronic billing tools in the late 1990s, law departments have been able to use billing data to help reduce costs, especially outside counsel fees. In the past few years, these systems have become quite sophisticated, and law departments have a plethora of data they can use to help negotiate rates, decide which law firms to use, and get a better understanding of what work should cost.

Cost management is important, but in today's environment, reducing costs is not nearly enough. Modern law departments are expected to not only be a strategic business partner, but also to operate as a business unit. The role of the general counsel is expanding and now frequently includes compliance, security, information governance, and much more. General counsel are increasingly expected to go beyond simply managing risk to protect revenue, margins, and growth. Law departments can no longer be the "department of no." They instead have to find a way to be the "department of go."

One of the steps to operating like a business unit is to use data analytics and metrics in the same way other departments do. By taking a life-cycle approach — cutting across practice groups and silos — law departments can apply analytics to determine impactful metrics driving results and behavioral change.

In this article, we will focus on three areas where law departments can use metrics and data analytics to perform more like a business unit and spur growth by helping the corporation protect revenue: contract management, litigation, and intellectual property.

Contract management

At many companies, it is law department inefficiency in dealing with contracts that first frustrates businesspeople. If a law department becomes known as the "Revenue Avoidance Department," it is likely because it is not finalizing contracts quickly enough, putting revenue — or at least the timeliness of acquiring revenue — at risk. Many law departments have implemented technology and processes to speed things up.

Just accelerating procedures, however, can do more harm than good. Bad contracts lead to disputes, so it is important to set up a process of continuous improvement. When disputes occur, someone should go back and review the contract that governs the relationship. If it is unclear or imperfect contract language that caused that dispute, that clause should be updated, as should any language that exists in a "clause library" or "playbook" that may be applied in any future contract. Often, there is a pattern to the cause of these disputes, and identifying that pattern and cleaning up the issue will prevent future litigation. The more you track, the better the contract language becomes.

There are also benefits to such a process in terms of driving revenue. Using previously reviewed language can often lead to quicker agreements and avoid disputes that would otherwise delay or eliminate the ability to drive revenue.

Search and retrieval

One overlooked area of the contracts process is search and retrieval. Enforcing contracts can be

difficult when the final, executed version cannot be found, and a continuous improvement process might be impossible. Many contracts exist in multiple locations, and every location may not have the most up-to-date version. This makes retrieving contracts difficult. A continuous improvement program can fall apart at this stumbling block: attorneys may not want to spend the time on such a process if they cannot get through the very first step of *finding* the contracts. This is why companies should consider building a centralized repository for executed contracts.

Nonstandard contracts

To the extent possible, the law department should attempt to standardize contracts and forms. In addition to a clause library, this often includes playbooks and processes, as well as rules and responsibilities. With this in mind, it is possible to determine how many contracts come through that are not in compliance with the standards. If too many fall into this category, then either the playbook or process must be improved, or training must be adjusted to ensure that the standard is being met in the field.

Recoveries

While the *raison d'être* for law departments has long been the management and mitigation of risk, they do not always represent the defendant in disputes. Not infrequently, the corporate client has been wronged, and there is an opportunity to act as the plaintiff and recover money for the company. (The most common cause of action is intellectual property infringement.) Both parties must comply with a contract, and more and more law departments are starting to deliver revenue to their companies by recovering funds from parties that do not.

At some companies, the department is recovering enough to cover its entire budget, so tracking this number can be an effective way to improve how the law department is perceived throughout the company, especially considering many law firms will take such cases on a contingency basis to minimize the risk. Funds recovered by the law department make up a critical metric that can go a long way toward illustrating how the department is performing like a business.

Right sourcing

While some agreements, such as nondisclosure agreements, are ripe for self-service by the business units themselves, most do require some interaction with a legal professional — either from the law department itself or from one of its law firms. Some of these agreements are very complex, while others are very simple, but most fall in between. It is important to know if the right agreements are being handled by the right people. This is not only critical because of cost, but also because the wrong attorneys handling the wrong contracts can increase risk.

A good tool for making sure that this work is “right sourced” is to divide the types of agreements into a handful of bands based on complexity. Then, calculate the “weighted average billing rate” within each band. The calculation should include attorneys and paralegals, both inside and outside of the law department. Outside legal professionals mean both law firms and alternative service providers. Hourly rates for inside counsel and paralegals should include a calculation for benefits and overhead.

Work within the most complex band should be costing more per hour than work within band two, and so on. Otherwise, the best lawyers are not focusing on the most complex matters, which is a recipe for trouble. Right sourcing will not only improve risk management, but will also increase productivity

by streamlining work, leveraging technology, and eliminating nonessential tasks.

Cycle time

Cycle time is a critical metric and one that is especially valuable because it is so easy to track.

TE Connectivity has thousands of business partners, most of which are distributors. The faster new distributors can be brought on board, the quicker revenue can be earned from their efforts. However, it must be done without risk. As part of due diligence, TE Connectivity does some research on the organization and makes some decisions relative to its location and role in the business (e.g., how susceptible it might be to FCPA and bribery issues). With that done, it is time to negotiate and execute a contract. The key factor is cycle time. How long does it take from the time the potential partner is introduced until it is fully on board?

The shorter the cycle time, the quicker the new partner can start producing. But there are other benefits as well. Customer satisfaction is higher, and legal resources are freed up for other work. Law departments should also attempt to track the reverse: ridding themselves of inactive business partners. Inactive business partners are pure risk and have a real cost as resources must be spent to at least monitor the relationship. The metric to track is the ratio of relationship managers to business partners. At TE, for example, keeping that ratio in check created an approximately 30 percent productivity gain.

Litigation

Litigation is the most expensive and least predictable legal function, and it carries the highest risk. As a result, it is especially important to track it closely. Here are a few metrics and data points that should be analyzed.

Average total resolution cost

For the clients that use it, average total resolution cost (TRC) is the key metric. It is the total of judgment, settlement, legal fees, and other costs necessary to dispose of a dispute. TRC also includes both internal and external costs over the entire life cycle of the matter. Knowing this number for each dispute allows the department to make sure that it is spending its money and managing risks in alignment with overall corporate objectives. This information also helps bring down the number of disputes.

This single metric can drive the law department's strategy, especially if the department is willing to share with a benchmarking group of peers to see where it compares to industry standards and how efficient the law department actually is. Should the number be above average, more time and effort would be spent understanding why. If the disputes are especially complex, perhaps a review of upstream procedures is in order (e.g., better contracts). Otherwise, the dispute process itself should be reviewed and put in place to understand the exposure earlier and act quicker. Measuring total resolution cost also provides the data needed to create effective budgets going forward, which can then be measured against actual costs on an ongoing basis, creating a feedback loop.

Cycle time

Cycle time is also a valuable metric for disputes because it is so easy to track. While the correlation

with litigation costs is not 100 percent and it is not always controllable, the quicker a matter is resolved ultimately lowers the cost. If the department — and especially outside counsel — can be made to move faster, total cost of outcome will typically drop in step.

Pre-discovery resolution rate

Because disputes that are resolved earlier generally cost less, it is worthwhile to track what percentage of matters are at each stage and to work to resolve them earlier. Because the discovery phase is so expensive, however, the most important piece of data is what percentage of disputes gets resolved before discovery starts. More specifically, where there is the best opportunity for enormous savings on defense costs.

Percentage of disputes handled in-house vs. at law firms vs. by alternative service providers

Conventional wisdom for many years has been to keep corporate work in-house and send litigation disputes outside. However, a careful analysis of disputes has shown that many disputes are similar in nature and can be handled in-house. An increasing number of law departments are hiring senior attorneys who can manage routine litigation cases, while sending complex litigation to outside counsel. Small customer and immaterial contract disputes are handled with an internal or external process that is akin to a claims operation. By keeping some forms of litigation in-house, the savings are substantial.

Many law departments are also turning to alternative service providers as a lower cost alternative source for some work. These providers can serve as an extension of the law department and provide the capacity to gain the efficiency and control of doing more work in-house without adding headcount or overhead.

Cost vs. value

While the key metric is total resolution cost (TRC), that information must be balanced against potential exposure. As a result, the ratio of TRC to the amount reserved (or another estimate of exposure) is important. It is also important to track cost against the matter's strategic value to the company. This can be accomplished by creating tiers based on strategic value. A TRC that otherwise looks relatively high may make sense when compared to exposure if it includes cases that are in the "most strategically important" tier. Understanding the complexity and potential exposure of matters can also be valuable in determining where and how the work should be done, i.e., whether a particular matter must be worked on at a big law firm, or if it could be done just as well in-house or by an alternative service provider.

Preventing future disputes

Sharing TRC and associated metrics with other business units can help them to eradicate the issues that later become disputes. Tiers based on exposure help here as well. If the total number of disputes and the TRC in a certain exposure tier is going up, then the department should collaborate with the business unit to figure out how to fix the problem. Again, it could be that contract provisions are not appropriately covering the risks or misalignment on product strategy, design, and marketing. Banding based on exposure also makes it easier for both the department and the relevant business unit to prioritize, fixing the most relevant issues first. Educating business clients on ways to reduce their risk

and exposure — and therefore the resulting cost — may be the highest value the law department can provide. Showing a reduction in TRC is a great way for the department to demonstrate that value.

TE Connectivity case study – The TE Operating Advantage

BACKGROUND OF TEOA

In 2008, TE Connectivity launched a lean business system initiative called TEOA — the TE Operating Advantage. Starting in 2009, TEOA was spread to every manufacturing and logistics site across all regions. By 2012, it included administrative, office, and legal functions, using a tool set known as “business process improvement,” (BPI) that was designed especially for office and transactional processes.

TEOA is a lean business system that provides a framework that every business unit and function can follow to transform any process and continuously improve and sustain the gains. But beyond this, TEOA is the philosophy, set of values, and series of management processes that collectively define who we are at TE and how we do things — the purpose of TEOA is to drive the extraordinary customer experience (ECE).

For the law department, this means focusing TEOA efforts in enabling business growth, achieving greater shareholder value and efficiently, and effectively managing the risk profile of the company and thus protecting revenue and profitability.

THE ROAD MAP TO PROCESS IMPROVEMENT

TEOA is organized by function, with each function divided into sites that use a “star assessment” model, which consists of two components: tools and metrics. The tools define improvement actions that are based on lean management best practices and are implemented in a prescribed sequence that is designed to help achieve an increasingly higher level of proficiency. Metrics are designed to record tangible improvements in results that are expected to follow the implementation of these programs. The level of application for each of the tools and the expected performance target for each of the metrics increases as the site progresses from Star Level 1 to Star Level 5.

For the legal function, the sites represent practice areas, (i.e., intellectual property, litigation, and commercial). To develop a baseline for the performance of the law department in meeting the needs of the business, we started by conducting a Voice of Customer (VOC)/Voice of Business (VOB) survey. For each practice area, a series of questions were presented to the business users asking for feedback on the importance and performance of specific services being provided. The ensuing quantitative analysis helped the law department to focus on what areas to prioritize for TEOA application.

Armed with input from the VOC/VOB survey results, the next step in the TEOA road map was to develop a comprehensive process catalog to define the owners, stakeholders, sponsors, service level metrics, and application of tools to achieve performance improvement for each designated process. Process improvement is implemented and tracked across multiple business segments and geographic regions. One of the greater challenges — but also a true benefit — is leveraging business process improvement methodologies across a very global enterprise.

MEASURING PERFORMANCE IMPROVEMENT

TE Legal looks at performance metrics as a way to measure successful results as well as identify areas for further improvement in the delivery of legal services. The metrics are a barometer to see how the TE Legal services delivery model is responding to the demands and needs of the business clients — VOB and ultimately the end customer — ECE. The four key metrics which we apply to any given process are:

- Quality;
- Cycle time;
- Productivity; and,
- Customer satisfaction.

Early success stories have been found in the contract management and compliance areas. Here are a few examples:

Given the industry, product lines and supplier base, TE Legal is faced with an inordinate amount of non-disclosure agreements to be reviewed and approved. Several paralegals using TEOA methodology and tools were successful in reducing the cycle time for this process using standardized templates, resulting in improved quality and productivity. The process improvement also increased customer satisfaction as the businesses were now in a better position to engage distributors, suppliers, and customers. Standardized work and the automation of manual steps are proven methods for improving service delivery.

TE puts a premium on compliance and educating employees on business ethics and conduct. The investment in these efforts are paying off as highlighted by our recognition by Ethisphere as one of the most ethical companies in world for the past two years. Within the compliance program resides a rigorous process for the onboarding of TE business partners — suppliers, service providers, distributors, and customers. This process tests legal's balancing act for enabling business growth while also effectively managing the risk profile of the company ("department of go vs. department of no") and our initial implementation received considerable push back by users who found extra steps and challenged the workflow to slow down the onboarding process. In response, we socialized some process changes, conducted a VOC/VOB survey, and applied TEOA methodology. This led to the development of a framework to better manage and measure process performance. Beside cycle time, metrics were developed around quality (e.g., accuracy and completeness of onboarding checklist, productivity and increased capacity) and efforts were made to identify legacy, inactive, and out-of-scope partners.

Our TEOA journey is far from complete. The process catalog includes a number of opportunities where redundant, recurring, and often manually oriented tasks are exhibited. Prioritization is given to those processes having the greatest impact in delivering value to the TE business, such as contract management, compliance, supply chain management, and information governance. The latter has risen higher as M&A activity is vital to the growth of the company and managing the transfer and integration of intellectual and information assets is often overlooked.

Intellectual property

At many companies, the protection of intellectual property rights is an enormous expense and also the best opportunity for the law department to deliver some revenue.

Total cost of ownership

In terms of protecting intellectual property, a key metric for the law department is total cost of ownership. This includes cost per asset (patent or trademark) for procurement and maintenance (including patent and trademark searches and costs for monitoring and enforcement). It also covers fees and legal expenses, but not research and development costs. The metric can be tracked by product and product type then balanced against the value of those products and the likelihood of infringement to determine if those assets should be maintained or protected in the first place. Even further upstream, understanding the likely cost to protect can help the business unit make better decisions on which ideas that are worthy of becoming products, what ideas are worthy of pursuing patent protection on, and other key IP strategies.

Quality metrics

One of the often overlooked metrics worth tracking is the percentage of granted patents, trademarks, and copyrights that actually come to market. If, for instance, only a small percentage of the protected assets are ever commercialized, then the company's patent review board may not be doing its job. If not enough of the applications are getting granted, it is possible that something is broken in the research and development or, more likely, in the selection process. Either way, this metric is a great one to share with other business units to demonstrate law department value.

Violations

Infringing on others' intellectual property can be expensive. Patent infringement litigation can be extremely costly to defend and puts the company in a difficult position from which to negotiate a license. An upward trend in infringement claims should be watched very carefully and acted upon immediately.

Recoveries and licensing revenue

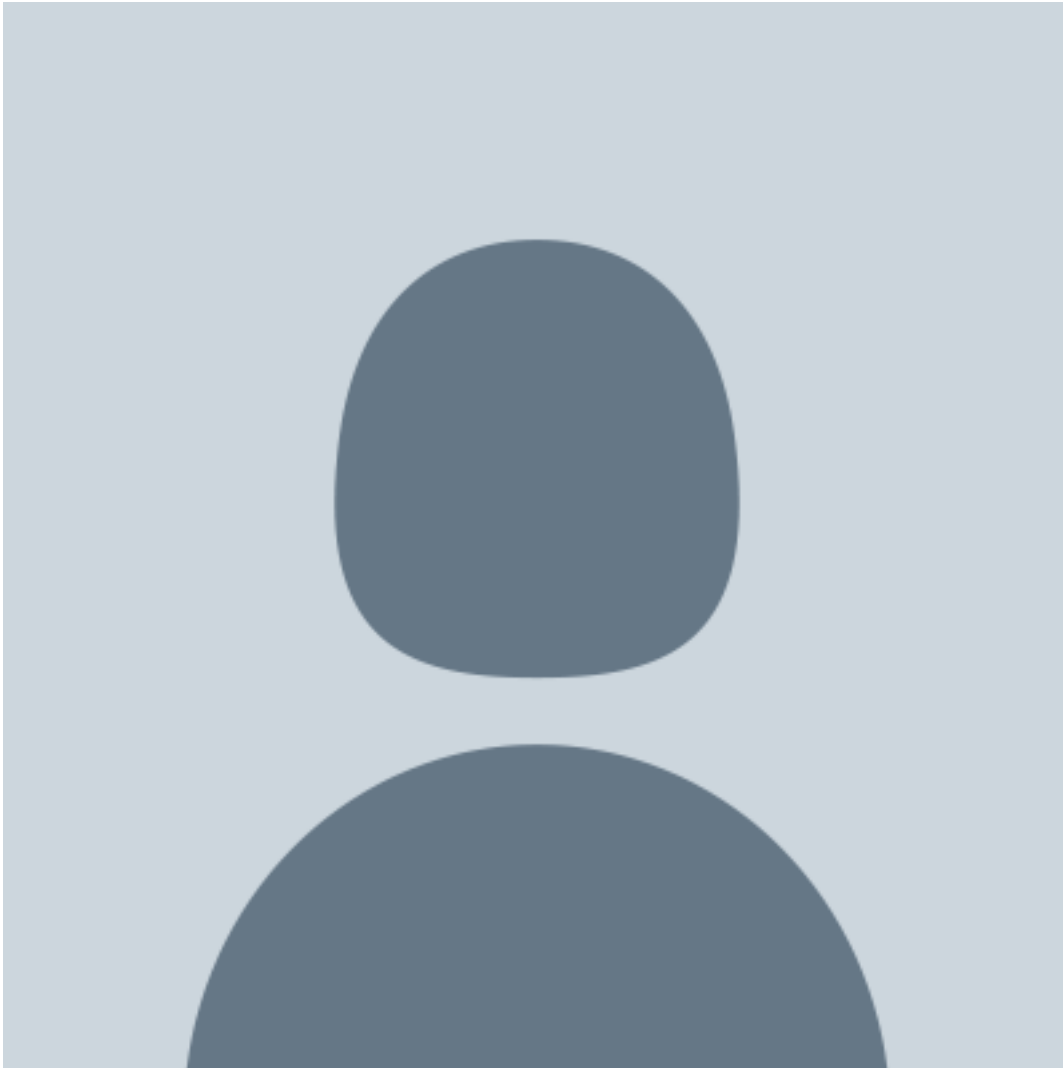
On the other hand, having your company's asset infringed upon can be extremely lucrative. However, these recoveries, which are made up of both settlements/judgments and licensing fees, can only be generated if the law department pursues them. Both metrics should be tracked carefully. While careful financial modeling should be part of the process (for example, to make sure the company is not trading away product sales for licensing revenue), many companies are not taking full advantage of opportunities for recoveries. Increases in licensing revenue should be one of the IP department's key goals. A process should be in place to identify violations and pursue a possible plan of action against infringers. Again, many law firms will do this work on a contingency basis, reducing the risk for law departments. Net revenue from aggressively protecting the company's intellectual property is often the top earner for a law department and the best way to illustrate its value to businesspeople who are used to assessing business units by profit-and-loss statements.

Conclusion

Many law departments see data analysis and metrics as tools to control costs. But it is not just about cost — it's also about value. Tracking metrics and analyzing data helps drive desired behavior. Effective metrics push accountability, which spur results and change. Those changes can mean more efficiency, improved performance, better decisions, more collaboration with other business units, and tighter alignment with corporate goals. As it turns out, one of the byproducts of all those benefits is

reducing costs after all.

[Jim Michalowicz](#)

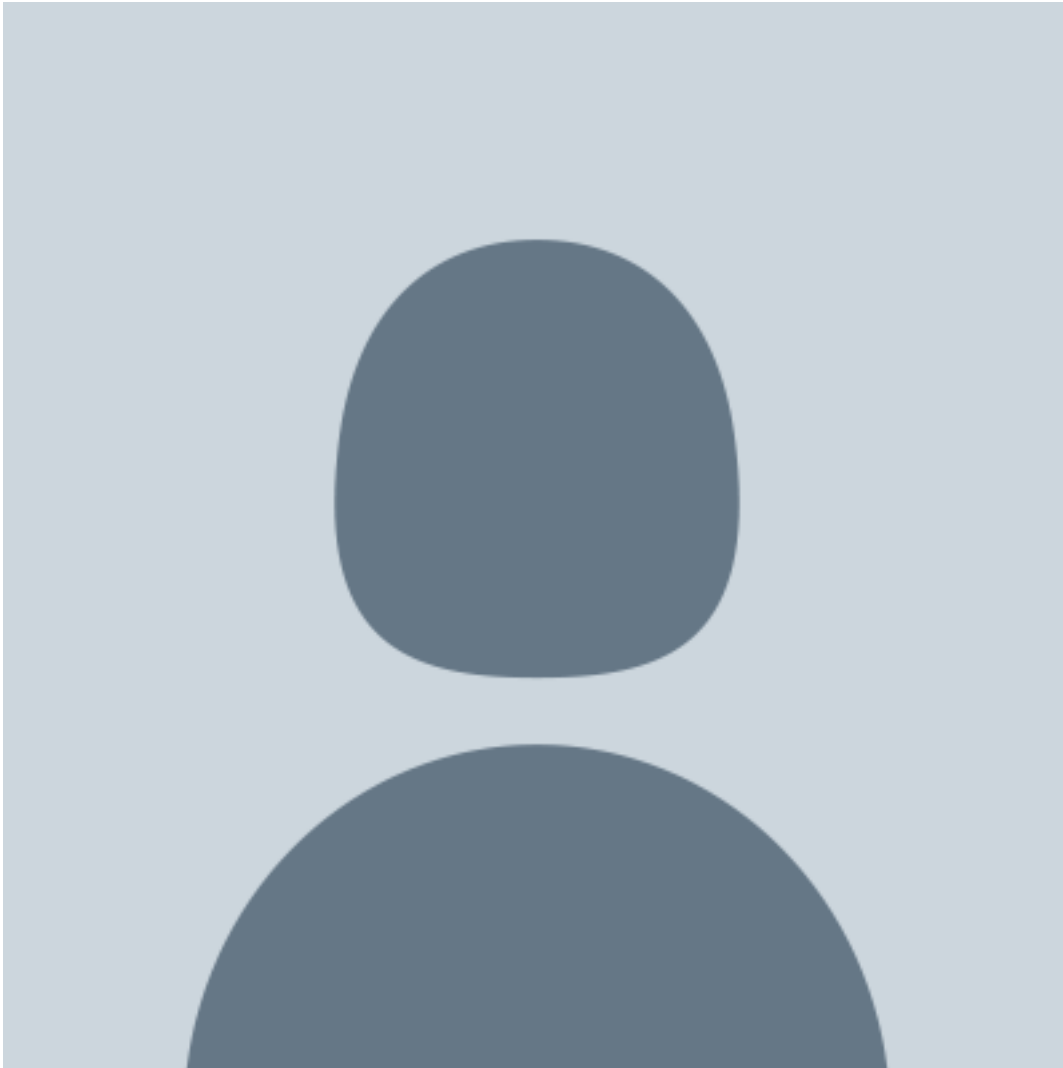


Senior Manager of Legal Operations Business Performance

TE Connectivity

He is responsible for developing metrics and processes to improve the department's business performance. Prior to joining TE Connectivity, Michalowicz was a consultant with a number of major firms and was litigation program manager at Tyco International and business manager of DuPonts' legal department.

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Chief Strategy Officer

Morae Legal

Saphla is responsible for delivery of the company's services and its commitment to accountability by ensuring measurable quality and efficiency. With more than 20 years of experience delivering sustainable results for law departments, Saphla helps improve business performance by providing strategy, people, process, technology, and data related solutions.

