

CMCPAC Beyond "No": How In-House Counsel Drive Smarter Business Outcomes

California Minority Counsel Program

Date & Time: Wednesday, March 11, 2026, 12:00 pm - 1:00 pm

Title: CMCPAC Beyond "No": How In-House Counsel Drive Smarter Business Outcomes

Description: Effective legal counsel isn't just about saying "no." This session focuses on how in-house lawyers can become trusted strategic partners by providing insightful, risk-calibrated advice early and often. Learn how to build influence and guide the business towards innovative and sustainable outcomes.

Panelists:

- Allen Lo, Deputy General Counsel at Meta
- Kerry McLean, Executive Vice President, General Counsel, & Corporate Secretary at Intuit, Inc.

Moderator:

- Katherine Tong, Product Counsel at Google DeepMind

CA MCLE credit: 1.0 hr (General Credit)

OUTLINE:

PART 1. INTRODUCTIONS AND SESSION OVERVIEW

Acknowledge that "Strategic Partner" is a cliché in legal panels. Today's goal is to break down *how* that actually happens when the technology (AI) moves faster than the law.

PART 2. THE "SEAT AT THE TABLE": SHIFTING FROM GATEKEEPER TO ARCHITECT

Explore how legal advice shapes the *product roadmap*, not just the terms of service.

Panel Questions:

1. The "Department of How" vs. "Department of No"
"There is an old trope that Legal is the 'Department of No.' In the age of AI, I'd argue we need to be the 'Department of How.' Can you share a specific 'War Story' where a product feature seemed legally impossible (too risky, too regulated), but your team found a creative architecture to make it viable?"
2. The Open Source Strategy
"Meta made a massive strategic pivot to open-source its AI models (Llama). That is a terrifying prospect for a traditional IP lawyer—giving away the 'crown jewels' and accepting decentralized risk. How did Legal help weigh that strategic risk? Did you have to fight your own instincts to support that business vision?"
3. The Accuracy Imperative
"Intuit is moving toward 'Agentic AI'—where the AI doesn't just draft an email, it might file taxes or move money. For a lawyer, an AI that takes action is a nightmare of liability. How are you advising product teams on the 'Human in the Loop'? At what point do you tell the business: 'The AI cannot be the final decision maker here'?"

PART 3. NAVIGATING THE "GREY AREAS": AI, ETHICS, & UNCERTAINTY

The law hasn't caught up to the tech. This is where strategic advisors earn their keep—by making judgment calls in the void.

Panel Questions:

1. Global Fragmentation
"You both operate globally. We are seeing a splintering of AI regulation (EU AI Act, US Executive Orders, Brazil, China). Tell us about a time when a regulatory constraint in one region actually forced you to innovate a better global product strategy. Did a constraint ever turn into a competitive advantage?"
2. The "News Headline" Test
Sometimes the law is on your side, but public sentiment isn't. Can you share an example where you had to advise the business to stop or alter a project not because it was illegal, but because it was 'lawful but awful'? How do you have that hard conversation with a product leader who just wants to ship?

PART 4. THE TALENT & CULTURE SHIFT

How the speakers are changing their own teams to adapt.

Panel Questions:

1. The Modern Legal Skillset:

"I'm seeing job descriptions for 'Prompt Engineers.' Do we need 'Legal Prompt Engineers'? When you look at your legal department today vs. 5 years ago, what is the #1 non-legal skill you are hiring for? Is it data fluency? Coding? EQ?"

2. Educating the Client:

"To be a strategic partner, your client (the business) has to know how to use you. What is one specific thing you've done to train your engineers or product managers to spot legal issues before they build the prototype? What worked and what failed?"

PART 5. CLOSING AND TAKEAWAYS

Panel Questions:

1. The "Crystal Ball" Question:

"Look 3 years into the future. AI agents are everywhere. What is the single biggest new legal role or function that will exist in your department that does not exist today?"

2. Final Actionable Advice:

"If everyone in this audience could go back to their office tomorrow and change one interaction they have with their business stakeholders to become more strategic, what should they do?"

ADDITIONAL SUBSTANTIVE LEGAL ANALYSIS AND PRACTICAL GUIDANCE

1. Legal Landscape for AI and Product Development

The global regulatory landscape for AI and product development is rapidly evolving, driven by divergent approaches in major jurisdictions like the EU and the US.

EU AI Act Risk Tiers

The EU AI Act employs a risk-based approach, categorizing AI systems into four tiers:

- **Unacceptable Risk:** Systems that pose a clear threat to fundamental rights (e.g., social scoring, indiscriminate surveillance) are banned outright.
- **High-Risk:** Systems used in sensitive areas such as critical infrastructure, law enforcement, education, employment, and as safety components of regulated

products. These face strict, comprehensive obligations regarding risk management, data governance, transparency, and human oversight.

- Limited Risk: Systems like chatbots are subject to specific transparency obligations, such as informing users they are interacting with AI and labeling deep fakes.
- Minimal Risk: Systems posing little to no risk (e.g., spam filters) are largely unregulated.

U.S. Regulatory Approach

The U.S. lacks a single, overarching federal AI law, resulting in a fragmented, sectoral, and often reactive framework.

- Federal Regulation primarily relies on adapting existing laws and utilizing voluntary standards like the NIST AI Risk Management Framework (RMF).
- State-Level Fragmentation: A proliferation of state laws (e.g., California, Colorado) addresses issues like algorithmic discrimination, deep fakes, and transparency, adding complexity for nationwide companies.

Product Liability Concerns

Liability for AI systems remains a complex and uncertain area.

- The EU Approach: The EU is moving towards stricter liability. The New Product Liability Directive (PLD) generally treats software and AI as a product subject to a strict liability regime.
- The US Debate: Traditional US tort law (negligence vs. product liability) is difficult to apply, as AI systems lack the uniformity and predictability of physical products. Some litigation and proposed federal legislation aim to classify AI as a product to clear the way for liability claims.

Governance Expectations for In-House Counsel

In-house counsel are expected to shift from a 'gatekeeper' role to a strategic 'architect' by proactively building flexible and robust internal governance and risk management frameworks that can adapt to divergent regulatory requirements.

2. Practical Legal Frameworks

Legal Risk vs. Reputational Risk

Legal advice must be calibrated holistically. In internal risk models, the potential for Reputational Impact and Ethical Impact can be weighted as more concerning than purely monetary loss or litigation risk. Understanding this distinction helps counsel align advice with the broader business mission and values.

“Lawful but Awful” Decision Making

This framework addresses the "News Headline" Test—situations where an action may be legally permissible, but is likely to cause significant public or ethical harm. Counsel must be prepared to advise the business to stop or alter a project when public sentiment or ethical concerns outweigh the technical legality.

Cross-Border Compliance Challenges

The divergence between global regulatory models (e.g., the EU's proactive, harmonized model versus the US's fragmented model) creates significant challenges. To ensure operational consistency and market access, multinational companies often adopt a 'highest common denominator' approach, designing products to meet the stricter EU standards globally (the 'Brussels Effect').

3. Practical Takeaways for In-House Counsel

- Engage product teams early: Shape the product roadmap from the conceptual stage, moving beyond reviewing only the final terms of service.
- Translate legal risk into business language: Frame legal advice in terms of business impact, such as product delays, researcher time, or reputational harm, rather than just stating 'no' or quoting statutes. Be the 'Department of How'.
- Build internal AI governance structures: Create flexible and robust internal processes to monitor legislative and judicial developments and ensure compliance across all operating jurisdictions.
- Educate engineers and product managers on legal checkpoints: Train business clients to spot legal issues before the prototype is built, making them better strategic partners for the legal team.

ADDITIONAL RESOURCES:

Lisa Lang, *In-House Counsel – More Than Just a Legal Advisor*, LinkedIn (May 18, 2020),

<https://www.linkedin.com/pulse/in-house-counsel-more-than-just-legal-advisor-lisa-lang/>.

Sterling Miller, *Dealing with Business Executives: A Primer for In-House Counsel*, Thomson Reuters Legal Blog (Sept. 3, 2025), available at:

<https://legal.thomsonreuters.com/blog/dealing-with-business-executives-a-primer-for-in-house-counsel/>

3 Steps to Becoming a More Influential In-House General Counsel, Axiom Law Blog (Jan. 2021), <https://www.axioplaw.com/blog/increasing-general-counsel-influence>.

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