Looking Outside the Firm for On-Point Work Product

by Justin Hectus

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The value of a good lawyer is not proven in redrafting maps of familiar ports, but rather it is secured by successfully navigating uncharted waters. Sophisticated purchasers of legal services understand this, and they expect today's lawyers to quickly locate, validate, update and utilize past work product where it is prudent to do so. Forward thinking firms have started utilizing tools to effectively mine their own documents, but we were recently introduced to an amazing concept: Why stop looking for precedent documents at your firewall, if you can just as easily access documents filed by your competitor? The ramifications of this new concept are astounding.

Looking Inside the Firm

Responding to various client demands (faster turnaround and lower costs among them) and a mandate to improve the firm's internal realization rate, many firms have begun to seek ways to make better use of their existing stores of documents. These initiatives are broadly lumped under the term knowledge management. Not long ago, knowledge management was the domain of a few attorneys who understood the value of maintaining precedent or form files. It saw its broadest (and perhaps most aggravating) incarnation in firm-wide e-mails, in which an individual attorney might request information on a given topic from his/her peers.

The last few years have seen firms intensify their efforts to formulate broader strategies for tapping existing work product on an institutional level. Various vendors have responded with applications that take differing approaches to solving the problem, ranging from universal search to targeted work product retrieval. However the given system works, the overriding objective is the same: to find the right work product at the right time.

Looking Outside the Firm

As law firms have begun to better utilize their internal work product, it is a logical extension of the initiative that they should consider how they might begin leveraging work product created outside the firm – namely, at other firms. Imagine the possibilities! If you were charged with drafting a patent license agreement, for example, you could see what experts at other firms have drafted, and compare to what you've done. If you were going up against another firm in a transaction involving the sales of some of your client's assets, you could see how that firm had dealt with similar deals, or how the firm's client had dealt with similar deals.

It may sound like a fantasy, but there are ways to review and compare documents created by attorneys at other firms. Better yet, this ability to peek at the work product of practitioners at rival firms does not involve trying to tap into those firm's secure networks, riffling through their recycling or garbage for discarded drafts, or aiming high-powered binoculars from one sky scraper to another to view content on rival attorneys' computer screens. This is because each time a corporation posts a filing with the Securities & Exchange Commission – an annual report, 10K or registration statement, for example – it becomes part of the public domain, via EDGAR – the Electronic Data Gathering, Analysis, and Retrieval system. According to the SEC's website, EDGAR "performs automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others who are required by law to file forms with the U.S. Securities and Exchange Commission (SEC). Its primary purpose is to increase the efficiency and fairness of the securities market for the benefit of investors, corporations, and the economy by accelerating the receipt, acceptance, dissemination, and analysis of time-sensitive corporate information filed with the agency."

"Wow," you may be thinking. "This should be easy. I'll just go to the SEC website and begin browsing through documents until I find what I need. Perhaps an M&A deal from Skadden Arps, a range of benefits plans from, say, the financial services sector, or a handful of good patent license agreements."

If only it were that easy!

When you visit the SEC website *(www.sec.gov)* and click through to EDGAR, you'll find that your search options are somewhat limited – limited, in fact, to company name, ticker symbol, file number, state or SIC. Full text searching is also available. If you punch in a company name – say Microsoft – you'll come up with thousands of hits. Many are Statements of Changes in Beneficial Ownership of Securities, but scrolling through, you'll eventually find an Annual Report. You surmise that an example of the sort of document you're looking for – an example of a compensation plan for a senior software executive – might reside somewhere therein. So you open up the Annual Report filing, and begin sleuthing around. Eventually, you just might find the document you're looking for.

But you don't need to be a knowledge management guru to understand that this is a less than an adequate solution to work product retrieval from the public domain. It takes too long, and there's too much hit and miss.

A More Practical Tool

Our firm, Keesal, Young & Logan, has built an international reputation for its litigation work, but we also have a thriving transactional practice. While we make every effort to make good use of transactional documents we've created in the past, we have recognized that there would be value in reaching beyond the walls of our five offices to find work product that more closely matches the matter at hand. After all, with so many agreements/clauses in the universe of transactions; no team of attorneys could ever know all the aspects of the transactions that might be encountered.

After a bit of research, we came upon a service that seemed to open up a broad spectrum of quality transactional documents from the public domain. The service, RealPractice™ Public Access™, was developed by Practice Technologies, Inc. *(www.practicetechnologies.com)*. The company has created a name for itself in the large firm KM space with its enterprise work product retrieval system, RealPractice™ Private Access™.

There are several aspects of RealPractice Public Access that make it appealing, one behind the scenes; the other in the application's interface. First, behind the scenes: As alluded above, EDGAR makes all SEC filing information available to the public, but does not categorize it in a way that makes it available in a meaningful way for attorneys. Public Access uses Practice Technologies, Inc.'s proprietary categorization engine to isolate the exhibits and clauses contained in the SEC filings – the attorney work product – from other superfluous material. It then categorizes and profiles these exhibits by document type, governing law, counsel, involved parties, etc.

The RealPractice Public Access interface is perhaps the application's greatest attraction. Like RealPractice Private Access, Public Access gives users entrée to information via task-based searching. Users can dictate exactly the kind of document they're seeking with a combination of pull-down menus and key word searching. "The natural language searching of SEC documents that Public Access™ provides is exceptional," said John Babala, a transactional attorney at our Long Beach office. "Tools that were available to us in the past did not allow for this. The application provides huge value in terms of finding precedent."

Returning to a hypothetical example from above, let's say that you need to draft a patent license agreement, and you're looking for a few good examples of such agreements. To conduct a search, you'd select "Intellectual property" from the system's document type pull-down menu and then select "patent license agreement" from the document subtype pull-down menu. You can narrow your search further with the addition of search terms (for example, the industry that the license involves, the name of the corporation whose license agreement you'd like to view or the name of the law firm that drafted the document. In seconds, Public Access returns examples of such documents. It's significant to note that the actual document titles, the parties involved, the law firms and governing law involved are all listed, so the user can quickly judge if the document is useful. Scores of irrelevant hits that might match surface criteria need not be opened, evaluated and dismissed. Once you've selected a document to view, it can be saved or printed.

While there are other tools for searching EDGAR, they are better suited for searching filings. Since Public Access parses filings to segregate exhibits, then analyzes and classifies these exhibits, it is much better suited to finding lawyer work product. Simplicity is everything in research tools, and the Public Access interface is certainly simple to work with. In addition, the application's flat-fee pricing alleviates any user (or client) concerns that the meter is forever running.

Though Public Access is relatively new on the market and we've only licensed it for six months, I've already had a very enthusiastic response to the application from our transactional lawyers. They view it as intuitive to the way they go about research for drafting documents, and as a great tool for seeing what other big firms are doing. On some occasions, we've even used it for competitive intelligence. Two examples come to mind. Earlier this summer we were going up against a very large Los Angeles-based firm on a sizable transaction for one of our clients. The firm representing the other side of the deal was bulldogging us on several issues. Using Public Access, we were able to locate some similar deals the given firm question had worked on and get a good sense of how they'd ended up resolving the issues in question in the past. Public Access didn't elaborate on what our course of action should be, but it gave us a peek behind our opposing counsel's curtain so we could best apply our skills.

On another occasion, we had a situation recently where an attorney at a large New York-based firm adamantly insisted that his firm would never agree to a "no-shop" provision in an agreement. (Adamant is being kind.) The individual said that not only would he never agree to such a provision, but that he was certain that no lawyer in his firm had ever agreed to such a provision. Our attorney used Public Access and quickly found five agreements authored by this very individual that included the specific provision we were asking for. Needless to say, the provision was accommodated!

Some practitioners might be loathe to admit it, but much of the practice of law involves the recycling of documents and information that has proven successful in the past. Detractors (who may refer to this practice as "cribbing") would state that cut-and-paste drafting supports the argument that legal services are nothing more than a commodity, but I think that they're missing the point. I believe that the value provided by the attorneys at our firm (and, for that matter, at any firm of merit) comes in the nuanced interpretation and execution of the matter at hand. We'd be doing our clients a tremendous disservice if we tried to reinvent the wheel each time we had to create a new agreement, instead of leveraging previously successful work product and adding the artful interpretations and additions relevant to the current situation. By starting with a foundation of proven work product and further, by learning as much as we can about our competition, we're able to focus our efforts on delivering real value to our clients.