

Focusing on Client Service in Asian Technology Practice

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Ask investors about Asia's technology market and you will see their eyes light up. Just glance at the headlines in the *AWSJ* on any given day and you will notice that high tech is booming: "Web Sales Rise Twofold in Asia Pacific Region," or "Technology Sector Emerges as Growth Engine in Japan."

According to most analysts, while Internet businesses, and along with them, the industry, may rise and fall based on the viability of business models, there is no question that the Internet economy is here to stay. Indeed technology such as the Internet is at the heart of a transformation that directly affects how legal services are delivered and, more specifically, the role of lawyers in the professional community. As in any competitive business only the open, the adaptable, the creative will thrive. The old way of doing things no longer is an option.

This article discusses the role of IT lawyers and their roles in providing legal solutions in technology transactions in the Asia Pacific region and, particularly, in China and Japan. Given the diversity within social and economic systems, language and cultures, lawyers in this region are facing different types of challenges from their clients and will need to adapt to the business needs of clients to help them succeed.

Understand the Client's Needs

There is a distinct trend which began in the United States that lawyers are becoming less scriveners than advisors, consultants and solution providers. Change must now be anticipated; client needs must be forecasted. Past precedents no longer apply in an environment of overnight obsolescence and first-mover advantage. This is already reality in the high tech industry.

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In this environment (and to win back revenue lost to competition in the form of the Accenture, McKinsey and Jones Lang LaSalle's of the world – even from the drove of in-house tech lawyers leading the same sophisticated deals as high-priced associates), lawyers must demonstrate their value by leveraging their resources to be not just wordsmiths but "videosmiths and soundsmiths" as advocacy increasingly extends across the new media of communication.

It is very important to understand clients' needs before any useful services can be offered. One client may have a particular long-term commitment to its China business and wish to see such commitment in all documentation with its business partners in China. Another client may wish to adopt a "wait and see" attitude in China investment policy, keeping its commitments to a bare minimum and retaining a certain degree of flexibility in exit strategy. Others may adopt strictly a "profit-driven" approach and therefore wish to take a "control-centered" approach in structuring its business deals in China.

Understanding a client's needs is not as easy as it may appear. Clients generally approach a firm with a request for legal service in order to solve specific legal needs. Lawyers then provide services that are priced according to the cost of their time. In meeting with a client's request, outside lawyers may bring with them assumptions that may not be appropriate to the client's business context or situations. In addition, the lawyers' diverse cultural background, as well as the clients', will sometimes make the problem worse and cause misunderstandings.

The above scenario calls for lawyers to master the skills of communication with their clients (whoever and wherever they are) and to understand the factual situations objectively by establishing "seamless" ties to their clients. To do so, lawyers must be able to develop a proper balance between providing quality and cost-effective services in any project, large or small.

This is also part of the understanding of the client's needs. Some clients may see more value in better service than in lowering costs; others are highly cost-conscious and cost-driven. Yet others, as with most clients, expect to benefit from both. As part of the legal services, lawyers will need to understand and manage their clients' expectations..

Provide a One-Stop Service to Clients

At the most basic service level, clients expect their advisors to be their local eyes and ears -- a radar channel tuned into the most difficult-to-understand markets in the world. They want you to take the pulse and advise whether the situation requires costly surgery (if so, what is the cost) or a wound that could be closed by a simple patch (if so, will there be infection). They expect no less than primary source information useful to expanding their business, cutting costs or gaining a competitive advantage over their competition.

In Japan, for example, clients want to overcome hurdles to investing in the Japanese Internet sector. They want to forge relationships and alliances with semiconductor manufacturers who may need an infusion of technology not available at home. The lawyer needs to advise “whether” “when” and “how much” services should be provided.

Clients in old economy -- publishing, hotel, auto and insurance -- industries need help taking their business online in Japan, either by working closely with the Ministry of Publish Management, Home Affairs, Posts and Telecommunications (MPHPT) in the form of administrative guidance or by being advised of the latest e-commerce initiatives promulgated by the Ministry of Economy, Trade and Industry (METI). Unsophisticated Japanese Internet portals targeting a worldwide audience of online gamers cannot run their business without an analysis of how their content may run afoul of U.S. securities regulations, Taiwan privacy and e-communication regulations, and PRC. content and ISP liability policies which are extremely harsh by global standards. For example, PRC regulations prohibit Internet content providers (ICPs) from producing, copyring, publishing or distibuting any information that violates the constitution, subverts state power, advocates separatist activity, supports cults, spreads rumors or disturbs social stability. Japanese Internet portals should be aware of these restrictions if they provide services in Chinese to their Chinese customers.

Clients in any industry who are in financial difficulty will want to know how to capitalize on their intellectual property portfolio, sell superfluous assets and make cost-cutting deals. It is true also in the Internet industry in this volatile market. IT lawyers of any jurisdiction should be equipped with the basics of intellectual property and be able to speak the language of patent, trademark and copyright in transactions involving the Internet and new media.

Carrier clients not already familiar with the market will want to understand the difference between a Type 1 and a Type 2 license and how to apply for them. They may be reticent about the requirement that as a carrier, all customers must be provided the "Yakkan" which must be filed with the MPHPT every time the services specification changes, to ensure fairness in being subjected to public scrutiny. Clients will also want to know that any commercial terms, rebates, refunds, etc. must be dealt with in side letters that must be kept confidential. Clients involved in online information and media will need to know how to avoid application of the new Wire Tapping Law brought about to curb online crime. They will also have a stake in knowing whether a violation will subject them to civil sanctions or punitive damages. ISP clients don't need a 10-page memo but will ask for a meaningful yardstick (not, "the law is presently unclear in this area") to assess the extent of their liability for content generated by customers (and their customers' customers).

In sum, clients need help navigating through complex Internet and telecommunications regulations in Asia. Clients will have confidence in lawyers who can provide useful solutions to their ability to invest in markets to which access may be hindered by cultural or language barriers. For example, the Chinese Ministry of Information Industries (MII) is promoting a Silicon Valley-style future with hi-tech development zones in Beijing, Guangzhou and Shanghai. Shanghai attracts much attention and has a RMB 1 billion (approximately US\$120 million) venture capital fund from the government to support start-up companies. How would a foreign Internet incubator take advantage of this fund and how would it go about building relationships with the appropriate parties?

This question is particularly interesting in the context of China's entry into the World Trade Organization. China officially entered into the WTO on December 11, 2001. According to its commitments under the WTO Agreement, China is to open up many of its domestic markets to foreign competition. In the telecommunication industry, China committed to phase out all geographic restrictions for value-added services within two years and also, within that same period, is to permit the establishment of joint ventures allowing for 50 percent foreign ownership for value-added services.

In the legal services industry, foreign law firms will be permitted to establish more than one official presence in China. While foreign law firms are not allowed to advise on

Chinese law, the opening of more than one office in China presents tremendous opportunity in international firms being able to provide services to their clients in China with respect to international law and the laws of their home country in general.

International lawyers who provide services to international companies operating in China must be aware of these new developments in order to help their clients succeed in the post-WTO Chinese market-place.

It is well-known that consultants in McKinsey's Business Technology Office regularly apply their distinctive business and technology expertise to help senior managers solve complex business and technology challenges facing their organizations. These consultants work on each engagement from beginning to end, with members of McKinsey's other offices around the world. Law firms also must develop and leverage their competitive advantage – human resource and practice area capabilities. Whether a problem occurs or a solution needs providing in Europe the Middle East or Asia – the Internet is a global phenomenon -- a client is best-served when it can outsource all of its legal needs with a single provider. In China, for example, foreign law firms may entrust Chinese lawyers to provide opinions and services in matters relating to Chinese law. This calls for a much closer working relationship between Chinese law firms and international law firms operating in China. Both the providers and the client will benefit from the enhanced relationship.

Increase Visibility

Offering value-added and immediately useful legal advice is only half the battle. Clients will not appreciate how **your** service, as opposed to the other general service firm down the street, can benefit them unless they are educated about your capability. Word of mouth is effective, but just as a name brand jewelry-maker exudes "quality", law firms, too, must generate excitement and industry buzz by regularly appearing in leading business and financial publications that find their way to the desk of technology GCs across the region.

New business can be found in young but aggressive companies stepping up investment activity in the Asia technology sector. This is not limited to dotcoms and sexy brands like Yahoo!, the Amazon.com, Ariba, Bloomberg, AOLs of the world. They want to learn about how you can help them expand their business.

Law firms that have a strong marketing team and constantly engage in speaking and publishing opportunities on cutting-edge topics of interests to clients in the industry will likely be better valued by their clients. Letting the clients know your capacity is particularly important in the current volatile legal market as it will help the clients adjust their expectations in respect of their legal work.

Attract and Retain Talent

There is a generation of lawyers who could care less about making partner. What do you do to motivate them? Top talent will always come at a premium but the investment can, and should, be made. Over the long-run, the payoff is worth it to prepare future leaders. In a winner-takes-all environment, two firms competing for the same business have a tendency to believe that they will be judged on either their experience or their ability to churn out perfection. That sophisticated clients want to hire an authority, meaning anything from raw knowledge to time spent in Asia to foreign language skills in the relevant field is a given. However, for the one paying the bill, it often comes down to the intangible tangibles -- feeding and caring, appreciating the sense of urgency brought on by the real possibility that their product may become obsolete the day after hitting the market, and speaking the native language. These factors take center-stage in the technology business.

Associates need to know that their work matters or they will bolt to the next company that offers them a VP Business Development position, even at half the salary. Emphasizing less on billable requirements (number 1 reason for associate attrition) and more on quality of training, client interaction, brain-teasing work, colleagues who define the term WOW!, the ability to impact their clients' bottomline, as well as the leadership and business savvy of firm management, will help ensure long-term success in retention and human resource development.

Building your Brand

In today's e-economy, time is always of essence. The traditional "bricks and mortar" foundation is being transformed into "clicks and mortar". This brings home the need to transform your business to meet the challenges. Law firms traditionally have long names derived from a combination of partners's names. Nowadays, these long names

are being changed into short forms, like MoFo (Morrison & Foerster), Sidley (Sidley Austin Brown & Wood), DLA (Dibb Lupton Alsop), even completely re-invented brand names like Australia's newly launched "Acuiti" (formerly Middletons, Moore & Bevans). Needless to say, the short form brands will be more appealing to corporate clients. Their short form websites are also easy to remember and access by the clients and the general public. Therefore, lawyers are also facing the challenge of brand construction in competing for client "clicks" in the borderless Internet age.

Execute the Plan

However attractive your website is, however versatile your services may be, they constantly must be sold to new and existing clients and will require proactive lawyering. Lawyers in the technology sector should learn to work in the way their clients work. They should be able to come up with business plans in respect of their existing and new services in current and emerging markets in relation to the old and new economy.

These plans should be tailor-made to meet the business needs of the clients in this industry and provide business solutions. The plans may be different in the level of specific services depending on the level of sophistication of their clients. A Fortune 500 company will usually require more detailed plans for legal and business suggestions than a start-up company in the venture capital industry. However, the gist remains the same, that is, the plan should meet the expectations of the client in the industry.

The business plan must be executed with the precision, style and costs demanded by the particular client, whether Japanese, Chinese or American. Fee-earners who sit by the phone and wait for instructions do their client absolutely no good.