

The real challenge of innovation for in-house lawyers

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Innovation is becoming the new mantra among legal departments. But in what direction should in-house lawyers direct their innovation efforts? Where are the real challenges of innovation for in-house lawyers?

These challenges are at two levels: First, contributing to the innovation strategy of the company (launching a new product, reinventing the business model, transforming the organisation, etc.); second, improving the functioning of the legal department itself. Make no mistake: from the company's point of view, there is a clear hierarchy. Contributing effectively to the innovation strategy of the company has more value than improving the functioning of the legal department. This is not to downplay the importance of improving systems and processes within the legal department. But focusing on “internal cuisine” should not make in-house lawyers lose sight of the bigger game.

Contributing to the company's innovation strategy

Contributing to the company's innovation efforts only make sense if innovation is at the heart of the company's strategy, which is not always the case. Some companies do not need to innovate to thrive. For these companies, innovation is a minor theme, or not a theme at all. Trying to contribute to the non-existing innovation strategy of the company would of course be a self-defeating enterprise for in-house lawyers. On the other hand, in other companies, innovation is indeed at the core of the strategy. Let's focus on them now.

No need to be an innovative lawyer to contribute to innovation

How can lawyers contribute to their company's innovation effort? By engaging in legal innovation? By exercising their profession in an innovative and creative way? Not necessarily. One could even say that it is unrelated. Lawyers can effectively support innovation with the traditional mix of legal advice, drafting contracts, negotiation, legal watch, etc. Business acumen, curiosity about the company's new products and services, an expertise in IP/IT law and a skill for negotiating research contracts or obtaining R&D subsidies are very useful for an innovative company, but do not require lawyers to be particularly innovative.

A real challenge: risk assessment

A more important driver of lawyers' contribution to the success of strategic innovation is how they assess risks and advise accordingly.

Let me provide an example. At a seminar with members of the legal department of a large international company, participants were randomly divided into subgroups. Each subgroup received the same business case: an innovative initiative proposed by the marketing department. The subgroups were instructed to issue an opinion. The different subgroups produced a wide range of opinions, some giving an unconditional green light, others speaking out against the project, and the rest subjecting their approval to a series of conditions. This raised tough questions: How could lawyers from the same department come up with such a broad range of advice on the same question, some of them killing the project? Those who opposed the project were not necessarily wrong. The ambition to foster innovation does not mean that lawyers should lower their standards. But the disparity of answers weakens the credibility of the legal department. If the legal green light depends on the personality of the lawyer in charge of the matter, what weight should be given to a legal opinion? How many innovative projects have been blocked, slowed down or complicated by unnecessarily rigid or anxious lawyers? Conversely, how many projects have passed through the legal department, when they should have been killed or bettered?

It is probably in this area that there is the biggest potential to improve the contribution of lawyers to the effectiveness of business innovation. How can lawyers ensure that the legal assessment of risks is done in a coherent, deliberate and methodical way, rather than left to the unchecked subjectivity of individuals? Let's be clear, once again: it is not about lowering the level of legal protection of the company nor accommodating an unreasonably voracious "risk appetite" of the business. It's about ensuring that the opinion of the legal department, especially when it blocks, slows down, or otherwise limits an innovative project, is the result of an irreproachable reflective exercise.

What to do in practice?

Here are a few steps to move into that direction (among many other possible measures):

- Educate the lawyers about the innovation goals and strategy of the company;
- Encourage lawyers' curiosity about the business, about new products and services, about new trends in the market;
- Develop within the legal department a structured methodology and effective tools (checklists, matrix, etc.) to identify and assess risks;

- Educate the lawyers about risk management (what it is, how it works), and train them to use the department's risk management tools;
- Promote discussions among lawyers, but also with colleagues from the business and from the other corporate functions, to collectively identify and assess risks, thus reducing the impact of individual biases;
- Set out a risk policy that determines what is acceptable, what is acceptable under certain conditions, and what is not acceptable at all. Involve the business managers in the discussion, even if the legal department "owns" the policy. The business is much more likely to respect the policy if they see it as their own, rather than as an offspring of the legal department;
- Encourage lawyers to come up with innovative ideas for the company as a whole, rather than limiting themselves to innovation within the legal department. Aren't lawyers able to have good business ideas beyond the legal realm? Can't they play a leading role in a cross-functional teams to promote business innovation, instead of just serving as the legal expert to such teams? Of course they can. And they should.

Innovation in the Legal Department

Let's address now innovation within the legal function.

This issue is generating a lot of excitement. Consider, for example, the Financial Times awards to innovative legal departments, and the noise around legal tech.

In many companies, innovation is a core value to which all are bound to adhere. Everyone is called upon to be innovative, including lawyers. It is undoubtedly hoped that this generalized innovative agitation will bring the company to be effectively innovative at the strategic level, like some companies where a deliberate policy of encouraging creativity and innovation has been able to produce spectacular results (3M, Google, and others).

We should applaud when a legal department innovates successfully: it makes the department more efficient and effective, it contributes to the overall success of the company (even if only marginally), it positions the legal department as a hero and as a role model in the company, and it can boost motivation and excitement among the members of the department. For example, a legal department was able to reduce by 90% its legal spend with a new case management process (no legal tech involved – just a better workflow). Optimising the performance of the legal function is of course an important responsibility of the head of the legal department, and efforts to improve the functioning of the legal department deserve recognition.

But the excitement and the media hype around legal innovation should not hide basic facts:

First, quite a lot of the so-called innovations in legal departments are just an upgrade to the current standards of business organization and technology (for example, a legal department that

would introduce a document management software can hardly be called “innovative”, even though a majority of legal departments still don’t have proper document management systems).

Second, many initiatives to improve the organisation and the output of the legal department are related to innovation, even if they require to change the status quo and to push lawyers beyond their comfort zone: clarifying the department’s mission and goals, defining workflows, making better outsourcing decisions, investing in training and education, making ambitious hiring decisions, reenergizing the team, and communicating more with internal clients are all venues to improve the performance of the legal department but are not, strictly speaking, about innovation.

Lawyers should, of course, constantly endeavour to improve the legal function, through innovation or otherwise. But at the same time, and especially if they want to be seen as strategic business partners, they should aim at a larger goal, expand their ambition beyond the legal realm, and dedicate the best of their creativity and expertise to contribute to the innovation strategy of their company.

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