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All You Can Eat

Consumption Pricing in the IP Industry



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Foreword by Jeppe Hudtloff Viinberg

I have been working in the IP Industry for 12 years altogether now. And after the initial period working in-house, I first joined the IP department of one of the largest full-service law-firms in Denmark and then became a partner at an IP Boutique firm. Later I set up my own specialised IP Law Firm with my tech savvy partner, Bjørn Kunz Petersen before building the basis of what came to be Rightly.

As an attorney, as a partner and as a co-founder, I have spent numerous hours the last nearly 10 years studying business and pricing models, exploring tech innovations, attracting new clients, and developing strategies for growth. Our law firm grew from 1 attorney to a team of 21 people in three years. Alongside our dedicated IP law firm, we grew a legal technology from an excel sheet powered with automations into a company that was nominated for the EY Entrepreneur of the Year awards in Denmark this year.

Growth and efficiency in the IP legal services sector is our passion. My goal from the beginning was to reinvent IP management as a profitable business for law firms while helping them to deliver real value to their happy, happy clients.

As well as my own experiences as an IP lawyer, managing partner and co-founder, I travel a lot to client meetings, and I love most getting to hear first-hand about the challenges that both IP law firms and IP owners are facing – especially when we have easy and profitable solutions to them!

I hope some of my experiences and insights can help you to grow your business and bring value to your clients.

Value and Pricing in IP Legal Services

We certainly don't disagree. But fundamental to the idea of 'adding value' is understanding what that truly means from the brand perspective and rather more crucially, how to do it well and communicate it brilliantly.

As a verb, value is defined as estimating the monetary worth of something and you cannot look at 'worth' without including 'cost' in the calculations. But are all 'costs' created equally?

In terms of scaling your law firm, growing your practice, and retaining a sufficient volume of happy, profitable clients to ensure your success in the future, these are some pretty big and hard-hitting questions which need big answers too.

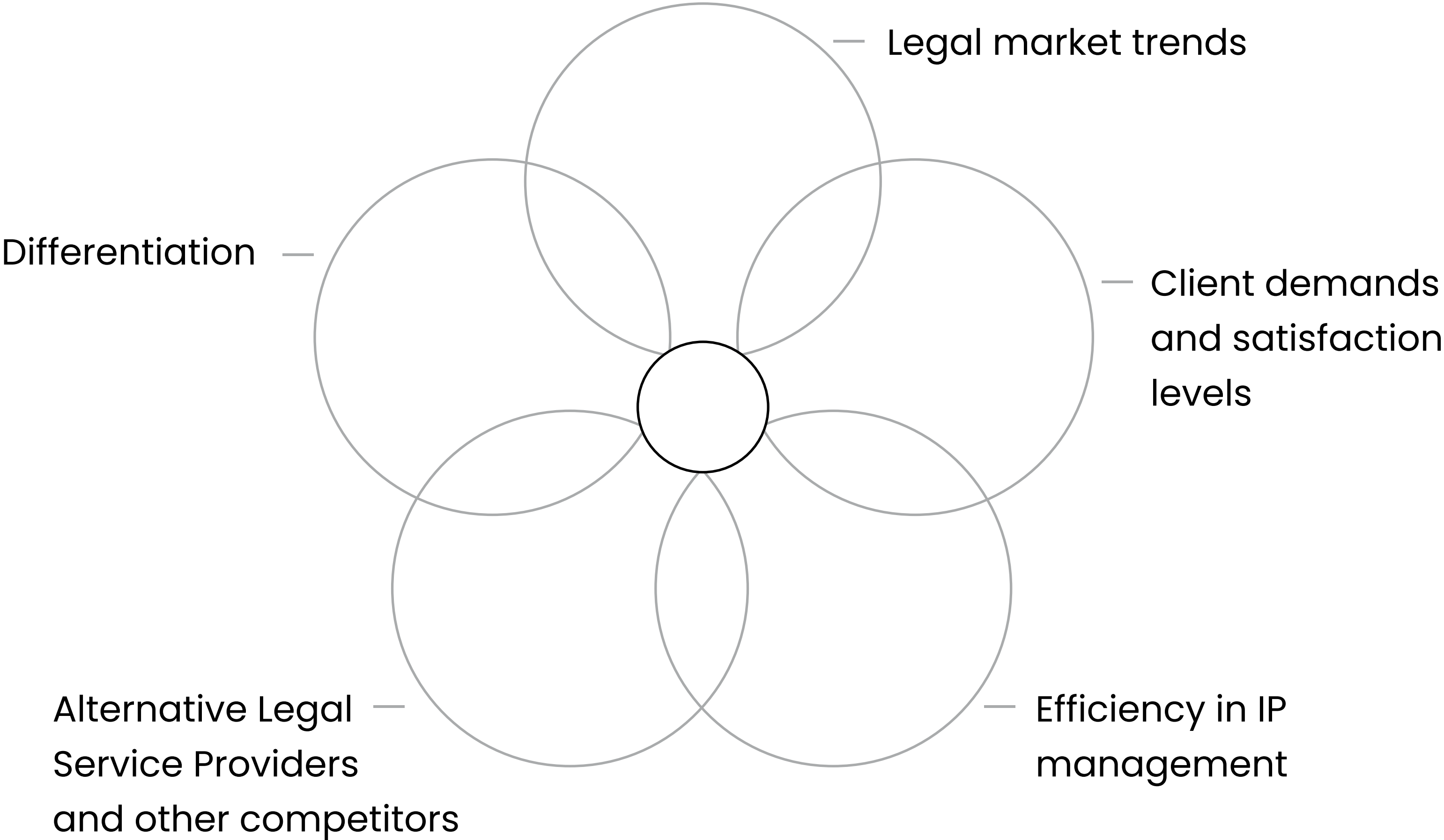
How large is the gap between what is valuable to clients and what the law firms are able to offer? How profitable can law firms be in a competitive marketplace while offering real, discernible, relevant value to their clients?

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Legal service models are fast evolving, and trademark and brand lawyers must adapt – understanding the changes and how best to add value is key.

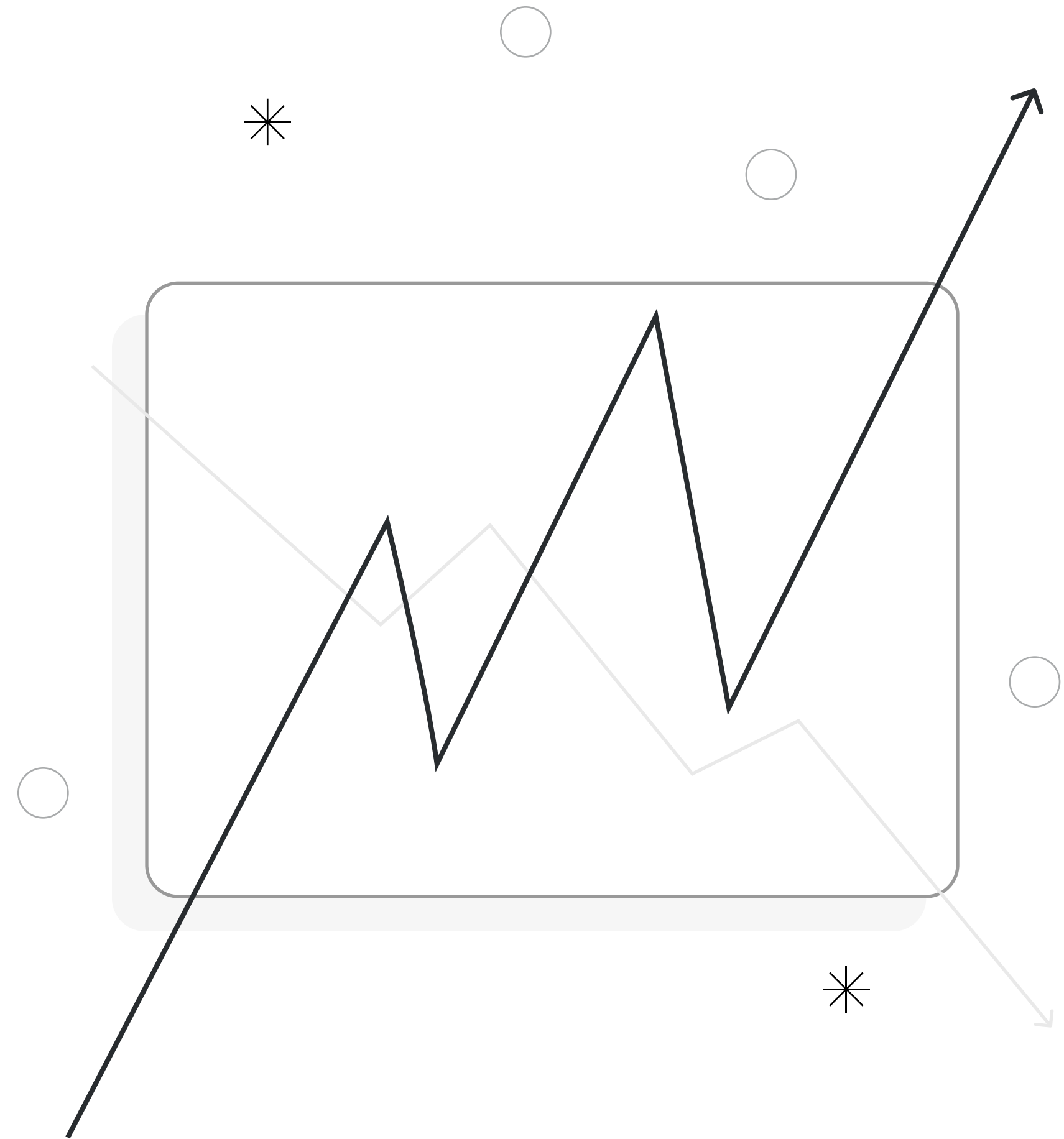
Saman Javed, WIPR article titled "What brands want in a shifting legal services landscape"

Of course, we are not the only ones interested in how the IP legal services world will evolve and grow so throughout this paper, we will examine innovative solutions to old, old problems through the lens of the critical and much studied factors that dictate the ebb and flow of work, value, and profitability from both sides of the table.



Challenges in Growth & Scalability for IP Law Firms

While, of course, there are challenges that are shared by all law firms across every practice area, there are some that are unique to the practice of IP law and it is important to bear in mind that as we are exploring insights and solutions, specific issues will have bigger impacts on IP firms and solutions may not be so easily accessible.



Pricing

From the client perspective, traditional pricing in IP legal services has elevated unpredictable costs to the kind of art form of which Monet would be proud. End-to-end, the entire IP lifecycle is riddled with estimates and 'best guess' pricing that makes setting budgets a frustrating exercise in futility.

There is little transparency or certainty to be found in estimating the potential costs of any part of the IP creation and maintenance process. It should be stressed that this is not the fault of the individual law firms nor of the lawyers themselves. It has arisen in part from the territorial nature of IP rights, the network of official offices that govern their registration and use, the tools that have been traditionally available to manage the necessary processes and their pricing models and of course, the results of international litigation that creates a 'shifting sand' effect for brand owners in terms of stability.

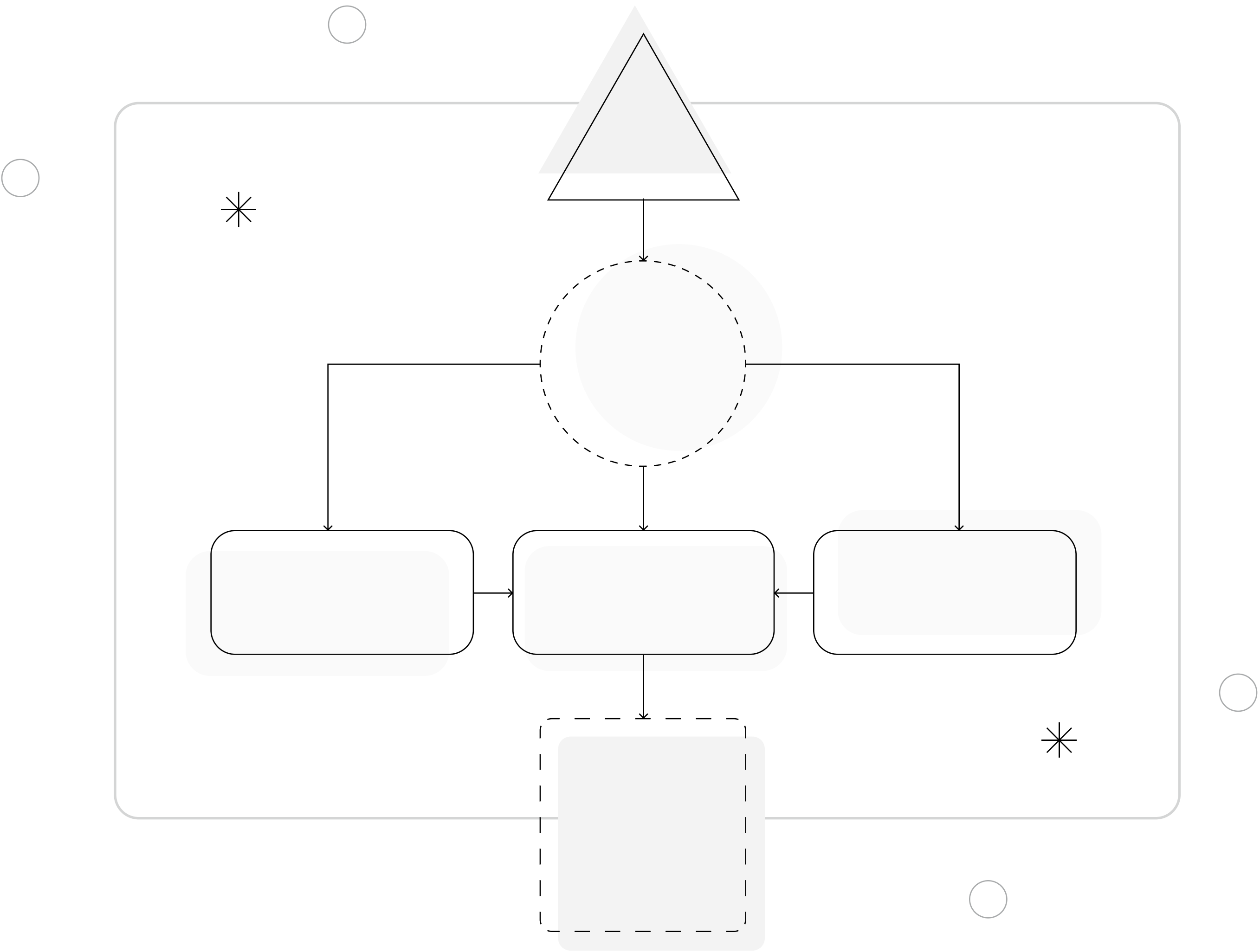
This challenge is not experienced in other law practice areas in the same way nor to the same extent. While potential costs of litigation are always an unpredictable minefield, projected needs and associated costs of more routine work have greater clarity and reliability.



Workflows

Everyone in the IP industry bemoans the volume of manual tasks and with good reason. Docketing systems and other law firm project management tools notwithstanding, the email inbox (often accompanied by several versions of excel spreadsheets of IP rights, clearance and watch reports and other documentation – final.final.FINAL.doc anyone?) remains the focal centralised point of task activity in IP management.

Performing and tracking your workload and current status of the various procedures in progress through the medium of multiple email threads, delayed response times, the occasional spam filter catch and the always joyous ‘out of office’ response to time sensitive matters is not an undertaking for the faint of heart.



Perceived value of routine work

In most practice areas of law, how clients perceive the value of the routine services with which they have been provided is, broadly, generally understood and mostly in line with the costs that are associated with that service provided. If you need a will drawn up or a contract created, it is easy to understand the relationship between what you are paying and what you are getting.

In many cases, routine work associated with IP does not come with that same reassuring sense of value received for money paid. To follow the examples above, with a will or a contract, there is an immediate delivery of something that the client wants or needs.

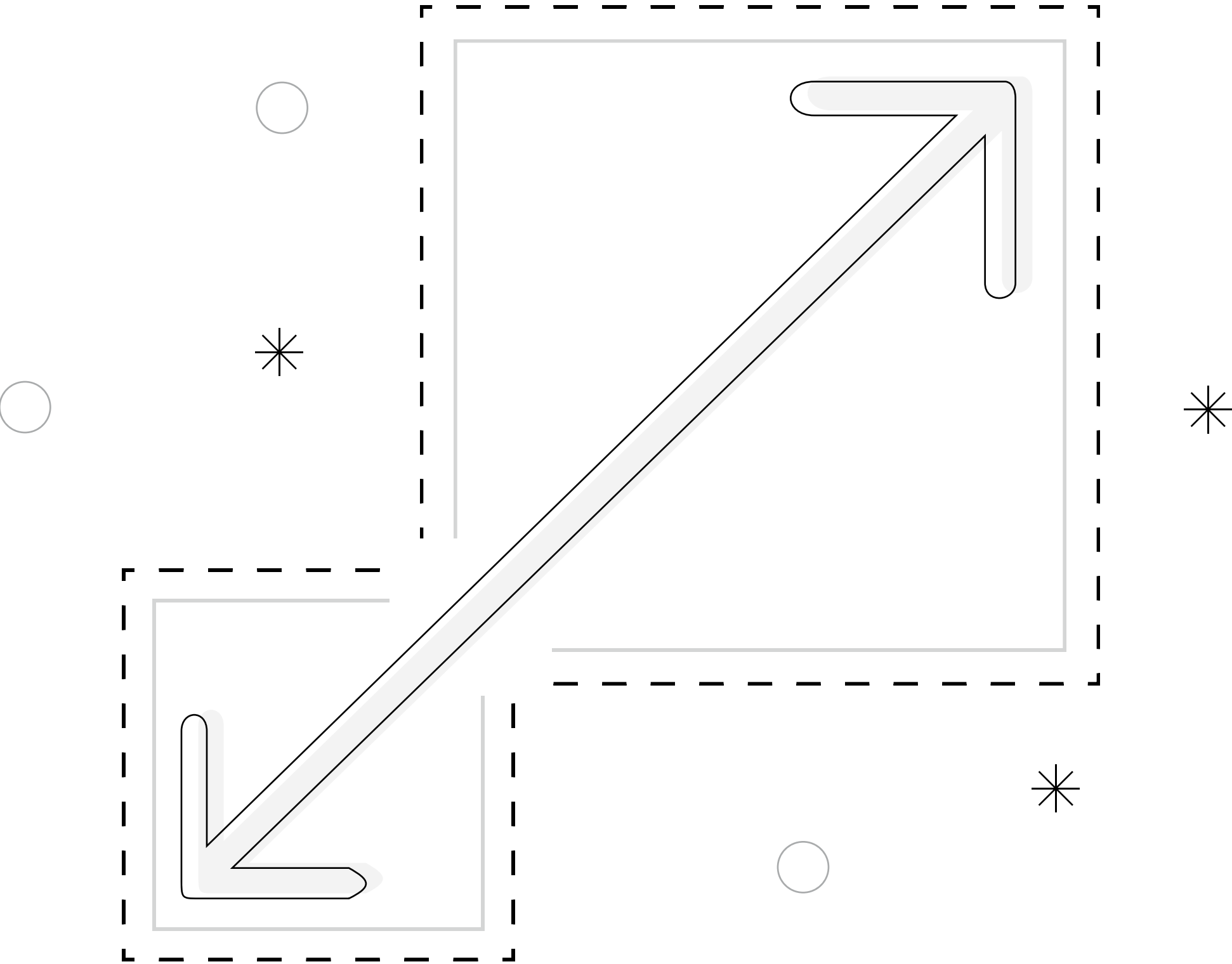
In the case of IP rights management, however, it can be usefully argued that what they are really paying for is the assertion of rights in the event of a future infringement or attack on those rights.

This challenge is not experienced in other law practice areas in the same way nor to the same extent. While potential costs of litigation are always an unpredictable minefield, projected needs and associated costs of more routine work have greater clarity and reliability.

Scalability

These factors combine to create an interesting challenge in growing and scaling IP practice areas or dedicated law firms. With high volumes of manual tasks required comes higher staffing requirements. With unpredictable costs and clients baulking at the perceived lack of value comes difficulty in acquiring sufficient work to realise the needed revenue.

And with both of those, comes challenges in growth and scalability. And solutions offered must, of necessity, tackle these fundamental and long-standing challenges.



Reviewing changes to the core factors

For the past number of years, management consulting agency, Altman Weil, have performed an annual survey entitled “Law Firms in Transition” in which they delve into a wide range of questions that strike right at the heart of how law firms are responding to global and national challenges, strategizing for growth and profitability and analysing trends among a number of criteria that can be considered fundamental to the law firms meeting the challenges of change.

While this survey is, of course, not limited to IP law firms (information about specific practice areas is not included) and has a largely US-centric view.

It nonetheless provides tremendous insights into challenges and trends in the legal services industry that provides some foundation to find a start point for solutions.

What is clear from the outset is that whatever law firms are actioning to meet challenges is not sufficient to have the kind of impact on their business that they realistically need – and they know it!

Nevertheless, the message is that there is still time to change direction, make new choices, drive increased client satisfaction, and improve profitability.

Similar findings were echoed at a session titled “The State of the Legal Profession” at the Nordic Tech Day conference on the 7th December 2021.

The presentation by Business Development Director, Christian Schørring of the Karnov Group illustrated a nearly identical urgency in the need for change in how law firms do things today.

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This year’s survey highlights the persistent disconnect between what firm leaders agree they should have done during the intervening years and what they actually accomplished. The survey points to the many opportunities still available to firms that choose to pursue them.

Altman Weil, Law Firms in Transition 2020

Legal market trends

Core amongst the recommendations offered by Altman Weil is the necessity of acknowledging that while law firms have not driven vast volumes of change over the past decade, the marketplace has and continues to evolve at a rapid pace.

They asked the lawyers which legal market trends they thought were here to stay and there are several findings presented which bear closer examination as we think about pricing models and creating changes in costs and billing that accurately meet the demands of the market.

Just over 90% of lawyers agreed that more price competition is now a permanent fixture of the legal services market landscape. This is a stark figure to consider through the lens of IP work which carries a heavy load of manual work.

Faced with strong demands for lower pricing there are only 2 credible options.

- 1. Lower your hourly rate for the completion of manual work or**
- 2. Find another way to complete work so that you can explore different pricing models that don't lead directly to a race to the bottom in terms of pricing.**

This is echoed in a second finding which states that 74.7% of lawyers believe that increased demand for non-hourly billing is also a trend which is here to stay. While many law firms are leaning towards flat fee models to try to meet this demand, high volumes of time-consuming manual work again proves to be the stumbling block in the IP practice area – whether you use hourly billing or flat fees for time consuming work, the only option to reduce prices is to reduce revenue for the work performed.

However, if you can instead reduce the time it takes to complete the work, you can reduce prices and still increase revenue.

How do law firms differentiate themselves?

Differentiation

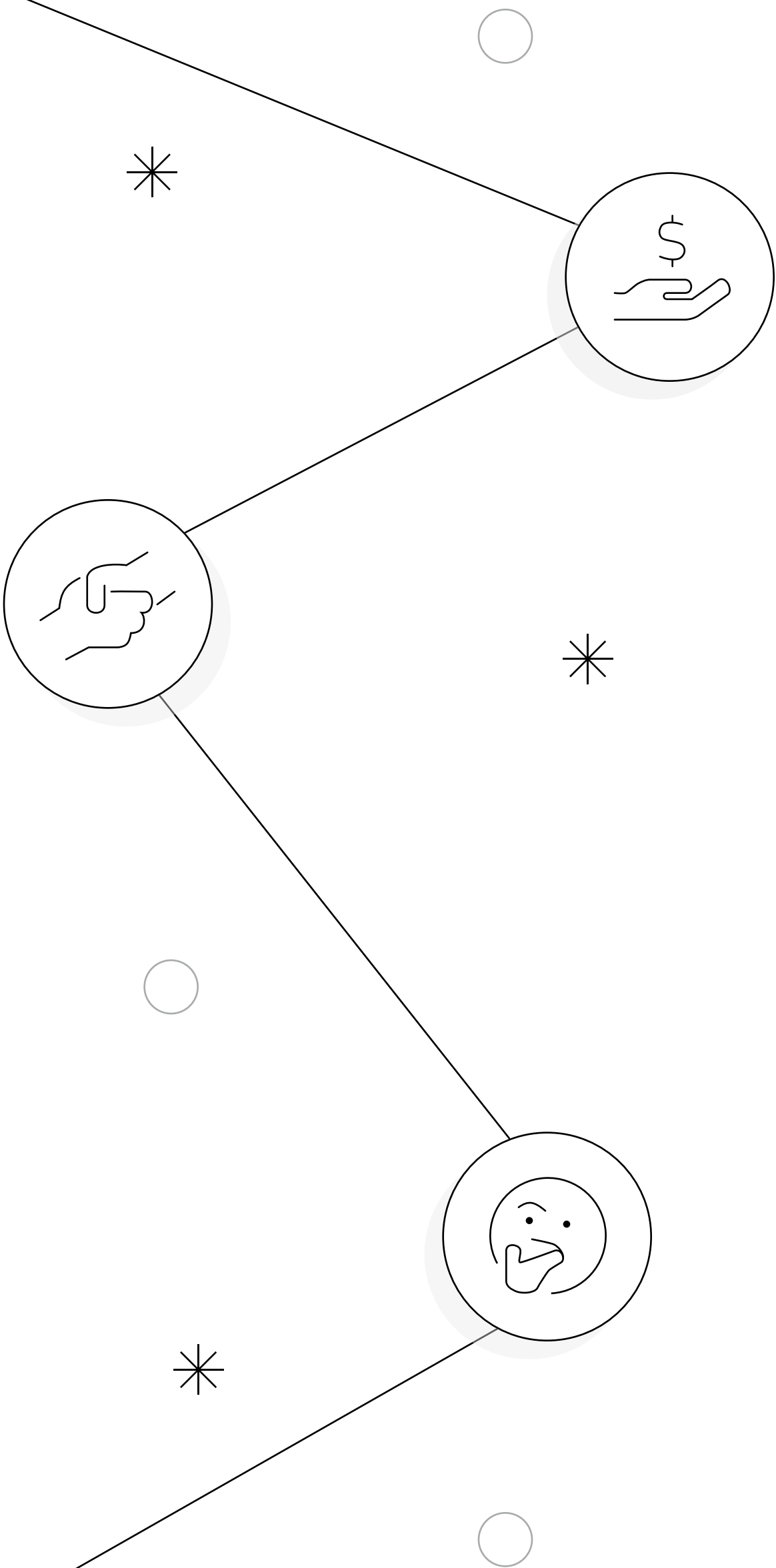
There can be little doubt that the current legal services marketplace is a highly competitive one and this can be a critical factor in the survival of law firms in a market like this.

Differentiation is difficult in every practice area of law at the best of times and the intellectual property practice area is no exception.

In Law Firms in Transition 2020, just over half (54.9%) of law firms believed that they have successfully differentiated themselves from their competitors and when asked about efforts that are being made to better understand client needs, 80.2% stated that they have initiated conversations about pricing and budgets. It is clear that from the law firm perspective at least, that pricing and costs associated with the provision of services is a key factor for clients.

Not all differentiation is created equally and it's important to ask whether the differentiation strategies pursued by the half of the firms that have employed such strategies - are those differentiating factors ones that clients care about?

The success of those differentiation strategies should reveal themselves clearly in factors such as client retention and growth, greater market share, law firm growth both in terms of revenue and head count and ultimately, overall client satisfaction. Is the success of differentiation strategies borne out by the findings covering these areas in the report?



Alternative Legal Service Providers (ALSP) and other competition

It might be considered that Alternative Legal Service Providers can position themselves in the marketplace in one of two ways. Either they position themselves as companies that seek to enhance the relationship between lawyer and client through the tools and services they provide, or they position themselves as providing an alternative to those legal services outright.

The former tends to view their role as driving simplified, business justified changes to tools, processes, and systems for law firms in meeting their clients' needs. The latter have an entirely different focus and are a source of direct competition for law firms in many practice areas.

This core difference is borne out by the findings in Law Firms in Transition 2020 where 15.5% of lawyers say that ALSPs are taking business from them right now and 52.9% agree that this is a potential threat for the future.

It may well be that the future is now. Looking more broadly at how brands are responding to the variety of legal and quasi-legal services provided to an end user rather than a lawyer, a trend towards utilising those tools to bring more work in house and handle more tasks themselves is strong and growing.

The Head of Intellectual Property at FIFA (Switzerland), Daniel Zohny, speaking to World Intellectual Property Review (What Brands Want in a Shifting Legal Services Marketplace – January 2019) confirms this trend from his own perspective and hints at the core reasons for making that shift:

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UDRP work can be done a lot cheaper by service providers than a law firm, and service providers are well-versed. Also, for searching, the service providers are sometimes better at processing and presenting the data to us"

Daniel Zohny, The Head of Intellectual Property at FIFA (Switzerland)

All is not lost, however. This is not necessarily a majority perspective for many companies. In the same article, World Intellectual Property Review spoke with Julia Talke who is the Global Lead Counsel, Trademarks and Branding at Lumileds Holding B.V. – a very satisfied client of Baker McKenzie who maintain a suite of 78 offices worldwide.

For her, larger law firms who can achieve an international perspective through their presence in so many countries, are an essential ingredient in the successful management of an international portfolio.

However, she does go on to say that they still see value in outsourcing to service providers albeit only for particular services such as renewals, clearance screenings and watching series for counterfeit products.

It is fair to say that client confidence in managing tasks associated with legal services, in-house expertise in the practice area, capacity for risk and the level of complexity of the projects at hand will be factors in the

decision to whether to choose to complete tasks in house manually, in house with supportive tools from Alternative Legal Service Providers, outsourced to a service provider or outsourced to outside counsel. There will never be a ‘one size fits all’ situation in these decisions.

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It really helps if I have outside counsel who can anticipate the issues and think globally... I rely on outside counsel to take an ever more global approach to anything and everything they do. I really want them to give me the big picture

Julia Talke, Global Lead Counsel, Trademarks and Branding at Lumileds Holding B.V

Client demands and satisfaction levels

Central to this discussion is the viewpoint of the clients in relation to all of these factors. So how well are client demands being met and how satisfied are they by the services from law firms?

The Altman Weil report – Law Firms in Transition 2020 asked law firms why they weren't doing more to drive changes across a wide range of potential options available to them.

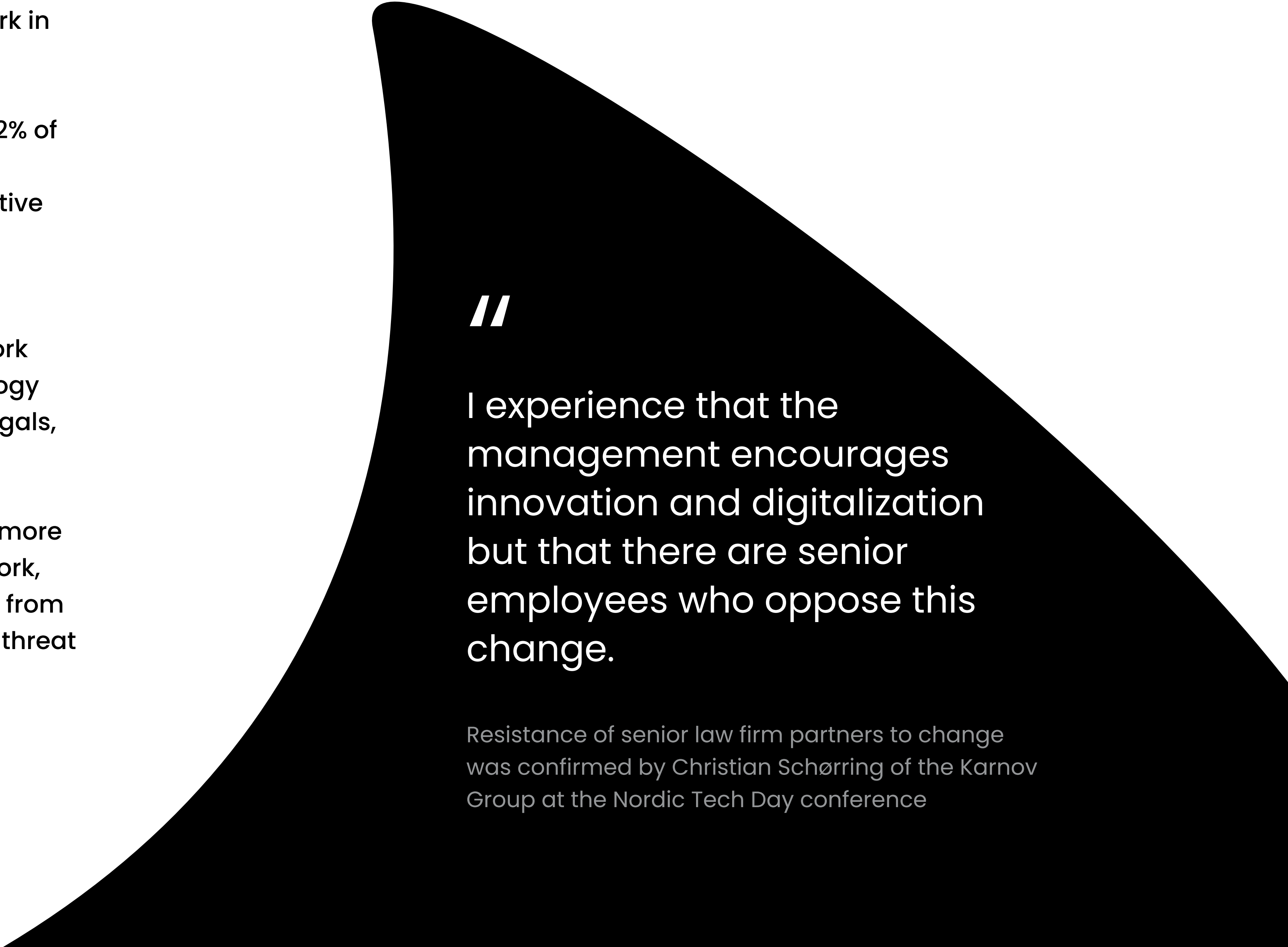
The usual suspects were listed such as resistance to change from managing or equity partners, lack of time or capacity or that they are not yet seeing the kind of drop in revenue that would force such changes.

But amongst those typical responses, lies the shark in the water.

When asked why law firms aren't doing more, 65.2% of lawyers said that their clients are not asking for change. You might reasonably view this as a positive until some further questions shed a rather more disturbing light.

In investigating information in relation to more work being taken in in-house and client use of technology tools that reduce the need for lawyers and paralegals, the trend looks somewhat less rosy.

When asked about threats to their business from more corporate departments in-sourcing more legal work, 68.4% of lawyers say that this trend is taking work from them now and 26.4% identified this as a potential threat for the future.



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I experience that the management encourages innovation and digitalization but that there are senior employees who oppose this change.

Resistance of senior law firm partners to change was confirmed by Christian Schørring of the Karnov Group at the Nordic Tech Day conference

2021

52%

Already ask law firms
about technology use

39%

Plan to ask
within 3 years

7%

Don't plan
to ask

2% not sure

2020

41%

Already ask law firms
about technology use

39%

Plan to ask
within 3 years

15%

Don't plan
to ask

5% not sure

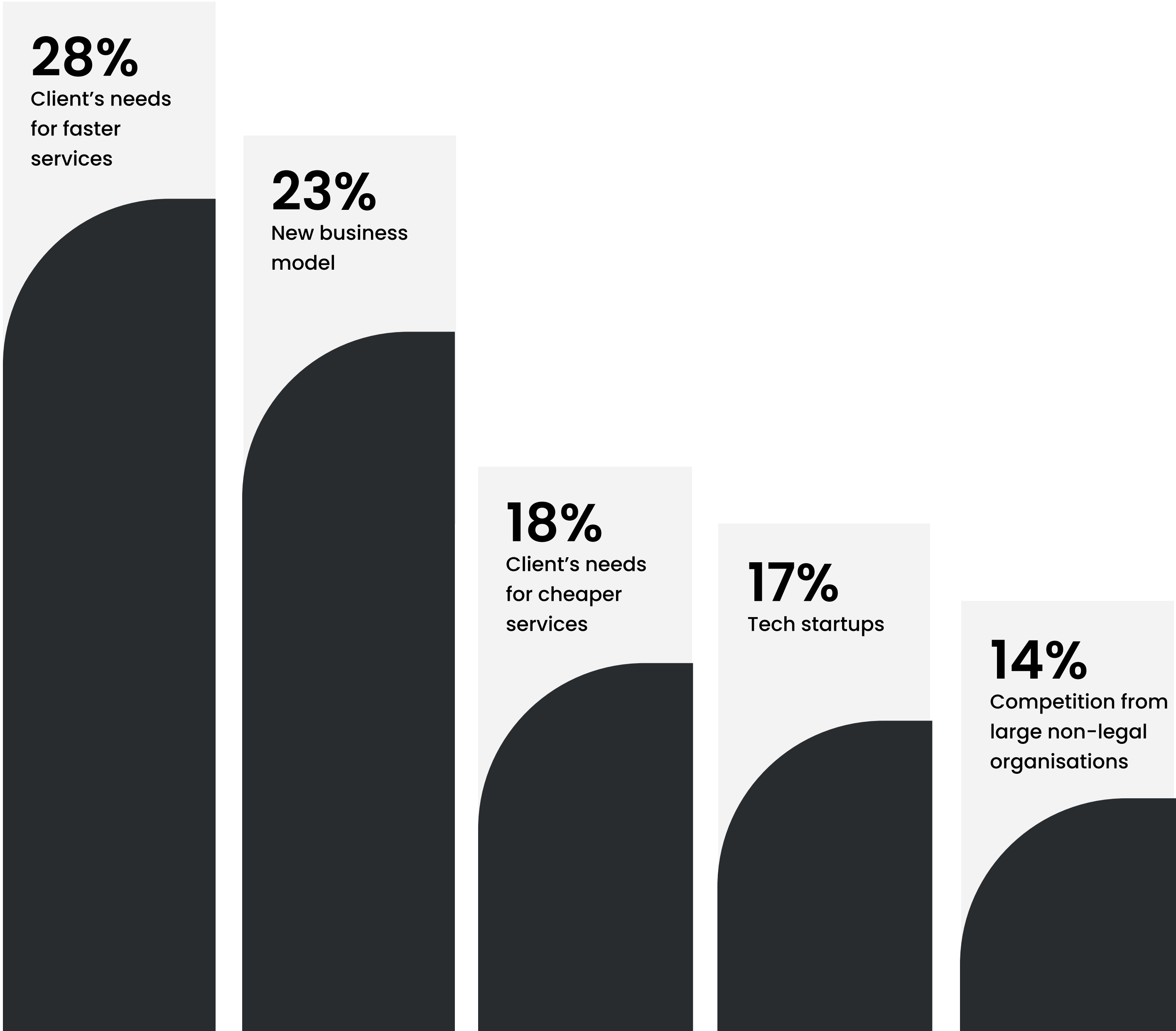
Perhaps more worryingly, in relation to client use of technology tools that reduce the need for lawyers and paralegals, 28.9% say it's taking business from them now and 56.6% say this is a potential threat for the future. This is also confirmed by Christian Schørring of the Karnov Group at the Nordic Tech Day conference;

Confirming the change in one year from 41% to 52% of clients asking their law firms about access to technological tool between 2020 and 2021.

It is clear that clients are voting with their feet. In every type of business, it can never be assumed that those clients who are dissatisfied with the service that they receive will (or even want to) communicate that to you and give you an opportunity to create a service more in line with their needs and expectations. Most will simply walk away to avail of a service elsewhere that does meet their needs and expectations.

And according to Christian Schørring of the Karnov Group at the Nordic Tech Day conference, they will do so quickly! When asked which of the following do lawyers think will drive/change and innovation the most in the legal industry, the most strongly cited factor was ‘Clients needs for faster services’ at 28%. The need for speed is finally out of our TV screens and alive in our offices instead

Key then to any strategy for growth for law firms is strong proactivity in accurately assessing your clients satisfaction levels prior to experiencing a drop in client numbers or workload. An understanding that you cannot rely on them communicating dissatisfaction to you as opposed to simply finding satisfaction somewhere else must be disseminated through the organisation.

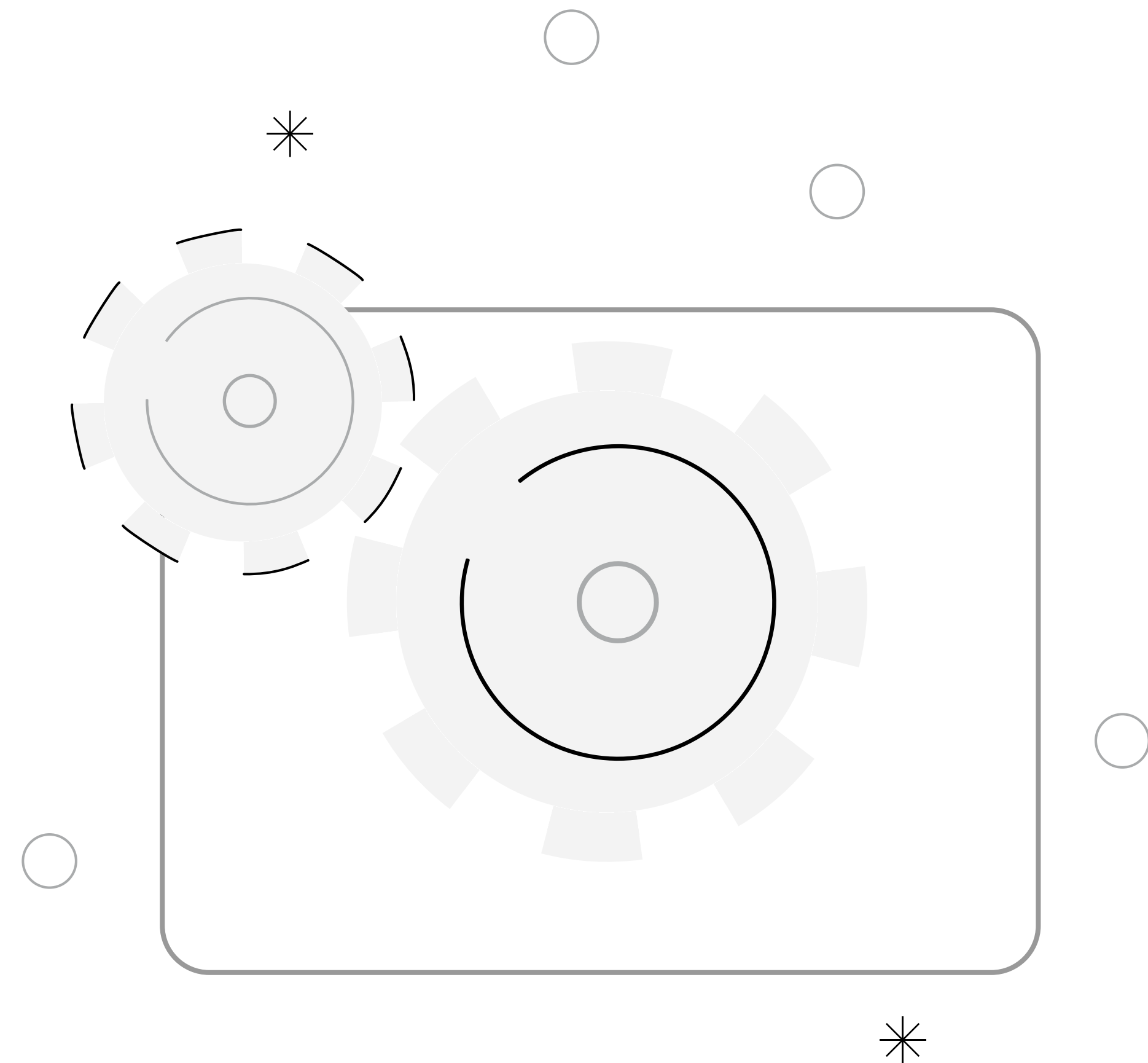


Efficiency in IP management

Given the high level of manual, repetitive work tasks associated with routine IP management work, you might imagine that that efficiency in this area would be a strong focus for attention.

It is difficult to find data that addresses efficiencies in legal service delivery models that are unique and specific to the intellectual property industry, but we can take a broader view across the legal services industry through the lens of Law Firms in Transition 2020 by Altman Weil.

5.5% of lawyers said that their plans for an 'efficiency of legal service delivery' model was in a mature stage while at the other end of the scale 10% haven't taken any steps in this area. The rest hover somewhere along the scale between these 2 points. So, across the industry and in general, it is still rather young and undeveloped.



53.6%

said that they were using technology tools to replace human resources

45.8%

reported rewarding efficiency and profitability in compensation decisions

31.3%

cited ongoing project management training and support

22.3%

have implemented a formal knowledge management program

22.3%

have also employed a systematic re-engineering of work processes

21.7%

are using no law firm vendors

So what steps are being taken?
When asked “Is your firm doing any of the following to increase efficiency legal service delivery?”

15.7%

are employing a project management director

16.3%

And a staggering 16.3% are doing none of these things

Contractbook asked what in-house counsel wants, and the results were extremely clear – they want clear communication, expert and specialised legal knowledge and access to technological tools.

Efficiency is always a good thing however, asking whether the sort of efficiencies being implemented are the kinds of efficiencies that will increase client satisfaction, gives rise to the question, what do clients value most from their lawyers?

In an article titled “What do in-house counsels want from external law firms?,” Contractbook asked this very question, and the results were extremely clear – they want clear communication, expert and specialised legal knowledge and access to technological tools.

This is echoed by Bloomberg Law in publishing the results of their survey in “What do in-house counsel want from law firms.” The overwhelming answer? Subject matter expertise.

While this survey related to drafting commercial deals rather than IP work, it seems a fair guess to estimate that many in-house counsels are seeking law firms to help with strategic and complex issues outside their wheelhouse.

So, the questions that those of us within the intellectual property practice area need to be asking ourselves are these: What is the true cost of the manual workload so endemic to routine work? Are clients really satisfied to pay you to shuffle emails and file bits of paper?

While there is little research to cite to make a determination one way or another, it seems logical to conclude that with corporate clients placing a strong value on strategic advice and subject matter expertise, the answer would be no.

Scalability and profitability factors for the IP Law Firms of the future

Inarguably, the costs and pricing strategies associated with the provision of legal services are a critical factor impacting not only scalability and profitability of law firms in the modern legal services marketplace, but their survival too.

The billable hour as a core pricing model and as a concept is fundamentally incompatible with the market need to gain more efficiency and value from their budgets, set budgets with greater confidence and somehow manage to fulfil the needs of the company with less budget than they had before.

Cold hard cash is not the only resource that is in increasingly short supply, however. Time runs short for us all and as budgets shrink so often do staffing levels. There is a compelling need for companies to streamline their processes, need fewer people to do as much if not more than they were doing before and utilise tools to make that dream a reality.

Pricing that clients can easily understand and account for both in their budgets and cost projections is critically important to them.

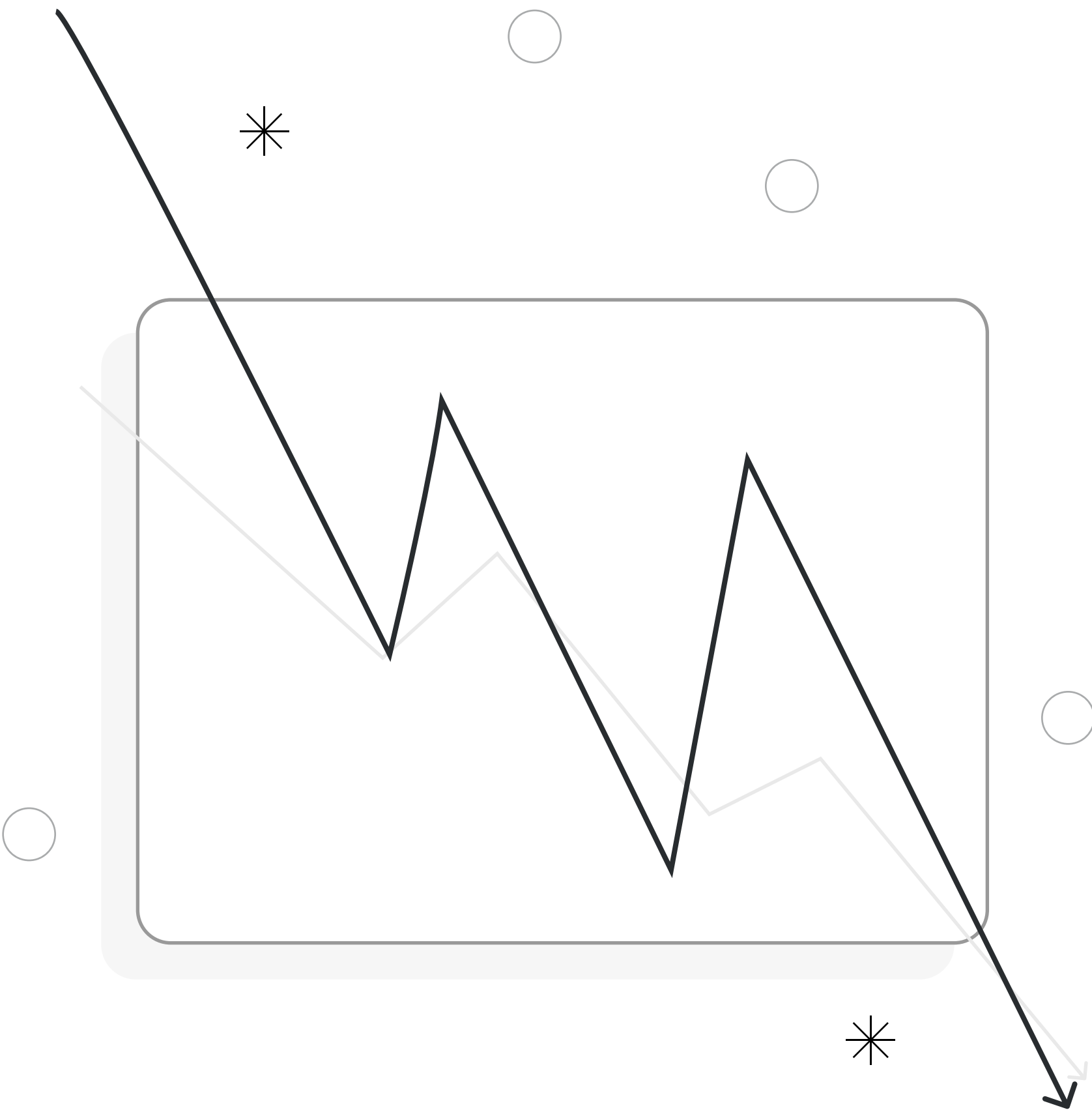
Consumption pricing permits companies to control their spending and prioritise key projects or tasks when budgets are tight. Amid demands for pricing concessions, it remains to be seen which factor is more highly ranked by clients – low cost versus predictable and controllable costs – if they had to choose.

The potential value offered by consumption pricing is not limited to the client side, however. It doesn't just offer certainty to the client though. Consumption pricing offered by law firms allows them to create internal security in relation to pricing for more 'low value' services and manage staff numbers and workloads accordingly. Used in the right way, it can be leveraged to support scalability and growth in any size law firm.

And what might that 'right way' look like?

On its own, consumption pricing doesn't necessarily resolve the 'race to the bottom' issue that is so prevalent throughout the legal services industry, across the last decade in particular. But in combination with collaborative tools created by Alternative Legal Service Providers that are designed to enhance the client experience of working with their lawyer, whilst at the same time lowering the workload to allow lawyers to provide a greater volume of services with less time and staff needed, it can be a powerful weapon in the fight for growth and differentiation.

This is of particular interest and importance in the intellectual property practice area, riddled as it is with manual and intensely time-consuming tasks. Consumption pricing applied to these very tasks coupled with the adoption of ALSP tools that clients can leverage through and with your law firm, not instead of, reducing tedious manual work and regularly surveying or otherwise keeping in touch with your clients to ensure satisfaction is a transformative strategy for the IP law firm of the future.



But will they successfully harness the opportunities that are being created by so many Alternative Legal Service providers? Altman Weil address this very point in the introduction to their report:

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“In 2020, amid a global pandemic and a stalled economy, firm leaders are presented with an opportunity for another reset—an opportunity to truly rethink what a law firm ought to be doing to meet the needs of a marketplace that has already changed in terms of how clients define and measure value and what they’re willing to do to make sure they get it. Clients will be pushing anew for pricing concessions, predictable budgets, more efficient staffing, more sophisticated utilization of preferred technologies, better communication relating to goals and metrics, and new strategies to create winning outcomes. Corporate law departments will reassess how, when, and how much they use outside counsel. Competition from well-funded law businesses will surely accelerate.

Altman Weil, Law firms in Transition 2020

Will law firms respond by rethinking their methods and structures to align with clients’ expectations?

History says that most will not. Will this time be different?

References

WIPR

What brands want in a shifting legal services landscape

Saman Javed (25/01/2019)

<https://www.worldipreview.com/contributed-article/what-brands-want-in-a-shifting-legal-services-landscape>

ContractBook

What do in-house counsels want from their external law firms

<https://contractbook.com/legaltech/inhouse-counsels-want-from-external-law-firms>

Bloomberg Law

What do in-house counsel want from law firms

<https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-what-do-in-house-counsel-want-from-law-firms>

Altman Weil

Law firms in Transition 2020

http://www.altmanweil.com/dir_docs resource/474829CC-0945-4A99-B321-2BFD3DAB146D_document.pdf

Nordic Legal Tech Day Conference 7th December 2021 - Session title “The State of the Legal Profession” presented by Business Development Director Christian Schjørring, Karnov Group

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