ACC DOCKET
INFORMED. INDISPENSABLE. IN-HOUSE.

Legal Tech: Contract Standardization & Leading Lawyers to Trust More

Commercial and Contracts

Law Department Management

Technology, Privacy, and eCommerce



Contract negotiations often begin like tug-of-war. I am currently in the third month of a "standard" NDA negotiation with a party that keeps adding language to the draft. We can't even start to discuss how we'll craft a mutually beneficial relationship.

But imagine a world where companies can skip the tedious NDA wranglings and basic contract negotiations and jump straight to capitalizing on new opportunities. It's possible if the most commonly used agreements contain universal language that all lawyers instantly recognize and trust. Movements are now underway to do just that.

Soon, lawyers will apply standardized contract language in daily practice. Right now, you have to decide what will help your company or your legal career most: proactively embracing a more efficient and effective contract experience that expedites healthy enterprise or continuing to engage in the same old lose-lose game of tug-of-war.

Current contract standardization efforts at work

Contract standardization is already working on a global scale. The International Securities Lending Association (ISLA) is currently partnered with legal tech company D2LT to develop and maintain a legal clause library and shared data standards. ISLA constructed its first Global Master Securities Lending Agreement (GMSLA) in the year 2000. Since then, there have been very few challenges to the core language used in the GMSLA, none of which have fundamentally undermined its enforceability. Instead, the GMSLA has:

- achieved a high degree of market acceptance globally;
- increased efficiency and reduced transaction costs;
- reduced basis risk between different forms of agreement for different security types; and

- promoted market liquidity.

Contract standardization is also a way to productize legal services and serve more people more efficiently.

The oneNDA Club is joining in on the mission to “create a universally standardized and agreed upon NDA that will reduce legal work, increase transparency and speed up business dealings.”
Their plan is to get 100 lawyers to agree on the standard NDA format, language, and content of the “oneNDA,” then get 1,000 companies to adopt it by the end of 2021.

Many other companies are sure to follow. The oneNDA and the GMSLA simplify and streamline contract review, negotiation, execution, and lifecycle management. Standardization will do the same for many basic business agreements, leading to more modular and code-based contract creation and management systems that deliver distinct advantages.

Creating structure that supports automation and enables reliable data analyses

Standardization provides a foundation of common elements that support reliable automated and data-driven contract processes. Before we can share and analyze data, the data points first must be organized in an analogous fashion. Data also needs to be accurate and collected in a consistent manner to ensure its integrity. An industry-wide contract-related code set (similar to universal matter taxonomy for legal work developed by the SALI Alliance) will give everyone a shared framework for categorizing and managing contract data.

Contract Lifecycle Management (CLM) software provides the structure to ensure data integrity and to document analytical processes from data collection through completion. Contracts can also be classified according to type. Clauses can be standardized to deliver optimal outcomes, then defined and categorized. Commonly used contract types can be templated for general use.

Lawyers will be able to create contracts using structured language that is fully understood by the natural language processing (NLP) technology in CLM systems. Among its other advantages, NLP can learn to extract key terms such as indemnity and force majeure clauses. This enables a faster, more reliable digital review of third-party contracts. It also allows legal teams to act quickly on a specific clause throughout an entire portfolio *en masse*, as is often required by regulatory changes. The time-saving and error-reducing potential is enormous.

Building trust through uniformity and time

Standardized language and code sets will lead to much greater transparency and accountability in contracting practices. They will also increase the uniformity in how lawyers negotiate contracts, which in turn will provide enhanced clarity for calculating risks versus rewards. That uniformity also helps ensure all stakeholders understand the terms they agree to uphold. Courts, too, will be more likely to agree on the interpretation of uniform language. Years of use will enhance confidence in the mutual understanding of shared language.

And that brings us to the key point behind standardization movements: Building trust. The confidence inspired by standardization will enable you to:

- Trust that your contracts use tried-and-true language that stands the tests of time.
- Rest assured that lawyers can’t “slip a fast one” by you using their preferred language.
- Trust that your analytical systems deliver reliable results and insights.
- Know you have a solid foundation for building reliable automation to track contract dates and obligations and ensure compliance with regulations.

Standardization works at the speed of business

In time, we can avoid much of the contracting delays that, when left unchecked, can lead to millions of dollars of missed opportunities. Consistent, uniform language that results in a mutual understanding of business arrangements also enables companies to act faster and more decisively against market pressures.

Organizations can eliminate weeks of wrangling to start testing and deploying innovative new ideas right away. Companies that reduce negotiation conflicts can accelerate bidding processes. Business partners have more time to focus on developing strategies that align with their shared objectives. Contract management becomes more efficient overall, transforming legal contracts from roadblocks to business enablers.

Building a future of contracts we can all trust

Standardization is not about completely homogenizing all commercial contracts. Lawyers will still need to use their legal skills, business acumen, and creative ingenuity to outline complex relationships and dubious situations in contracts. But some portion of each contract, no matter how large or complex, can include standardized clauses. And a large number of general business agreements — starting with NDAs — can be standardized to carry the same meaning to all readers. From where we are now, we will build a future of contracts we can all trust.

Olga V. Mack



Fellow

CodeX

Olga V. Mack is a fellow at CodeX, The Stanford Center for Legal Informatics, and a Generative AI Editor at law.MIT. Mack shares her views in her columns on ACC Docket, Newsweek, Bloomberg, VentureBeat, Above the Law, and many other publications.

Mack is also an award-winning (such as the prestigious ACC 2018 Top 10 30-Somethings and ABA 2022 Women of Legal Tech) general counsel, operations professional, startup advisor, public speaker, adjunct professor, and entrepreneur. She co-founded SunLaw, an organization dedicated to preparing women in-house attorneys to become general counsels and legal leaders, and WISE to help female law firm partners become rainmakers.

She has authored numerous books, including Get on Board: Earning Your Ticket to a Corporate Board Seat, Fundamentals of Smart Contract Security and Blockchain Value: Transforming Business Models, Society, and Communities. She is working on her next books: Visual IQ for Lawyers (ABA 2024), The Rise of Product Lawyers: An Analytical Framework to Systematically Advise Your Clients Throughout the Product Lifecycle (Globe Law and Business 2024), and Legal Operations in the Age of AI and Data (Globe Law and Business 2024).