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Beyond the Billable Hour: It's Not About Economics—It's About Relationships

By *Neal Suggs and Judy Jennison*

About a year ago, the legal department at Microsoft announced it would be shifting away from the billable hour in the vast majority of our outside counsel arrangements. In describing these intentions, Corporate Vice President and Deputy General Counsel David Howard wrote about forging “a new type of relationship” with the firms handling Microsoft’s most important legal work.

Much of the discussion around this shift focused on its economic ramifications and on framing this move as another step toward the long-anticipated demise of the billable hour in favor of alternative fee arrangements.

A year into this effort, the Microsoft team can attest that, while the new billing model has certainly had an economic impact on the company and its outside firms, it’s had a far more profound impact on the relationships between Microsoft’s in-house personnel



and outside counsel. This impact can be seen in the ways David predicted, but also in a way we believe represents a fundamental change in the manner corporate legal work is performed and delivered.

Today, Microsoft’s Commercial Legal Group works almost exclusively with a single outside law firm, Perkins Coie, which provides almost all the outside counsel work on a retainer arrangement with a performance bonus. While that certainly brings Perkins Coie’s economic interests into closer alignment with Microsoft’s, what’s far more meaningful is how,

together, we have reshaped the client-firm relationship.

A year into this new arrangement, we have blurred the lines between outside and in-house counsel. Together we have developed new processes and tools that integrate Perkins Coie attorneys into the Microsoft culture and workflow, helping the Perkins Coie team cultivate a deeply ingrained understanding of Microsoft’s business. Today, the outside counsel team delivers legal advice in the same way the in-house team delivers it—with the same context and the same sense of Microsoft’s culture, pri-

orities and appetite for risk. The Microsoft team gets answers and advice aimed at solving business—not just legal—problems, and that means it can make faster decisions, get better results and drive more value for the enterprise.

Revolutionary Times

To understand why this effort is revolutionary, it's important to understand that the technology that has transformed nearly every part of our lives and society has run far ahead of the legal regimes meant to regulate it. In past revolutions, it took decades for regulation to catch technology. The child labor laws, product quality standards, and fair wage and employment laws we take for granted today took 30 to 50 years to evolve. Unfortunately, today's technology is advancing at such an accelerated pace, we may be on to the next revolution before the regulation for this one is even considered.

This regulatory gap is evident not just in advanced computing, but even in everyday technology. Cellular technology, for example, has existed for 40 years and has been ubiquitous for the last 20, yet lawmakers and courts are still trying to figure out what to do about it. Just this past June, the Supreme Court ruled that

the Fourth Amendment requires law enforcement to get a warrant to search cell phone location records—clearing up a single, narrow question while giving rise to a handful of new ones and leaving dozens more unanswered.

Meanwhile, at companies like Microsoft, in university laboratories and on inventors' laptops all over the world, the pace of technological change is only getting faster while the chasm between technology and the law only grows wider.

Nowhere is that chasm more relevant, or more challenging, than in a legal department like Microsoft's. Every day, in-house legal teams are asked to come up with business solutions to legal problems that have not been contemplated by current regulatory regimes or judicial legal decisions. Questions about data protection, use and ownership, including law enforcement's right to access our customers' data, new go-to-market motions and intellectual property considerations are all issues of first impression. With the ever-accelerating pace of change, newer technologies using advances in machine learning techniques threaten to further expose the ethical gaps in the already depleted state of our legal framework.

To maneuver through issues like these, Microsoft lawyers work incredibly hard to understand and keep up with the innovation happening at the company and in the world. We can no longer work with outside counsel that are incapable of matching the in-house team's familiarity with our technology, business and markets.

Tearing Down the Hourly Barrier

In the past, outside lawyers did their best to understand our business, but there was no way they could get the depth of knowledge they would derive from being immersed in it every day. Immersion wasn't an option—the hourly billing model prevented it—so outside counsel delivered legal advice, and inside lawyers had to take the time and effort to figure out how it applied to their businesses.

Businesses can't operate that way anymore. Our industry changes too quickly, our business grows at an ever-expanding rate and the law is too far behind. We not only need reliable legal advice fast, but we also need it to come to us in a way that's already tailored to fit very particular business contexts.

That rapid rate of change, as much as the need to drive down costs or shift to a more predict-

able spend, is why we tore down the hourly billing model. Working together, Microsoft and Perkins Coie have created a structure that allows attorneys to spend far more time working alongside each other. Microsoft pays a flat monthly fee for Perkins Coie's counsel, with a discretionary bonus at the end of the year based on performance. The firm's performance is evaluated partly on hard metrics but also on more subjective measures such as ingenuity, creativity and their ability to deliver meaningful value to Microsoft's business. Perkins Coie also collects and provides data that gives the Microsoft team a view across all its legal work to ensure that the company's investment supports its strategic priorities, which would have been virtually impossible under the old model.

New Tools, New Perspective

For Perkins Coie's part, the firm has done more than merely agree to a new, potentially disruptive model. It has made significant investments to ensure its success, including building a new intake tool that allows Microsoft lawyers to open a new matter by simply filling out a few fields on a digital interface that connects directly to Perkins Coie. This tool allows the firm to quickly run conflict checks, assign new matters to the right

attorneys and get projects moving within hours.

It's interesting to note that Perkins Coie lawyers now refer to matters as "projects"—a small thing, perhaps, but certainly not a trivial one. "Projects" are what everyone at Microsoft works on. They are attacked with a defined scope and a clear goal with a measurable outcome—hardly hallmarks of traditional law firm work.

A Stronger, Richer Relationship

The first year under the new model was a win for Microsoft and Perkins Coie alike. Perkins Coie hit their goals and received their performance bonus. More importantly, though, the firm's attorneys clearly became more engaged with Microsoft's business. Unshackled from the desire to limit billable hours, the Microsoft team is no longer discouraged from looping in outside counsel for calls, meetings and other opportunities to help them learn the nuances of Microsoft's business. The Perkins Coie attorneys have started delivering legal advice that reflects those nuances and considers the company's needs and goals in ways you wouldn't usually see from an outside firm.

Microsoft gets access to Perkins Coie's deep bench of experts and

their broad range of experience, which complement the internal team's deep knowledge of its technology and business. All this makes the Microsoft Commercial Legal group a more valuable contributor to the law department and to the entire enterprise. The result is a relationship that not only serves Microsoft's legal needs but also helps build value for the business.

Both of us are excited for the second year of our collaborative project. Microsoft has defined the outcomes for the next fiscal year, and Perkins Coie is busy developing new tools and resources to help meet those goals. We look forward to the day—maybe this year, maybe next—where the lines are further blurred and the Microsoft and the Perkins Coie teams are perceived as one unified and blended team designed to provide cutting-edge advice to our collective client.

Neal Suggs is Vice President & Deputy General Counsel—Commercial Group, Corporate, External and Legal Affairs at Microsoft. **Judy Jennison** is a Partner at Perkins Coie and leads the firm's relationship with Microsoft.