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Dedications

Olga: To my loving dad, Vitaliy Kotlyarevskiy, who showed me that my imagination is the only barrier to my potential.

Adrienne: For my father, Henry Go, MD, who taught me the value of working hard, serving community, and learning always.

Preface

As a kid growing up in rural California, watching too much television, I thought lawyers were found only in courtrooms. And they had to wear nice suits. I did not own a suit.

In law school, I studied the standard fare – torts, elements of contracts, and rules of evidence. I borrowed a suit and headed for BigLaw. Following a stint in the public sector, I joined eBay, an e-commerce pioneer with a world-class legal team.

At eBay, I suddenly found myself smack in the middle of a fascinating intersection of law, technology, and business. In this complexity, I saw both opportunities and challenges. I began to see news headlines in a whole new light. Toyota recalling millions of cars over floor mat issues, Microsoft facing hefty fines from the European Commission for alleged anti-competitive practices, and AOL grappling with the fallout from an accidental release of user data. These stories weren't just news – they were cautionary tales of the complex challenges awaiting any company in the 21st century, regardless of industry or geography.

It was here that I realized the critical need for product counsel – someone to guide businesses through this intersection for modern products and services. I knew I needed to up my skills and to reframe our approach to legal advice. With the support of eBay's legal leadership, I started small, inviting myself to product meetings for key domains. I tried to ask questions without making the engineers nervous that I would kill their launch. I recruited lawyer Braden Dong to join my effort. We took product managers to coffee and user research specialists to lunch. We asked engineers to explain their algos and designers to show us their flows. We announced that we were their "product lawyers". I ditched the suit.

Over time, our small but increasingly influential product legal team developed strong, trusted relationships with our client teams, learned more about our customers and products, and honed our risk assessment skills. We worked to "look around corners", proactively identifying upcoming laws and regulations to develop business-supportive compliance plans. We cultivated a "start with yes" mindset, sometimes silencing alarm bells in our heads.

At the time (and for many, still), “product lawyering” was not a standard course in law schools. Law firms didn’t seem to offer teams expert in “product counseling”. The title “product lawyer” seemed rare. That’s not to say that we were the first to product lawyer. On the contrary, other talented lawyers were leading the way in industries such as automotive, insurance, food, medicine, and tech. I just didn’t know how to find and connect with them.

Enter Olga Mack, my co-author and a force of nature in the legal world. Olga, originally from Ukraine, studied economics, political science, and law at UC Berkeley. She’s a tech enthusiast, thought leader, and innovator, known for her expertise in product, crypto, AI, and visual lawyering. Turns out she was on the *same* mission, working to “law better” in advising on and driving innovation in the development and offering of goods and services.

In 2023, Olga approached me with the idea of co-authoring a book on product counseling. Her vision aligned perfectly with my experiences – our society is powered by goods and services, and companies are struggling with the complexities of laws and regulations. Yet there’s a dearth of resources for lawyers advising on these products. Everyone is trying to figure it out without the benefit of a framework or legal community.

Together, we recognized that in today’s rapidly evolving technological landscape, businesses want to disrupt and differentiate. Customers want products that simplify and amplify their lives. Regulators want to ensure these products meet societal goals. At the intersection of all these needs stands the product lawyer.

We need strong, practical lawyers who know how to manage risk, drive business, build client trust, champion consumer protection, protect privacy, grow intellectual property assets, understand regulators, and promote ethical behavior. This book, born from our combined experiences and vision, offers a framework to help law students and practitioners develop the mindset and skills that make for an effective product lawyer and promote product counseling as a discipline.

Whether you’re a seasoned legal expert seeking to expand your skillset or a legal enthusiast yearning to embark on a new career path, this book is your guide to becoming a lawyer who can advise, innovate, and inspire. Together, we can shape the future, one product at a time.

Are you ready to be that kind of lawyer? Say yes.

Adrienne Go

Introduction

Have you ever imagined a role where you could leverage your legal expertise proactively to shape the design, development, and offering of an actual thing or service? Have you ever signed up for an online service or researched a new appliance, asking yourself questions such as, “Do I need or want this?”, “Do I understand how it will work?”, or “Is it safe?”. Do you find yourself staring at a video doorbell, car dashboard, garden tool, or children’s toy, wishing that you could change something to make the product more intuitive, informative, and safe? Maybe you are an avid gamer and are uncomfortable with the user interaction features or confused by the in-game purchase options. Perhaps you have seen too many baffling product manuals. As a trained lawyer, you know there must be a better way. If so, you might be a “product counsel” in the making!

Most laypeople believe the practice of law is all about the courtroom scenes featured in popular television shows. For trained legal professionals, the perception is broader, understanding that legal disciplines include practice areas such as civil litigation, commercial contracts, IP, tax, employment law, family law, real estate, and mergers/acquisitions. While many of us experience a jury duty summons, real estate deal, or tax question occasionally, we see the success (and shortcomings) of product counseling every day.

Product counseling is all about the “product”. In most contexts, this means what a business is selling to its customers: physical products like cars, toys, and coffee machines; intangibles like insurance, marketing, and consulting services; and technology services like ride-sharing platforms, crypto wallets, dating apps, e-commerce sites, and cool text-to-image generative AI tools. Products are everywhere, and each brings important legal and business consequences. The better the product, the more delighted the customer will be, driving the company’s brand, customer base, and – hopefully – revenues. Together, these products drive a strong market economy. Lawyers have long advised their business clients but, as the global legal landscape governing goods and services becomes increasingly complex, product counseling is now emerging as a distinct and recognized discipline.

Today, a query for “product counsel” roles on your favorite job search site might yield hundreds of posts for product counsel jobs. While technology companies or intellectual property (IP) law firms often offer these roles, the legal thinking and mindset are not limited to 21st-century screen-based products. Before outside counsel law firms grew in the 1940s, large American companies (think railroads, banks, and household products) relied on their management-level company lawyer. Legal Professor Eli Wald describes this era (pre-1930s) as the “Gilded Age” of in-house lawyering, where the general counsel was valued for his sage counsel and respected judgment. He had the ear of the CEO and company board, guiding the company through mergers and acquisitions, geographic expansions, financing plans, and product decisions.¹

As discussed in more detail in chapter one, throughout the 20th century, “company lawyers” navigated a growing web of consumer protection and product liability laws, advising on a wide range of products, from automobiles to aircraft, radios to televisions, and newspapers to online service providers. In the 21st century, policymakers (including both lawmakers and regulators) addressed other goals, such as environmental sustainability, online safety, consumer transparency, and data privacy. As products become more ubiquitous and laws and regulations increasingly complex, lawyers are transitioning from reactive legal experts to proactive business coaches.

As an example, consider the dramatic surge in the need for privacy counsel in the last 20 years, driven by significant laws such as the EU General Data Protection Regulation (GDPR) and the California Consumer Privacy Act. According to the International Association of Privacy Professionals (IAPP), its membership jumped from 20,000 in 2015 to 30,000 in 2017 and 50,000 in 2019.² Undoubtedly, even if your company’s product is analog, you will need to understand user privacy. The recent surge in generative AI (GenAI) is even more dramatic, a real-life intersection of ground-breaking technology, public policy, multi-jurisdictional regulations, ethical decision-making, business opportunities, and customer empathy. What an awesome time to be a lawyer!

In today’s world, product counsel demand is sometimes met with an in-house legal person able to leverage client proximity and lawyer or team integration. It helps to sit “side by side” – virtually or in real life – to develop and offer a holistic view. If your company is lucky to have you as its only lawyer: congratulations – you will also be its product lawyer. If you are on the legal team of a large international company, you will likely find this book valuable, even if “product counsel” may not (yet) be in your title.

Outside counsel can also play a critical product counseling role. They often have industry or geographic legal knowledge and can leverage cross-company implementation experience. For example, say a business is looking to launch a digital art platform in Europe. A law firm with European IP expertise can provide valuable advice on infringement issues, including perhaps recent private and regulatory actions. Regardless of whether you are in-house or outside counsel, with a product counsel mindset, you can coach your team to deliver strong business wins.

This book offers a framework to help law students and practitioners develop the mindset and skills that make for an effective product lawyer and promote product counseling as a discipline. Whether you're a seasoned legal expert seeking to expand your skillset or a legal enthusiast yearning to embark on a new career path, you can advise, innovate, and inspire. We're here to guide and empower you and unlock the influence of product counsel – a discipline defined by its ability to shape the future, one product at a time.

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About the authors



Olga V. Mack is an accomplished entrepreneur, executive, and attorney dedicated to harnessing transformative technologies for positive change in law. Serving as a lecturer at Berkeley Law, fellow at CodeX, The Stanford Center for Legal Informatics, and Generative AI editor at law.MIT Computational Law Report, Olga is a strong advocate for the integration of innovative technologies that enhance functionality and accessibility. With a proven track record as an award-winning general counsel, CEO, and tech start-up advisor, Olga encourages the adoption of cutting-edge technologies to drive progress and efficiency. As a seasoned TEDx presenter, Olga leverages her unique blend of expertise in technology and business to inspire and educate audiences. Recognized as a top speaker and thought leader, she shares her insights through various platforms, including Forbes, Bloomberg Law, law.MIT Computational Law Report, Newsweek, Venture Beat, law.com, Above the Law, and ACC Docket. Her accomplishments include being honored with prestigious awards such as Silicon Valley Women of Influence, ABA Women in Legal Tech, Make Your Mark, Corporate Counsel of the Year, and Women Leaders in Technology Law.



Adrienne Go is a lawyer who loves to build. As a real estate associate at Morrison & Foerster, Adrienne counseled on complex real estate and business transactions, learning how bricks and mortar actually create buildings. As a deputy city attorney with the San Francisco City Attorney's office, she advised on building and operating a 21st century airport. As associate general counsel, global product at eBay Inc., Adrienne led a team focused on developing risk-embracing, user-delighting products and technology. Adrienne is author of numerous publications on business-driving in-house lawyering.