

**DLA PIPER GLOBAL WOMEN'S LEADERSHIP SUMMIT**  
OCTOBER 16-17, 2018 • THE RITZ-CARLTON CHICAGO

CLE CREDIT  
OPPORTUNITY

# Implementation of New Technology in Global Legal Platforms

October 17, 2018  
2:30 p.m. – 3:45 p.m.



## Speakers

- **Rachel Barnett**, General Counsel, *Travelzoo*
- **Katherine Butler**, General Counsel, *GE Digital*
- **Susan Garcia**, Associate General Counsel  
*Thomson Reuters*
- **Phyllis Harris**, Senior Vice President  
General Counsel of Legal Operations, *Walmart*

## Facilitator

- **Victoria Lee**  
Partner, *DLA Piper*

## Panel coordinator

- **Amanda Morgan**  
Associate, *DLA Piper*

# Agenda

- Overview
- Technology trends
- Role of legal department

# Overview

As companies and business models continue to innovate at a blistering pace, in-house counsel face increasing pressure to keep up. How can today's general counsel manage and leverage technology and innovation to support their business clients?

Panelists, who are at the forefront of technology and innovation in in-house legal departments, will discuss their best practices for assessing and implementing new technologies to support their businesses, while balancing the need to retain and promote human and knowledge capital against the drive for efficiency. Panelists will explore how technology is transforming the way lawyers work generally today, and ways in which they have adjusted to work with their business clients.

# Technology trends

- Going digital
  - What does it mean
  - Key elements of digital transformation
    - Data as an asset
    - Electronic records/electronic signature (see appendix)
    - Technology-centric solutions
- How does a company “go digital”
  - Legal issues
    - Importance of trade secret policies
    - Data rights
      - Raw v. aggregated
    - Privacy and regulatory concerns
  - Partnering with the business

# Technology trends (cont.)

- Artificial intelligence
  - Are we replacing ourselves?
  - Use cases
    - Predictive analytics for litigation
    - Contract management
    - eDiscovery
    - Legal research
  - Legal can drive efficiencies
  - Legal is not just G&A; can add value in different ways

# Technology trends (cont.)

- Internet of Things/Industrial Internet of Things
  - The value of connected devices
  - The value of data to the business
  - Use cases
    - Manufacturing
    - Apparel
    - Other
- Blockchain (see appendix)
  - What is it
  - When should it be used
  - Use cases
    - Stock ownership
    - Supply chain
    - Smart contracts

# Technology trends (cont.)

- Social media
  - Double-edged sword
  - Social media policies, training
  - Marketing/recruiting tool
- Legal operations tools
  - CLOC
  - Driving change and implementing standards in the legal market

# Role of legal – ethics

- Ethical obligations
  - Rules of professional responsibility
  - Duty of competence and diligence includes use of technology
  - Consequences of “not keeping up”

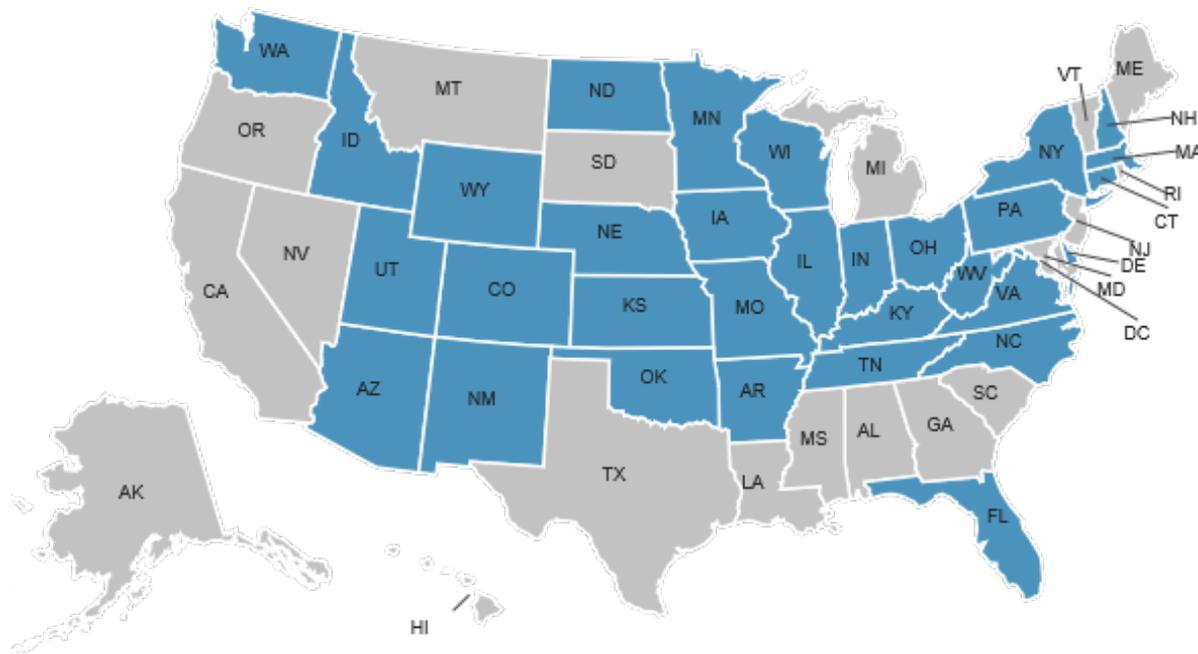
# Role of legal – ethics (cont.)

- ABA Model Rule of Professional Responsibility 1.1, Comment 8:

“Maintaining Competence - To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.” (Emphasis added.)

# Role of legal – ethics (cont.)

- More than 30 states have adopted the duty of technology competence



# Role of legal – ethics (cont.)

- California
  - Has not adopted model rule
  - Requires attorneys who represent clients in litigation either to be competent in eDiscovery or associate with others who are competent

# Role of legal – ethics (cont.)

- Duty of technology competence in social media use
  - Washington, DC – ignorance or disregard of social media may create potential for ethical misconduct
  - New York – cannot be sufficiently competent without a working knowledge of the benefits and risks associated with use of social media

# Role of legal – ethics (cont.)

- Ethical pitfalls of social media
  - Refusing to use
    - Case investigation and research
    - Diligence likely includes investigating social media of clients and opposing parties
  - Misuse
    - Disclosure of confidential/privileged information
    - Communicating with represented parties
    - Inadvertent creation of attorney-client relationships
    - Preservation of information/spoliation

# Role of legal – changing perceptions

- Legal driving innovation
  - No longer just G&A expense/cost center
  - Catalyst for change
    - Information governance
- Benefits of innovation
  - Business opportunities from data analytics
  - Increased efficiencies
- Risks of innovation
  - Lack of motivation for workers
  - Need for retraining
  - Increased regulation

# Role of legal (cont.)

- Best practices
  - Evaluation
  - Implementation
  - Identify relevant stakeholders
  - Cross-functional approach/strategy
  - Ensure flexibility
  - Avoid vendor lock-in

# Appendix 1: Blockchain

**Blockchain** - is a shared (distributed) ledger where transactions are immutably recorded by appending blocks of data. The blockchain serves as a historical record of all transactions, from the genesis block (i.e., the initial transaction) to the latest block creating a chain.

**Near Chain** – items (e.g., contracts, smart contracts, governance documents) that are related to a particular blockchain and are stored in a “bunker” but since they might need to change, they are not stored in the blockchain.

**Off Chain** – artifacts that are not stored or recorded in the blockchain or in a bunker but are referenced in the blockchain. Examples: payment transactions consummated off the blockchain but recorded on the blockchain.

**Transactions (really “Events”)** – something that happens that needs to be recorded in the blockchain.

**Blocks** – a group of digital representations of a group of transactions where the digital representation does not exceed a certain size that an authorized participant in the blockchain is authorized to contribute to the blockchain.

**Hash** – computational algorithm produces a fixed-size and unique hash value from variable-size transaction input. Keys and “digests” are created by hashing. Hashing provides the security and the immutability for the blockchain.

# Appendix 1: Blockchain (cont.)

**Token** – A digital identity (created by a cryptographic hash) for something that can be owned.

**Public Key** – Cryptographic key that is used by anyone to encrypt messages intended for a particular recipient.

**Private Key** – Corresponding cryptographic key used by message recipient to decipher message encrypted by the Public Key.

**Distributed Ledger** - immutable data is replicated and stored across a network of decentralized nodes.

**Node** - participant computer on the blockchain network that keeps a copy of the ledger.

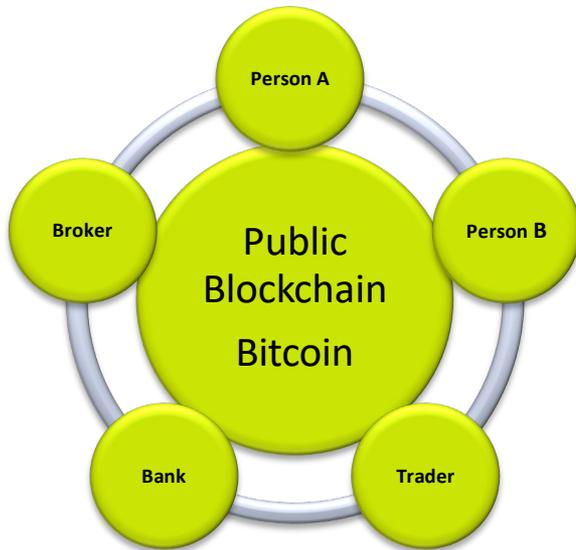
**Provenance** – Ability to digitally audit the journey of a physical asset and verify authenticity and origin.

**Smart Contract** – computer program that contains business logic and executes when all contractual requirements are met, e.g., if X (goods arrived at the dock), then Y (carrier is automatically paid).

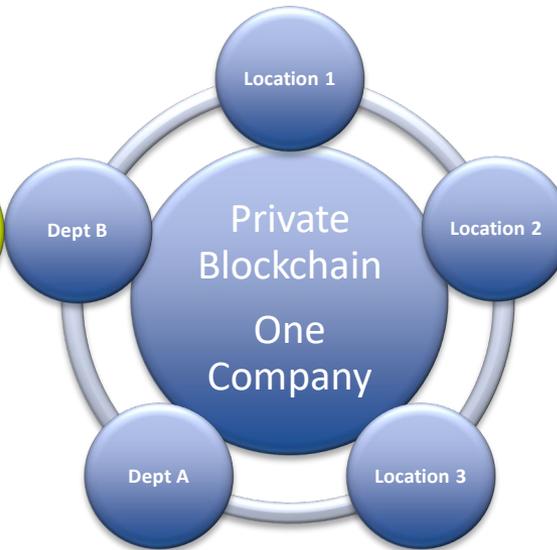
**Consensus** - is achieved when all participants of the network agree on the validity of the transactions, ensuring that the ledgers are exact copies of each other.

# Appendix 1: Blockchain (cont.)

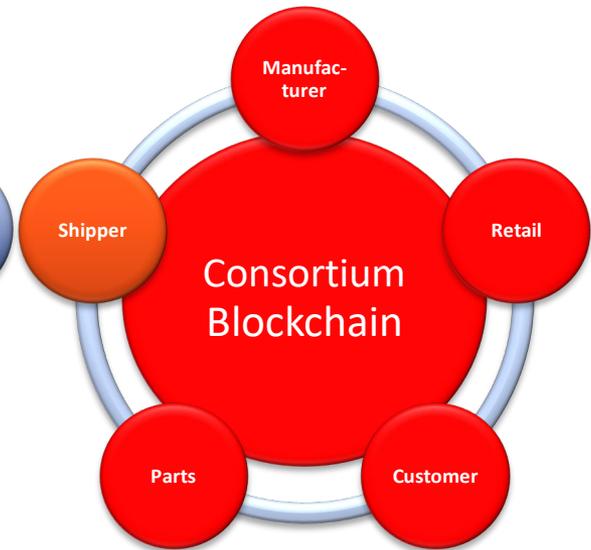
## Multiple Blockchain Models



■ Many and unknown participants



■ Known participants from one organization



■ Known participants from multiple organizations

# Appendix 1: Blockchain (cont.)

## Blockchain is the answer

### Does your solution

- Need to be Secure?
- Need to be Shared?
- Need to be Distributed?
- Need to be Authoritative?



Benefits	
✓ Increase Trust	✓ Eliminate Intermediaries
✓ Increase Speed	✓ Increase Savings
✓ Increase Revenue	✓ New Business Model
✓ Increase Transparency	✓ Reduce Fraud
✓ Increase Efficiency	✓ Reduce Counter Party Risk
✓ Optimize Process	✓ Reduce Negative Business Impacts

## Appendix 2: Enabling digital transactions – The three pillars

- A record or signature may not be denied legal effect or enforceability solely because it is in electronic form
- If a law requires a record to be in writing, an electronic record satisfies the law
- If a law requires a signature, an electronic signature satisfies the law

# Appendix 2: Enabling digital transactions (cont.)

## “Electronic signature” defined

- “Electronic signature” means:
  - an electronic sound, symbol, or process
  - attached to or logically associated with a record
  - executed or adopted by a person with the intent to sign the record
- Attribution, authority and intent are key:
  - Can be shown from context of the record or factual circumstances
  - Use paper conventions when possible for intent (placement of signature at end of record, call to action before signature, confirmation)
  - Preserve process and audit logs for both intent and attribution
  - Authority usually established by other means

## Appendix 2: Enabling digital transactions (cont.) eSignature law framework

- The state law solution – the Uniform Electronic Transactions Act (UETA)
- The Federal solution – the Electronic Signatures in Global and National Commerce Act (ESIGN)
  - Overlay statutes
  - Authorize replacing writings with electronic records
  - Authorize electronic signatures
  - Require affirmative “opt-in” by parties – but opt-in may be shown by surrounding circumstances
- The outliers – New York, Illinois, Washington state
- The really “out there” outlier – California
- Statutes that are “special” – UCC Articles 4A, 5, 8 and 9

## Appendix 2: Enabling digital transactions (cont.)

### Opting in

- For business-to-business transactions, any old agreement to use electronic records and signatures will do (express, or implied from circumstances – like turning on your computer)
- For consumer transactions where the consumer is entitled to receive information “in writing”:
  - under ESIGN (for federal requirements)
  - under UETA in 17 states (for state requirements):
    - Consumer must affirmatively consent
    - Other party must provide disclosures prior to consent in clear and conspicuous statement
    - Consent must “reasonably demonstrate” ability to receive documents

# Appendix 2: Enabling digital transactions (cont.)

## Opting in – Part 2

- “Reasonable demonstration”
  - Consumer consent must:
    - Be electronic or be confirmed electronically
    - Include a “reasonable demonstration” of consumer’s ability to access information in the electronic form(s) provided
  - Legislative history in ESIGN attempts to set standard
    - Test is not intended to “burden commerce”
    - Email confirming receipt of test files is sufficient
  - Failure to include “reasonable demonstration” in consent process may not be used as basis to invalidate contract

# Appendix 2: Enabling digital transactions (cont.)

## Opting in – Part 3

- “In person” consent/demonstrations can be tricky
  - The “now”
    - Demonstration of ability to view – “they came, they saw, they clicked”
    - Demonstration of ability to retain – relying on self-reporting
  - The “later”
    - What constitutes a “reasonable demonstration” of the ability to access the records after the consumer leaves the place of business?
    - What special risks are created by relying on self-reporting to establish a “reasonable demonstration” for future, off-site communications?

# Appendix 2: Enabling digital transactions (cont.)

## Right to retain a copy

- Principle: In most cases, the Recipient has a right to retain disclosures, notices, and agreements presented electronically
  - ESIGN and UETA both create retention rights. Strategies for retention include offering the transaction participant the opportunity to:
    - Download for storage
    - Print
    - Designate an online location for storage and access to a copy of the record
    - Receive an electronic copy on a storage device (e.g., a CD)
    - Receive a paper copy
- Watch out for disclosure regulations that provide that the disclosure must be “delivered in a form the recipient may keep” – rule may be read to imply that only immediate retention options (such as downloading, printing, or storing online) will do

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**Rachel Barnett**  
General Counsel  
*Travelzoo*

Rachel Barnett is a Member of the Board of Directors and General Counsel of Travelzoo (NASDAQ: TZOO), a global internet media company and trusted publisher of travel, entertainment and local deals. Ms. Barnett runs the legal department and is responsible for all aspects of Travelzoo's domestic and international legal affairs. As General Counsel, Ms. Barnett manages a wide range of legal matters for the company, including, among other things, corporate governance, employment, intellectual property, corporate transactions, securities compliance and general litigation.

Prior to joining Travelzoo in 2013, Ms. Barnett was a member of the Litigation department at Skadden, Arps, Slate, Meagher and Flom, LLP, where she specialized in representing corporations and their officers and directors in a variety of complex corporate and commercial litigation matters, including merger and acquisition litigation, shareholder derivative lawsuits and securities fraud class actions at both the trial court and appellate levels.

In the Spring, Ms. Barnett co-teaches a course at Columbia Law School along with the General Counsel of LVMH Moët Hennessy Louis Vuitton Inc. The course is entitled "Exploring the Role of the General Counsel" and teaches students how to combine practical business sense with legal knowledge to achieve commercial objectives. Ms. Barnett developed the course content to expose students to practical commercial situations and teach them how to identify, analyze and solve legal problems from both legal and business perspectives.

Ms. Barnett also recently authored the book, *"A Short & Happy Guide to Business Contracts,"* which is published by West Academic, and contains a simple roadmap on how practitioners negotiate terms and avoid common pitfalls in everyday business contracts.

She earned her J.D. from Columbia Law School, where she was a Kent Scholar, and a Bachelor of Science degree from Cornell University. Ms. Barnett clerked for the Honorable Vice Chancellor Stephen P. Lamb of the Delaware Court of Chancery.

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## DLA PIPER GLOBAL WOMEN'S LEADERSHIP SUMMIT



**Katherine Butler**  
General Counsel  
*GE Digital*

Katherine Butler brings more than twenty years of experience in the computer software, hardware and services sectors. She currently is the General Counsel of GE Digital located in San Ramon, California.

Prior to rejoining General Electric, Ms. Butler was the Senior Vice President and Chief Administrative Officer of NComputing, a Silicon Valley start-up offering a disruptive end-to-end hardware and software virtualization solution. Before relocating to Silicon Valley, she served as Software AG's Senior Vice President and General Counsel in Reston, Virginia. At both NComputing and Software AG, she managed the Legal department and also led the Government Affairs, Finance and Human Resources functions. Prior to joining Software AG, Ms. Butler served as Senior Counsel with General Electric Company's computing and information services business unit in various locations including London, Paris and Washington, DC.

Ms. Butler earned an L.L.M. from Boston University, a J.D. from Suffolk University and a B.A. from Smith College.

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**Susan Garcia**  
Associate General Counsel  
*Thomson Reuters*

Susan Garcia is Associate General Counsel for Thomson Reuters (Legal Division), overseeing the legal function for the business lines that operate and sell Tracker, Practical Law, Westlaw, Managed Services (Pangea), and Elite software.

Prior to joining Thomson Reuters, Ms. Garcia was a Senior Corporate and Transactions Counsel for NBC Universal, handling a variety of corporate transactions, including global program distribution, joint ventures, acquisitions and affiliation agreements. Prior to NBCU, Ms. Garcia was a corporate associate at two major New York law firms, working on corporate finance, securities and M&A transactions.

Susan Garcia received a B.A. from Cornell University and a J.D. from University of Pennsylvania School of Law

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### **Phyllis Harris**

Senior Vice President and General Counsel, Legal Operations  
*Walmart*

Phyllis Harris manages a team of 70 attorneys and support staff as Senior Vice President and General Counsel of Legal Operations at Walmart Inc. In this role, Ms. Harris leads a team of attorneys and legal professionals in the areas of employment, intellectual property, corporate affairs and corporate governance law. In addition, Ms. Harris is responsible for the organization's budget; legal data and analytics; diversity and inclusion programs; outside counsel management; and programs to support the talent development of Walmart's legal team. Prior to this role, Ms. Harris served as Senior Vice President and Chief Compliance Officer for Walmart US and as Vice President, Environmental Compliance.

Prior to coming to Walmart, Ms. Harris worked at the US Environmental Protection Agency where she served as Deputy Assistant Administrator for Enforcement and Regional Counsel in Atlanta, Georgia. In 2001, Ms. Harris was awarded the Meritorious Rank Award by President George W. Bush. She serves as the Chairman of the Converse College Board of Trustees; Board Director for the Thurgood Marshall College Fund; the Advisory Board for the Council on Legal Education Opportunity; and the Advisory Board of the Wake Forrester Graduate School of Sustainability.

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## DLA PIPER GLOBAL WOMEN'S LEADERSHIP SUMMIT



**Victoria Lee**

Global Co-Chair, Technology Sector

Partner, Intellectual Property and Technology - Technology, Data & Commercial

*DLA Piper*

Victoria Lee has been practicing in DLA Piper's Technology and Sourcing practice for over 17 years. Her practice focuses on representation of emerging growth and public companies in complex technology and commercial transactions in the software and semiconductor industry, as well as a variety of other industry sectors.

A significant component of Ms. Lee's practice includes advising clients on open source business models and compliance issues and she has substantial expertise in representing both customers and service providers in cloud computing transactions. She also has significant experience assisting clients in the intellectual property aspects of buy and sell-side M&A transactions, spin-ins and spin-outs.

The respected research publisher Chambers & Partners recently recognized Ms. Lee in *Chambers USA: America's Leading Lawyers for Business*. *The Recorder* lists her as one of the 50 Women Leaders in Tech Law 2013.

Victoria Lee received her J.D. and her B.A. in History and Economics from the University of California at Davis.

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