



THE CURRENT STATE

Client service requirements and fee pressures are converging rapidly for lawyers who handle transactions, demanding change in the way that law practices draft, review and finalize legal agreements. Lawyers still must meet these demands while delivering agreements with clear and unambiguous content.

In law practice, to say “every word matters” in a transactional document is a simple truth; transaction-related lawsuits can often hinge on the interpretation of a single word. Thus, lawyers must avoid ambiguities at all costs and draft documents with exceptional demands for care, diligence and precision in order for the transaction to be enforceable in the court of law. For example, although later settled, litigation turned on whether the word “business” should have its dictionary meaning or the meaning assigned to the defined term “Business”.

While complete precision is a necessity in legal drafting, it can also be a burden, which is derived from both the difficulty in manually identifying inconsistencies and the fact that agreement drafting may require repeated exchange and review among the parties to the transaction.

Some professions, like architecture or engineering, have long embraced Computer Aided Drafting (CAD). The construction of buildings, power plants or aircrafts all depend on capabilities for which CAD is routinely used in order to meet the requirements for thoroughness,

completeness and accuracy. Intelligent, embedded review tools specifically designed for creating and reviewing sophisticated transactional documents enable lawyers to benefit from precision, minimizing risk to the firm and client.

The law practice that seizes technology guided drafting gains a critical competitive advantage.

DRIVERS FOR CHANGE

The Pressure is on. Clients expect lawyers to have the capacity for a very high level of responsiveness and rapid turnaround, regardless of the transaction’s complexity. In addition, clients and competition are pressuring lawyers to manage fees. Giving transactional lawyers tools that address these pressures with improved content quality and drafting and review efficiency is an important competitive strategy. Yet, there is a deeper reason why computer-assisted precision in legal drafting is imperative. Industry studies in electronic discovery suggest that an “eyeballs-only” review method can miss search results that can be found with computer assistance. In those studies, eyeballs-only document reviews fail to find all relevant results.

At critical times during collaboration, negotiated changes may introduce new terms that must be validated quickly. While the 100+ page documents drafted by transactional lawyers may be smaller than an e-discovery document collection, eyeballs-only drafting and review may expose the firm to unnecessary financial and reputational risks that are better managed when guided with effective technology.

EYEBALLS-ONLY VS. TECHNOLOGY GUIDED DRAFTING

Role Play. The transactional document drafting process includes significant manual

Regardless of the quality of the content, there exists a great risk to the success of the overall submissions process when the Microsoft Word documents themselves are improperly formatted, or the documents contain unknown formatting issues.



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effort from multiple levels of a legal team to achieve and maintain the required precision. While the Drafter—usually a lawyer—has primary responsibility for the substantive content, secretaries and document production staff—the Assistants—usually take responsibility for the document’s style and other structural details. In some practices—more prevalent in the United Kingdom and Canada—a separate responsibility belongs to the Professional Service Lawyer (PSL), who contributes to the document’s substantive content.

In order to ensure complete consistency and accuracy in the use of terms, phrases and other key usage in transactional documents, legal teams manually identify issues by reading, re-reading and cross-checking the document before passing off to the lawyer to execute or confirm a resolution.

Term Sheet. Serving as a definitive guide for a transaction’s financial and business terms, the Term Sheet has requirements which must be included in the transaction’s documents. Marking and annotating a document to connect to the Term Sheet helps significantly. However, drafters have lacked a tool that collects, organizes, displays and navigates among these markers, having tried to do this by working with “marker” text such as {COMPLETE ME}, using document comments or even using Post-It® notes.

Defined Terms and Consistent Phrases.

Definitions and consistent phrases make documents legal-legible and enable legal, financial and factual terms to be used consistently. Those responsible for drafting, reviewing and proofing documents—lawyers and those who assist them—need to account for the consistency and accuracy of defined

terms and phrases. This tedious effort demands a disciplined eye and a thorough understanding of the meaning of the text.

Review. Transactional documents are subject to multiple reviews, inside and outside of a law practice, which also require significant manual effort to ensure complete accuracy and lack of ambiguity. Often during the exchange and review process, an opposing party or even a client will propose language that must be included in a document, particularly in situations where each party has its own form document. When defined terms differ in the “battling” forms, the effort to achieve consistency can be significant. Additionally, time spent during the manual review is time that could be allocated to focusing on legal issues or added back to the profitability of the deal.

TECHNOLOGY GUIDED DRAFTING AND REVIEW

Initial Draft. The preparation and review of transaction documents benefit the most from incorporating technology guided drafting. The Drafter may employ software to view or check the usage of defined terms and the consistency of phrases or they may use a technology enhanced process for marking incomplete items, highlighting especially those not yet resolved in negotiation.

Preparation and Review. When an associate sends drafts to partners for review, both the lawyer and partner may enlist technology to provide a hands-on view to check usage or use the comment markup or reports as a guide to speed and complete corrections.

Exchange and Review. As documents are exchanged with clients and other parties, responses or suggested revisions arrive

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verbally or in written form and are then incorporated into the next draft. When proposed revisions are incorporated, the parties will find examining the document with automated review solutions and guidance beneficial. Ideally, software can be used to review the effects of proposed language, the continued relevance and consistency of defined terms and phrases, the introduction of new defined terms, as well as to detect editing mistakes.

Meeting Deadlines. Transactions face hard deadlines when they must be completed before the end of year or accounting period, or if they depend on legislation, regulation or permits that may expire. Business negotiations may proceed to nearly moments before the deadline, increasing the pressure on legal teams. The ability to check the effects of drafting changes in near real time offers the assurance of unambiguously clear content, with more accuracy and less stress and risk.

Enabling Cooperation. In most cases, all parties share the common goal of completing a transaction, even if they have differing interests. Software solutions that ease the process are mutually beneficial, as a lawyer's time and effort are employed and most beneficial to a client when efficiency, quality and responsiveness are optimized. In the critical time frames of negotiated transactions, power tools to assist the drafting process will prove their value.

TECHNOLOGY THAT DOESN'T WORK

Document Assembly. Since the late 1980's, technologists have promoted document assembly as an essential "solution" to the requirements of document drafting. Though successful when transactions are very highly

standardized (such as residential mortgages), document assembly does not meet or address the requirements of sophisticated and complex transactions nor does it support the exchange and review of drafts. The effort to "program" the transactions fails in the face of the changes and variations that the transactions demand. The need for precision in the use of defined terms and consistent phrases remains.

Other Solutions. In the marketplace today there are a handful of solutions for automated drafting and review. They have had minimal market penetration due to either limitations in functionality, breadth of documents that can be accurately reviewed and/or pricing. With technology advancements and a fresh approach to the problem, these limitations can be eliminated. Effective tools are available and broadly used for citation checking. However, a more complete tool for all types of agreements benefits the firm and their transaction lawyers.

ENTER CONTRACT COMPANION (FORMERLY EAGLEEYE)

Contract Companion – formerly EagleEye - software, developed by Litera Microsystems, brings precision and power to transactional document drafting and review by providing automation to improve efficiency and reduce the risk of human error.

Contract Companion ensures legal work product, including documents provided by third party publishers, is consistent and free

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of ambiguity at all stages of the review cycle. Using Contract Companion, lawyers start with an accurate first draft and eliminate the amount of time spent on manual review, allowing for more time to focus on legal content instead of drafting mistakes. Knowledge Management Professionals and PSLs benefit from technology guided drafting and review as they refine and update first drafts for the firm.

Contract Companion helps assure that usage of terms and phrases in Form Documents are complete and correct. Using Contract Companion’s Incomplete Items to mark up a form for items that match document Term Sheets or checklists helps assure accuracy and the incorporation of terms that may arise in negotiation.

Using Contract Companion, lawyers not only save time, but they can also increase competitive intelligence by using Contract Companion on documents from opposing counsel to quickly identify inconsistencies and ambiguities that may change the intent of the agreement.

Contract Companion’s search, analysis and markup presents results on screen, allowing lawyers to analyze a document quickly and navigate directly to each of the items found. For those who prefer to work on paper, the results of the analysis can be applied as comments and printed or gathered into summary reports. Configurable to a lawyer’s drafting and review style or preference, Contract Companion was designed to accommodate varying review styles and the different roles responsible for reviewing legal agreements.

THE GAINS SUMMARIZED

A law practice that employs and embraces technology, such as Contract Companion, achieves gains in accuracy and precision as well as improved efficiency. Client satisfaction is a direct result of delivering clear content that avoids litigation risk and best supports the legal position. While in theory, a skilled lawyer should be able to deliver a careful and accurate draft without technology, the realities of increased time pressures and limited resources often get in the way of achieving the desired results.

In addition, efficiency gains achieved by freeing the lawyer from eyeballs-only review are redirected to the time required to resolve issues critical to the transaction and for which the lawyer is ultimately valued. In each step of the workflow, Contract Companion offers discipline, assurance and speed critical to the drafting and review of sophisticated transactional documents. That technology investment should provide ample rewards. •

Contract Companion Performs Checks For:
Defined Terms
Identifies and navigates to all of the problems with Defined Terms that may cause ambiguity or cause dissatisfaction with the quality of an agreement. Analyze a single document or analyze across multiple documents.
Inconsistent Phrases
Identifies phrases used inconsistently throughout a document.
Inaccurate or Incomplete References
Detects and enables validation of internal and external references throughout a document.
Editing Mistakes
Checks for inconsistent punctuation, inconsistent spacing and out-of-order numbering throughout a document or across multiple documents.
Incomplete Items
Allows for the markup of places in the document that require completion or resolution.

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ABOUT LITERA MICROSYSTEMS

Litera Microsystems software and services drive document quality and production efficiency while reducing the risks associated with collaboration. Specifically, DocXtools provides enhanced collaboration and document formatting functionality as well as automation to identify and correct document issues. Using DocXtools, document-intensive organizations can increase the productivity of Microsoft™ Word users and facilitate faster delivery of quality documents.

The patent pending agreement checking solution, Contract Companion, improves the drafting and review of legal agreements by providing automation to ensure an agreement's completeness, accuracy, consistency and lack of ambiguity. Contract Companion helps lawyers in transaction-driven practices avoid litigation risk by confirming a legal agreement best supports the intended legal position.

Additionally, Litera Microsystems offers 3BClean, a technologically advanced solution that prevents unwanted metadata disclosure from email sent via a mobile device or the desktop. For more information, contact us at info@litera.com, visit <http://www.litera.com> or call 630.598.1100 (US) or +44 (0)20 3890 2860 (UK).

Litera Microsystems is the leading provider of software for drafting, proofreading, comparing, repairing and cleaning documents in the legal and life sciences industries worldwide. Our core products empower users to generate, review, and distribute high-quality content quickly and securely, from any device. Today, Litera Microsystems supports thousands of document-intensive organizations across the globe, helping them satisfy the complex demands of clients and regulators.