The Importance of Up-to-Date Software

Keeping Current in Today's Legal Landscape

LITERA

As legal technology evolves, it's more critical than ever that legal professionals get, and keep, their software up to date. Outdated software presents three primary problems: security vulnerabilities, program instability, and poor compatibility with other applications. But the benefits of updating go beyond transcending these problems, offering access to new software features and incremental change that is easy to adapt to. This white paper explains the barriers that legal practices need to overcome to embrace software updates as well as the challenges that technology developers address with new products and services. Finally, it offers best practices to support consistent updating.

Outdated technology is a professional liability, especially in the law. This is obvious enough at the extremes. No one wants to find that their lawyer is looking for relevant precedent by flipping through hardbound reporters instead of leveraging a searchable online catalog of cases. But too many lawyers and legal professionals think they've done enough because they upgraded their hardware and purchased basic legal software—in 2010. What's wrong with that, provided it still works?

Imagine that a lawyer decided, one sunny day, that he was done with case law updates. Whatever the law was yesterday will have to do. This lawyer is done updating and is never going to learn about another new case.

Ludicrous, right? Obviously the law—based on statutes, regulations, and case law interpretations—is in constant flux. Legislators introduce new bills that become laws; judges overturn their old rulings and create different standards and tests on a daily basis. Staying up to date on the law is an ongoing enterprise, a relationship that demands a regular investment of time and effort.

Yet technology changes constantly, just as the law does. Legal professionals who adopt a "set it and forget it" approach to their software are letting themselves, and their clients, down—just as they would be if they stopped studying changes in the law.

This isn't just a matter of whether legal professionals are using the right software for their work. Lawyers also need to consistently evaluate their existing tools and programs to ensure that the software they're using is up to date and fully patched.

The American Bar Association recognized this need in 2012, when it added a duty of technological competence to its Model Rules of Professional Conduct. Comment 8 on Rule 1.1 advises that lawyers ought to "keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology." It's not just the model rule, either; as of today, 31 states have incorporated a duty to stay up to date on technology within their ethical rules.

Updating software creates benefits beyond minimum ethical compliance. It generates a competitive advantage by improving security, stability, and compatibility with other programs. Then there are the secondary benefits, like access to new software features and adjustment to steady incremental change.

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MODEL RULES OF PROF'L CONDUCT R. 1.1, Comment 8 (2012), https://www.americanbar.org/groups/professional_responsibility/ publications/model_rules_of_ professional_conduct/rule_1_1_ competence/comment_on_rule_1_1.html.
Robert Ambrogi, Tech Competence, https://www.lawsitesblog.com/ tech-competence/(last visited Aug. 6, 2018).

This white paper sets out these advantages, then explains the barriers that get in the way. It closes with a few best practices that legal professionals can implement today to encourage their ongoing relationship with legal technology.

The Primary Advantages of Updating

Software is constantly patched, updated, revised, and refreshed for a reason: each iterative change is intended to fix a bug, repair a vulnerability, or improve a feature. Sure, it's true that some updates miss the mark. Sometimes developers have to turn around and create a patch for the patch. But the overall trend with software updates is toward improved security, stability, and compatibility with other tools.

Security

The longer any software or technology is on the market or in public use, the longer hackers have had to break down its defenses. This increase in vulnerability over time has no bearing on the original security of a system; it's merely a reflection of the passage of time, like water dripping on a rock and gradually eroding it.

The Equifax data breach is a perfect example. Hackers exposed the private personal data of nearly 150 million Americans—birth dates, addresses, and even Social Security numbers—because Equifax's web application hadn't been updated. The vulnerability exploited in the Equifax hack was revealed months earlier. Fixing it would have been a matter of a simple patch.

Software developers constantly pivot to address these new challenges through updates. This up-to-the-moment security is vitally important in the legal profession. If clients can't trust their lawyers to keep their information safe, they will find new lawyers. It takes years to build a reputation as an ethical, zealous, trustworthy law firm—and just one missed software patch to raze it to the ground.

Stability

Everyone has experienced unstable software at least once. It runs well enough with short documents or small files but bogs down when the user tries to work on a long, complex document. The "loading" screen flashes, yet the progress bar never budges. The only solution, often, is to shut the entire system down and restart it. On particularly ill-timed days, the offending program crashes and takes the last hour or two of work with it.

This would be bad enough in any profession, but legal practice is often deadline-driven, and those deadlines are unforgiving. Courts don't grant extensions or accept late filings just because an attorney's software had a glitchy day. And once software starts slowing down and crashing, it doesn't spontaneously recover—it just gets slower, laggier, and less stable as time goes on.

Keeping software up to date minimizes these instabilities. The most current version of software is more likely to do what it's supposed to do, operate without crashing, and handle complex tasks without slowing down or struggling. That allows lawyers to do what they're supposed to do without needless, frustrating delays.

Compatibility

Even if an out-of-date program isn't having stability problems on its own, those problems are increasingly likely to arise when other systems are added to the mix. Compatibility is a moving target, because no individual element is standing still. Other programs and systems are constantly updated, which can create incompatibilities with out-of-date software.

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Lily Hay Newman, Equifax Officially Has No Excuse, WIRED, Sept. 14, 2017, https://www.wired.com/story/equifax-breach-no-excuse/.

Secondary Benefits of Keeping Software Up to Date

In addition to enhancing security, stability, and compatibility of software, updating produces several secondary benefits.

New Features and Functions

Often this is the first—or the only—thing that users think about when they consider updating their software. New features can definitely enhance productivity and add exciting new functionality. The ediscovery capabilities of Office 365 are a great example. However, lawyers should be careful not to fall into the trap of thinking that they don't need to update unless they're interested in accessing specific new features.

Wraparound Solutions

Today, more legal technology vendors are combining their efforts or even consolidating their companies so they can create wraparound solutions to complex, multifaceted legal problems. Updating software often allows users to unlock seamless integrations with other programs or applications.

Gradual Adaptation to Changes

By keeping software up to date with ongoing, continuous minor updates, users can be gradually introduced to incremental changes in a program's approach, workflow functionality, or layout. This regular yet manageable adjustment doesn't just avoid business disruption; it also keeps users agile and adaptable, removing the need to take time off for training on a new system.

Barriers and Challenges to Updating

Given the substantial benefits of updating software—and, viewed in the inverse, the disadvantages of failing to update—why doesn't everyone keep their systems fully patched and updated?

Updating can be inconvenient.

Who hasn't, at least once, had their computer restart in the middle of an important project because the software decided to update itself at that moment? Without careful management, software updates can be annoying, disruptive, or downright disastrous. And some updates require financial reinvestment, which many legal professionals haven't budgeted for.

Users worry about encountering changes they don't like.

While users may appreciate changes to software, there's no guarantee that every change will be a positive one from that individual's perspective. Many lawyers—especially those who haven't been updating their systems and who have fallen quite far behind—are comfortable with their dated, familiar systems and are reluctant to change.

Users may fail to see the problems of outdated software.

Many lawyers, unaware of the hidden risks of out-of-date software, have an "if it ain't broke, don't fix it" mentality. If their software isn't actively crashing, they'd prefer not to rock the boat. But just because a problem isn't visible today or doesn't seem overwhelming today doesn't mean that it won't be worse tomorrow. Such "creeping" problems occur with health too: as people settle into careers, they often find they're putting on five or ten pounds a year.

The first year, or even the second or third year, that may not be a problem. But the longer we ignore these small concerns, the more we set ourselves up to have to deal with big problems. At some point, we realize we do have a problem that we must confront—and by then, it can be considerably harder to fix. Similarly, developers face their own challenges around software updates. Too often, those challenges include figuring out how to keep pace and ensure compatibility with other programs' updates while still supporting users with outdated versions. No software creator wants to have to phase out old versions or disappoint users who still rely on those tools, but at some point, outdated software is too far behind to catch up.

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Choose to Update Your Software—Or Don't, and Be Forced to Update Anyway

Barry Keno, President and Owner, Keno Kozie Associates

Do you want to change because you choose to or because someone forces you to? That's the question Barry Keno, President and Owner of legal IT provider Keno Kozie Associates, thinks of when he contemplates software updates. "It's a chicken-and-egg problem, really," Barry explains. "Once your software gets out of date, it's often incompatible with newer hardware and infrastructure components. Or the inverse—an old IT environment may not be able to run a brand-new version of critical software. So firms find that once they get out of step, they have to update everything at once, and that can be overwhelming."

In a similar vein, law firms often find that their outdated software is incompatible with newer programs that their customers or partner firms are using. "We used to see this all the time when people were using different versions of WordPerfect and Microsoft Word," Barry points out. "It creates enough annoyance and friction and slows the collaboration process down enough

that firms are eventually forced to update. But you can't just react ad hoc without creating a whole new host of problems."

Instead, Barry encourages firms to take a long-term approach to maintaining their software, viewing it much as a homeowner would home repairs. Formalizing the upkeep of your IT resources in an organized, businesslike way ensures that you'll set aside the budget and time it takes to stay up to date. Of course, Barry acknowledges, "No one is really happy to have to spend the money or the time, whether it's on home maintenance or software updates! We definitely hear some grumbling when we recommend that law firms keep their systems current. But when they do that planning and strategic work, they realize that they have one less thing to worry about, and in the long run, they do end up appreciating it. Having a systematic plan really helps firms avoid unpleasant surprises."

Best Practices for Maintaining Up-to-Date Software

Convinced that keeping your software up to date is worth the effort but unsure where to start? Consider implementing these best practices.

Stay on Schedule

Develop a plan for updating your software on a regular schedule. Keep yourself informed about when updates are coming and what new functionality or repairs they'll include. Most technology companies try to release updated versions on a predictable basis. Once you're in step with that schedule, it's easier to keep up.

Take Advantage of Automatic Updates

Don't be a micromanager: using automatic updates, scheduled for off hours, can be an easy way to avoid the inconvenience of midproject reboots. This scheduled maintenance can also prevent staff from circumventing the update process.

Take the Long View

Remember that updating regularly prevents small problems from becoming big problems and gets everyone in the swing of adapting to change. Keep reminding everyone, including yourself, that it's easier to bear a bit of discomfort in the short term, adjusting to a minor change in software, than it is to fall years (or even decades) behind and have to catch up.

Build a Financial Case for Updating

If the expense of updating causes resistance or outright rejection, take the time to gather data about what being out of date is costing you. Consider the cost of a security breach, how much time staff is losing to buggy or slow software, and enhanced or automated features you're missing out on.

Sell the Value of Reduced Stress

It's not always about the financial case: the intangibles from regular updating may be less conducive to measurement, but they're just as valuable. Enhanced security, stability, and compatibility, along with new features, enhanced integrations, and increased agility and adaptation to change, combine to optimize operations and minimize workplace stress.

Legal professionals tend to view software as a tool, something that only needs to be purchased once and then used until it wears out. Often they don't realize how software updates address security vulnerabilities, resolve program instability, and enhance compatibility with other applications. Fortunately, with just a bit of effort, the barriers to updating can be overcome. Legal professionals owe it to themselves, and their clients, to stay as current with technology as they do with the law.

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