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All these efforts, and more, are done to counter the effects of what Creative Commons considers to be a dominant and increasingly restrictive permission culture. In the words of Lawrence Lessig, founder of Creative Commons and former Chairman of the Board, it is “a culture in which creators get to create only with the permission of the powerful, or of creators from the past”.^[2] Lessig maintains that modern culture is dominated by traditional content distributors in order to maintain and strengthen their monopolies on cultural products such as popular music and popular cinema, and that Creative Commons can provide alternatives to these restrictions.^{[3][4]}

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Outsourcing Know How in Law Firms – Strategies for Success

Abstract: Outsourcing is now a reality for the legal profession. Sarah Fahy from Allen & Overy LLP asks how we decide its relevance for know how. Key to deciding is an objective review of our current internal practices and an appreciation of the relationships and skills necessary for compiling successful know how. Establishing a productive partnership with an outsourcing company takes commitment and investment. Success is forged through a shared vision of success from an agreed starting point.

Keywords: law firms; outsourcing; legal information; knowledge management

Introduction

The pressure for law firms to outsource some or part of their business is growing. The benefits of outsourcing have long been proclaimed. Studies quote savings of between 30 – 70% on staff costs, and with 80,000 law graduates in India each year, the opportunity to expand is attractive. With Forrester estimating a \$4billion legal outsourcing market for 2015¹, even the *New York Law Journal* noted recently that “outsourcing legal work to India is no longer a novelty. It’s a reality.”²

So should you consider outsourcing and, more importantly, what should you outsource? How do we strike a balance between maintaining a good service for our fee earners and being prudent? Is outsourcing know how realistic?

Why shouldn’t you outsource?

It is important to consider this question before starting out on the journey. I should also make clear that, in this analysis, I am assuming that actual legal work is not being outsourced. Where core legal work is outsourced, I believe the whole story changes, as lawyers need support locally. So given this omission, what reasons are there for us not to outsource supporting functions? By exploring this question we can examine our prejudices and blow the cobwebs off our assumptions.

The value of the law firm is its people and their expertise and experience. Law is essentially a relationship-driven business. Clients rely on lawyers as their trusted advisers because they are proactive in spotting problems and expert at finding solutions. So which part

of the legal process could one outsource without undermining this relationship? Ironically it is pressure from clients to reduce fees that has brought outsourcing to the fore in the legal world, yet it is the expectations of clients that must temper our approach to outsourcing. Is there enough activity left, after these concerns have been addressed, to make outsourcing viable?

The final, most important, consideration is the risk element of outsourcing. Entering into an outsourcing agreement opens areas of risk – is your data truly safe? Are you able to endorse fully the practices and procedures of your outsourced partner? One thing for sure is that you will be accountable for any failings. As Diana Kelley so succinctly put it, “most accountability and almost all reputational risk cannot be outsourced”.³

These considerations should inform our decision as to what we can and cannot outsource.

The know how landscape

Know how as a function encompasses many activities. One can see these on a value chain, ranked according to the level of expertise required, stretching from the mundane, but essential, task of inputting know how into a database to the provision of innovative thinking to clients. The internal relationships that exist between these activities are vital to their success, and an essential consideration when considering what to outsource. It would be counterproductive to deny functions access to the relationships and oxygen they need to evolve, through a lack of appreciation of these factors. The risk associated with the work and the value it has to the reputation of the firm should also be assessed.

The know how landscape is made up of people and products, and can be expressed in Figure 1.

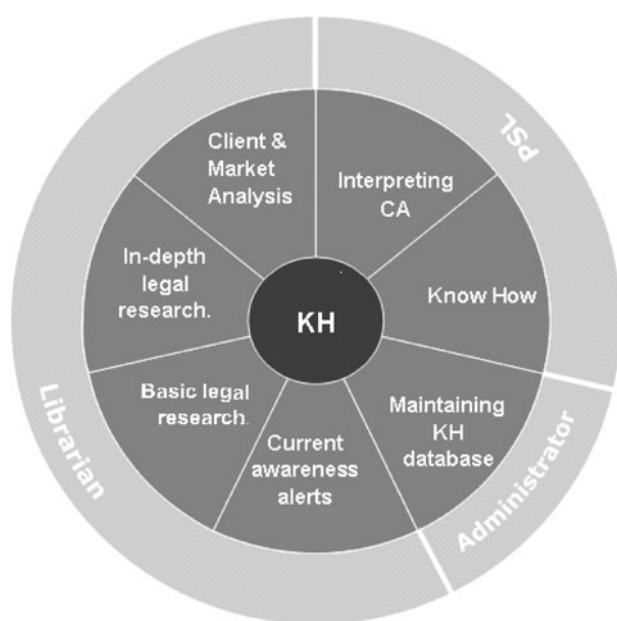


Figure 1: The know how landscape: products and people

In this landscape, know how products can be divided into three different levels. Core activities are essential, largely administrative tasks, that underpin the provision of know how. Tasks at the intermediary level are often complementary to the fee earning skill set, and key to the support of legal work. Branded know how offers unique content, produced for fee earners and client alike. Each of these tasks requires different relationships, skill sets and attributes to succeed, and a consideration of each of these will help identify those suitable for outsourcing.

Core tasks

Core tasks are essential to the success of any know how strategy. They facilitate the flow of information and underpin the whole activity. Within this level I would include the maintenance of the know how database, provision of current awareness alerts and of basic legal research.

The first core task falls to the administrator role. Maintenance of the know how database through the receipt and processing of content forms the bulk of this work. Clear procedures are necessary to ensure content is updated, old content retired and its integrity thus preserved. This role falls firmly within the traditional remit of outsourcing. Once appropriate channels are set up to facilitate the flow of information, success should be assured. Whilst the task is core, the skill and risk level is low. Supervision remains the domain of the creator of the content, thus the integrity of content should be assured.

The remaining core tasks fall to library staff. Essential to the efficient support of fee earners and the know how community the skills involved, however, are not exclusive to the librarian. The provision of current awareness involves the identification of key sources, the application of search techniques, and dissemination of the results to fee earners in a timely manner. Its aim is to keep lawyers up-to-date with new events or changes in the law in the most efficient and economical way possible. Much of the input originates from the lawyers (i.e. the required sources), as does the key search terms. The librarian acts as an intermediary, applying search skills to the particular database or website required. One should not underestimate the importance of an understanding of the lawyers in this regard – the cultural awareness of the librarian is integral to success, and thus presents particular challenges if outsourced. There is no reason, however, with the judicious use of appropriate technology and careful management of expectations, that a significant amount of this activity should not be outsourced.

Basic legal research involves retrieving specific items on request. Trainees and fee earners are routinely engaged in this activity, but the librarian holds the position of expert. Whilst the act of undertaking basic legal research may not require expertise beyond an

understanding of legal terminology and the ability to search databases, the selection of sources, advising and training of lawyers does require expertise. In outsourcing basic legal research, therefore, it is essential to ensure that these expert levels of skill are applied to the process. Keeping abreast of one's lawyers' concerns and interests feeds into the overall quality of service a library is able to offer, so a watching brief on enquiries sent to outsourced researchers would be necessary. The librarian would then apply his/her expertise in guiding and training all parties accordingly.

Intermediary tasks

The two intermediary tasks identified in the know how value chain reside with the librarian.

In-depth legal research requires the application of judgment and experience acquired over a number of years. For success it is necessary for the librarian to understand the context of the enquiry, the needs of the requester and the breadth of the services available. Truly valuable librarians achieve their place at the table through skilful questioning and negotiating with their requesters, and matching this with their broad, deep understanding of the variances of the products available. The relationship the librarian has with the lawyer is vital to the efficiency of this process. In-depth legal research is invariably undertaken in support of client matters, so accuracy and quality is essential. Failure poses a real risk to the reputation of the firm. I would suggest, therefore, that this activity should not be outsourced. The combination of skills and experience, coupled with the relationship necessary with the fee earner, makes this activity a difficult one to transfer to others.

The provision of client and market analysis is the other intermediary task that often sits with the librarian. This type of information is more generally understood. Business press, annual reports and analyst's reports form the body of information to be searched and analysed. The analytical skills required sit less naturally within the toolkit of the librarian. This activity may well, therefore, be suitable for outsourcing. Many outsourcing firms claim to offer this service and some have been recognised as succeeding. It is a mature market, and so we can learn from the experiences of others. Numerous organisations have experienced frustration through lack of consistency in research output, and report difficulties in transferring cultural understanding. The high attrition rates within outsourcing firms have cost firms dear, as the drain of constantly training new staff delays the receipt of expected outsourcing benefits. Many early entrants into the outsourcing market transitioned rapidly to the off-shoring model to overcome these problems. Success in outsourcing this activity, it seems, mirrors all the advice available for successful outsourcing itself – choose your partner wisely and invest in the relationship heavily.

Branded know how

In the context of this analysis, branded know how encompasses the interpretation of current awareness and the production of know how. These activities are the domain of the professional support lawyer or, in the absence of a PSL, a fee earner. The same skills are needed for each product – the application of authoritative legal knowledge and judgment and an appreciation and understanding of the firm's approach. Solid legal training coupled with a good understanding of the firm's business and strengths is thus required. These products support the internal development of the firm, underpin the efficient provision of client services and contribute to the reputation of the firm.

The PSL is engaged in interpreting current awareness. He/she takes the information disseminated by the library, applies knowledge of the sector and of clients and interprets the information appropriately. Here is the opportunity for a firm to identify the present and future needs of its clients, and for the identification of new fee earning opportunities for the law firm.

The final product - the production of know how - is a proactive activity. The PSL, through the expertise described above, identifies those issues that require further analysis and produces considered content accordingly. This activity has great value internally for a firm as the production of value added know how can aid the development of associates, support the expansion of practice areas and provide a knowledge base for the firm to build from. Supporting client teams, and ultimately clients, the PSL can become a trusted adviser to in house counsel. Could these tasks be outsourced? Success relies on expert knowledge, experience and, above all, a close understanding of client needs, so I would suggest not.

Outsourcing strategies for success

There is, then, some know how activity that could be outsourced. The success and future growth of this activity depends heavily upon the quality of the relationship enjoyed with the outsourcing partner. Careful planning is vital, and I will now consider how success might be secured.

Internal considerations

Before looking outward for support, we should consider the internal picture. It is essential to the success of the outsourcing project to fully appreciate the procedures and steps currently undertaken within this activity, and moreover, to ensure they are efficiently executed. Remember: an internal muddle outsourced simply creates an outsourced muddle!

- **Preparation: current status:**

As with any good business case, the first step is to define your objectives. What are your key drivers for outsourcing – is it to save money? save headcount? or both? Is it to add complementary services and allow you to expand your offering? Whether it is only one of these, or a mixture, it is important to identify the strategic benefits your organisation expects to achieve through outsourcing. This then forms your barometer for success – throughout the process you should check and recheck progress against these stated aims.

It is also important to understand fully the current value chain for know how in your organisation. Understanding who is currently doing what, and questioning whether your firm is deploying the skills currently available in the most efficient way, will help you to identify whether the right people with the right skills are currently doing the right tasks. Identifying the failings in your current model will allow you to ensure the correct model is adopted for outsourcing.

The value of the people involved in the know how process is also important. The monetary value of employing staff is the most common approach to valuing them, but do not underestimate the intangible value current staff bring to the process. Maybe the lowly task of data inputting actually involves much more – perhaps this role also ensures that content is gathered through close links with its authors. Make sure you understand the full value of each role as it stands.

Finally, consider the stakeholders. Identify who will be affected by your decision to outsource and explore how these stakeholders currently interface with staff. Try to anticipate their sensitivities so that you can account for them in your outsourcing plan. Some cannot be addressed – awareness of what these are will help you manage the expectations of the firm.

- **Preparation: review alternatives**

Whilst outsourcing is popular, and you know you could outsource certain tasks, do take time to consider any other alternatives.

Through a clear understanding of the value chain involved in the know how process, you may find that a restructuring of current resources would be appropriate. Review this and consider how the potential result measures against the key drivers you identified at the beginning of the project. Finally, consider the role of technology. Do you currently use technology in the most efficient way? Be aware that, whilst you may find a technological solution, the likelihood that it will meet your key drivers and be cheaper for the firm is unlikely.

Finally, consider the current operational arrangements in place within your firm as certain tasks may already be outsourced or there may be an offshore resource. Consider whether it would be possible to outsource your tasks to this party, but be sure that you are satisfied the partner can provide the skills you require. A vanilla

BPO provider may not be able to provide research support and it may cost you dear in time and effort trying to achieve the impossible.

- **Preparation: assess impact**

By understanding the relationships that will be affected by outsourcing a particular task, you will be able to identify the potential risk issues. An approach to assessing this is to audit the benefits fee earners currently perceive that they enjoy. Consider the relationship between trainees and library staff and the tangible and intangible value of this relationship. Objective analysis of the value of the current structure will allow you to identify the level of internal management you will need to ensure the outsourcing project is successful. Do not underestimate the cultural issues, and seek others' experience to help you anticipate and prepare for these.

- **Preparation: agreeing the objectives**

Having identified your key drivers, reviewed the alternatives available to you, and having gained an understanding of the sensitivities concerning outsourcing in your organisation, you are ready to engage with management. Keep at the forefront of your mind the truth that no firm wants to downgrade its offering, and seek to offer realistic solutions to safeguard current standards.

A common reason cited for the failure of outsourcing projects is lack of long term commitment. Whilst the economic benefits are widely trumpeted, the investment and commitment required to make the arrangement succeed is often overlooked. Management must fully appreciate the financial investment required and appreciate the ongoing investment of staff time in the project. It is important to ensure management have realistic expectations of the project, both in terms of cost savings and delivery timelines.

Most importantly, it is necessary to define the metrics for success with management. Identifying how you will know whether the process is succeeding, and the factors that are deal breakers for all concerned – whether financial or procedural – will help remove hidden agendas and establish transparency. In addition, you should not shy away from agreeing what will happen if the project fails.

External considerations

Many have gone before you and it would be sensible to seek advice and learn from the experiences of your peers, but do maintain your independence. Decisions should be based on the best provision of the skills and experience you require, rather than any current arrangements your firm may have, or the experiences of others. Whilst price is of course a very important consideration, it should be secondary to the establishment of a quality, sustainable service. The criteria for selecting your

outsourcing partner should be based on abilities first and price second.

- **Preparation: policies and procedures**

Most outsourcing relationships fail for the lack of an agreed understanding of the scope of the project. Partner with your chosen firm and establish a close working relationship as quickly as possible. From the start agree explicit service level agreements covering a “right to audit” clause; an agreed approach to the loss of service; and an agreed escalation plan should the service fail. Detail the consideration due for specific failures to ensure the relationship is transparent, and ultimately negotiate and agree an exit strategy with your partner. This basic framework will help build understanding and trust.

To succeed you should regard your outsourcing partner as an affiliate of your firm. You therefore need to know and agree their policies with regard to recruitment, insurance and data protection. You need to know and be comfortable with their attrition rates and contingency plans, their corporate social responsibility record, and their reputation in the market. The failure of your outsource partner will reflect on your firm, so be thorough in your review.

- **Preparation: implementation**

Only now are you ready to implement the agreement. It should be clear that your partner is capable of providing you with the service you require, and that you are happy to welcome him into your family. Much has been achieved, but as many projects fail upon implementation, don't underestimate the importance of investing time and energy at this stage of the process.

A successful model is to approach your relationship with your outsourcing partner as if it were a joint venture. Agree who the key partners are and define their respective responsibilities and accountabilities. Then plan the roll out thoroughly by agreeing milestones. These milestones will help you both assess the success and progress of your venture. Failure to meet a milestone can be as valuable as succeeding, as much can be learnt through failure. To ensure failure is positive, it is important to agree contingencies upfront. An agreed approach to events will diminish the opportunity for misunderstandings and confusion.

An ideal way to build the outsourcing relationship is to shadow each other. This will quickly identify and iron out miscommunications and develop a positive working relationship. Do not underestimate the opportunity for misunderstandings and use this phase to build an open, honest relationship. This may be the first time you have the opportunity to work closely with the people on the ground too – those who will actually be working for you rather than their managers. Take some time to research the cultural differences of the outsourced staff so you can be sensitive and mindful of these. Common failings in outsourced relationships centre around a different approach to conflict and authority, whereby willingness to agree cannot be met with performance. Be aware of these nuances so that you can develop a common language to minimise misunderstandings.

Conclusion

Much has been written about the ingredients of a successful outsourcing experience. Common to all is the need for realistic expectations. Being realistic about what one can and should achieve, be it cost savings or more resource, and keeping these in mind throughout the process, will ensure the project can be objectively judged a success or failure.

Both parties need to commit and invest in the project, and be aware that the implementation phase will involve an initial loss of productivity as teething problems are addressed. A common frustration to many who outsource is the high attrition rates of their outsource partners. Careful selection of a sustainable, good employer to partner with is thus crucial.

The pressure to outsource in the legal market is increasing. The emergence of a dedicated legal processing outsourcing industry, and downward pressure on legal fees, mean that it is no longer an option to ignore this challenge. Approach outsourcing as an opportunity to increase the value of your in-house staff rather than a threat, and drive the thinking rather than follow. Clarify where your know how staff are really adding value and concentrate on devoting more resource to these tasks. In this light, the outsourcing challenge can be seen as a positive aid to extending the reach and influence of in-house know how staff.

Biography

Sarah Fahy is the Head of Global Library Services at Allen & Overy LLP, an international legal practice. She is responsible for the strategy of the firm's library and information service across its global network. Her particular focus is on the promotion of library services within the firm's different practice areas, the global development of the service to meet the changing needs of a modern law firm and consultation with the legal and business development teams to ensure they have access to the best resources to support their clients. Her background of many years working in consultancy firms and investment banking allows her to bring a fresh approach to this established service.

Footnotes

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Examining the Long Term Impact of Outsourcing Know How

Abstract: This article by Loyita Worley examines the potential effects of outsourcing knowledge management processes in law firms and discusses the impact it may have on the firm, its information resources and the clients involved.

Keywords: outsourcing; legal information; law firms; clients; knowledge management

Introduction

This article originated from a talk that I was asked to give at a conference on outsourcing know how in law firms – specifically on the potential long-term impact. At that point, outsourcing was not something that I had considered much, although I was aware that it was a concept that was being used increasingly in connection with law firms. It was only recently that I had heard of the term specifically in connection with know how or knowledge management. I accepted the offer to speak and decided to use it as an opportunity to explore the possibilities of outsourcing in relation to legal information provision. The first thing I discovered was that, when people talk of knowledge management in the context of outsourcing, they can be referring to any number of things. Either to what we would normally consider to be a firm's 'know how'- i.e. standard forms, briefing notes, lecture papers etc, or indeed to library services themselves, such as certain types of research (business development enquiries perhaps), current awareness or maybe subscription management and therefore I am using the terms very loosely in this article.

At Reed Smith Richards Butler we do not outsource know how or any knowledge management functions, but

we have relied upon an external company to process, classify, index and add metadata to our know how database and index our know how - although not create the know how itself – for several years, which I suppose is a form of outsourcing.



Loyita Worley

As we all know, the legal profession is very risk averse, and therefore has been comparatively slow to embrace outsourcing as a whole and, in particular, the more challenging aspects of outsourcing which would include KM. I have enquired extensively to see whether any law firms have outsourced any of their KM and then subsequently brought it back in-house, but have not found anybody within the legal sector – or at least not anyone who will admit to it! This effectively means that examining the long term impact

of outsourcing KM involves a lot of crystal ball gazing. I have drawn upon discussions that I have had with interested parties and I have also looked at the experiences of other business sectors.

Looking at the long-term impact is most important as any outsourcing initiative is likely to involve a considerable investment of time and money and should therefore always be viewed as a long term strategy. There are potentially many types of KM that can be considered for outsourcing – some of which I have already touched on - as well as many outsourcing models that can be put in place.