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Becoming a Trusted Business Advisor

What CLOs can learn from the
Product Lawyer's lens



The CLO's role is expanding to areas that haven't traditionally been under the legal team's purview.¹ At the same time, CLOs are noting an increasing workload² and 13% of surveyed legal leaders say they're confident they can manage cross-functional risks without impeding the business.³ In navigating these expanding demands on their time and leadership, legal leaders are being called upon to find the right balance between risk mitigation on the one-hand, and helping the organization innovate and reach its business objectives on the other. Striking the balance correctly may require legal departments to adopt

some of the practices leveraged by their internal clients because when your legal department models its business style after the clients it serves, it goes a long way toward building a reputation as a trusted business advisor. But how?

The product lawyer model may provide one answer. Product lawyers are often known for how they interact with their clients and taking a closer look at how they operate can provide examples of how legal departments can elevate their value within the organization. Successful product lawyers understand how product

works; know the short- and long-term goals of the product teams they support; and immerse themselves in the language, cadence, and practice of product methodology. Whether or not your organization has embraced product methodology, your legal department can become better and more trusted legal advisors by adopting the skills product lawyers use to serve their clients. To see if a product lawyer approach could benefit you and your legal team, answer the questions below.

But first, for those new to this area of the law, what is product and what is a product team?

Product:

When we refer to "product" in this article, we are using the term to describe a methodology used to develop and improve consumer offerings (for example, software or service). We do not mean a widget, a consumer good, or other tangible items. Product includes identifying a consumer demand, researching the competitive landscape, conceptualizing a solution, developing a product roadmap, building a minimal viable

product, and ultimately releasing the consumer offering to the public.⁴ Product became popular as an alternative development method for software and often involves rapid iteration and incremental development as opposed to large, one-time releases.

Product Team:

Product teams are comprised of a cross-functional group of specialists who continuously innovate and improve on the

customer experience. They do this by working to understand the customer's needs and pain points in the current experience.⁵ A typical product team includes a product manager, developers, designers, data analysts, and quality assurance engineers. A product lawyer usually isn't technically part of the product team, but plays a key role in its success.

Has your organization adopted product methodology?

Because of its origins, many people think of product as something unique to technology companies, but product methodology can be (and often is) used by any business focused on improving the customer experience.⁶ Experiences such as streamlining your client's grocery delivery process, managing a customer's change of address process, or adding new payment options at e-checkout are all customer experiences that could be improved by leveraging product methodology.



Understanding Product Methodology, A Hypothetical Example

Traditional Approach: A big box retailer might spend months working on a new way for customers to quickly learn if an item is in stock and where it is located in a brick-and-mortar store. A group works to improve the way in which this happens. Once the new experience is fully operational, but just before the “big reveal,” the legal department provides review and—if permissible—the new product is released to the public. At this point, if the legal department identifies potential risk that the organization considers to be unacceptable and if the organization has invested a significant amount of time, money and effort into a project that may not see the light of day then potentially the legal department may be viewed by the organization as a blocker and no one is likely to be happy.

Product Methodology: In contrast, product teams work iteratively and release parts of the experience along the way to better understand what resonates and how the product can be improved. Product counsel understands the goals of the product team and provides guardrails in which product teams can innovate. As new legal issues arise in each iteration, product counsel is called upon to classify risks for the business. By the time the entire project is complete, the product team will likely have released many versions of the experience. There may be no “aha” moment upon completion, but the chances of the product team releasing a product that may not resonate with the customers or legal quashing a fully-completed experience after months of preparation is less likely to happen.

If your organization doesn't have formal product teams, can the product approach still work for you?

Not every organization has formal product teams, but companies typically dedicate significant time and resources toward improving their consumer offerings and the customer experience. The businesspeople working in this space, whether they are technically called "product teams" or not, likely employ methods that could benefit from a different type of interaction with their in-house legal advisors. Product counsel are skilled at embedding with the business team, understanding their goals, and intervening early when potential legal roadblocks loom ahead – and other lawyers might benefit from taking a similar approach.

If a business team is in the early stages of a new project, the attorney may earn praise for saving wasted effort and not pulling the rug out from under a team's efforts. This is particularly critical in a product or innovation space because the cadence may be quicker and the team's direction may change frequently based on what they are learning during early stages of development and consumer testing. That being said, attorneys operating in other areas may also see real benefit from gaining a greater understanding of their clients' day-to-day work and proactively mitigating risk.



Does your organization have lawyers dedicated to privacy, data protection, marketing, advertising, regulatory, contracts, intellectual property, or consumer protection?

While all in-house attorneys might benefit from “thinking like a product counsel,” there are some attorneys who should be particularly well-suited to this mindset. Attorneys specialized in the areas listed in this question are likely already skilled at working across multiple business units and are expected to define boundaries for the business in these collaborative spaces. What might be new to these attorneys, and what is standard operating procedure for a product counsel, is the need to deeply understand the product team's goals, calibrate legal guidance based on the risk tolerance at various stages of a product, and move quickly, even in areas that are new to them or evolving. For example, if a marketing team wanted to air a broadcast commercial containing a potentially infringing trademark, the risk might be considered too high. If a product team wanted to use the same, potentially infringing mark for a 24-hour online test that would be seen by fewer than 20 customers, depending on the organization's risk profile the risk might be considered acceptable. Without understanding exactly what stage of product development the business was in,

and how to provide practical legal guidance appropriate to that stage, the intellectual property guidance might be too conservative. Assuming our hypothetical business didn't have product teams, the marketing team would benefit greatly from an IP attorney acting like a product counsel. The IP attorney would get involved early in the process with marketing, flag potential trademark issue before significant work had been done, and present a risk assessment and possible alternatives to the business. The business could then understand the level of risk and decide whether to move forward before costing itself time and money. This is just one example of how leveraging product counsel methodology in other legal spaces could be beneficial.

While not all organizations have product teams and product counsel, using the product methodology and approaching work from the product lens could help all of the lawyers on your team shift toward a more client-centric (or “product”) model of legal practice to enhance the value of the services they provide. Here are examples of how successful product lawyers operate and what

your non-product counsel can think about to help them become trusted business advisors for their clients:

Common attributes of an effective product counsel

- Curiosity
- Creativity
- Ability to offer guidance on a wide variety of issues
- Interest in learning about all aspects of the business
- Familiarity with the product team's goals
- Comfort with providing risk-informed guidance on tight timelines
- When faced with a scenario where the legal advice is to say no, they are capable of providing constructive, risk-appropriate alternative solutions
- Judgment on when to bring in subject matter experts and outside counsel
- Appreciate the need to adjust guidance based on the stage of product development

Understand your organization's risk profile.

All lawyers are trained to be risk averse. But “the goal of product counsel is not to de-risk the business. That isn't realistic,” says Shara Chang, Chief Legal Officer at Divvy Homes. Instead, product lawyers weigh business initiatives against the organization's risk profile allowing the product team to make risk-informed decisions.” Factors typically shaping a risk profile may include the nature of the industry, the regulatory environment, the organization's age and growth trajectory, competitive pressures, and previous consent orders or fines. Developing this risk-oriented knowledge base requires that a product lawyer have deep relationships across many areas of the organization and that the product lawyer works constantly to maintain those relationships and keep lines of communication open.

Gain business partners' trust so they involve legal with the entire product lifecycle.

Product teams, like many business partners, may be wary of involving legal out of concern legal will stop or slow the innovation process. “Instead of simply pointing out all the things that could go wrong, product lawyers earn trust by classifying risks for the business,” Chang points out. “If you build a reputation for giving practical legal advice that solves legal problems instead of just raising potential legal issues that could block progress, your guidance will be trusted, valued and needed. Additionally, if the majority of your advice is enabling, on the

occasions where you have to say no, the product teams are more likely to listen when you tell them something just isn't possible.” Here again, relationships are critical. Product counsel should know, and be known to, a wide range of stakeholders on product teams and throughout the business.

Provide the business with timely risk assessments for an initiative.

Product teams are also more likely to engage internal counsel when doing so still allows the product team to meet its deadlines. As Cody Gillians, Senior Corporate Counsel (Product) at Autodesk, explains, “Your product teams are looking for your legal lens and your judgment. Unless potentially significant legal risk is identified, this is not the type of practice where the client wants a lengthy memo.” The pace at which product teams move can be uncomfortable for some lawyers. However, Gillians explained that “when product lawyers truly understand both the business and the product, counseling the product team on tight timelines is not as difficult as it would be if the lawyer was only brought in at later stages of discovery or product development and had no context about the issue.” It is important to underscore the need to move fast and to deeply understand the business.

Proactively spot issues on a variety of legal topics.

Product lawyers are comfortable wearing a generalist hat and bringing in specialists as the situation demands. “While I never know what questions

I may get from my product team on any given day,” Gillians says, “attending the product team's weekly standups and strategy discussions allows me to proactively identify legal risks that may impact product development and flag those risks to the product team. Flagging legal issues early gives the product team the opportunity to “engineer around” identified legal risks.” A constant curiosity and a commitment to continuous learning are core attributes of a successful product lawyer.

Offer guidance and alternatives so the product team can continue to innovate.

Product lawyers are often called upon to exercise judgment. “Product teams appreciate when you present them with potential options, because it shows you care about where your product will ultimately end up,” Chang says. “You're rolling up your sleeves, not just to give academic legal advice but to brainstorm and be a thought leader in the room.” In this way, judgment is supplemented with creativity and the ability to connect ideas, helping the product lawyer balance the need to support innovation with the need to moderate risk.

As the CLO looks for ways to elevate the legal function to that of the ‘trusted business advisor’, approaching future work with the mindset of a product lawyer may help the legal function (and possibly everyone on the legal team no matter the discipline) become trusted legal and business advisors in their own right.

Endnotes

1. Association of Corporate Counsel "[Chief Legal Officers Survey](#)." Visited site on September 7, 2022.
2. Deloitte, [A tale of trust and transformation: Highlights from the 2022 CLO and CCO Strategy Survey](#), June 2022.
3. "[Legal Technology: Trends and Predictions by Gartner](#)." Legal Practice Intelligence, February 14, 2022.
4. [Product Development Process](#), Product Plan, Visited site on September 7, 2022.
5. Jianoa Zhang, [Think Like a Product Manager: How All Leaders Can Thrive by Thinking from the Problem Space](#), Forbes, May 2, 2022.
6. Jace Grebski, [Integrating Customer Experience Design Into Your Product Process](#), Originate, Visited site on September 7, 2022.

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