

Benefits and Risks of Legal Research Technologies

by Roger V. Skalbeck

Appreciating Advanced Algorithms

Technologies to enable effective legal research are often extremely sophisticated. Many apply advanced algorithms for searching, sorting, and even predicting results. Legal professionals need to understand the benefits and risks associated with these technologies. This is not a matter of knowing how queries are processed. Instead, the need is to understand the scope of what is being searched and the nature and reliability of results returned.

In August 2012, the American Bar Association amended commentary to Model Rule 1.1 on general competence, stating that “[t]o maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks of relevant technology.” To date, fourteen states have adopted this updated commentary to Rule 1.1.¹ Kellam T. Parks wrote in the April 2014 *Virginia Lawyer* about how this duty can relate to law practice in Virginia, citing cases that touch on technology competence.² An approved amendment to Virginia’s Rule 1.1 is pending review by the Supreme Court of Virginia.³ This need to appreciate relevant technology necessarily extends to the research realm.

Simplified Search

Major legal databases start users with a single search box, which returns results from cases, statutes, briefs, journals, and regulations in one result set. This is the default search mode for WestlawNext and Lexis Advance, and is a feature being introduced in a forthcoming version of Fastcase.⁴

This provides the benefit of not having to decide in advance where to search. An answer to a legal question could come from a statute, decided case, or in a law review article. The risk is that an inattentive attorney could choose to rely on the wrong resource. It is perhaps more likely that a new law student would

mistake a statute for a secondary source. However, it is important to recognize the labels and result structure.

Optimize Inputs, Scrutinize Outputs

However you start your legal research, it is important to optimize search inputs. With this, a sophisticated searcher should have a basic understanding of a platform’s search features. Does the tool support natural language processing so you can search with a phrase instead of key words? Are there ways to select both federal as well as state cases before you search? For statutes or treatises, can you start with a table of contents or index instead of starting with the full text?

In evaluating outputs, scrutinize the results returned with a search. The mundane advice is to decide if a resource is reliable. Beyond this, check to see if there are additional ways to filter, sort, or rank your results. Almost every research platform provides options to limit results by year, jurisdiction, or author. You can often provide additional search terms to help focus what you need to review.

Beyond text filters, advanced legal research technologies have begun presenting results visually to portray document relationships. For case law databases, this can be seen in both the Fastcase research system, as well as the newer platform, Ravel Law (www.ravellaw.com). A search is presented as interconnected circles for each case in the results. These can be used to sort results and view materials in new ways. The benefit here is that document relationships can be discovered in ways that text-based research might fail. The risk, if any, is that it can be difficult to know how to interpret and leverage this visualization.

Looking Beyond Cases and Codes

The need to understand benefits and risks of research technology doesn’t end with databases that index cases and codes. In the world of electronic discovery, machine learning technologies are

employed to automate document review across massive data sets. A company called FiscalNote has a product called Prophecy to search, track, and attempt to predict legislative outcomes. In the area of intellectual property, companies like Lex Machina and Juristat leverage analytics and predictive modelling for new ways to research patents and anticipate outcomes.

The need to understand the benefits and risks of legal technology arise across all forms of practice, including current and future tools for research. Approach these new technologies with a healthy balance of skepticism and optimism.

Endnotes:

- 1 Robert Ambrogi, *13 States Have Adopted Ethical Duty of Technology Competence*, LawSites (March 16, 2015), <http://www.lawsitesblog.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html> [<http://perma.cc/98L4-RNJH>]. (Updated March 27, 2015 to reflect adoption in Massachusetts.)
- 2 Kellam T. Parks, *Are You Technologically Competent?*, 62 Va. Law. 57 (2014).
- 3 The status of these and all rule changes are found on the Virginia State Bar’s own website here: http://www.vsb.org/pro-guidelines/index.php/rule_changes.
- 4 Robert Amrogi, *Exclusive First Look: All New Version of Fastcase Out Today in Beta*, LawSites (July 9, 2015), <http://www.lawsitesblog.com/2015/07/exclusive-first-look-all-new-version-of-fastcase-out-today-in-beta.html> [<http://perma.cc/835Z-2SR5>].



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