

IT IN LEGAL PRACTICE research in progress

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ABSTRACT

Information technology (IT) offers possibilities for legal practitioners not only as an aid in administrative processes but also for legal tasks. The former have been gradually automated particularly in larger firms but automation regarding the latter is still uncommon. Nevertheless, law firms could take advantage of their late start.

A research project initiated by the Centre for Computers and Law of the Erasmus University Rotterdam will examine the application of IT to law firms. The project stresses the specific organizational aspects that need to be taken into account when dealing with the implementation of IT.

The project addresses three research questions; the current state of law firms regarding their use of IT; what triggers or does not trigger law firms to make use of IT; how can IT be implemented within law firms without making the mistakes made by other businesses in which the implementation has been a failure.

This research may well be of importance to the Dutch Bar as it has set the goal that all law firms must have reached a certain level of automation before the end of this century.

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INTRODUCTION

The Centre for Computers and Law of the Erasmus University, Rotterdam has started a research project to examine the use of information technology (IT) in legal practice, specifically in law firms. The research will focus on those systems which can be an aid in legal work itself (searching for legal texts (Acts, case law, periodicals), drafting of documents, production of legal advices or solutions, etc.) rather than in the administration of law firms.

Three research questions have been formulated:

- 1. What is the current state of law firms regarding IT?*
- 2. Which forces trigger the need to use IT within the law firm?*
- 3. Would implementation of IT require significant changes in management, personnel and organizational structures of law firms?*

This research will first analyse the present organizational situation in law firms, a distinction being made according to the size of the firm. Interviews will be used to acquire information concerning why law firms decided to implement or not to implement IT. The research will be mainly conceptual but backed by empirical findings from case studies of certain firms¹.

RESEARCH RATIONAL

In 1970, the German professor S.Simitis stated that the fact that lawyers are not able to satisfy their need for information without the help of automated legal data processing systems would

cause an *Informationskrise des Rechts* (Simitis, 1970). Computer technology which provides access to large quantities of new legal data is indispensable for lawyers to process the growing amount of legal information. Yet 20 years later, the level of automation in the field of law remains low. The new technology seems to be limited to word processing systems although legal databases and expert systems could well provide greater assistance to lawyers themselves.

In terms of Rogers (Rogers, 1983), law firms can be considered as late adopters of IT. Rather than concentrating on the negative consequences of this conservatism, it is preferable to stress that a late adopter has the important advantage of being able to learn from others. The late start could be advantageous to the legal profession as it can capitalize on three decades of IT practice, which has taught IT researchers and practitioners that implementing IT within organizations cannot be considered a one-way, technological driven effort. Within the last few years, the issue of Business Process Re-engineering [e.g. Davenport, 1990, Hammer, 1990) has brought to the fore the need of changing organizational processes to make full use of IT within organizations. This attention towards the recursive nature of IT implementation as well as the redesigning of organizational processes have implications for law firms which face driving forces to range themselves on the side of the IT users. Before addressing the question how IT can be a helpful aid in promoting the efficiency and effectiveness of law firms it is, however, necessary to examine why law firms have been so late in adopting IT applications. This information could be of help to the Dutch Bar which has set the goal that all law firms must have reached a certain level of automation before the end of this century (Computercommissie, 1991).

AD 1 THE CURRENT STATE OF LAW FIRMS REGARDING THE USE OF IT

Questioning the current state of law firms in relation to IT could provide insight into the nature of law firms, that is the specific occupation of lawyers, the specific culture of law firms, as well as its specific history. Some theories will be analysed thoroughly. Law firms have the image of being old-fashioned. It is also slow, and consequently, expensive

(Computercommissie, 1991). Little has changed in their day to day practice over the years.

Even in a country as the Netherlands, where almost every university has a department of Computers and Law and various legal applications have been produced, the use of IT in the carrying out of legal tasks is not common. It is, therefore, first necessary to examine why law firms have been so reluctant to adopt IT applications. Several (tentative) theories have already been advanced. One is that lawyers are simply not used to working with automated tools. Another theory emphasizes the time aspect: lawyers are fee earners and every hour dedicated to familiarizing themselves with computers is perceived as a loss of income (Becker, 1993). Another reason could be a fear of centrally managed law firms which may result from IT.

Although the use of IT is not common in the legal practice some tools have been developed in the recent years. Administrative systems as well as legal databases, expert systems and text processing systems.

expert systems

It seemed to many people that one of the very first areas which would be amenable to expert systems techniques was the legal one. This was based on the presumption that the law was, like expert systems, rule based. Unlike other areas which were not usually expressed in a rule-based form, the law was really just a collection of rules. By taking these and putting them into a knowledge base, an expert system could be built. 'It's just a matter of getting a group of lawyers off for a weekend together' a senior figure in the UK Government's programme to encourage expert systems once said about building a legal expert system (Leith, 1991). This expectation turned out to be overly optimistic. Although a lot of research has been done, quite a few legal expert systems in the Netherlands never left the laboratories. JURICAS is one of the very few expert systems which is being used by law firms (Wees, 1993).

document assembly

Other tools which are being developed for legal practice are document assembly systems. These software packages are often the continuation of legal informatics projects from around 1980 and the programming techniques used are closely

related to traditional automation. Examples are CAPS, Document Modeler, WorkForm. Lauritsen (Lauritsen, 1989) explains the success of document assembly systems by stating: 'Not the application of all kinds of artificial intelligence techniques is the driving force behind these systems, but the well designed user interface and high quality output'. The most successful and most used document assembly system is probably CAPS (Computer Assisted Practice Systems) (Piepers, 1992). In the Netherlands document assembly systems are not (yet) used, although they seem to have found their way into legal practice in the United States.

databases

Some legal databases have been produced in the Netherlands. Parts of Dutch legislation and case law can be consulted off-line. One Dutch publisher has produced (four) CD-ROMs containing a so-called 'legal library'.

Unlike in the United States (Westlaw and Lexis), the on-line consultancy of legal databases is not a great success in Europe. A report (Lloyd, 1986) on the use of legal databases in Europe says: "There has been a high level of interest in legal databases for several years now. They are seen by some observers as a potential tool for tackling the so-called information crisis in law and for disseminating legal information to anyone who requires it. While databases would appear to have a great future, nevertheless they are infrequently used, and particularly so with on-line legal databases". Although this report has been published in 1986, things have not changed much as far as on-line databases are concerned. Quite recently in the Netherlands, a publisher stopped exploiting an on-line database containing Dutch legislation because of a lack of interest by the targeted groups.

AD 2 FORCES WHICH COULD TRIGGER FIRMS INTO ADOPTION IT

It seems IT applications hardly find the necessary breeding ground within law firms in the Netherlands. The research project will explore this statement more thoroughly. Are IT applications not (yet) developed effectively? Is there a mismatch between IT possibilities and the organizational needs for IT. Or does the question

of implementing IT ask for issues like 'organizational prototyping'? (Leonard-Barton, 1988) These and other questions form part of the research project emphasizing the organizational needs in regard to IT. Issues as the globalization of the legal practice, the growing complexity of laws despite deregulation and the increasing competition within the legal business may drive law firms to take IT applications on board in the future.

The age of technology driven forces has faded away making room for more recursive dynamic forces in triggering the use of IT. The recursive position identifies two perspectives to explain the adoption and diffusion of IT (Klempa, 1993): the rational and the political perspective. The rational perspective identifies technology as an exogenous force. In contrast, the political or social perspectives suggest organizational needs driving IT adoption and diffusion. The research project intends to analyse both triggering forces. Together with the analysis of these forces together with the analysis of the idiosyncratic nature of law firms this could provide more insight into the potential of IT for law firms.

AD 3 THE IMPLEMENTATION OF IT WITHIN LAW FIRMS

After a preliminary analysis, it would seem that law firms do have to consider adopting IT applications. Besides being able to learn from state of the art information technology, law firms can also learn from the failures arising from the attempts to implement IT without changing work processes. The theory that applying technology to existing ways of working will not lead to success (Benjamin, 1992) would appear to be just as applicable to law firms as to other businesses. The research will, therefore, focus on which changes in management, people, and organizational structures will have to be effected by law firms before IT can be implemented. Insights from the practices and theories of business process re-engineering [e.g. Davenport, 1990) could be helpful in paving the way for the sound implementation of IT within law firms.

NOTES

1. At the moment of writing, research sites are being selected.

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