Chapter 5.29
Legal Knowledge Management

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INTRODUCTION

Legal practice is primarily concerned with the transfer of legal knowledge from practitioners or clients. Whilst lawyers may draft contracts and make representations on behalf of their clients, their primary task is to advise their clients on appropriate remedies and courses of action. Rodríguez Morcón, Pérez García, and Sigüenza Pizarro Rodriguez (2002) claim that a lawyer sells what he knows, often in the form of a document (a contract, an opinion, a report) and much more often in a trial before a court or in a negotiation with a counterpart. Khandelwal and Gottschalk (2003) claim that lawyers can be defined as knowledge workers. They are professionals who have gained knowledge through formal education (explicit) and through learning on the job (tacit).

To carry out their daily work, lawyers also have to manage a great many sources of information. It is important for them to be aware of current changes in legislation and jurisprudence, and to consult books and articles. But it is also neces-sary to manage the information that is generated from within the practice in the course of lawyers' relationships with their clients. In a law firm's day-to-day work, a mass of information and knowledge is generated which has to be managed efficiently, so that it is easily, quickly. and intuitively acces-sible whenever it is needed by any of the firm's offices. Rusanow (2003) defines legal knowledge management as the leveraging of the firm's col-lective wisdom by using systems and processes to support and facilitate the identification, capture, dissemination, and use of the firm's knowledge to meet its business objectives.

We commence by emphasising the difficulty of developing generic legal knowledge manage-ment approaches given the multiplicity of differ-ent legal systems. We next focus on maintaining legal knowledge using an argumentation-based approach and building legal knowledge-based systems for World Wide Web. Since the goal of the legal process is to avoid litigation, we conclude by discussing how knowledge can be managed to provide Online Dispute Resolution.

BACKGROUND

One of the major difficulties in providing generic legal knowledge management tools is the fact that legal practice is very context dependent. Whilst the laws of gravity are fairly uniform throughout our earth, this is definitely not the case with legal norms. Even within Western Europe, Canada, and the United States, there are distinct legal traditions—namely Common Law and Civil Law.

David and Brierly (1985) note that common law and civil law legal traditions share similar social objectives (individualism, liberalism, and personal rights), and they have in fact been joined in one single family, the Western law family, because of this functional similarity. Other countries may have a code of law based upon tribal practice or religious principles.

Even within one country, there may be various modes of legal practice or major regional differences in the way law is practised. For example, in the United States, a state court determines Family Law. Because of the varying legislation between states, lawyers often engage in forum shopping to obtain an advantage for their client.

As well as regional differences, the different courts in the same region may rely upon distinct burdens of proof—the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause (Black, 1990). Except as otherwise provided by the common law, the burden of proof requires proof by a preponderance of the evidence (or the balance of probabilities). In a criminal case, the government must prove all the elements of the crime beyond a reasonable doubt. Except in cases of tax fraud, the burden of proof in a tax case is generally on the taxpayer.

Hence law is very domain specific. An ontology is an explicit conceptualization of a domain (Gruber, 1995). Legal ontologies represent legal norms and are very significant for developing legal knowledge-based systems on the World Wide Web.

Building generic legal ontologies is not possible. Breuker, Elhag, Petkov, and Winkels (2002) claim that unlike engineering, medicine, or psychology, law is not ontologically founded. They claim law is concerned with constraining and controlling social activities using documented norms. Zeleznikow (2004) conducts an overview of legal ontologies.

CLIME, e-COURT, and FFPOIROT are all legal ontology projects funded by the European Union. Because of the plethora of legal systems in Europe, there is a great need to develop legal ontologies that are applicable across the European Union.

Given the domain specific nature of legal knowledge, and the fact that law firms exploit their legal knowledge for commercial gain, legal knowledge management has often been conducted in-house. Perhaps the one exception to this rule has been legal aid organisations, which provide advice to a large number of indigent clients.

LEGAL KNOWLEDGE MANAGEMENT, DECISION SUPPORT, AND THE WORLD WIDE WEB

Gottschalk (1999) states that the use of advanced technologies enables the law firm to take advantage of the most appropriate tools to improve efficiency, increase effectiveness, streamline communication, and reduce costs for their clients. A law firm is a collection of fiefdoms—each lawyer has his or her own clients and keeps the information about them private. One of the greatest objectives of knowledge management in law firms seems to be consistency of work output in an increasingly global market. Knowledge management support systems in law firms are concerned with capturing and codifying knowledge, creating knowledge, distributing knowledge, and sharing knowledge (Edwards & Mahling, 1997).

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