

# Data Strategy: The Role of Legal Counsel

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# Session Agenda

- 1. The Emergence of Data Strategy**
- 2. The Role of Lawyers in Data Strategy**
- 3. Take-Aways for In-House Lawyers**

# The Emergence of Data Strategy

## WHAT IS DATA STRATEGY?

- ▷ An organizational roadmap for collecting, storing, managing, protecting, sharing, using, and monetizing data to drive its strategic objectives.



Your Organization Needs a Data Strategy  
(Harvard Business Review, 5.2020) —  
<https://hbr.org/2020/05/your-organization-needs-a-proprietary-data-strategy>

# The Emergence of Data Strategy

## HOW IS DATA STRATEGY EVOLVING?

- ▷ Boom of data analytics
- ▷ Proliferation of data brokers
- ▷ Roles of chief architect, data scientist, etc.
- ▷ Analogous to other corporate assets (IP, Real Estate)

Creating a Data Strategy (Gartner 11.2019) --

<https://www.gartner.com/en/documents/3975595/creating-a-data-strategy>

# The Emergence of Data Strategy

## WHY SHOULD LAWYERS CARE?

- ▶ Your organization has a data strategy
- ▶ The strategy is dripping with legal implications
- ▶ The implications are significant to the business
- ▶ Legal can align business goals and compliance



# Legal Role in Data Strategy

*“Success today and in the future depends on an appreciation for the role of data assets in business and government institutions ... **The legal community** must develop a much more detailed understanding and nimble familiarity with the nature of that data, its value to the entity and the many aspects of its existence in use across the array of human transactions.”*

Mike Fleckenstein, [Ingredients of a Data Strategy](https://www.americanbar.org/groups/science_technology/publications/scitech_lawyer/2020/spring/ingredients-a-data-strategy), The SciTech Lawyer, ABA Science and Technology Law Section (Spring 2020)  
[https://www.americanbar.org/groups/science\\_technology/publications/scitech\\_lawyer/2020/spring/ingredients-a-data-strategy](https://www.americanbar.org/groups/science_technology/publications/scitech_lawyer/2020/spring/ingredients-a-data-strategy)

# Legal Role: Proposed Framework

## ▶ Step 1 – Due Diligence (Scouting Report)

Legal should understand the organizational data strategy, just as it would understand the organization's strategy for IP or real estate assets. Who is the business lead? What are the business goals? Possible different strategies for different business units.

Legal should assess the relative maturity level of the strategy from a legal standpoint. Has the strategy been well vetted by legal or is it a case of first impression?

# Legal Role: Proposed Framework

## ▶ Step 2 – Data Protection (The Defense)

Legal plays a key role in helping an organization understand its legal responsibilities and compliance obligations with respect to data.

These principally include:

- ▶ Data Privacy [GDPR, HIPAA, CCPA, etc.]
- ▶ Data Security [NYDFS, HIPAA, Reg S, Mass., etc.]
- ▶ Data Ethics [EU Data Ethics Opinion, etc.]



# Legal Role: Proposed Framework

## ▶ Step 3 – Data Innovation (The Offense)

Legal plays a key role in helping an organization position itself to use data for expanded commercial purposes. These areas principally include:

- ▶ Capturing ownership or expansive use rights from others
- ▶ Exploiting business insights (of customers, markets, competition)
- ▶ Driving operational improvements derived from data (costs, efficiencies, eliminating redundancies)
- ▶ Supporting the business in launching data enriched services or products

# Legal Role: Proposed Framework

## ▶ Step 4 – Data Governance (The Manager)

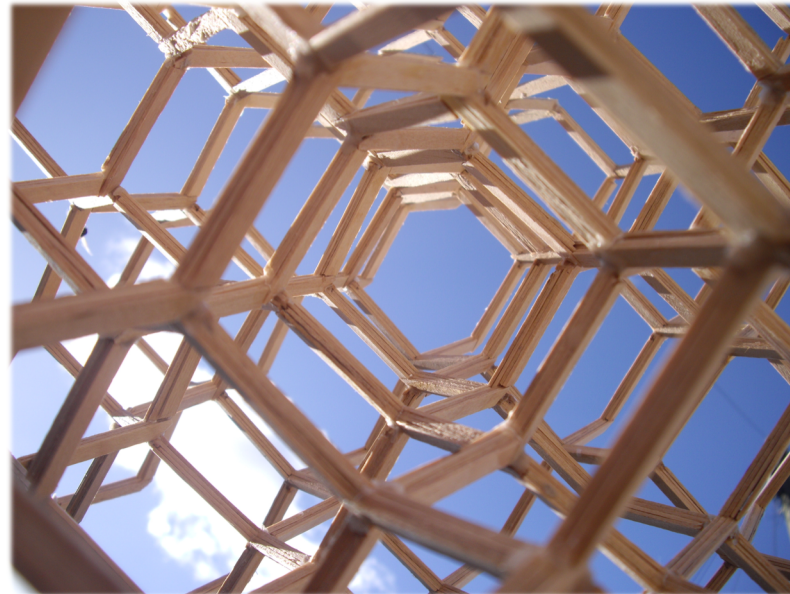
Legal plays a key role in helping an organization create and maintain governance structures that promote data strategy in compliance with applicable laws and regulations. These structures include:

- ▶ Clear leadership roles with scope of authority and responsibility
- ▶ Appropriate internal policies and procedures
- ▶ Audit and reporting functions
- ▶ Training and continuing education as to legal developments

# Legal Role in Data Strategy

## How to Implement the Framework:

- ▶ The business creates and drives a data strategy to achieve certain business goals. Legal need not (and probably should not) serve as the lead.
- ▶ Rather, legal should grab a seat at the table and participate in a support role and, in doing so, weave in the framework.



# Take-Aways for In-House Counsel

1. Has my organization implemented a formal Data Strategy?
2. If so, do I know what it is? Was legal involved? Has legal reviewed it?
3. If my organization has no formal data strategy, is it apparent that the enterprise nonetheless follows certain data practices that constitute an informal strategy (i.e., collect everything, keep all data, delete data)?
4. If so, who within the organization understands our current practices? Who within the organization leads the practices? Does legal interact with them in any meaningful way on this?

# Take-Aways for In-House Counsel

5. How might I find a seat at the table internally with the data strategy “team?” Is there an internal committee that I could join – like a data governance committee?
6. How might I weave elements of this framework (or other framework) into my organization’s data strategy planning?



# Thank You



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