

Knowledge Transfer in Commercial Law

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1. Abstract

This paper describes two initiatives that are extending the boundaries of knowledge transfer in the field of commercial law. Both initiatives are concerned with 'legal incubators'[1,2], university-based entities that facilitate the provision of legal services to early-stage, technology start-ups and entrepreneurs by postgraduate law students.

The first of these two initiatives is 'qLegal', established by the Centre for Commercial Law Studies (CCLS) at Queen Mary, University of London (QMUL) in 2013. Located in close proximity to the flourishing Tech-City community, qLegal[3], provides legal and regulatory advisory services to early-stage, start-up companies, primarily in the Information and Communication Technologies (ICT) sector. The main focus is on helping these companies to address a range of challenging, ICT-related legal issues associated with IP management, data protection and e-commerce.

The second initiative is 'iLINC', the European Network of legal incubators. This EU-funded FP7 'coordination and support' programme is building an open network of legal incubators that collectively support the provision of legal services to ICT start-ups and entrepreneurs throughout Europe. iLINC[4], is led by QMUL.

2. Introduction: Setting the Scene

Early-stage start-up companies and entrepreneurs looking to develop and commercialise new ideas and technologies need to draw upon a wide range of resources to build momentum and firmly establish business operations and market presence. This is particularly true in the information and communications technology (ICT) space, where the breadth of resources required goes well beyond management expertise and access to investment finance to include a range of very specific skills related to digital technology innovation.

This portfolio of technology-related skills and knowledge includes legal expertise, the nature of which is often more specific than more generalised transactional work covering, for example, corporate structure and commercial contracts. Indeed, many start-up companies in the ICT sector, even at an early stage of development, need to develop an understanding of a range of complex legal issues concerning the ownership, use, sharing and commercialisation of intellectual property, in all its forms (e.g. patents, copyright, trade marks and confidential information); as well as

ensuring compliance with different regulatory frameworks, whether operating horizontally upon certain types of activities, e.g. data protection and public procurement, or vertically within an industry sector e.g. telecommunications law. Indeed, In a recent report[5] from a group of Belgian technology transfer offices, the importance of legal and IP support was ranked second only to 'financial support' and considered even more important than 'management support' and 'commercial support'.

This clear need for specialised legal support for start-ups and entrepreneurs in the ICT sector is of course met to some extent, particularly in some of the main European technology hubs. Government-funded initiatives (both at a national and EU level) have supported the provision of relatively rudimentary legal support to start-ups and entrepreneurs for the protection and ownership of intellectual property (e.g. 'own-it' based at the University of the Arts London[6]). Legal professionals also provide low-cost (and sometimes free) legal services to start-up companies in the hope of developing brand recognition and securing longer-term and full-fee-paying clients. A good example here is Bootlaw[7] from Pinsent Masons in London.

A pioneering example of where a university-based legal institution has established an initiative to provide legal support to start-ups and entrepreneurs is found at Brooklyn Law School in the US. Since 2008, the Brooklyn Law Incubator and Policy (BLIP) Clinic[8] has functioned out of Brooklyn Law School as a full-service, technology-oriented law firm in which students provide transactional, policy, litigation, and general legal support to technology-oriented, start-up clients. To date, BLIP has provided legal support to more than 500 companies.

In Europe, however, such university-based legal support for ICT start-ups and entrepreneurs has only just started to emerge. Examples of leading university-based law clinics include the Legal Advice Centre at Queen Mary University of London[9]; the Student law Clinic at Northumbria University[10] and the International Law Clinic at the University of Amsterdam[11]. However, these clinics have tended to focus on the provision of legal advice to individuals and social enterprises in areas such as e.g. employment and immigration law.

A growing knowledge-based economy with a strong portfolio of ICT enterprises will see a concomitant growth in demand for legal support. And, while a limited number of leading university-based law institutions in Europe have taken some initial steps to establish legal support clinics (such as the examples mentioned above), these initiatives are few in number and often do not cover some of the more specific and/or advanced needs of start-ups and entrepreneurs in the ICT sector.

Importantly, the need to inspire and encourage a new generation of lawyers capable of representing ICT and other emerging technology companies is also fundamental to ensuring technological, economic, social and political progress. Too many students graduate from law school programmes without the experience and confidence needed to represent the sorts of ventures that will be encountered

in the 21st Century. As such, the current situation presents an acute need for cost-effective and forward-thinking legal services.

3. Introducing qLegal: Knowledge Transfer for ICT Start-ups

Established in 2013 at the award-winning Queen Mary Legal Advice Centre (LAC), qLegal is a unique initiative that facilitates the provision of high-quality pro-bono legal and regulatory advisory services to technology start-ups and entrepreneurs. One of the distinctive and defining characteristics of qLegal is that the services are provided by high-calibre postgraduate law students from the Centre for Commercial Law Studies under the guidance of legal professionals from collaborating law firms and academic staff.

Legal expertise is often prohibitively expensive for early-stage companies, and can therefore result in a potential barrier to innovation. Hence, by providing start-ups with access to both specialised and affordable (or indeed free) legal expertise, qLegal helps its clients to remove this barrier.

Of equal importance is the educational angle. Through engagement with qLegal, the student learning experience is significantly enriched: projects represent a unique opportunity for students to apply their legal knowledge in the context of a real-life, hands-on, practical examples. Furthermore, the qLegal experience serves to enhance student employability and professional development prospects.

From a broader perspective, London is becoming one of the main global hubs for digital technology innovation, amply demonstrated by the vibrancy and growth of Digital Shoreditch. As a close neighbour, QMUL is very much aware of the important role it can play in this emerging digital innovation hub.

4. qLegal: Service Delivery

qLegal employs three main mechanisms to provide legal support to its clients.

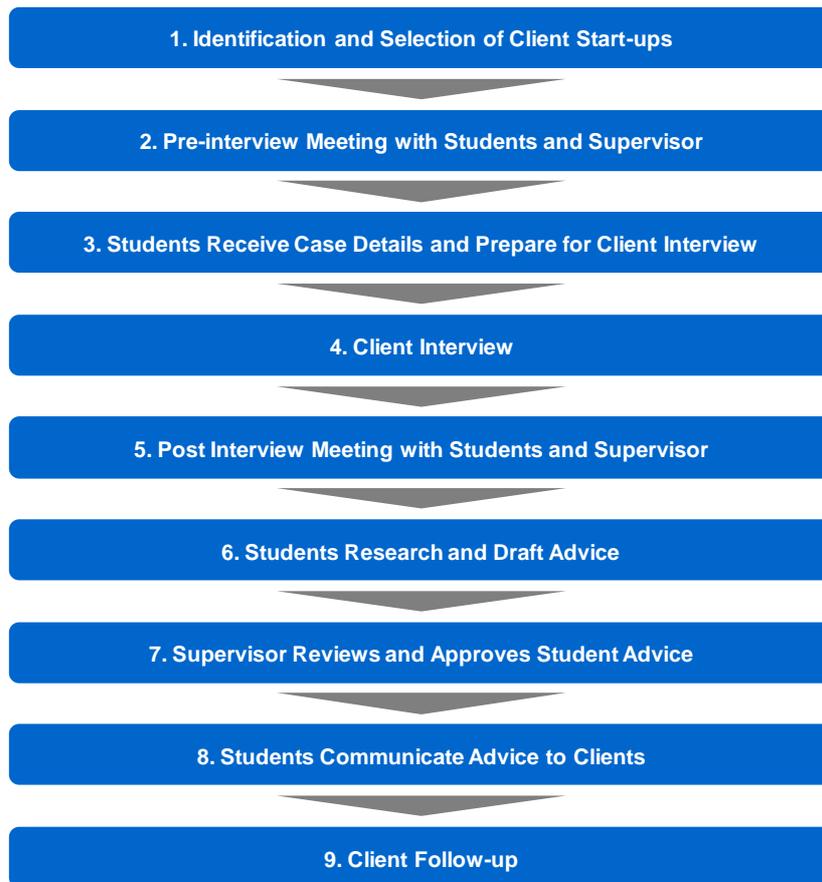
Firstly, provision of bespoke legal support via 'advice sessions': student advisers provide written legal advice to clients under supervision from qualified lawyers. The student engagement time per client is approximately 8 hours over an elapsed period of 21 days (including the drafting of the letter and client interview). The service delivery process for this important mode of bespoke client engagement is shown in Figure 1 overleaf.

Secondly, provision of workshops and talks (to several clients simultaneously):

- Workshops: Students provide presentations on various areas of law to start-up companies and entrepreneurs. Presentations have input from qualified lawyers. The student engagement time for each presentation is approximately 8 hours over an elapsed period of 60 days.
- Talks: Collaborating professionals provide talks on various areas of law to start-up companies and entrepreneurs.

Thirdly, provision of online support via a 'portal': Students draft factsheets on various areas of law for start-up companies and entrepreneurs. Toolkits have input from qualified lawyers and are uploaded to the qLegal website as an online resource. The student engagement time for each toolkit is approximately 4 hours over an elapsed period of 30 days.

Figure 1: qLegal Service Delivery Process for Bespoke Legal Support



The identification and selection of potential clients is an important first step for qLegal. Start-up companies must be able to demonstrate that they are committed to fully engaging with the qLegal team in order to ensure that the service provided is of a high quality. A further aspect to be considered is the nature of the legal themes to be addressed. qLegal is constantly seeking to stretch the envelope of innovation for university-based law clinics and from a service delivery perspective this translates into addressing new and challenging legal issues.

As the host university, QMUL has secured professional indemnity insurance specifically for qLegal as a provider of professional services. One of the important constraints (that has a direct impact on client selection) is that the turnover of the client start-up companies must not exceed a threshold figure of £25,000. In addition to this mode of protection, the collaborating professional lawyers are also protected through their own companies.

A further question that is often asked of qLegal concerns possible contravention of European State Aid Regulation[12]. For law incubators such as qLegal, the important area of regulation is the so-called 'de minimis' rule which states that: "aid measures up to EUR 200 000 per company over any period of 3 fiscal years do not constitute State aid within the meaning of the Treaty[13] which means that Member States can grant these amounts of aid without any procedural burden." The Handbook for Community State Aid Rules for SMEs goes on to say that: "The aid amount (for innovation advisory services and for innovation support services) shall not exceed a maximum of EUR 200 000 per beneficiary within any three year period. If the service provider benefits from a national or European certification, the aid may cover 100% of the eligible costs, otherwise the maximum aid amount is 75 % of the eligible costs." Hence, in order to be fully compliant with European State Aid Regulation, it is important therefore that qLegal is aware of the bigger picture regarding publicly-funded grants from which start-ups may be benefitting.

5. qLegal: Legal Education Enrichment

For a number of reasons, student recruitment for both undergraduate and postgraduate courses is becoming increasingly competitive. In response, universities are focussing more on 'enhancing the student learning experience'. In addition to accelerating the growth and development of technology-based, start-up companies, the second core objective of qLegal is to provide an unparalleled student learning experience.

It is recognised that 'industry placements' have been encouraged as a means to enrich student learning in an industrial environment for many years by universities. Typically, however, these initiatives are not linked directly to university-based learning and can be rather limiting in terms of their flexibility i.e. fixed durations of three months or one year. In contrast, the qLegal approach is both flexible and integrated. In the course of their project engagement, students will:

- Interact with real clients and be faced with real legal issues;
- Receive extensive training from professional lawyers, academic staff and the QMUL Careers Office;
- Improve their legal research, analysis and drafting skills;
- Improve their interviewing and communication skills;
- Develop their client relationship management skills.

In addition to the above, qLegal is seeking to better integrate the project-based, engagement experience with the university-based learning experience through the following:

- Student preparation of case studies and engagement reports to increase the scope of student involvement and provide a rigorous basis for academic assessment;
- Joint lectures involving both clients and students (again providing a mode of assessment).

6. qLegal: Thematic Focus of Legal Services Provided to ICT Start-Ups

Since the launch of qLegal in 2013, the legal support provided has covered the three main areas below. In the longer term, it is anticipated that the provision of services will be expanded thematically to cover all of the themes outlined in the Table 1 overleaf.

- **Intellectual Property** i.e. the use, sharing and commercial exploitation of intellectual property assets (including patents, copyright, trademarks and confidential information);
- **Employment** including employee rights, employer obligations and employment contract terms;
- **Business and Commercial** advice on business structure, liability, commercial contracts and non-disclosure agreements.

Table 1: Thematic Scope of qLegal Legal Support for ICT Start-ups

<p>Privacy Policy & Data Protection: Handling (collection, use, storage) of 'personal data' pertaining to employees, customers, users of a service, web visitors etc.</p>
<p>E-Commerce: Examples include the security of the online transactions through websites; online advertising/ marketing; and adherence to the guidelines for distance selling such as providing a right to withdrawal, etc.</p>
<p>Electronic Communications: Compliance with telecom regulations e.g. obligations relating to access and interconnection, and security of networks and services.</p>
<p>Corporate Structure and Transactions: Incorporation of businesses – form of company; Company sale/exit; allocation shares, liability etc. between partners</p>
<p>Non Disclosure Agreements: Handling of confidential information about companies and ideas. How ideas can be protected when negotiating with interested parties?</p>
<p>Intellectual Property Rights: This covers a range of IP assets such as logos, brands, websites and software. What are the key considerations when designing logos and using trade names? How should brands and websites be protected? What criteria must be considered in order to protect ideas and products?</p>
<p>Contract and Consumer Law: Which types of contracts are required for dealing with other companies (B2B) and consumers (B2C)? Which rules should be followed for consumers? How should contracts be drafted that balance the rights of both parties? How can contractual agreements be enforced?</p>
<p>Terms and Conditions: Drafting of standard agreements for multiple transactions (both B2B and B2C) and for the provision/sale of services/product. What are the important provisions (e.g. liability, price, delivery) that have to be considered?</p>

7. qLegal: Performance Measurement

After an internal, 'soft-launch' in 2013, qLegal was successfully launched at the Google Campus in January 2014 and began to advise clients shortly thereafter.

Collaborations

qLegal has established working collaborations with seven legal partners including: Unisys, Origin Ltd, Mills & Reeve, Kilburn & Strode, Intel, Morrison & Foerster and Edwards Wildman.

qLegal has also established a further 12 collaborations with non-legal partners: School for Start-ups, London Technology Week, Cambridge Wireless, Google Campus, Matthew's Yard, QM Careers, qMedia, the Centre for Digital Music (C4DM); the Interaction Media and Communication Group (IMC), the Multimedia and Vision Research Group (MMV), the Mile End Group and Shoreditch Trust.

Start-up Assistance

Since its formal launch, qLegal has surpassed expectations by:

- Receiving 64 enquiries from start-up companies for pro-bono legal advice;
- Selecting start-ups and organising 22 appointments for clients;
- Providing over 200 clients provided with legal assistance through workshops and talks.
- Drafting 9 toolkits for the qLegal portal;
- Organising 3 workshops facilitated by students in the tech community;
- Organising partner-led qLegal events.

Student Engagement

In terms of providing a platform for enhancing the student learning experience:

- 36 students have been selected through a strict application process to participate in the project;
- 9 training sessions have been organised for students covering UK law, client advising, interviewing, legal research, drafting, common legal issues for start-ups, marketing, public speaking and presentation skills.

8. iLINC: the European Network of Legal Incubators for ICT Start-ups

There is an increasing recognition from policy makers around the world of the importance of innovation and entrepreneurship as a cornerstone for the development of healthy and competitive economies. Furthermore, there is an increasing emphasis on supporting early-stage companies that may well grow into world-beaters. For example, the EU Start-up Manifesto[14] was recently unveiled at the World Economic Forum. The manifesto covers a number of areas including 'access to talent' and 'education and skills', both of which are core objectives for establishing university-based legal incubators (or clinics).

The Start-up Manifesto suggests that: "The days of relying on large businesses or the government for job creation are over. Many of the millions of jobs lost over the past five years will never return in their old form. Entrepreneurship, which has been

the engine for growth in the United States, has not been cultivated in an effective or systematic way in Europe. To create more businesses and more start-ups requires more than a change in policy. It requires a change in mentality.”

To meet this challenge, the main objective of iLINC is to establish an open European Network of law incubators that supports the provision of legal services to ICT start-ups and entrepreneurs. The services will be delivered by postgraduate students from leading university-based law institutions, an innovative approach that will help to underpin a fundamental need for a change in mentality.

Launched in October 2013 as a two-year programme funded by the EU, iLINC is achieving this objective by focussing on:

- Understanding the legal requirements of start-ups;
- Developing and exchanging best-practices for service delivery from law incubators across a European (and possibly a US network);
- Developing and sharing best practices for linking student project engagement with learning programmes; and
- Establishing a platform for collaboration with focussed events and an online portal.

As a direct consequence of undertaking the above, iLINC will therefore help to:

- Accelerate the innovation of ICT start-ups and entrepreneurs;
- Enrich the student learning experience through direct engagement with real clients and relevant projects;
- Provide collaborating law firms (in student supervisory roles) with access to a global legal talent pool;
- Contribute towards building the overall European legal incubation capacity for technology start-ups and entrepreneurs.

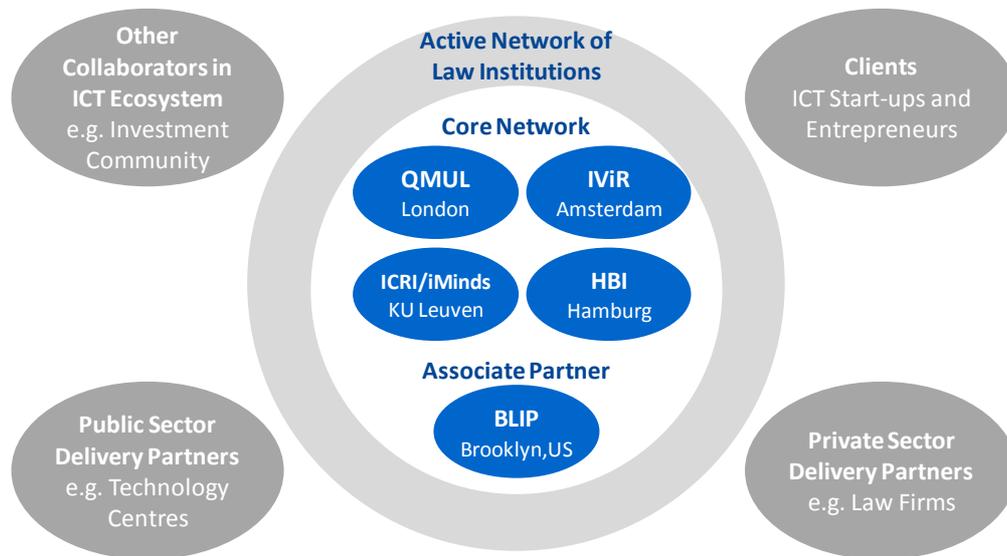
9. iLINC: the Structure of the European Network for Legal Incubators

Led by QMUL, the iLINC Core Network Partners include leading law schools from the universities of Amsterdam[15], Hamburg[16] and Leuven[17]. Each of these institutions has taken early steps towards establishing legal incubators within their own regional ecosystem of start-ups and entrepreneurs in the ICT sector. The iLINC Network is further enhanced through the direct involvement of the 'Brooklyn Law Incubator and Policy Clinic' (BLIP) from Brooklyn Law School in New York. A schematic of the iLINC network is shown in Figure 2 below.

As shown overleaf, the iLINC Network is concerned with establishing a critical mass of law universities, collectively covering the specificities of different national legal systems within and beyond Europe, and developing links with communities of ICT start-ups and entrepreneurs.

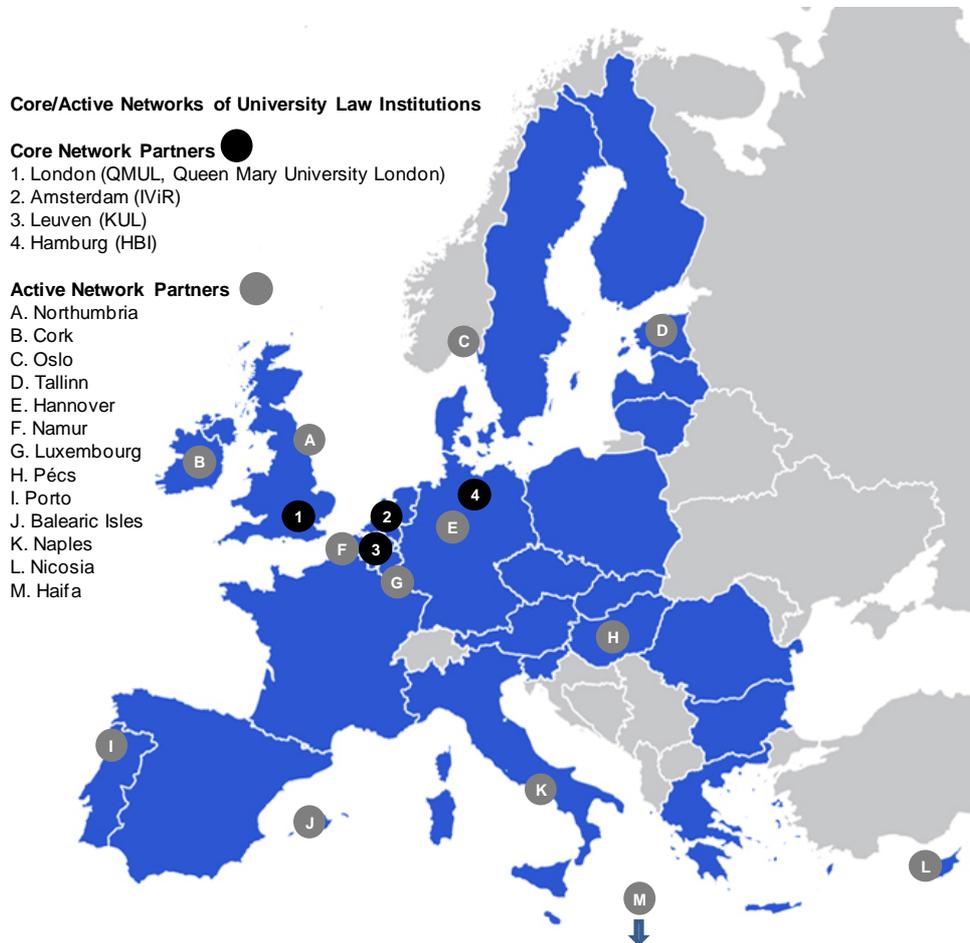
iLINC is also one of six collaborating EU projects within EU-Hub[18], which seeks to provide a comprehensive portfolio of support services (including legal) to European start-ups and entrepreneurs.

Figure 2: iLINC European Open Network of Legal Incubators



The 'Core Network' is complemented by the 'Active Network'. The Active Network Partners are a group of over 13 academic institutions that have an interest in setting up their own law incubators, or are looking to benefit from the collective expertise of the Core Network in some other related way. After two years of operation, it is hoped that the iLINC Active Network will extend beyond 20 partners, thus providing a critical mass for capacity building. One of the key mechanisms of involving the Active Network partners is through two-day 'Best Practice Sharing' events, hosted at one of the Core Network Partner institutions. The current portfolio of Core and Active Network Partners is shown in Figure 3 below.

Figure 3: iLINC Network: Core and Active Partners



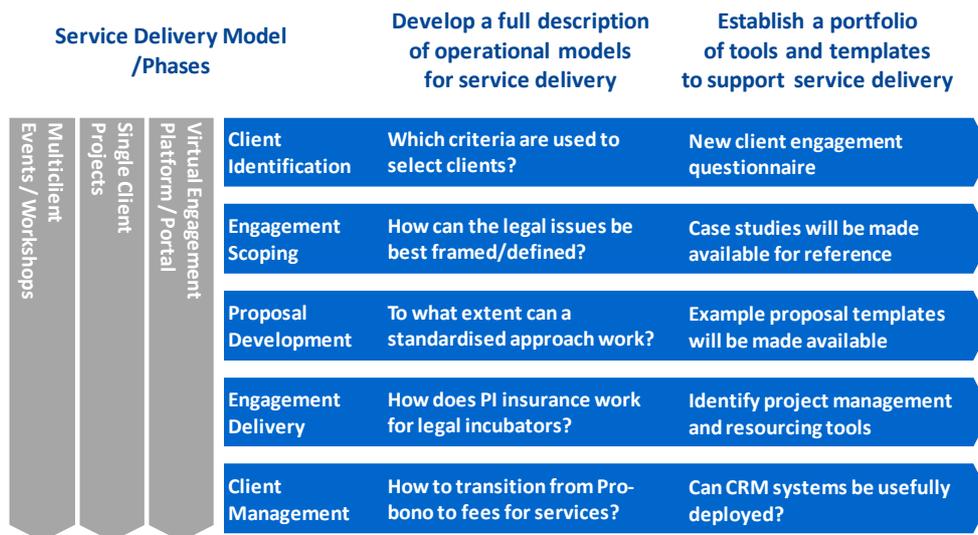
The iLINC Network also incorporates an 'Extended Network' of private and public sector, non-academic entities for whom some form of association with the Core/Active Network Partners is beneficial. Apart from client start-ups and entrepreneurs that benefit directly from the legal services provided, this includes service delivery partners in the private and public sectors e.g. professional law firms (for student supervision) or university technology transfer entities. There are also a range of further potential collaborators in the broader ICT innovation ecosystem such as investment and incubation organisations (e.g. Wayra which is also an EU-Hub partner).

10. iLINC: Establishing and Sharing Best Practices Incubators

Engaging postgraduate students from university-based law institutions to provide legal services to start-up companies is at a very early stage of development in Europe. To change this and to benefit fully from existing legal incubator model(s) currently in operation (both within and outside of Europe), the Core Network Partners are working to:

- Understand the legal requirements of start-ups and the appetite for working with university-based legal incubators;
- Develop full descriptions of operational models for service delivery and models for linking student project engagements to learning programmes (see example in Figure 4 below);
- Establish a portfolio of tools and templates to support links to learning;
- Build a library of case studies for project engagements.

Figure 4: iLINC Network: Service Delivery Models



The delivery of professional services covers a distinct set of value-adding activities that are common to all modes of service delivery:

- **Client Identification** – establishing and maintaining an ‘optimum’ client portfolio, target audience or group of participants.
- **Engagement Scoping** – defining the issues (and their scope) to be addressed during the engagement. This is also known as defining the ‘problem domain’.
- **Proposal Development** – describing how the issues will be addressed through the provision of services. In document form, the proposal often accompanies some form of commercial engagement contract.

- **Engagement Delivery** – the provision of the services and the resources/processes required.
- **Client Management** – managing client relationships is a vital aspect of professional service delivery. This also covers ‘support systems’ that are deployed to enhance client management.

Each legal incubator will be uniquely characterised by the way in which the value-adding activities are undertaken for each of the service delivery models. While there will of course be ‘good’ or ‘best’ practices, it is important to recognise that the institutional environment will determine the appropriate model.

Furthermore, clients will regularly engage with law incubators across all of the service delivery modes. This means that clients receiving bespoke legal advice (e.g. through a series of one-to-one advice sessions) are also likely to participate in multiple-client workshops and to make use of the legal resources from the portal.

11. iLINC: Performance Measurement

Similar to qLegal, Measuring the success of iLINC means assessing the extent to which participating start-up companies have benefited from the services it provides, and the extent to which postgraduate law students have benefited. Although, it is still early days for iLINC, each of the Core Partners is observing the following key performance indicators:

- The quality of legal advice provided and impact on business operation (e.g. improvement in IP management);
- The success of start-ups, in terms of both survival and growth rates, and assessed on a case-by-case basis through the use of specific metrics e.g. extent to which ability to secure funding has improved;
- The number and breadth of start-ups and other companies involved in the full portfolio of activities of qLegal and iLINC as a measure of impact on the broader business and innovation community (and the overall European legal incubation capacity);
- The quality of the learning experience provided (i.e. the perspective of the students and staff involved).

12. References

- [1] The term 'in-house clinic' is the standard term used by Roy Stuckey et al: Best Practices for Legal Education, 138-145 (2007);
http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf
- [2] The term 'incubator' has been used to describe those law-clinics that provide legal support, specifically to ICT start-ups and entrepreneurs. The use of the word 'incubator' serves to emphasise that the legal support is being provided at the early (incubation) stages in the overall development of the start-up.
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