

PRACTICE AREA GUIDE



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OVERVIEW

Before the Internet went mainstream in the late '90s, no one really considered herself an e-business lawyer. Rather, a lawyer might think of herself as a trial attorney or a transactional attorney who dealt with certain emerging legal issues and perhaps targeted Internet-related clients.

As these issues gained notoriety (especially through high-profile cases such as Netscape and Microsoft's browser war) and as Internet IPOs led to dot-com mania, lawyers were increasingly called on by their clients to answer ever more diverse questions at the speed of cyberspace.

Trial lawyers began addressing questions of jurisdiction, such as "Can you be sued in a remote place just because your site is accessible from anywhere on the Net?" Corporate lawyers pondered concerns over funding Internet start-ups, such as, "How should the board of directors be structured so that venture capitalists have enough control without impeding the company's growth?" And intellectual property lawyers examined trademark infringement matters, such as "What do you do if someone else owns a domain name that uses your trademark?"

Thus, mainstream lawyers began specializing in business with an electronic component. At the same time, techie lawyers began retooling their practices to make them more versatile. The bulk of the work ultimately landed on the desks of corporate lawyers because of the transactional nature of e-business (e.g., reviewing licensing agreements, Web hosting contracts, and employee stock-option plans).

The high-tech revolution, of course, began in northern California's Silicon Valley and then traveled east. Two groundbreaking law firms that benefited from this expansion were Cooley Godward and Wilson Sonsini Goodrich & Rosati. From the early '90s to the present day, many of these California-based firms doubled or even tripled in size. Although New York's largest law firms (like Skadden, Arps, Slate, Meagher & Flom) have established prominent tech/e-business practices, the California firms also have a presence in the Big Apple, bringing much of their Silicon Valley expertise to Silicon Alley. Boston's Testa, Hurwitz & Thibault is another big East Coast player in this area.

The essence of an e-business/technology practice is to assist clients in establishing an online identity, protecting that identity from copycats and pirates, and transforming and streamlining its operations using the Internet. A new associate might be asked to research the ability of a corporation to hold board meetings over the Internet or to vote by e-mail, and then might have to draft a memorandum about his findings. Other projects might include reviewing the privacy policy posted on a client's Web site and identifying any aspects that do not conform to accepted standards; drafting employment agreements for valuable high-tech executives; assisting with negotiations for online advertising contracts; and reviewing domain name ownership records for due diligence purposes.

Since nearly every company now has an Internet component (or at least a Web site), newly minted e-business lawyers are much sought-after. Law schools throughout the nation have picked up on this trend, and many offer courses in this area. For example, the John Marshall Law School in Chicago offers a seminar on "Cyberspace Law," and the University of Miami Law School offers a class called "Law and the Internet." Harvard Law School and Brooklyn Law School offer similar courses that are quite popular.

TRENDS

Shifting business models. A year ago, most e-business lawyers assisted promising Internet or technology companies in their efforts to find funding, helped take them public, and went on to represent the new public companies. Now, however, they're more likely to help a maligned dot-com—one that never made it to the public market—secure a much-needed infusion of cash, and hope that the loan will carry it to profitability. If it's in really bad shape, lawyers help identify a merger partner—or worse yet, provide guidance on the road to bankruptcy.

That's the downside. The upside is that every Old Economy bricks-and-mortar firm these days is incorporating the Internet in some way into its business model. These newly created hybrids are replacing dying New Economy-only clients in many e-business practices. This makes for some interesting legal work—the new clients are often open to creative ideas from everyone, including their lawyers.

Technological enhancements. Law firms of all sizes, government legal offices, the courts, and even in-house legal staffs are going tech. Although the law may have been slow to adopt new technologies (yes, there are still law firms out there using WordPerfect 5.1 for DOS), most offices are now incorporating mobile devices into their IT budgets. E-business practice groups in particular have embraced this movement, with BlackBerry

wireless e-mail devices, laptops, and the all-important Palm or other PDA becoming de rigueur.

Focus on expansion and hiring. Though the market has fallen and can't seem to get up, law firms, while coping with a slowdown in tech work, are still aggressively moving into lucrative markets and searching for talented lawyers in preparation for the next technology boom.

Landmark/precedent-setting cases. Two of the most high-profile cases in the past few years, aside from the U.S. government's case against Microsoft, have been Amazon.com v. The New York Times (the case in which the Times demanded that Amazon end its use of the newspaper's best-seller list on its Web site) and Ticketmaster Corp. v. Microsoft Corp. (Ticketmaster sued Microsoft to prevent visitors to Microsoft's "Sidewalk" Web-based city guides from "deep linking" to Ticketmaster's Web site, thereby bypassing its homepage and hurting the company's advertising revenue). Both cases ultimately settled, but their significance helped create several new legal boundaries to which companies must conform.

AT WORK

Life as an e-business lawyer varies considerably depending on firm size. Usually, though, the work involves cutting-edge or high-profile technology, and clients tend to be unorthodox. For instance, at any given meeting, there may be three conversations taking place on three separate cell phones while the lawyers are trying to advise the client on the risks of a deal it has already agreed to and is in the midst of finalizing.

New Economy executives may be in suits or they may be in jeans; they may sit on a chair or on the table itself. Transactions are typically fast-paced (imagine conference calls at 11 p.m.), particularly during corporate deals, and they often address novel business arrangements requiring creative drafting skills. For instance, customer data maintained by an e-business is a valuable asset when a company is on the auction block; however, its lawyers must carefully draft the agreement transferring rights to that data without raising regulatory suspicion or violating the company's own privacy policy.

Before the Internet invaded the law, the great divide between big and small firms concerned salaries and the seductive "boom-year" bonus (a fatter-than-normal bonus that associates may receive at the end of particularly profitable years). Now it's not quite so cut-and-dried, especially when you compare large firms to small technology-focused ones—whose use of venture funds and other creative programs has helped bridge the compensation gap.

When money is taken out of the equation, distinctions are based on the breadth of the work and on the lifestyle. But don't be fooled into thinking that because a firm is small, it offers a better quality of life. Often, a small firm with a successful e-business/technology practice will keep its associates as busy as the largest firms in New York City, because there are fewer people to share the workload.

GETTING IN

Aside from using every gadget they can get their hands on, e-business lawyers subscribe to magazines like *Wired*, *The Industry Standard*, *Red Herring*, and *eCompany Now*. The truth is, they read these magazines for pleasure as much as for business. They love to talk with their friends about industry developments and are genuinely excited to share new ideas with one another. So getting into this practice area requires a sincere interest in all things electronic, as well as a keen sense of what is happening in the stock market and the world of business.

You do not need an engineering background to represent technology companies. What you do need are common sense, an awareness of your client's business and its competitive landscape, and a shared vision for the company's future. Many lawyers demonstrate this last point by taking equity (i.e., stock) in the company in lieu of a percentage of legal fees.

Students looking to enter a technology practice group will give themselves a great boost by demonstrating their commitment to this area while in law school. When hiring, lawyers look for written materials on related subjects, work experience in the field, and an interesting background (tech-based or otherwise).

One e-business attorney now working in Silicon Valley started his career as an intern with a major California technology company, completed non-tech graduate work overseas, and began practicing law in a project finance group outside of northern California. The keys, he notes, are "to be interested, interesting and unwavering in your pursuits."

MOVING UP

To some extent, upward mobility in e-business is similar to that in other practice areas. Class-year progression is routine for those associates who bill their required hours and produce high-quality legal work. But reaching the holy grail of law-firm life—equity partnership—might be more difficult for e-business lawyers, especially in a bear market. The reason: Ascension to partnership is almost always based on the amount of business you generate for the firm rather than the number of billable hours you can endure.

Then again, the great advantage of e-business is that clients tend to be younger and the issues themselves tend to be novel, so a young associate who hustles can gain the credibility to convince new companies to use a lawyer who understands their needs and perspective, regardless of her age.

One partner in the technology practice of a midsize firm says that to stay ahead he is always marketing himself. He notes, "You never know where business is coming from. It could be from the CEO of some large company, or it could be from your cousin whose boring hardware manufacturing business is now developing an online strategy." While there is no direct path, some of the most effective methods for generating business include speaking at tech conferences, writing for tech magazines, working on blockbuster deals, and, naturally, knowing as many people as possible.

TYPICAL DAY

Unlike associates in other practices, who often work on a particular case for months, e-business practice groups generally handle a variety of short-term projects. On average, expect your schedule to be something like this:

9:30 a.m. Bagels on Fridays; check snail mail, e-mail, and voicemail (starting time may be earlier, depending on your group's habits).

10 a.m. Redraft agreements for current project, incorporating e-mail comments you received overnight from clients overseas or on the West or East Coast. You may, for example, be working on the acquisition of a free Internet service provider (ISP)—and while you were sleeping, your client may have renegotiated the price it will pay for each new subscriber it receives in the deal.

10:30 a.m. Discuss with client the changes to the terms of the free ISP deal that occurred overnight.

12 p.m. Lunch meeting with colleagues to discuss workload, or Continuing Legal Education presentation about SEC disclosures required by e-businesses filing for an IPO, given by members of the department.

1:30 p.m. Meeting with partner on a new project for an existing client who has been contacted by the Department of Consumer Affairs for deceptive business practices related to certain claims it makes on its Web site.

3 p.m. Research novel questions of law and background on new client. Draft an e-mail message to the entire firm asking whether other attorneys nationwide (or worldwide) have addressed similar issues.

5 p.m. Conference call with clients regarding new transaction. Provide partner and client with details on the basic disclosure requirements under the law and develop a preliminary plan of action to prevent any further regulatory interest.

7:30 p.m. Order dinner.

9:15 p.m. Record billable time for the day either directly into the firm's computer system or by hand for entry later.

9:30 p.m. Head home to get some sleep.

OVERVIEW

Pros:

- Innovative, intriguing work.
- Cool clients.
- Potential to build credibility quickly at a young age.
- Hard work is generally rewarded.
- Relatively flexible schedules; firms may encourage telecommuting.
- Opportunity to address novel issues of law.
- Excellent guidance and training.
- Most firms provide associates with laptops. Some firms give associates a lump sum upon entry with which to purchase such

portable technology equipment as a PDA, a laptop, and a mobile phone. The great thing about this system is that the associate gets to keep his gadgets when he leaves the firm.

- Relocation bonuses.
- Corporate credit card, to foster client development.
- Free lunches during training sessions.
- Free dinner and transportation home when you work late.

Cons:

- Tight time frames and demanding work.
- Precedent for a particular transaction doesn't always exist.
- Emphasis on billable hours (similar to other areas but stressed in an e-business/tech practice because of the pace and large volume of work).
- Influenced more heavily than other practice areas by market fluctuations.
- Sometimes difficult to relate to clients whose technology is significantly more advanced than yours.

MISCONCEPTIONS

Myth: The best jobs pay the most money.

Reality: One New York e-business lawyer who moved from a large firm to a position with a technology company warns, "Money doesn't equal happiness" in this field. A lawyer at a big firm may have to revise a document transferring some incredible technology so quickly that he misses the opportunity to marvel at the technology itself. A lawyer working inside a tech company, on the other hand, may have the chance to immerse himself in the innovation and thereby derive a greater level of satisfaction at a slightly lower salary.

Myth: E-business law is always exciting.

Reality: While this is certainly one of the most cutting-edge areas of the law, it can involve long hours just like everything else. People tend to think that if the clients are really cool and the work is great, staying at the office until 2 or 3 a.m. is acceptable. Once in a while, it is; but try it for a couple of months straight and the fun factor may wear off.

Myth: California firms work less than New York firms.

Reality: Laid-back doesn't mean lazy. A West Coast e-business attorney coming from an East Coast practice noted, "People [in California] are more pleasant and relaxed, although they work just as hard as people in New York. I was a bit surprised at the [high] volume of deal flow." That same misconception applies to small and midsize firms when making comparisons to bigger firms in any locale.

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