

Your Firm's Annual Technology Review

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We realize that many of you are reading the title of this column and saying to yourself, “What annual technology review?” You belong to a big club. But if you are not doing an annual technology review, you are not serving your law firm well. So, let's start with the threshold question . . .

WHY DO LAW FIRMS NEED AN ANNUAL TECHNOLOGY REVIEW?

You may have noticed that keeping up with technology is next to impossible. The authors each read an average of two hours a day and we still can't keep up. The best advice is to be pragmatic and recognize that if you assess your technology once a year, including your cybersecurity, you're doing much better than the average firm.

One very good reason to do an annual technology review is to control your technology budget. If you fail to review your technology costs each year and plan for an annual budget, you are very likely on your way to a “big bang” expenditure caused by your failure to plan. No law firm enjoys an abrupt and large depletion of its funds.

Annual reviews also allow you to spot software you are using that may be going out of support. It is astonishing how many lawyers are still using Windows 7, which is now out of support and therefore not receiving security updates (except for rare situations which apply largely to big firms). That makes Windows 7 unethical to use.

As you go through your annual reviews, you will undoubtedly note that your technology costs (hardware, software and IT/cybersecurity support) have increased over time. As our friend Jim Calloway is fond of saying, “Every law firm is also a technology business.” That is very true in the digital era. As Jim has also noted, older technology impedes the efficient running of your law firm – it hurts productivity, which obviously impacts your bottom line.

CLOUD VS. ON-PREMISE TECHNOLOGY - CYBERSECURITY

This topic simply doesn't go away. The majority of law firms are using the cloud – at least for some functions. But while a sizeable chunk of law firms is using the

cloud for basic law firm functions, a sizeable chunk believe that they are more secure having an on-premise solution.

We wish that argument was easy to sort out, but it is not. Our friend Dennis Kennedy, who wrote the ABA 2019 TechReport on Cloud Computing, has said that “The current state of cloud security among law firms is a train wreck waiting to happen.” This is true. Law firms overwhelmingly do not do their due diligence when contracting with a cloud provider, as the 2019 ABA Legal Technology Resource Center Technology Survey demonstrated.

58 percent of respondents to that survey reported that they use cloud computing – and we know that number is higher because many lawyers have no idea at all when they are using the using the cloud.

To quote from Kennedy’s survey summary, “of 13 standard precautionary security measures listed in the 2019 Survey, the measure most commonly used was used by only 35% (using secure socket layers aka SSL) of the respondents. Given the emphasis on data privacy in 2019 because of the European Union GDPR and “hacking” by state actors, the jaw-dropping decrease from 38% to 28% of respondents reviewing vendor privacy policies is alarming. The next most widely-employed precautions were making local data backups (27%, down from 36% in 2018), reviewing Terms of Service (27%, down from 34%), and reviewing ethical decisions on cloud computing (25%, down from 34%).”

Those are horrible stats – and certainly do suggest that a train wreck is waiting to happen. This is one subject that should be raised every year to ensure that any cloud provider used by your law firm has been properly vetted. If you need an ethical mandate, remember your Rule 1.1 duty of competence with technology and your Rule 1.6 duty of confidentiality, among others.

CLOUD VS. ON-PREMISE TECHNOLOGY: WHICH IS MORE EXPENSIVE?

Yet another thorny question. The sad truth is that even we can’t answer that question without a somewhat exhaustive analysis. There are no apples to apples comparisons.

For each solution, you have to calculate (for the cloud), not only the price, but how long you are locked into a contract. Just because your data is in the cloud doesn’t mean you are not responsible for configuring the applications you use in

the cloud. That means IT and cybersecurity assistance – there is a considerable cost associated with those configurations.

There may be technical support charges for the cloud, or charges for enhanced functionality. You may be charged by the volume of data you are holding in cloud – and for how many backups you want in the cloud – along with the requisite “test restores” of data to make sure your backups are good.

Even Office 365 has had outages – at what price to your law firm? As we write, case management software company TrialWorks was reportedly hit by a ransomware attack. For at least four days, TrialWorks was effectively “out of business.” The shutdown prevented some lawyers from accessing their case files, including a close lawyer friend of ours, who is fit to be tied. What price tag do you put on that?

Another area for cost creep is what we call integration expense. This is particularly true for practice management platforms. Perhaps you need your case management system to work with an accounting application (e.g. QuickBooks, etc.), court calendar rules and credit card processing, each having their own cost. In other words, the cost of your case management usage is the aggregate of all the costs and not just what the case management provider charges you.

We often hear lawyers say blithely that the cloud is cheaper – and rest assured, cloud providers, being vendors, will tell you that as though it were gospel. We have seen the calculations go both ways – sometimes the cloud is cheaper and sometimes it isn't.

WHO SHOULD BE INVOLVED IN THE REVIEW?

This depends somewhat on the size of your firm. If you're a solo, obviously you and your IT provider do the review. The larger you are, the more people will be included.

In small firms, we often see two partners involved along with the office manager (who often really knows more than the partners) as well as the IT provider and sometimes a separate cybersecurity provider.

WHAT IS INCLUDED IN THE REVIEW?

This will vary from firm to firm. Certainly anything that has caused a crisis is top of mind. Perhaps the server is out of space or at end-of-life. You may be deciding whether to remain with an on-premise solution or go with the cloud.

These days, some law firms have many software subscriptions – when do they run out? Do they auto-renew? Is there a cancellation period that needs to be on your radar?

What new technology is out there that your firm needs? Is this the moment to sign up for artificial intelligence (AI) powered legal research or contract review? Is now the time to discuss accepting cryptocurrencies as payment for legal fees? Mobile technology is driving a lot of law firm change. The 2019 ILTA (International Legal Technology Association) Technology Survey reported that the #1 project which law firms reported as having the greatest impact involved improving mobility and the security needs that come with mobility. The same survey reported that the top areas where firms were using cloud computing software were payroll, email, document management systems and time and billing.

If you have not yet adopted a true case management system (and no, Outlook is not a case management system), is now the time? Do you need to modernize your website and/or make it more mobile friendly? At this point, the strong likelihood is that more prospective clients are finding you on their phone, not on a computer.

What about incorporating a client portal in your practice? Are there policies in place governing your technology? There are many that should be. What software is at end-of-life or not performing well? What new technology are your lawyers and staff clamoring for? What vendors have raised their prices and by how much? Have they priced themselves out of the solo/small firm market?

As to that last scenario, here's a splendid example. Say you are using Sage Timeslips for time and billing. But now you can't get a perpetual license for Timeslips because Sage is only providing annual subscriptions to use the software. Your last chance to get a perpetual license is to buy it from a certified reseller before September 2020. After that, your only choice is a subscription. So what do

you do? Look for another product knowing that the subscription model will be considerably more expensive? These types of decisions crop up all the time.

WHEN SHOULD YOU HAVE YOUR REVIEW?

Most firms choose to review their technology in the fall. Partly, this is because the summer is always a poor time for a review with so many folks on vacation.

Perhaps the most compelling reason to do the review in the fall is to capture the full benefit of the Section 179 of the US Internal Revenue Code, which allows a taxpayer to elect to deduct the cost of certain types of property on their income taxes as an expense, rather than requiring the cost of the property to be capitalized and depreciated. The property has to be in use by the end of the year which suggests planning should take place in September and October.

Remember that your IT provider is probably overwhelmed with requests to buy/install/configure technology toward the end of the year. Almost every law firm is looking to take advantage of Section 179 – and most of them are late in making their purchase decisions. Avoid the holiday rush!

IMPLEMENTING CHANGE AFTER THE REVIEW

So now you know what you want to do – the first question is always how much money you can afford to budget. Though it is self-defeating, many smaller firms try to just hang on without making ongoing investments in technology.

Sometimes, the money just isn't there – but sometimes, the lawyers simply don't see the need to become more efficient and competitive in the marketplace.

There's another "stopper" – which was emphasized in the 2019 ILTA Technology Survey. Simply put, when asked about the "the top three technology issues or annoyances within your firm," the top three responses were:

1. Change: Users acceptance of change
2. Change: Keeping up with new versions of software; and
3. Change: Managing expectations (user and management)

Change does not come easily to law firms – and managing change is an arduous process which could easily be the subject of another full column!

FINAL THOUGHTS

As we were writing this article, author Nelson posted on Facebook a photo with the words, “The most dangerous phrase in the language is ‘we’ve always done it this way.’” Another attorney and good friend replied, “How about: ‘If it is not broken, don’t fix it.’”

Perhaps this exchange highlights why many lawyers are not evolving. They don’t see antiquated systems, processes and technology as “broken.” So they take no action to modernize their practices whereas those who are receptive to change are successfully reinventing themselves and keeping pace with technological changes. Case in point – do you still have a physical fax machine?

One way to advance a law firm and increase its efficiency, attractiveness in the eyes of clients/potential clients and economic success is to take the time and effort each year to review your technology and the associated procedures that go with it. Change in the practice of law is no longer an option. It is pivotal to growth and economic health. Sometimes it is pivotal to survival. Law firms which do not evolve will consign themselves to the dustbin of history. So don’t forget to calendar your annual technology review!

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