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Buzz Off: 5 Business Buzzwords That In-house Counsel Should Shoo Away

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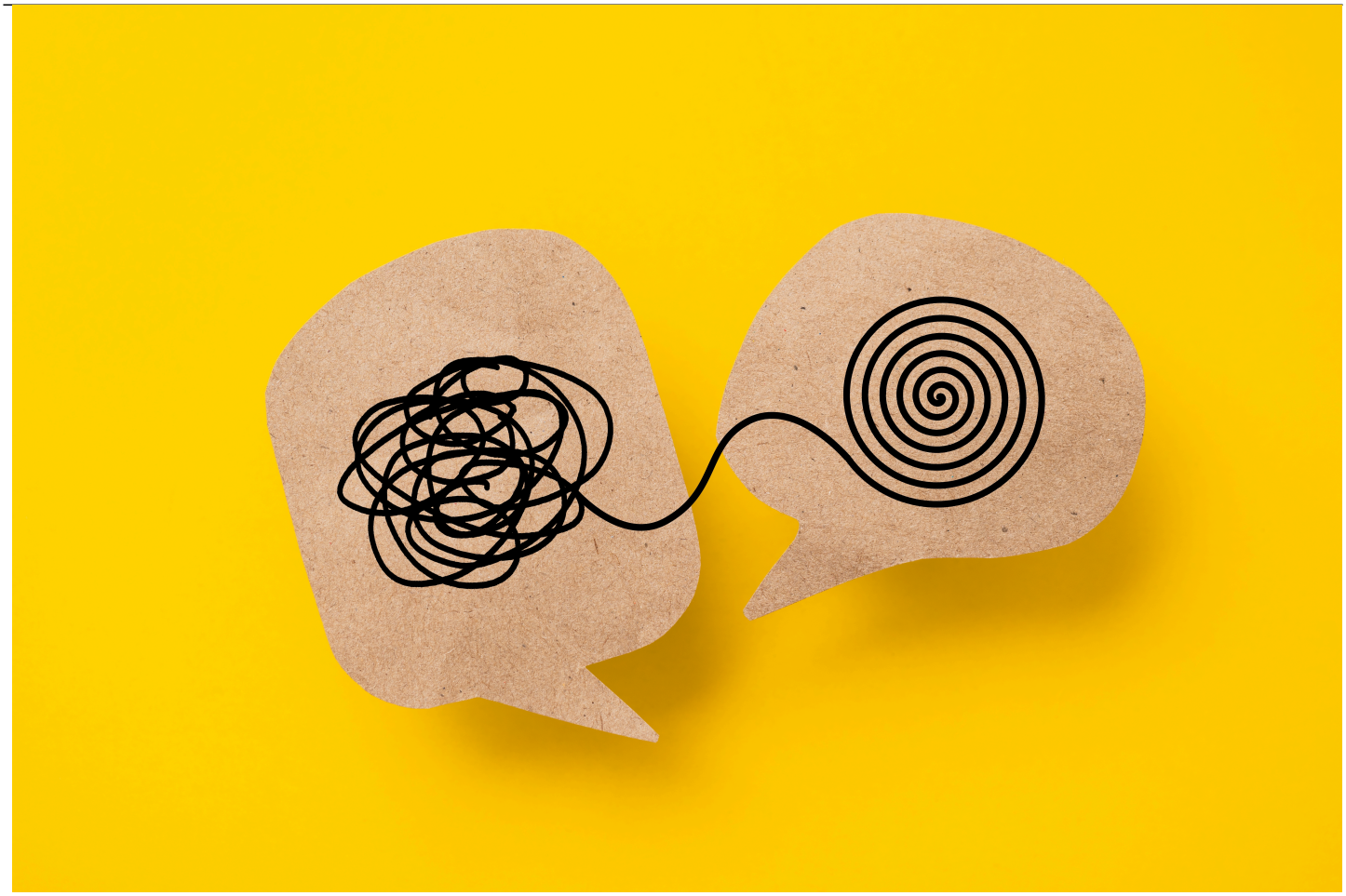

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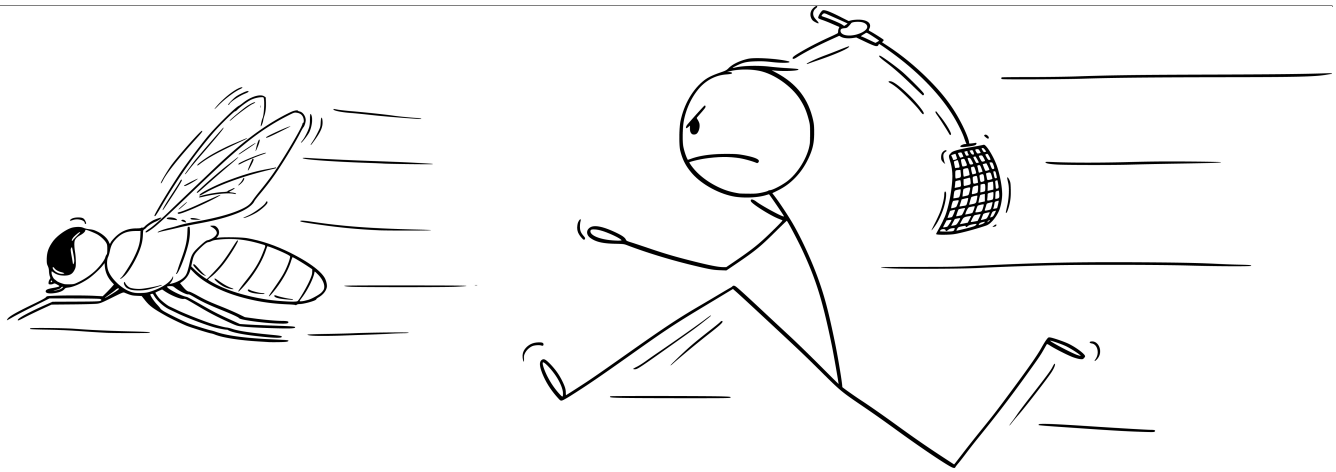
A great perk of being an in-house lawyer is that your colleagues aren't, well, lawyers.

Besides its social benefits, working alongside non-lawyers gives attorneys unparalleled exposure to the business world and its exciting landscape: strategy, finance, sales, crisis management, and of course — corporate jargon.

Business buzzwords swarm around our in-house ears: disrupt, synergy, pivot, value-add, level-set, core competency, ideate, double-click, ROI, learnings, and on and on. Every lawyer has a particular phrase that makes the skin of their neck tingle. Mine is "Are we aligned?" [translation: "Agree?"].

But some buzzwords do more than bug; they raise concerns, either because they sound like legal terms or because their fuzzy meanings blur important distinctions. Here are five such specimens, adapted from real contracts and documents. In-house lawyers should swat them on sight.



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1. “partner” [v./n.]

Ex.: “Client will partner with provider to move client’s data to a cloud-based environment.”

“Partnering” in bizspeak means working together. And a “partner” can in turn mean nearly anyone that your company rubs elbows with: client, vendor, distributor, sponsor, funder, your Uncle Buck.

In a narrower — but still corporatese — sense a “partnership” also refers to a co-marketing or referral fee arrangement. The Microsoft AI Cloud Partner Program, for instance, offers resources and other benefits to “partners” marketing Microsoft products to end-clients.

The term emphasizes parties’ collaboration and equal footing: No need to get caught up in who’s paying whom. We’re *partners*.

But despite the term’s prevalence and good vibes, “partner” comes with two legal drawbacks.

One is its hazy meaning. Take the example quoted above: “Client will partner with provider to move client’s data to a cloud-based environment.” What does that mean in practice? Will the provider transfer files to the cloud and the client pitch in when needed? Or vice versa? Or are the parties splitting up tasks in a different way altogether? Loose terms like this have many meanings; in most legal settings, that’s not a good thing.

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The second problem with “partner” is its ambiguity. In legal parlance “partners” are members of a “partnership” — under the Revised Uniform Partnership Act (RUPA), an “association of two or more persons to carry on as co-owners a business for profit.”

If the loose use of “partnership” nods to an egalitarian relationship, the legal version means it. In a

general partnership, two or more partners split profits and losses, share control, and owe each other fiduciary duties.

And unlike with a corporation, a general partnership can arise without filing paperwork. If the parties intended to carry on as co-owners of a for-profit business, then they may have formed a partnership — even if they didn't mean to. (See RUPA again, Section 202.) And while merely labeling the arrangement a "partnership" won't be conclusive evidence of forming one, putting the bizspeak term in a legal doc invites disputes about control, profit- and loss-sharing, and fiduciary duties.

No surprise, the terms of Microsoft's Partner Program clarify that Microsoft's partner program isn't a legal partnership: "Any use of the term 'partner' is for reference purposes only. The parties are independent contractors and do not intend to create an employer-employee relationship, partnership, joint venture, agency relationship, or fiduciary relationship."

But why use a term that needs that clarification? Instead, ditch the casual "partner" for something more descriptive.

2. "own" [v.]

Ex. "Vendor will own product delivery during the project."

"Own" in this sense means "be responsible for."

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The above example, for instance, lists vendor as "owning" product delivery. If the drafter is using the jargony "own," they may just mean that vendor must deliver the product. But a lawyer or judge could, quite reasonably, read the sentence as granting the vendor an ownership interest in deliverables.

Lawyers are less likely to trip up on this term; ownership is such a fundamental concept in law. But if laypersons write parts of a contract — for instance, service or deliverable descriptions — in-house counsel should watch out for this usage. It can usually be swapped for "be responsible for."

3. "stakeholder" [n.]

Ex. "We will maintain our duties to our stakeholders in managing our business in an efficient and sustainable manner."

“Stakeholders” are anyone with an interest in, say, a company, transaction or project. It may include shareholders, employees, customers, the local community, or a still-wider circle of interested persons or organizations.

“Stakeholder” is also a legal term of art in interpleader actions. But unlike with “partner” and “own,” the legal and lay usages of “stakeholder” likely won’t get confused: you probably won’t see the legal term outside of the interpleader context.

What makes “stakeholder” problematic is instead its vagueness.

The trouble crops up when a party takes on an obligation or duty to “stakeholders,” particularly in a contract or public promise. If it’s unclear who those stakeholders are, some holders of stakes may claim that you failed in your duty to them.

One solution is to define the stakeholders, either by name (if it’s a few) or by category (if it’s a lot). Another option is to avoid the word altogether; instead, just refer to the individuals or entities you mean.

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4. “solution” [n.]

Ex. “Our technology solutions are designed to deploy quickly and accelerate value delivery.”

Did I just say solution above? Who doesn’t love those?

While the word often describes software, “solutions” are marketed by everyone from consultants, manufacturers, and more.

But what does it mean in corporatese? Well, just as “partner” denotes nearly any business associate, “solution” can mean almost any product or service.

Pitching your product as problem-solving makes for a good sales spiel. But in emphasizing how the product helps users, “solution” purposefully shifts the focus away from the product’s nuts-and-bolts workings — the stuff lawyers think about most when contracting and assessing risks.

Imagine an internal client brings you an agreement for a “solution” they’re buying. Well, if the “solution” is from Oracle, they might be getting database management software. But if it’s an “Industry Solution” from Toyota Material Handling, they’re probably purchasing a forklift.

A lawyer would, one hopes, notice that software and forklifts differ in ways that matter, even if they

share the same “solution” label. Harder to differentiate are the myriad software “solutions” whose websites and marketing collateral stress high-level results over concrete details. For an in-house lawyer’s tasks, the term’s muddy meaning doesn’t solve problems; it creates them.

So, when someone on your business team seeks advice about a new “solution” they’re buying, don’t nod your head in understanding. Instead depose them: What exactly does it do? How does it work? Can you show me?

5. “AI” [n./adj.]

Ex. “Agency shall disclose to Advertiser the use of any artificial intelligence (AI) in the provision of Services prior to the use of such AI and obtain Advertiser’s [Legal Department’s approval] of any such use.”

The buzz around artificial intelligence (AI) remains loud and inescapable.

It’s not just coming from the sales, marketing, and tech teams. Lawyers too chatter ceaselessly about the tech — whether it’s pitching ways to speed up legal work or warning of new risks posed by the tech. (No judgment here; I chatter too.)

And the buzz isn’t *just* buzz. Legislators are drafting and passing AI laws; courts are facing novel legal issues; and artists are making cool, weird AI art.

It’s refreshing to see lawyers — a profession that puts Latin words in their sentences — embrace and wrestle with new technology.

The problem is that, like “stakeholder” and “solution,” “AI” means a lot of different things. For many of us, AI sprung into being with the viral chatbot ChatGPT and with text-to-image generators like DALL·E 2 and Midjourney. For others, the word sweeps in a much broader category of technologies, including machine-learning tools — software as common as spam filters and website product recommendations.

The broad meaning offers a sales opportunity for marketers and a wide target for regulators. But it’s a big blob for lawyers dissecting legal issues.

Take the above example, pulled verbatim from the template media buying contract that the Association of National Advertisers published last year. The provision mandates client disclosure and consent before agencies use “artificial intelligence.” “Artificial intelligence,” however, isn’t defined. As written then, an agency might need approval before using Outlook’s default text prediction feature. But does any client really want to have to approve that? Probably not.

It's an instance of lawyers letting a buzzword frame their legal thinking.

A better approach is to avoid the catch-all term, at least in its undefined form. If it’s only generative AI that you’re concerned with, say so. If you do mean the broader AI category, then still define the term; as with all these buzzwords, its meaning is otherwise inexact.

It's an instance of lawyers letting a buzzword frame their legal thinking.

O tempora, o mores

In fairness to our business colleagues, the legal profession suffers from jargonitis too. Our writing has inherited vestigial stock phrases (“right, title, and interest”) and dated locutions (“herein”) that bloat and complicate our documents and advice.

That makes work more challenging for our clients, who are 21st-century laypersons, not 18th-century barristers. Even if we don’t write *arguendo* or *mutatis mutandis* in our emails, sometimes we may as well be speaking Latin to them.

It’s natural then to think we’re speaking *their* language if we spice up our counsel with bizspeak. But we do so at the expense of clarity and communication. Corporatese, like legalese, is at home with abstract words instead of concrete ones, stale expressions instead of engaging ones.

But even where — especially where — issues are complex, lawyers and business teams alike should avoid the -ese’s and keep their language clear, precise, and arresting.

Are we aligned?

Join ACC

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Chris Wlach is the general counsel of Huge, a creative consultancy owned by the Interpublic Group of Companies, Inc. Before moving in-house he focused on complex commercial litigation at Arnold & Porter. He is a Certified Information Privacy Professional (CIPP/US) through the International Association of Privacy Professionals. He also chairs the board of HEART, a humane education nonprofit.