

New Normal Legal Practice: Automated Legal Services Online?

Part III

A book review of Peter Hinssen, *The New Normal* (Gent, Belgium: Mach Media, 2010)

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This final Part of the special review of Hinssen's *New Normal* in regard to legal practice, poses a refreshment of professional perspectives, by reference to the emerging *New Normal* legal practice, considered in Part 1, and the new business model for legal practice that was explained in Part 2. Part 1 showed that major problems in the legal system may be remedied by technology adaptations. The new business model was developed from this macroview of Part 1 and its technology adaptations. Microviews of the implementations of the Part 1 technology adaptations also contribute to the refreshment of professional perspectives in the *New Normal* legal practice.

16. Justice industry

If legal practice businesses were thought of as the justice industry, how would they be rated for effectiveness by clients or end users? Hinssen examines the advertising industry as it was established by the *Mad Men* of New York in the 1950s and the impact on it that the *New Normal* is likely to have.¹

The most important feedback mechanism wasn't necessarily the effectiveness of the advertisements, as 'effectiveness' was difficult to quantify, but rather some crude alternative that measured the prestige (and thus, one supposed, the reach) of a particular agency or campaign. In establishing this norm, the ad industry was able to create a self-grading (and

self-congratulatory) awards system; a system that graded ad campaigns on the basis of creativity instead of effectiveness and was arbitrated by other industry insiders instead of by customers or end-users ... awards were a must.

The feedback cycle of an advertising campaign was slow as it depended on changes in sales figures but now computer systems can capture, store and recall data in real time. To a large extent, the legal profession is self-regulatory and self-congratulatory with insiders in control; it does not even recognise that it is the justice industry, and it does not measure client feedback about the quality of justice they experienced.

Hinssen observes that 'we can now measure everything and thus at any given point in our interaction with a customer, we can create total visibility about the effects of a campaign'.² For lawyers in practice there are measures of how many cases are managed, how many cases were won, satisfactorily settled, or lost, and how much was taken in costs for given periods. There is little focus on the extent of just outcomes.

The law has always placed an emphasis on money as a measurement for justice, and legal practices follow business practices in ensuring the financial sustainability of the business. Is justice a bits or atoms industry, or both, (see Part 2) and is it sustainable?

17. Marketing innovation

As the corporate role is stripped bare by the digital culture of the New Normal, the essential corporate tasks of marketing and innovation remain as a skeleton. Marketing difficulties suggest product or services modifications which require innovation. The lawyer's predilection for justice must be reconciled with the commercial requirement for marketing, through New normal innovation. Most human relationships in business will occur as digital interactions with a consequence suggested by Hinssen that:³

We will have to market to consumers differently when the world has become a digital society with the user in control of the consumption of information.

In an article in *Honi Soit*, the student newspaper of the University of Sydney, in March 2011, Melissa Werry asserts that Gen Y have 'crap-filters':⁴

Marketers, producers, authors beware: this is the generation that won't be easily swayed. Our highly sophisticated crap-filters, honed by a steady diet of search engines and wiki pages will see right through your attempts to exploit our minds as your own consumer playthings.

What do clients of a legal practice now want? They can already check out black letter law, in all its chaos, on AustLII and its international family. Terms used in law can then be searched for more comprehensive understanding. All of this is time consuming. How much 'crap' will be found in the law? Will its tricks be detectable and acceptable? A small error in understanding the law may have a major consequence. Some areas are matters of legal specialist secrets. Clients want access to the secrets, faster access to legal services, and meticulous attention to accuracy of advice for the client's circumstances. What might be expected of innovations in legal practice? Can innovations provide such online legal services?

There are now short courses available to the public that are offered for management of law in various areas, for example, for domestic domains set up under cohabitation contracts or domestic partnerships. Each person may fashion a legally safe niche that suits the life of that person; but what of the potential of the law that could be helpful? Online legal education may become more integral to legal services in order to present legal choices for informed client selection.

In summary of customer strategies, Hinssen says:⁵

... the intelligence necessary to do this will have to operate in real time ... What we want to do today is to understand the customer rationale and delve into the customer intelligence... The next ten years will be about using the internet cleverly... It's all about intelligence.

In his Chapter 5, Hinssen gives advice on information strategies for the New Normal which is an age of 'information insanity'.⁶ With petabytes of data storage capacity, information overload is counter-productive. Knowledge is lost in data due to the cracks 'between management and IT';⁷ it cannot be found in the fog. To solve problems, better analysis, judgments and assessment of uncertainty, may be required rather than more information.

Hinssen poses four pillars of the information pillar: content, collaboration, intelligence and knowledge;⁸ these four pillars partially overlap with his 'Four I's', namely information, intelligence, integration, and innovation, that are the 'pillars of a re-imagined technology paradigm'.⁹ Content is seen to be about storage and retrieval of documents. Through cooperation, value can be added by collaborative sharing. The higher goal of information is collective intelligence that can be searched. Knowledge is regarded by Hinssen as the 'most noble' and underdeveloped pillar.¹⁰ He defines knowledge as reduced and condensed information; knowledge also has speed.¹¹ Succinctly, he says:¹²

When we want to search intelligence, we want to query knowledge.

Perhaps marketing intelligent innovation could promote the delivery of justice.

Interestingly, Hinssen compares the concepts of deduce and reduce.¹³ He sees deduce as arriving at a fact or conclusion by reasoning, or drawing a logical conclusion, whereas reduce is making smaller by a concentration that changes substance to a different form. A simplified form can make information overload more manageable. It is suggested by Hinssen that the scientific paradigms of (1) mechanical, exact certainty and (2) quantum, dynamic probability, could be combined in an information strategy.¹⁴

But the opposing concepts of exact and dynamic could possibly be combined. Perhaps you don't need to make an agonizing choice between the two. It all depends on your information strategy.

Hinssen poses three defensive and three offensive drivers of information strategy.¹⁵ The defensive drivers are compliance, control, and archive. Improvement of information quality and flow is a focus for business. The offensive drivers are speed, sharing, and intelligence; speedier retrieval and distribution of information, supports collaboration within an organisation to produce more value in information. Intelligence involves the collective creation of knowledge so that it can be re-used.

The entry point to information, says Hinssen, should be treated like the shop front suitable for consumers, as distinct from the storeroom that suits suppliers.¹⁶ Structures are required to assist retrieval but in the New

Normal, co-operation is required to produce 'clever' information systems which Hinssen defines as:¹⁷

What we really need are 'clever' information systems that state what is 'relevant' for us, how good the 'quality' of document is, and who should read this document.

Also, information systems have to suit multi-tasking. Within an organisation, systems like Facebook for personal interaction and Twitter for broadcasting should be part of an information strategy. Teams with multi-faceted views and multidisciplinary skills are required for the New Normal. Hinssen concludes:¹⁸

In the New Normal, an information strategy centers on people. It's about how we work, share, publish, access and find information in the future.

It is the meaning in information which adds value to data. As access to technology is equalised, says Hinssen, technology becomes a commodity:¹⁹

In the New Normal, companies need to start viewing innovation as the true enabler, and technology as the mean to drive innovation ... we have to focus on how to be clever with digital. ... There will be no more 'technology projects', but all projects will be 'business projects with a technological angle'. ... The role of the next generation of technology departments will be to lead the business into a world of technology-enabled innovation.

Investment in the New Normal shifts from business sustaining costs to innovation which creates value. Decisions are made on a COST-RISK-VALUE basis, rather than the Old Normal limited COST-RISK assessment, as innovation introduces change which affects cost and risk. There is a focus on the best mix of spending on customers (front-end), products (core), and operational excellence (back-end).

Hinssen poses a new dynamic of thinking, a Technology Innovation Sudoku which is a matrix method of allocating investment proportions to front end, core and back end (vertical axis), for costs of maintenance, customer success and innovation change (horizontal axis).²⁰ The matrix is a compact view of an innovation portfolio that maximises benefits for the business and produces the same sudoku total for the vertical as the horizontal allocations, while indicating the differences for each combination of items across the vertical and horizontal columns. Trade-offs between the differences ensures maximum value creation.

Once the customer and information strategies are settled, Hinssen describes organisations in the New Normal in Chapter 6 and innovation in the New Normal in Chapter 7. In the New Normal, organisations have total transparency and accountability; but, says Hinssen, our ability to record and zoom is not yet matched by our ability to comprehend.²¹ Rewards to an employee should

not exceed the value creation by that employee. However, loss of control over employees will mean a brain drain from the business. Intrapreneurship has a much faster pace in the New Normal.²² Google is an example of the pace of development from a start-up to a corporate culture. Their ten golden rules for getting the most out of knowledge workers are set out by Hinssen:²³

- Hire by committee to allow corporate community dialogue about candidates.
- Give creative employees 20 percent of their time on a project of their choice.
- Strive to reach consensus: the manager becomes an aggregator of viewpoints, rather than an elite decision-maker and total control dictator. It is recognised that 'many are smarter than the few'. As Hinssen observes:²⁴

The crowdsourcing model of Wikipedia assumes a group of self-editing individuals can match experts in depth and surpass them in breadth. ... Google's consensus approach prefers the balanced interests and viewpoints of the group...
- Data drive decisions: algorithms assist analysis and decision-making. Qualitative inputs are turned into quantitative outputs.
- Outsourcing innovation: where innovation requires a lot of capital, an organisation might become the centre of outsourced components sold under a single brand.
- Limited entrepreneurship: outsourcing is limited by the preservation of the core identity of the organisation. The identity might become more complex or simpler. Interactive productivity tools on the web that are free or freemium, allow an entrepreneur to exponentially leverage time, reduce staff needs and reduce costs.
- Lifestyle design :²⁵ the end goal is to earn enough money to live an enjoyable life. Hinssen explains how business savvy and connectivity make lifestyle design and a four hour workweek possible.²⁶
- The intelligent organisation is more fragmented than its corporate predecessors. The balance between owners of investment capital and suppliers of human capital is more reasonable. The organisation will provide interesting and challenging work and the employee will invest discretionary effort and produce relevant results.
- 'Command and control' is replaced by 'coordinate and cultivate'. Boards, operating committees, teams, and working groups across the organisation provide strategic advice and evaluate projects and progress. Organisational systems are routed and rotated through different business functions.
- The breadth and depth of skill sets in the organisation are provided by T-shaped

individuals in collaboration.

Hinssen devotes Chapter 7 to innovation in the New Normal. He quotes Michael Porter:²⁷

Innovation is the central issue in economic prosperity.

In the New Normal, the business organisation is calibrated to maximise innovation; there is a new innovation strategy. Open, rather than closed innovation, with value given to innovation, will ensure the transition of innovation to the market. Innovations will not be confined to the current business. Technology aimed at a new market, suggests Hinssen, has an unknown number of variables and requires 'flexibility, quick decision-making, and the nerve to test and probe the competitive landscape...'.²⁸ Like the game of poker, the decision is whether or not to spend more money to stay in the game.

A sustainable model of innovation norms in the New Normal occurs as a managed process across the boundaries of organisations, through the Internet, the 'ubiquitous collaboration platform'. R&D will be replaced by C&D, Connect and Develop. Through innovation partnerships, permeable boundaries extend innovation resources. Key elements of product development may be sourced from outside an organisation. Through technology cross-licensing agreements, the aggregator replaces the original content producer. Hinssen illustrates the new model:²⁹

Savvy companies will tap into knowledge created and held by different players – universities, government research centers, independent experts etc. – and combine it with internal knowledge. This mode favours the aggregator over the original content producer – a common theme in the New Normal – and speaks to the power of the platform.

Open innovation amounts to outsourced innovation, but start up funding may be used to develop innovations for a purpose. This purpose may be to provide a component or to provide a new product for marketing. The advice of Hinssen is:³⁰

If you miss a required competency, there is typically no time to build it in-house. Instead, look for possible partner companies that can contribute such competency. This should allow you to build the new product together, faster.³¹...the trends of openness will carry the day in the New Normal.³²

In the New Normal, customers will demand innovation. There is a mini-industry of application developers. For instance, the Facebook platform now has over half a million active apps. This attracts new participants to the community as users or developers. Over one million developers and entrepreneurs contribute to the Facebook platform. Apple also has an expanding App Store for outside sources of innovation. 'Viral' user adoption can

result from instant access to large online communities of potential customers.

After technological strategy in Chapter 8, Hinssen's final chapter, Chapter 9, provides the big picture of the New Normal. It opens with a whimsical quote from George Bernard Shaw:

We learn from experience that men never learn anything from experience.

With adaptation to the New Normal, the 24/7 internet results in a death of distance and time. Technology and business fuse into hybrid organisations of collaborating T-shaped individuals.

Hinssen uses many interesting real examples in business to support his views and strategy recommendations. The book is worth a read for its highlights of recent business history and lessons. It conveys a sense of energy and excitement about the realities of human creativity and technology. As the cover of the book suggests, for men in suits with ties, it is like a plunge into a swimming pool overlooking the sea, leaving behind only suit jacket and shoes; mad men of the New Normal?

18. Open culture

Hinssen suggests that closed cultures in business are now outmoded and are being displaced by an open culture. Legal practice, like most businesses, has long sustained a closed culture. However, the traditional role of lawyers may be stripped bare by the digital culture.

The closed innovation of commercial R&D practices, which stifled innovation, says Hinssen, must be replaced by open innovation whereby there can be the necessary collaboration between organisations to bring new products to market. The internet is 'our ubiquitous collaboration platform', so that the open innovation model can use a 'connect and develop' paradigm. Outside innovators could be engaged to add to inside innovation, with a motto of 'proudly found elsewhere'. This favours the aggregator through the power of the platform. Technology cross-licensing agreements give effect to the new open or outsourced innovation practice.

There is a growing mini-industry of application developers. They have instant access to a very large population and technology enjoys ever-increasing adoption rates. The tiered ecosystem of the New Normal separates service providers from the app developers who can achieve tremendous growth in increasingly compressed timeframes. The 'virality' of the platform will tend to instantaneous 'super-charged adoption'.

Hinssen quotes Alan Kay:³³

The best way to predict the future is to invent it.

Susskind also recommends this advice.³⁴ Systems that are designed to change will have open boundaries, shared control, and be composed with extended enterprise components. Technology as a commodity enables this

innovation. Hinssen refers to the example of Google's Gmail:³⁵

Today, webmail services like Google's Gmail offer vast amounts of storage capacity, efficient and user-friendly interfaces, excellent search capabilities, and all sorts of functional extras like Gmail to Gmail chatting (Gchat), language translation, integration with calendars, etc. Gmail is free for individuals and extremely cheap for corporate users.

Google's New Normal strategy is outside-in and bottom-up. Their customers adopt Google technology at home and, because it is better than their work technology, they bring it into use in their work. This is in contrast to the Old Normal inside-out and top-down strategy of Microsoft whose technology was bought in by executives and taken home by employees.

19. Synthesizers

Also Hinssen (p.103) quotes from E.O. Wilson's *Consilience* (1998):³⁶

The world henceforth will be run by synthesizers, people able to put together the right information at the right time, think critically about it, and make important choices wisely.

Developing an information strategy, on Hinssen's analysis, requires building on the basis of information sharing. Data in the form of knowledge and intelligence is what customers want to share. Compliance with law is a defensive driver of corporate information strategy. This requires control of processes and archives for quick retrieval. Offensive drivers of information strategy are speed, sharing and intelligence. Reducing cycles of information can increase speed, and this assists an increase in the spread of information. Increased spread and transparency of information allows people to work together and co-create to increase value in information. Collective creation of knowledge advances intelligence.

In an information strategy, information should be stored for ease of entry for further addition or retrieval. Structured information can be sorted and manipulated; sometimes it needs to be linked to relevant unstructured information. Intelligent filters could be developed to assist determination of relevance and information management. Information strategy is dynamic.

Consumers in the New Normal construct their own content world in an exponentially more complex landscape. They seek interaction; Hinssen asserts that the quality of the interaction is paramount. Interaction patterns require rethinking. The digital experience for the consumer should be faster, more convenient, seamless, interesting, simple and enjoyable. It must be designed to create digital loyalty to the business.

20. New Normal success

In the New Normal, says Hinssen, our ability to measure everything will result in total accountability and transparency. This will change the way we work with competitors and employees. The key to business success in the New Normal is captured in an article in December 2005 in *Newsweek*, by Google CEO, Eric Schmidt, and Hal Varian:

Getting the most out of knowledge workers will be the key to business success for the next quarter century.³⁷

Google success may be measured by their management practices. As noted, hiring employees at Google is done by a committee interview process. The manager is the aggregator of viewpoints, not the dictator of decisions. Google fosters intrapreneurships by allowing engineers to spend one day a week on a project of their choice. Managerial control is replaced by aggregation and striving for consensus.

Websites might be established by specialist lawyers to produce, collaboratively, online legal expert systems, open to public access and discussion. In the New Normal, T-shaped individuals will have success through collaboration; success is shared.

Hinssen adds another appropriate quote from T.S.Elliot's *The Rock* (1934):³⁸

Where is the life we have lost in living? Where is the wisdom we have lost in knowledge? Where is the knowledge we have lost in information?

In the New Normal, warns Hinssen, 'businesses need to spot the next wave of innovation before it capsizes them ...' and '... waves of innovation will be larger and more frequent...'.³⁹ New innovation strategy is required.

21. New normal codification

Forms of action are static; formalisation of the processing of forms of action, with all their combinatorics as they are applied to alternative possible cases within their finite limits, is dynamic.

Intelligent computer codification of law may follow the Roman period of codification which was marked by a simplification of the rules of law, removal of inconsistencies and 'crap', and an elegant presentation that applied to the exclusion of all other sources of law.⁴⁰ It was designed for the Roman bureaucracy which displaced Roman lawyers and the judiciary. Susskind's themes include significant changes in the legal profession to serve IT and the online market. An intelligent code may become the New Normal of legal practice and legal services.

The field of artificial intelligence and law began with the establishment of artificial intelligence in the mid twentieth century. Study of the Roman code was resumed by the glossators of Bologna in the eleventh century; Bologna University is now a leading Italian University in the field of artificial intelligence and law,

searching for the intelligent computer codification. Glosses on the rules that are codified, may enhance the electronic code.

22. Download a lawyer

Looking beyond the New Normal, Hinssen considers a prediction by Ray Kurzweil that by 2050 it will be possible to 'download' a complete human brain.⁴¹ He quotes Douglas Adams' response to a question at a conference, as to how the new technology might affect several industries:⁴²

This is like a bunch of rivers, the Amazon and the Mississippi and the Congo asking me how the Atlantic Ocean might affect them ... and the answer of course is that they won't be rivers anymore, just currents in the ocean.

Accessing a New Normal intelligent codification of law and legal services in the cloud may become just currents in society, especially if the eGanges River hierarchy is adopted as the rule system representation.⁴³ Susskind makes a similar suggestion by reference to Eugen Ehrlich's concept of the 'living law': legal information services will become more multi-disciplinary and an integral part of people's lives.⁴⁴

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² Ibid 55.

³ Ibid 14.

⁴ Melissa Werry, 'I smell a rat ... in a polka-dot dress', *Honi*