From Attention to Detail to an Eye for Opportunity

The Evolution of Contract Analysis

Michael Sonsteng

Head - Legal Process Management, Infosys BPM

Jasdeep Singh Kaler

Global Product Head - XtractEdge, EdgeVerve Systems Ltd. (An Infosys Company)

Fragility and uncertainty. These are the terms that come to mind when you consider the impact of the coronavirus pandemic. It is not hyperbolic to state that things will never be the same again. For enterprises, the disruptions have been widespread and substantial. From manufacturing and distribution to operations and security, enterprises have been forced to revisit every aspect of their business to develop adaptability while ensuring survival. The circumstances have meant that contractual arrangements are now under extreme scrutiny, with companies needing to revisit relationships both from a client and vendor standpoint.

In the past, we have talked about the need for functions like procurement to become value centers, driving business growth, and unlocking intelligence across the enterprise. The current scenario places the same onus on support functions, such as legal, which now plays an even more substantial role in determining an enterprise's financial health. Many organizations are re-evaluating their contracts, addressing clauses that may have never been invoked before, including force majeure, termination, and liability.

Overruling the Status Quo

Before suggesting a solution, one must understand the challenges. Many contracts govern a substantial amount of risk, and the sheer volume of contracts means that it is difficult for enterprise CROs to evaluate an accurate risk profile. Additionally, the complexity of documents like MSAs may also result in revenue leakage with oversight affecting penalty payments, recovery, and even potential discounts. **Research from the International Association for Contract & Commercial Management (IACCM) indicates that contract value leakage affects even exceptional enterprises, creating average losses of 6.2% in annual revenue and nearly double that for the rest**[7]**.** With demand and supply
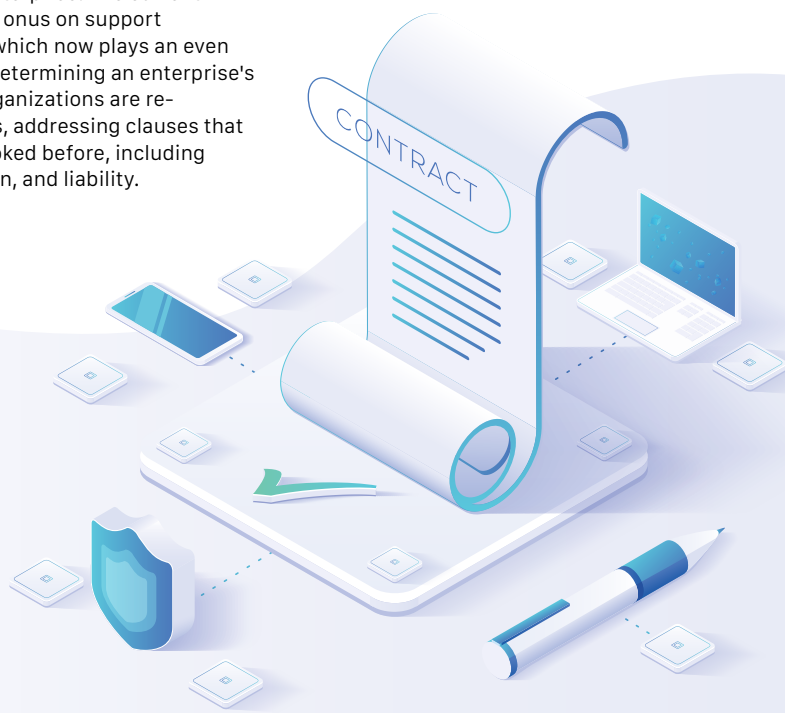
likely to be volatile in the medium-term, enterprises are under pressure to unlock revenue. Diligence in contract analysis could make a substantial impact.

When factoring in the disproportionate amount of time spent identifying instead of analyzing the key aspects of a contract, it is easy to see the reasons for inefficient negotiations and a loss of person-hours. Most negotiations are in real-time, and information asymmetry between the negotiating parties can create a disadvantage.

In addition to processing a large corpus of contracts, another challenge is how the contracts are linked to each other. With multiple amendments and addendums to any contract, it will be important to get a view on the latest applicable clause.

Then there is the matter of compliance to regulations, such a GDPR, GAAP, HIPAA, etc., which is the other critical aspect of Contract management. Enterprises need to ensure that their contracts are not just watertight but also fully compliant with all the relevant rules and regulations.

A review of current enterprise operations will point to the need for greater diligence, giving rise to trends like contract-centric sourcing and significantly improved negotiation capabilities. Intelligent technologies are essential to address this need.

Essential Quality Delivered at Speed

Although efficiency is an essential component of digital transformation in contract analysis, speed, and accuracy are equally crucial indices of success. It is here that intelligent contract management and analysis will make a tremendous contribution. While contracting is commonplace, proper contracting is less so, with companies losing sizeable percentages of the contract value on any particular deal. Contract law is very patterned, or at least should be, to achieve consistent and repeatable outcomes. In both contracting and many other aspects of life, humans unconsciously repeat patterns. AI-powered contract review can be the tool that recognizes these patterns to allow for those consistent outcomes and can be a tool for collaborative contracting.

Given the complexity of the documents and the importance of understanding nuance, accuracy must be viewed as a combination of comprehensiveness, detail, and intelligence. Contract Lifecycle Management (CLM) systems promised much at the outset but have not delivered. First, by being unable to address due diligence, particularly during M&A activities. There is a huge need for advanced contracts analytics, which is not met by CLM systems. Moreover, CLM systems address only the contracts created after the implementation and ignore the historic load of contracts, creating a significant blind

spot that could prove costly. The silo effect in enterprises is further exacerbated by the fact that these implementations are usually restricted to a few departments and not carried out across the organization. Even if allowances are made for these limitations, these systems still fall short on convenience as they do not offer an indexed and searchable repository of contracts. To realize the real impact of intelligent applications, users should have access to the most relevant information in a useful format, right when they need it. The resulting shift will give rise to a legal team capable of doing more with the same number of people, directing its attention to high-value tasks instead of what is more rote and routine, making a direct contribution to a company's effectiveness and profitability.

Why AI-powered Contract Review and Analysis is the future

It's important to note here that while contracts have been brought into focus by the current crisis, the process has long been inefficient. The sophistication of AI and the rapid evolution of NLP and computer vision means that contract analysis no longer needs to be an effort-intensive process that makes for a hasty negotiation with inadequate information. Companies now understand the need to be familiar with risk clauses such as force majeure, the survival of obligations, and limitations of liability across their supplier contracts or other third-party contracts.

However, that is not the only concern. Several other contract terms could offer valuable benefits. Take the example of discount clauses.

> **Companies able to negotiate and utilize discounts on their supplier contracts could unlock a substantial amount of revenue and redirect the capital towards business-intensive activities, which is often an opportunity often lost due to oversight.**

When capital is at a premium, enterprises must look to quickly shed spend by terminating non-essential contracts, making for another activity where speed and accuracy are paramount.

AI-powered contract analysis identifies and extracts information from contracts before providing the most relevant aspects for review. Combined with NLP and computer vision, advanced machine learning techniques are used to automate the evaluation of unstructured contracts, injecting efficiency into the management process. Whether it's the extraction of clauses like non-performance or termination rights from procurement contracts or indemnity, confidentiality, and limitation of liability clauses across other agreements, intelligent contract analysis can substantially reduce the effort involved and improve the quality of contract management. Additionally, **advances in AI/ML techniques mean that the technology can now transform the typical error-ridden**

and inefficient manual process of analysis by identifying, contextualizing, and extracting various elements such as the header, footer, and even data within a table at speed and with extreme accuracy.

On the one hand, the technology makes for a more effective procurement function by reducing the reliance on legal. On the other, it ensures that legal teams are responsible for generating valuable counsel instead of time-consuming administrative tasks[2].

The Real Impact of AI

AI-based solutions offer a versatile, powerful, and customizable alternative capable of continuous learning. They ensure that early adopters will enjoy an intelligence advantage as the platform evolves to their organizations' needs.

AI platforms often incorporate deep learning and progressive learning to enhance Natural Language Processing capability. They are, therefore, able to track variations in contract language for both simple business terms and even highly negotiated clauses with custom language. The resulting accuracy can be particularly useful for due diligence processes, compliance audits, and even third-party contractual language comparisons with an enterprise's corporate standard.

Moving from a descriptive to a predictive standard, AI can now all but eliminate OCR error-rates. These high accuracy levels and features such as redlining ensure that teams are looking at the most pertinent contract information at every stage of the review process.

By offering a single source of truth in a consumable, searchable, and analyzable format, intelligent contract analysis lends itself to a wide variety of use cases. In the case of M&A, it allows the parent company to evaluate the acquired firm's risk profile and interpret the change of control clause. Enterprises can examine vendor and sourcing contracts across their global supply chain, availing discounts, terminating non-essential spending, and building deeper relationships as required. Compliance, another major challenge, can also be more easily addressed with the speed and accuracy of AI-based contract analysis.

> Implementations of AI-based contract analysis have seen clients increase cost savings per contract by 90% while driving a 9x increase in productivity.

Additionally, by deploying predictive and cognitive modules, clients can implement standardized risk analysis and scoring systems, generating accurate and objective risk profiles.

Setting the Bar

While the advantage of AI technology is indisputable, it still pays to tread with caution when choosing a solution partner. Enterprises looking to transform their legal process must turn to providers with a demonstrable track record and expertise in the client's domain. Also, the platform should not create a need for rip-and-replace. They must instead offer both upstream and downstream integration out of the box or through customization, working seamlessly with existing applications systems, eSignature products, and downstream visualization systems for dashboarding and other purposes.

The solution must have Machine Learning and Natural Language Processing (NLP) forming the bulk of its AI capability. It must include pre-processing capabilities which can correct document skew and background noise that may have occurred during the scanning process. It should have Computer Vision like capabilities that go beyond the limitations of generic OCR products in understanding the context of document extraction. It should also be adaptable and dynamic, offering multilingual capabilities. Finally, enterprises must determine if their solution provider offers a strong consulting and services arm owing to the risk involved and the speed of resolution required.

As enterprises start to chart their path through the new normal, technology integration will prove to be a driver of resilience and growth. However, technology alone can't deliver growth and business resilience and needs to be complemented by timely and critical human intervention. Instead of Human-in-the-loop soon the world will be talking about Human-is-the-loop. The validation of any AI model by legal and domain subject matter experts is critical and is usually found missing in the cluttered space of AI contract review solutions. You can expect to see the emergence of hybrid roles such as legal technologists tasked with creating enterprise legal teams of the future. Current talent will need to develop technical skills and an understanding of platform workflows to ensure the success of the transformation exercise. We are at an inflection point in the global enterprise journey, and it is safe to say that AI will drive this shift, not least in moving legal from a safety net to a value creator and growth engine.■

[1] source: https://s3.eu-central-1.amazonaws.com/iaccmportal/resources/files/10151_iaccm-elevatewebinar-leak-proofingyourcontractprocesses-8may18.pdf

[2] https://dictionary.cambridge.org/dictionary/english/on-the-one-hand-on-the-other-hand