

Web-Enabled Document Assembly as a Disruptive Technology

1. Introduction

For most large law firms, business has been good over the past decade or two. The underlying business model has worked well, there has been a steady flow of work, fee income and profitability have increased steadily and remarkably. While other sectors have struggled, lawyers have endured and prospered unstoppably. But the party is now over. The credit crunch is going to accelerate change in the legal profession, bringing much more demanding and discerning clients who increasingly will require more work at lower fees. And I believe that lawyers, in order to survive and prosper, must respond creatively and forcefully to this impending demand.

--Legal futurist [Richard Susskind](#), in an interview with the AmLaw Daily, November 11, 2008

In his recent book, [The End of Lawyers? Rethinking the Nature of Legal Services](#), Susskind describes ten disruptive legal technologies that allow lawyers to respond creatively and forcefully to changing circumstances. One such disruptive technology is document assembly software. This white paper will use Harvard academic Clayton Christensen's theory of disruptive innovations to describe and analyze a range of legal business models that use document assembly software.

2. What is disruption?

The theory of disruptive innovations is based on the fact that companies innovate faster than peoples' lives change, which leads to overshot consumers (consumers or whom existing products or services are more than good enough) and opens the door to "good enough" solutions for low end consumers and non-consumers. These solutions are not as good as current solutions but they are usually cheaper and more convenient. Examples of disruptive innovations that have taken over their respective markets are hydraulic excavators versus cable shovels and online trading versus broker-based trading.

Within the legal industry context, a disruptive innovation is a low-end commoditization that marginalizes the conventional law firm business model. A sustaining innovation, by contrast, is something that enables law firms to improve what they already do, which is to provide legal advice to clients and generate billable hours and income for their partners.

Contrary to popular misconception, disruptive innovations do not offer dramatically improved performance (these are called radical sustaining innovations and lawyer use of the Blackberry is a good example). Instead, what they offer is a new value proposition.

The value proposition of a typical law firm is based on full and customized service, limited availability, reactivity, and unpredictable and high fees based on time spent.

Disruptive services offer a new value proposition based on self service that is not fully customized but 'good enough', 24 x 7 availability, proactive risk reduction, and low fixed fees earned while the lawyer sleeps.

3. What is document assembly?

Legal document assembly software was pioneered in the late 1970s. The basic functions are to replace the cumbersome manual filling in of repetitive documents with template-based systems where the user answers software-driven interview questions. The information collected then populates the document to form a good first draft.

In the legal context, document assembly software began as a tool which lawyers themselves used to create their own documents. That use continues and has become increasingly sophisticated. In the past, companies tended to create their own document assembly tools in-house, but today there are many off-the-shelf packages available. The industry has seven serious players. The leading products are (in alphabetical order): D3, DealBuilder, Exari, GhostFill, HotDocs, Rapidocs, and QShift. They fill different niches and offer a range of capabilities from clause management to open standards to e-commerce optimization to contract process automation.

At one level, document assembly software is being coupled with content, packaged, and sold to law firms as ready-to-use forms. At another level, it is evolving into contract process automation software that manages the contract life cycle from data capture to the due diligence stage.

The invention of the Web browser marked the birth of business models that are disruptive in relation to law firms. These new business models provide solutions to legal problems without the involvement of a lawyer practising in a conventional law firm.

[Richard Granat](#), co-chief of the [American Bar Association's eLawyering group](#), notes that the increasing reach of the Web makes it more economical to automate a given document. A model home renovation contract may not be worth automating if the lawyer who created it uses it twice a year. But if that same lawyer puts the contract on the Web within the reach of millions of people, its use likely will escalate, justifying automation.

Indeed, document assembly has been adopted much more readily with respect to disruptive applications than for sustaining applications. Most established law firms have opted not to use document assembly software. However, many forms of law-related disruption make use of document assembly software.

4. Business Models for Document Assembly in Law

There is a continuum of business models for document assembly, both in theory and in practice, that range from the sustaining to the disruptive. I have identified six, of which four are currently in use and two are merely theoretical at this point: document assembly combined with legal process outsourcing and document assembly combined with insurance. This white paper will focus on the four business models that are currently in use. (See the accompanying chart).

The continuum corresponds roughly to Richard Susskind's model that he introduced in his 2006 lecture to the Society for Computers and Law. That model begins with bespoke (customized) services on the left, followed by standardization, systematization, packaging for external use, and commoditization. In both models, clients are increasingly "pulling to the right", demanding more commoditized forms of legal services.

4.1. Law Firms with hourly billing

Most law firms operate with what [Innosight LLC](#) (a consulting firm founded by Christensen) calls the "sole-source/billable hour/cost-plus" business model. For firms that bill by the hour, document assembly is a radical sustaining innovation that dramatically improves performance. A lawyer who uses document assembly can produce first drafts of documents in about 1/7th of the time it otherwise would take.

Many lawyers who bill by the hour are reluctant to become too efficient. As leading document assembly expert Marc Lauritsen has stated, "why spend money to get work done faster when you charge for your time?" One reported response to a document assembly proposal was, "What are

you, a *communist*?" Lawyers don't perceive a payback for investing in a technology that doesn't appear to have the potential to increase their hourly rates or their number of billable hours.

In fact, lawyers who become more efficient due to technology can raise their hourly rates, so long as they are able to justify this clearly to their clients. Blair Janis is a Salt Lake City legal technologist whose former firm, Ballard Spahr, uses document assembly in conjunction with hourly billing. He describes one benefit of automating documents within the billable hour framework: "individual clients pay less than they would have without the automation (fewer hours for that client), but the lawyer continues to bill the same number of hours overall at a higher rate than before (getting more work done for more clients in the same amount of time it took without the automation)".

Lawyers who succeed in increasing their profitability through efficiency gains have trouble getting their efforts recognized in partnerships that value billable hours above all else. Law firms typically use billable hours to determine who gets associate bonuses, who gets promoted to partner, and which partners get the most compensation. Efficiency concerns are secondary.

Part of the reason for lawyer hesitation to combine document assembly "power tools" with hourly billing has been the lack of client pressure. For example, home renovation contractors also use power tools and also charge by the hour. When a contractor needs to cut several pieces of wood, however, he uses an electric saw, not a handsaw. The difference is that homeowners are aware of the existence of power tools and insist on their use but many legal consumers do not appear to be as well-informed.

The risk of combining document assembly with hourly billing is that competitors will arise with new business models that allow them to charge by the job rather than by the hour. According to Brad Gambill of [Innosight](#), these competitors will make money under the price umbrella created by the firms who bill by the hour.

4.2. Law Firms with alternative billing

We leave the cost-plus revenue model behind at this juncture. No longer do we assess the value of a document based on the number of hours of time put into its creation at the author's billable rate. Instead, documents are priced based on their value to the user.

With alternative billing, the lawyer assembles his or her own documents but the law firm bills the client other than by the hour. A law firm with sophisticated document assembly capabilities can undercut its competitors on price and make up the difference by turning around huge volumes of documents. This has been happening in areas such as conveyancing, mortgage refinancing, and foreclosures.

Alternatively, a law firm can make accurate fixed price bids for deals based on the ability to produce almost instant first drafts of documents. For example, auction models such as [eLawForum](#) source legal work for large corporations through a competitive bidding process. As these models increase in popularity, the most efficient law firms will be able to bid the lowest, knowing that their technology infrastructure still allows them to make money.

Queensland's [KRG Conveyancing Centre](#) is one of the largest conveyancing firms in Australia and a heavy user of document assembly tools. It offers residential conveyancing on a low fixed fee basis. Hammonds Direct operates a similar type of service in the UK called [LegalMove](#).

Consultants James Dow and Carlos Lapuerta have made the following comment with respect to the use of leverage in conveyancing:

“As one lawyer put it to us, the entire conveyancing system for the UK only needs one lawyer to operate it – this person would be responsible for approving the design and operation of a large IT system. This is an exaggeration, but everybody seems to agree that conveyancing, in the vast majority of instances, can be largely commoditized.”

One of Canada’s largest law firms, Gowlings, also uses alternative billing. The [Gowlings Recovery Service Group](#) uses document assembly software to completely automate the mortgage recovery and debt collection process. The fees are fixed and the mortgage enforcement lawyers involved do not keep track of their time.

4.3. Hybrid of self-help documents and legal advice

At this critical point in the continuum, we move to the disruptive side of the equation because it is no longer the lawyer who generates the document; it is the client. The lawyer continues, however, to give legal advice, making the service complementary rather than substitutional.

Too many attorneys still see document assembly as an internal tool that sits on the desktop and don’t understand its potential disruptive impact. When document assembly is web-enabled and client facing rather than simply used as an internal tool, the impact is to create new revenue streams by capturing nonconsumers, people who otherwise would not obtain legal advice but who simply would do nothing.

Some law firms operate more or less conventionally but use the Internet to streamline client intake. For example, [Heritage Law](#), a small firm located in West Vancouver, Canada, offers a menu of services at standard rates. An online intake form that feeds into a document assembly system allows users to enter information for matters such as estate planning, estate administration, and incorporation. A law firm using this approach can expect to produce documents for engagements roughly 7-10 times faster than before. This leaves more time available for doing business development to generate upmarket work.

Richard Granat has pioneered a more aggressive approach with [mdfamilylawyer.com](#), which advises clients on common family law matters. His goal has been to reduce the price to the same level as charged by pureplay disruptors (see section 4.4) but with the benefits of lawyer involvement, such as having a professional to sue if things go wrong. Granat’s approach is also virtual in that he advises clients on Maryland law from his office in Florida.¹

The nonconsumers thought to be attracted to Web-enabled document assembly are the Net Generation, young people whose starting point for any knowledge service is to search on the Internet. These people don’t necessarily value personal contact like their elders do and are attracted by the efficiency of replacing a time-consuming yellow-pad based interview with a quick, accessible online interface. Also, a well thought-out client interface removes a large part of the intimidation that some of these people feel when consulting a lawyer.

[Brown and Partners](#) is an Australian law firm with another classic new market disruption model. Like Gowlings, Brown and Partners focuses on debt collection, but it does so in a disruptive fashion. Small businesspeople who are owed money but who are uncertain how to proceed are drawn to the website by radio ads and by a weekly radio program on Sydney’s highest rating talk station.

¹ [www.mdfamilylawyer.com](#) is the prototype for the DirectLaw Web Service for Law Firms, which Granat also operates through DirectLaw, Inc.,

On the [website](#) is an automated debt collection service that is free to the user so long as legal intervention isn't required (document processing charges and court fees apply). Like the original Linklaters model, the online service establishes an initial rapport with the client and there is a compelling reason to use the firm if the debtor files a defence or if other complications arise. Since all documents are generated on a self-serve basis by the consumer and are not intended to be relied upon as legal advice, Brown and Partners presumably does not have to hire lawyers to review the documents.

Other models in the United States include [iowalawyeronline.com](#) and [essentialegal.com](#).

The caveat is that lawyers are held to the same standard of negligence no matter how much they charge their clients and because of this assumption of risk there may be a price floor below which they aren't willing to go.

Web-enabled document assembly also exists in some of the world's largest law firms and corporations.

In the early part of the decade, Linklaters was able to make gains on its rivals in the syndicated loan market when it introduced [Linklaters Blue Flag](#). Blue Flag allowed banks to generate their own term sheets for free via extranet. Once the data was input into the term sheets, Linklaters had the ability to produce an instant first draft of all the deal documents. This capability made for a compelling reason why the bank should use Linklaters for that particular deal. Blue Flag has evolved into a suite of online products covering everything from derivatives to employee share plans and shareholding disclosure.

Corporate law departments disrupt law firms by bringing routine work in-house, "making" rather than "buying" and competing with their suppliers. In the law department environment, document assembly uses built-in guidance and safeguards to manage the legal risk associated with producing documents in-house. For example, Cisco uses a "trap door" model that allows its salespeople to produce nondisclosure agreements.

Picture a document as a flat surface with trap doors leading to in-house lawyers hidden below. An employee is generating a document in a question-and-answer dialog session powered by document assembly software. If all questions are answered in a legally "safe" fashion, then the document is generated immediately. However, if the person answers a particular question in a fashion that requires the inclusion of a nonstandard clause, then he or she trips a trap door and the document goes to the law department for review. This system mitigates against the risks of employees using outdated versions of documents, making unauthorized changes, or involving the legal department too late in the deal process.

This example illustrates the fact that an organization may choose to use document assembly for particular jobs but won't necessarily use it for other jobs. It is only a narrow range of high volume agreements within any given company that could be made subject to the "trap door" treatment.

4.4 Pure-play Disruption

Christensen's theory predicts that disruption would start out in the consumer market, where there are many overshot clients who don't want to pay high hourly rates to get jobs done that have low associated dollar values. It would then work its way upwards. That appears to be happening. Most pure-play disruptors are currently focused on the consumer market, with a few exceptions.

The distribution of legal services through non-traditional outlets is sometimes known as "Tesco Law". Tesco operates a [website](#) from which it licenses documents to consumers. Tesco is

expected to expand its legal presence as UK law firm investment requirements liberalize.

Other interesting consumer models are [We the People](#), [LegalZoom](#), [SmartLegalForms.com](#), and [Wills-Online.com](#).

[We The People](#) is a document preparation company that has 88 storefront locations in 19 U.S. states. Interestingly, We the People has perhaps the highest revenues of any pure-play disruptor in the U.S., despite the fact that it relies more on retail-based innovation than technology-based innovation. Customers fill in a paper questionnaire and paralegals post data from that questionnaire to a desktop program. The completed document is returned to the store by e-mail for printing out and delivery to the customer. Granat attributes this success to a disruptive marketing strategy that uses the storefront retail interface. He explains,

“Consumers have difficulty in processing text. The Internet is still primarily a text medium. This inability accounts for the present low utilisation rate. Consumers want solutions. They don't want to read self-help books. They don't want to understand complex instructions. A small portion of the consumer market can master the text to the point where they do not need the assistance of any one. But most consumers want some human help to either solve their problem for them, or help them solve their problem.”

LegalZoom and SmartLegalForms.com do not have a physical presence: they license documents to consumers over the Internet and offer paralegal-based telephone support. The distinction between the two services is that LegalZoom offers legal document preparation services only, while SmartLegalForms.com offers both legal document preparation services and self-help document preparation. With legal document preparation services, a paralegal team either inputs data that comes in over the Internet into desktop document assembly software or reviews the data that the client has already input into web-based document assembly software. The self-help option allows the consumer to generate a document immediately, without assistance. LegalZoom is backed by O.J. Simpson's former “dream team” lawyer, Robert Shapiro, while SmartLegalForms.com claims to license 12,000 documents per month.

These sites are not substitutes for a lawyer because they don't replace the professional values of confidentiality, conflicts checking, and accountability that are associated with lawyers.

A major part of a lawyer's role is to perform an insurance function. To put it simply, lawyers can be sued if something goes wrong. For example, a lawyer who drafts a will negligently can be sued. People have used self-help will kits to create a will only to discover that the will didn't contemplate their particular fact situation, leaving them without recourse.

Consumers don't appear to recognize the need to reduce their risk using this insurance function. Many people think of estate planning as form-filling and regard consumer document preparation businesses as a perfect substitute for a lawyer.

The pure-play disruptor models listed above are broad and shallow and tend to attract people who would not otherwise be using a lawyer. However, [HedgeOp Compliance](#) is an exception. HedgeOp is a New York-based company dedicated to helping hedge funds tackle legal compliance issues using Web and e-mail-based tools, leaving expensive Wall Street law firms out of the loop. It was set up in 2001 by a young Wall Street attorney who left his firm. HedgeOp has developed a highly focused niche. It focuses on a narrow range of services that formerly was a “cash cow” for law firms and has replaced the customized approach used by these firms with a commoditized approach. The existence of such a business shows that even the large and powerful Wall Street law firms are not immune to the effects of commoditization.

Finally, governments and nonprofit agencies occasionally become involved in the disruptive

game. Another debt collection model is [Money Claim Online](#), which is busier than any single county court in England and Wales, handling more than 60,000 claims each year. Money Claim Online allows individuals, organizations, or their legal representatives to pursue fixed money claims online, up to £100,000. Non-profit organizations such as [National Public ADO](#) (Automated Documents Online) deliver free smart forms to low-income people and their advocates.

When governments and nonprofits automate processes like debt collection and incorporation, they improve access to justice for the consumer, sometimes at the expense of incumbent law firms and would-be-entrepreneurs. For example, [Idaho Legal Aid](#) offers free name changes and other interactive forms that are available to anyone who goes to the website; there is no need to qualify as low income first. Services such as this one appear to attract more middle-income users than low-income users. An incorporation service like [incorporator.com.au](#) is not needed for federal incorporations in Canada, which can be done online through a [government website](#).

Entrepreneurs also play a part in driving down the cost of legal information (as opposed to legal advice). One example is the free child support calculator available on [alllaw.com](#).

5. Conclusion

If there is a “disruptive technology” in law in the sense that Christensen once used the term, it is document assembly. As we reflect on the spectrum of business models, it is clear that the future of document assembly is on the disruptive side of the equation. Business models that combine document assembly with other innovations will continue to make a wide spectrum of legal services available to the consumer. These business models will be launched by law firms, multidisciplinary practices, banks, supermarkets, insurance companies, dot-coms, in-house legal departments, and legal process outsourcing companies. Some will offer a full spectrum of services from the sustaining to the disruptive. Others will focus on particular niches. Law firms need to move to the right before non-legal providers or other law firms take a large portion of their business.

As for the barriers, they will continue to fall, albeit slowly. Brad Gambill of Innosight puts it this way:

Every situation I've studied or been involved in has similarly daunting barriers. These can never be changed or overcome all at once and en masse. They are typically continually eroded at the margin by firms willing to push the envelope a little until they are gone. In my experience, disruption really needs to take hold when you have lots of little “nibblers” eroding the barriers simultaneously. To me, it feels like the legal industry has these sorts of situations in many spaces.

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Sustaining and disruptive business models that use document assembly technology

1

Lawyer prepares documents, law firm bills using hourly rate (eg Ballard Spahr)

2

Lawyer prepares documents, law firm bills using alternative billing method (eg Gowlings Recovery Service Group)

3

Law firm or legal department offers hybrid of self-help documents and legal advice (eg mdfamilylawyer.com, Cisco “trap doors”, Linklaters Blue Flag)

4

If implemented, self-help documents combined with outsourcing would minimize need for legal advice (eg Pangea3)

Business models that don't involve law firms or legal advice (eg We The People, smartlegalforms.com, HedgeOp Compliance)

If implemented, legally safe self-help documents combined with insurance might eliminate the need for legal advice

1

2

3

4

5

6

Sustaining*

Disruptive*

* With respect to conventional law firm business models.

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