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Design Thinking and the Law

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Apple just published a slick coffee table book dedicated to Steve Jobs, showcasing 20 years of historical product designs. The book tells the story of Apple's obsession with simplicity and design through high-resolution photos of all of our favorite gadgets that make our life work (things we never knew we needed, and now cannot live without). Jonathan "Jony" Ive, Apple's brilliant chief design officer, noted, "This archive is intended to be a gentle gathering of many of the products the team has designed over the years. We hope it brings some understanding to how and why they exist, while serving as a resource for students of all design disciplines." Ive's notion of "design principles" has spread far beyond Cupertino, California, as a number of companies have built "design thinking" into their corporate strategy.

Design thinking involves a business incorporating Ive's design principles into the corporate context. Last year, [Harvard Business Review published](#) an article that described design thinking as a business reaction to technology and globalization. The author, Jon Kolko, noted that "people need their interactions with technologies and other complex systems to be simple, intuitive, and pleasurable." Kolko goes on to describe ways different organizations are implementing design thinking to become better businesses by rethinking organizational design and enhancing the experience for their customers.

While Apple is an obvious success, Kolko notes that other large companies such as IBM and GE have embraced the trend. IBM has its own [IBM Design Thinking website](#) focusing on customer outcomes, empowering diversified teams, and restless reinvention. Design thinking works for companies because it stresses enhancing the customer experience. The Design Management Institute studied the impact of design thinking on 15 publicly held companies that met specific design criteria and found that those companies outperformed the S&P 500 by 200 percent over a 10-year period.

As design thinking spreads beyond technology, it has hit a wall with the legal industry. Though the legal field has embraced technology and data, it still follows a model centered around the billable hour, which often rewards slow decision-making and produces associate fatigue. The billable hour remains a key metric, and rates creep up every year (often later discounted to show value in pricing). Technology has evolved to provide clients with metrics to measure the value return on billable hours by labeling different tasks and activities to create performance metrics for similar services across law firms. This provides transparency and helps minimize cost disparities, but it is an imperfect fix.

The better design-thinking solution is for firms to look for ways to align their work with their clients' businesses, the same way legal departments align their strategy to the company's. IBM's Design Thinking website has a warning: "We're not our users"—meaning that to incorporate design principles into our work, we have to walk in the shoes of our users. For law firms, this means our clients. As businesses seek to become flatter and enhance the experience of both employees and customers, the legal industry could benefit by creating cost strategies aligned to their clients' businesses.

Flat fees are one way to accomplish this by providing a predictable pricing model that rewards efficiency and encourages a strong partnership between in-house and outside counsel. The typical complaint about flat fees is that they are not true risk-sharing arrangements or that they do not provide the type of transparency that billable hours produce—particularly with sophisticated software platforms that have evolved to calculate billable hour metrics.

We have some tips on how to incorporate design thinking into legal billing:

1. Understand your users. This seems obvious, but it is not necessarily intuitive for many of us. To develop a flat or alternative fee, first identify what legal problem the client seeks to solve and how it fits into their business strategy. In-house counsel works to manage the legal budget and show the business its lawyers are wise stewards of company resources. Also, the legal department needs to show how Legal supports the business. Understanding how company lawyers are supporting the business and managing costs helps outside counsel effectively partner with in-house counsel to make the legal department successful. Some issues are not suitable for flat fees because of their novelty, but a transparent conversation with the client about the nature of and scope of the work will allow both in-house lawyers and outside counsel to make that determination from the outset. Where flat fees may not be appropriate, there may be other opportunities to lower costs, such as using alternative third parties for certain tasks that may be performed by nonlawyers.

2. Provide transparency on cost savings. No one likes looking at lawyer bills. Outside counsel can improve this process by showing key performance indicators evaluating cost benefits to the client, including projected hourly metrics with cost savings and whether the client has achieved savings over other billing methods by using the flat fees. For projects that last several months, the metrics can highlight the cost/benefit of the flat fee to the client each month. The key is for both in-house and outside counsel to identify how they will measure success of the billing arrangement. If you use a billing system that relies on the ABA uniform task codes, outside counsel can put together analyses so a comparison can be made using the same codes. Firms will want to do this to show how they save the company more money than other providers.

3. Be fair and flexible. Even worse than lawyer bills are unbudgeted billing surprises. Companies have responded to the growth of law firms and billing complexity with detailed outside counsel guidelines and third-party software solutions. These tools provide companies with a way to analyze the bills generated by hourly billing law firms. Flat fee models often do not fit neatly within these templates, so outside and in-house counsel will often have to collaborate to build a model that accomplishes the collective goal. Outside counsel should make the model simple and build the client's trust in the flat fee system by allowing for scope creep and side tasks that fit within the flat fee project. This means outside counsel will not always show the same hourly rate when reporting metrics internally if the flat fee is based on a projection of hourly cost. Flexibility and a dialogue are keys to a fruitful partnership.

The billable hour will continue to be a metric that law firms use to gauge the value of services.

Courts use it, the Supreme Court has blessed it, and for many significant matters, absent a seismic shift in the legal industry or large scale revolt by clients, we are stuck with it. Internal law firm profitability models are set up to evaluate associate realization and leverage. But for a number of matters, the billable hour makes no sense. By using "design thinking" law firms can better understand the strategy of their clients and in-house lawyers and better align their billing with their clients' business—making everyone involved more successful.

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