

## Advocacy, technology and the coronavirus crisis

3-20-2020 | Wolters Kluwer

The situation generated by the epidemic is starkly highlighting the need for offices to have adequate technological means to deal with work in unprecedented conditions. But beyond these circumstances, the crisis is showing the very favorable situation in which those firms that have already faced change are found, and the important opportunities offered to the sector, included the possible impulse of online courts.



**Carlos B Fernández.** In mid-2019, the report " **The Lawyer of the Future - The Future Ready Lawyer** " prepared by Wolters Kluwer, highlighted that the firms that have known how to take advantage of the advantages offered by technology are better prepared to keep up with the pace of market evolution , that those who are just beginning to use it, or who do not use it at all. Few could imagine that less than a year later, the events were going to ratify this prediction in a massive and global way.

And it is that at this time, March 2020, the COVID 19 pandemic has forced practically all legal firms to radically change the way they work. Like many other activities, the offices have had to send their professionals home, at the same time that they have canceled all kinds of meetings, meetings and even trials. Under these conditions, the continuity of their work has come to depend, this time entirely and irretrievably, on technology. And this for an uncertain time, which can last for months.

### Situation in Spain

In our country, most firms of a certain size seem to have been able to adapt to this new way of working without special difficulties . These offices are prepared to work remotely, their work tools and document management systems are in the cloud and have efficient online communication systems. And most importantly, its employees and professionals are trained to use these systems and have the infrastructures, hardware and cybersecurity measures necessary to serve the needs of their clients from anywhere.

However, this is not the situation for the entire sector. As **Jorge Morell** , lawyer and partner of the legal technology consulting firm Legaltechies, points out by email , "according to 2019 data, just over 30% of Spanish lawyers used software that facilitated direct access to files or projects in process. And only a little over 50% worked in the cloud. " Therefore, at the moment, a large third of our firms "should be able to telework with some ease", but "there are still another two thirds that are likely to have a more difficult time and need to make adjustments these weeks to get there."

The good news, Morell adds, is that "a lot of technology to make that leap to teleworking has a relatively low cost." Now, he warns, "we have on the one hand the problem of training and the difficulty of adapting to this new way of working in a very short time, and on the other hand, that although the cost may be low, many lawyers are to see how their income falls during this period due to the slowdown in economic activity. So it is a complex situation. "

### Teleworking is not just giving lawyers a laptop

is very similar to that which occurs in other countries, both in Europe and in the United States.

As **Markus Hartung** , lawyer, founder and former director of the Center for the Legal Profession at the Bucerius Law School in Hamburg, explains through email, "law firms have been surprised by the virus. Most of them have no contingency plans. " And although "large firms, like large companies, have business continuity plans, these are exceptions to the rule." Not to mention, he adds, that many of these plans "are hardly applicable to the current situation. "

For this reason, he believes that the reality is that "very few law firms are prepared to send their employees to work at home" and, in fact, "many probably do not know what working at home really means." These firms, Hartung stresses, should keep in mind that telecommuting "means more than just sending employees home with a laptop."

This vision is shared from the United States. As **Robert Ambrogi** recently noted in *Above the Law* , many law firms are still constrained by local computer systems, which only operate within an office. But many others are not even that advanced, and continue to rely heavily on paper filing systems. Still others have virtually no infrastructure for their staff to work out of the office. Specifically, the results of the *2019 ABA Legal Technology Survey* ( *2019 ABA Legal Technology Survey Report*), points out that a considerable part of North American legal professionals is poorly equipped to face a prolonged situation of remote work, since, this information is enough, only 58% of lawyers are using cloud-based systems; And, of these, the most used is Google Docs.

Furthermore, adaptation to the new way of working is neither so fast nor so immediate. As **Victoria Hudgins** recently reported on *Law.com* , various technology specialists have revealed that many law firms do not even have the necessary portable equipment to provide their professionals, nor do they have sufficient connectivity or cloud structures, Adequate remote desktops and virtual private networks (VPNs). Something that can significantly complicate, if not impede, efficient work and, with it, obtaining income.

But, Ambrogi stresses, even if the offices were technologically prepared, many of his lawyers are not. Many of these professionals, Ambrogi adds, remain largely incompetent, or at least untrained, in technology, even "some proudly resist learning technology" and others simply have not taken the time to do so. .

An opinion in which **Daniel W. Linna Jr.** , *Director of Law and Technology Initiatives & Senior Lecturer* of the Northwestern Pritzker School of Law & McCormick School of Engineering agrees , who points out that "it is one thing to have the technology that allows remote work, including document management systems and videoconferencing. But having these tools does not mean that a culture is in place that will make the most of those tools. "

Beyond the infrastructure and culture to provide quality legal services, firms must consider the cost that teleworking entails for the people who make up the firms. As Linna indicates, "even before this crisis we knew that our current forms of work suppose a bad balance between work and private life, which ends up giving rise to stress, alcoholism and depression, among other problems."

Beyond the infrastructure and culture to provide quality legal services, firms must consider the cost that teleworking entails for the people who make up the firms. If the lawyers and other professionals at a law firm are often at the limit of their possibilities, doing things the way they always have, how can they keep things running at a distance? Asks this expert. Keep in mind, he adds, that working at home, many lawyers must deal with the stress of work, and also take care of children and other close people. Therefore, Linna is a supporter of a movement that promotes quality at work, implementing process improvement and project management, (<https://www.legaltechlever.com> ).

### **The consequences of the lack of technological capacity to face the crisis**

The reasons for this passivity regarding technological adaptation go back a long way. Markus Hartung explains it as the consequence of the culture of "presenteeism", of "staying in the office, whatever happens" that has characterized many offices. And a culture that has remained prevalent, even though long before the virus came, "it was clear that the younger generation expected more flexibility from work from their employers, including the home office. "

But now, Bob Ambrogi points out, it is no longer simply a matter of lawyers complying with the duty of technological competence demanded by numerous North American courts, but on that competence their own survival as firms will depend.

Much more abruptly than anticipated, the repeated image of a legal sector that "evolves" has been transformed into that of a legal sector in which everything has changed overnight. And in this context, it is evident that the law firms and lawyers that have already embraced technology are better prepared for this new normal.

As Hartung explains, "Law firms that already use Legal Tech's tools and have their management software and document management systems in the cloud suddenly realize how many advantages they have over their analog competitors."

With these systems, attorneys can access the firm and all of its knowledge, tools and documents, from anywhere, so that the connection with clients is maintained. Likewise, the firms warn that the investments they made in videoconferencing tools and other tools that allow them to work mobile, make customers hardly notice that employees are not working from the office. And this also includes the work processes themselves because technology is not everything. " Providing employees with laptops, tablets and smartphones "has nothing to do with fashion, but with the current requirements of mobile work."

Ultimately, as Dan Linna indicates, "law firms that have invested in (automation of) legal operations, innovation and technology are going to have an opportunity to differentiate themselves."

But, Ambrogi warns, for firms that have fallen behind in adopting the technology, for lawyers who have fallen behind in learning the technology, the next few weeks and months could be a litmus test. "It is sad to say, but if the situation persists, it could force the closure of some offices," he warns.

### **Don't waste the opportunities revealed by the crisis**

With a vision for the future, Markus Hartung highlights that the phrase "You never miss a *serious crisis go to waste* , attributed to Rahm Emanuel) has never been so true for law firms as now." This it's an opportunity to do things that you couldn't do before. "

No one should expect or expect that this crisis will end in two weeks, warns, therefore, "Now is the right time to invest in digital infrastructure."

In such a situation, any partner in a law firm, however conservative it may be, must understand that their firm must make the move to digital.

And as Jorge Morell adds, a positive point of this crisis is that "when it is said that the changes in many legal tasks (from applying processes, to working remotely, flexibility of time or conciliation) are very difficult and slow to apply Those excuses are abruptly gone when there is no other choice but to implement those changes. " Therefore, "perhaps a good lesson from this crisis is that much of our paralysis and rejection of change is in the head."

For this, as Hartung concludes, the focus must be, first of all, to launch the company, towards intelligent mobility (mobilewise). Something for which, he highlights, they are working intensively in the European Legal Tech Association (ELTA), of which he was founder.

### **A moment to promote online courts?**

In this general context of paralysis of all activities that involve the displacement or proximity of people, including judicial activity, the possibility of having courts capable of processing and resolving matters without the physical presence of the parties is presented as a very real alternative.

It is a subject to which **Richard Susskind** , the great benchmark in everything related to the evolution of the legal services market, has devoted a lot of work and, in particular, his latest book, entitled " *Online Courts and the Future of Justice* ".

In it, Susskind stresses the importance of having a new system that guarantees access to justice for citizens, at times, he warns, many people seem to have better access to the Internet than to the courts.

In the opinion of this expert, the most widespread model of access to justice is no longer sustainable. Especially when technology offers great opportunities for change in all areas of our social and work activity. That is why it is necessary, he points out, to open new perspectives for our most relevant social institutions, such as justice. Something that requires overcoming the prejudices, even well-intentioned, of those who firmly rooted in the values and procedures of the conventional courts, only understand the activity of justice as that in which the parties settle their differences face to face, in public and in front of a judge.

And although the lawyers and judges comfort zone is firmly established in courtrooms and not in a collaborative and online work area, Susskind argues that this should not deter us from exploring better ways for the administration of justice.

Or, as Jorge Morell explains in another way, "it is enough to watch the news to verify that the judicial system is almost entirely incompatible with the concept of social distancing and isolation. Therefore, when everything calms down, perhaps we can begin to seriously rethink the way in which many courts operate. "

In this line, Dan Linna highlights for his part that "this crisis should also accelerate the implementation of online courts", highlighting everything that can be accessed with good process organization and the necessary audio-visual technology. Something for which the possible bad experiences that some may suffer with these systems should not be an obstacle and that others may use as "data" to

argue against future changes, since with the available technology it is possible to manage emergencies that may arise. However, he concludes, this ability to creatively solve problems "does not replace the commitment of time and resources that is necessary to continuously design, develop and improve legal services and systems for the future."

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