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Waste not, want not – recalibrating legal

Eimear McCann

How can the legal industry operate more sustainably? Eimear McCann explores how lawyers can work smart to eliminate waste.

How often do you think about global waste? Predictions are that by 2050 worldwide waste generation will increase by 70%, driven by socio-economic factors and behavioural shifts. Only 20% of this (3.4 billion metric tons by approximation) will be recycled: a genuinely shocking statistic. In a state of overwhelm, most of us will be blinded to the remaining 80%, simply because we struggle to contemplate something which feels much larger than our lived, human experience. Our inaction is not necessarily reflective of indifference, but rather a feeling of impotence in the face of the enormity of the collective task.

I remain in awe of the astrophysicist, tasked with presenting a visualisation of the universe, even though our universe was not built for human minds to comprehend (in fact, only 5% of the universe is normal, observable matter). Our inherent cognitive limitations are further compounded by culture, mindset and a conditioned way of thinking and assessing. Apparently, as humans, we have blind spots for a myriad of cosmic phenomena that simply run counter to our intuition and understanding; for

example, we erroneously perceive patterns in the spacing of stars and of the planets in the solar system, seeing them as though arranged in a specific order. Apophenia or otherwise, our human perceptions often get in the way of seeing the truth.

Our legal universe is vast, and often indecipherable to those who do not inhabit it (trying to explain the dichotomous billable hour is often an exercise in self-ostracism). For many of us, law is all we have known, and it can be challenging to step outside of our cosmos and set aside flawed perceptions and patterns. Historically, law has been populated by lawyers and practitioners who have never resided in other worlds. Cross-pollinating was not a thing, and the law had its own unique orbit, which was simultaneously exclusive and inclusive, depending on the nature or duration of your residence.

Evolution is happening rapidly across all segments of the profession, and yet, as welcome as the transformation is, there is still so much waste on a global scale. Intangible and often impossible to measure, this waste – an elusive chameleon – is largely ignored.

The widespread adoption of technology within legal has inexorably diminished our reliance on paper, with a global push for greener ways of working. Working electronically has never been more seamless, or more desirable. Thanks to an escalation in the use of the cloud and a renewed focus on tech-enabled working on a business-wide level, paperless is becoming the norm. There is a sense that as we save on one resource, we overlook others.

Fundamentally, technology, for all its ubiquity, is only useful when it is properly implemented, understood, and, as obvious as it sounds, has full buy-in from the end users. Legal tech is still a relatively new market, and the waves of new products and functionality will continue to flow. Amidst talk of market saturation and record levels of investment, I can still picture stressed-out lawyers sitting at their desks, feeling entirely detached, not only from this exciting market, but from the new software that feels more like an imposition than a welcome addition.

The chasm between decision maker and end user has still not completely narrowed, and anecdotally many law firms find that uptake across the business can be low to moderate. Aside from the wasted cost of procurement, and the time lost on implementation and likely integration, there is a deeper sense of futility for all involved. Without internal marketing and buy-in, new platforms will experience a gradual atrophy of usage, which does little to displace some lingering reticence to engage new software in the first place. The land and expand strategy has a crucial role in many legal tech success stories, with a focus on internal champions and an empathetic style of engagement. It may sound basic, but a product is only useful if the story resonates with the user; otherwise, it's just another platform to contend with in an omnichannel overload.

Our adherence to Microsoft packages seems unwavering, and yet large chunks of the functionality of the Office 365 package are under-utilised. I'm not sure I've ever used Excel for much more than data capture and simple calculations. I suspect that most of us have access to platforms on desktops and laptops that we surface, but don't fully engage, and all the while new products with new integrations emerge; a steady flow of new ideas captured in software.

With this increasing digitisation, we face further challenges. The nature of a lawyer's autonomous inclinations is a standard part of the legal vernacular, but I wonder how far that desire for autonomy stretches? Our lives are busy, and our brains are busier. Thirty years ago, we tended to delegate; both personally and professionally. Armed with our multi-functional smartphone, we are very much in control. In fact, we can organise our entire lives from a device which could be said to be the digital encapsulation of autonomy. And yet, aside from the generic distractibility arguments, how much time do we waste as a consequence? With emails and instant messaging so accessible, do we send messages that are superfluous? Do we migrate away from complex work too often to check emails that simply don't need our attention?

Thirty years ago, we tended to delegate; both personally and professionally. Armed with our multi-functional smartphone, we are very much in control.

Unless, or until, we have a more cohesive way of working, I fear that we are fuelling the myth of multi-tasking, which not only increases the production of cortisol and adrenaline, but also leads to overstimulation and an inevitable scrambling of thought. Just when we think we are saving time and energy, we are wasting some of our most precious resources – our clarity of thought and judgement – indispensable in the mind of a lawyer.

Conversely, the same tech can be remarkably efficient at saving time, energy and cost in the overall automation of workflows. This is factually undisputed. Technology, coupled with legal design, is arguably even more effective, although the latter is still handled with caution by many, not yet persuaded of the potency of visuals and

iconography in the serious business of law. Legal design, as a concept, is a novel one, and innovation will always leave the door ajar to some cynicism; however, I believe that these misconceptions around legal design will dissipate, leaving more room for human-centred design thinking and ideology.

Legal design, in my view, is primarily about accessibility, in whatever form that may take. I love words and language, but we waste a lot of them in legal drafting. Do we need to be so verbose? Do contracts need to run to hundreds of pages? Does the language itself need to be so incongruous with the real world that we inhabit? I wonder how alive we are to the disparities of tone and language, and whether we are wasting an opportunity for new and innovative ways of communicating.

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Running in tandem with legal design thinking is the push for standardisation. OneNDA (a crowd-sourced, open-source Non-Disclosure Agreement) is an excellent example of a desire to stop legal waste. Like most great ideas, it started with asking a simple question – what if there was a homogenous starting point, with the same template? Wouldn't that save enormous amounts of time, money and effort? It makes commercial sense. No one wants a protracted negotiation; everyone gets the deal done quicker and lawyers have more time to spend on complex work. Not all legal documents are capable of standardisation and there will always be a place for the detailed and the tailored, but we could simply look to save where we can by streamlining language and by simplifying categorisation.

To do so, we need to embrace collaborative ways of thinking and working. The amount of knowledge that is wasted and forever lost within the profession cannot be captured by metrics, but it must surely be expansive. Before transitioning over to the world of tech, I had never heard anyone allude to the 'bus factor' (which essentially refers to the number of people in your team/business who could put a project in trouble if they are hit by a bus). It sounds brutal but it's an important component in the mechanisms of a project or within a business, particularly smaller ones, where the bulk of the knowledge and the core skillset tends to fall on to one or two people.

Knowledge-sharing in legal is sporadic, although the necessary duality of awareness and desire is growing. Noslegal and Liquid Legal Institute are two disparate initiatives that are a call to action for lawyers globally to share knowledge, experience and awareness; while they have a very different manifesto, they both aim to bring cohesion and transparency to a world lacking both, with education firmly underpinning their work across the sector.

Much could be explored on the wasted opportunities to share knowledge within and beyond the confines of our legal cosmos. As a starting point, I wonder why paralegals, trainees and junior lawyers aren't encouraged to share ideas and observations to a much greater extent, joining law firms and businesses with fresh minds and an initial objectivity that will naturally diminish over time. A question of rhetoric, but one worth asking is why aren't lawyers more consultative in their external engagements? Wouldn't it say a lot more about the profession if there was less "it depends" and more of "let's work this through together"? Would this not encourage knowledge-sharing, within and beyond the profession?

And yet it all starts where it is most equivocal – law school – the springboard for everything else. With some wonderful, notable exceptions, legal training can be oxymoronic and outdated. Rather than experiential and experimental, it is mainly study-based and light years away from current practice. Such a waste of brilliant minds and extensive resources. Imagine if kinaesthetic learning dominated, with law students utilising the tech used in practice, from document automation through to

visual workflow tools and data analytics. Imagine too that students were taught design thinking (by designers), business development skills, and actually spent time with clients, getting to understand their pain points and the importance of collaboration. The study of law is tough, but it could also be fun; more importantly, legal training could really move future lawyers from positions of heightened anxiety to a place of psychological safety. A new generation, armed with enough experience, confidence, and competence to feel at home in law – that would really be something.

Law and technology share a mutual criticism in that regard; both maligned for their absence of humanity. There are wasted opportunities in both. Professionalism has finally been granted its proper definition, shedding years of uptight stereotypes. The opportunity now is to really demonstrate that lawyers, intelligent and competent, are simply humans, who can not only empathise and think creatively, but who can also suffer burnout and exhaustion. External perceptions matter much less than the internal culture within legal. We have an opportunity to reframe and to give lawyers a chance to express themselves, to have permission to fail, to make mistakes and to be supported in the process. If there was ever a time to change, this is it – a time to recalibrate. With attrition rates at an all-time high, I can only think of the waste of training and talent, as more and more are choosing to leave the profession behind.

As to the tech, do we need to explore sensory experiences, particularly in the contentious sectors? Arguably, all virtual experiences are hybrid; we are physically present, even if our communication may

be digital, and we need to have technology that reflects that. How can we ensure that our hybrid experiences retain humanity? Should hearings be more immersive, with an interdisciplinary focus, looking at the roles of neuroscience, art and music?

The amalgam of law and tech is a human one. We design the technology and yet the tech shapes how we behave and how we work. We decide where the tech slots into workflows and processes and, in theory, the tech ameliorates our experience. We therefore have a responsibility to design the tech to augment our humanity, otherwise we risk creating a deeper chasm between them and us.

With a richness of data, there are many possibilities to create stories that bind together the human and the tech. Data stored and organised is powerful, but the uses are infinite and still untapped. Once we start to analyse the data to identify trends and patterns, our relationship with tech is less fractious and more harmonious, with analytics empowering decision-making and strategy. Creativity and autonomy marry well at this intersection of legal tech.

Perhaps we are already on the path to a more ecological legal world. Thinking around office space and business travel has changed, tech has liberated us from long commutes and there is a growing sense of urgency in the need for deep cultural change within the profession.

Returning to my awe of the astrophysicist, rather than focusing on the vastness of our legal cosmos, and how insignificant a place we may hold, maybe it's time to flip the narrative and instead see the potential of the individual in exploring exciting new ways to eliminate waste and to recalibrate legal.



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