



# Consumer Law Revolution

The Lawyer's Guide to Working  
with Online Marketing Tools

By  
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*This ebook contains excerpts from the book expected to be published by the ABA LPM in the summer of 2013. The full book contains a detailed discussion about the ethics issues involved in online lawyer advertising and collaboration with branded networks, a history of online lawyer advertising and regulation, case studies and interviews with legal technology companies, and an appendix of ABA and state-based ethics opinions and cases related to the topic.*

Some of the companies reviewed and/or interviewed for the full book include [Rocket Lawyer](#), [SmartLegalForms.com](#), [LawZam](#), [AttorneyFee.com](#), [LawGives](#), [Lexspot](#), [EagleFee](#), [Law99](#), [LegalSonar](#), [MyLegalBriefCase.com](#), [LawDingo](#), [UpCounsel](#), [LegalForce](#) (Trademarkia), [LawPivot](#), [LawGuru](#), [Fizzlaw](#), [LawQA](#), [Pearl.com](#) (formerly JustAnswer), [Virtual Law Direct](#), [Yodlelaw.com](#), [LegalReach](#), [Tabulaw](#), [ExpertHub](#), [LegalMatch](#), [MyLawSuit](#), [Jurify](#), [AttorneyBoost](#), [Mobilex Exchange](#), [Wirelawyer](#), [Lawyers](#), [Findlaw](#), [Nolo](#), [Total Attorney's](#), [Legal Leads](#), [Avvo](#) (and [Avvo ignite](#)), [myRight.me](#), [Justia](#), [JDSupra](#), [Docracy](#), [Shpoonkle](#), and [ExpertBids](#).

# CONTENTS

Introduction.....	4
What is the Consumer Law Revolution? .....	5
What is Lawyer Collaboration with a Branded Network?.....	7
The Lawyer Mindset.....	8
How Branded Networks Operate .....	10
The Basics.....	10
What are the Online Marketing Tools?.....	12
Working with Lawyer-Focused Companies .....	14
Online Directories.....	14
Online Lawyer Matching Services.....	16
Lawyer Review, Bidding and Fee Comparison Sites .....	16
Law Q&A/Law Related Public Chat Rooms and Forums .....	17
Direct Online Lead Generation for Lawyers .....	19
Legal Document and Form Sharing/Publication Sites.....	20
Direct Communication with Prospective Clients Through a Platform .....	20
Expert Systems.....	21
Best Practices for Collaboration with Online Marketing Companies.....	22
Understanding the Terms of the Collaboration.....	22
Disclaimers .....	24
Security of the Hosted Content.....	24
Using the Marketing Tool to Engage with the Public.....	25
Termination of the Collaboration.....	27
How does the company market directly to the consumers?.....	27
Combining Collaborative Methods.....	30
Closed Loop Marketing .....	31
Mobile Applications Used as Online Marketing Tools .....	32
Conclusion .....	34
About the Author .....	37



## INTRODUCTION

There is a revolution occurring in the delivery of legal services in the United States. Consumers in need of personal and business legal services are turning to the Internet to seek legal assistance. This should not come as a surprise. The public is going online for almost every other consumer need in their personal and professional lives. Instead of marketing legal services *to* the public, lawyers need to understand how to create a better *marketplace for* legal services.

Companies focused on the legal industry have identified this enormous unmet market need and are making strides to brand their reputations online as affordable and accessible solutions. These companies are developing technology platforms to deliver services directly to the public. They are also inviting lawyers to team up with them to deliver legal services online.

Speeding up consumer law revolution, the number of legal technology startups has grown rapidly. They are obtaining funding from major venture capitalists, gaining support of academic institutions and startup incubators, and entering into relationships with companies outside of the legal profession that have more experience in ecommerce. These startups are also testing the waters of lawyer regulation and ethics to find models of monetization that will sustain their growth.



More importantly, these companies are actively building their lawyer networks. They need licensed lawyers who recognize the change in the legal marketplace to join with them to serve the consumers seeking online legal services. The legal profession must learn to collaborate with nonlawyer legal service companies in order to meet the public's need for affordable and accessible online legal services.

Rather than attempt to compete with the online “branded networks” with million-dollar marketing budgets, innovative lawyers will understand how the consumer law revolution impacts the legal marketplace, their private practices, and their clients, and will learn to collaborate with these companies and their branded networks. As a form of lawyer advertising and client development, the use of online marketing tools has great potential to increase access to justice in our country for certain legal needs, as well as become a resource for

additional client development and revenue for many lawyers.

The purpose of this ebook is to introduce the different and evolving models of branded legal services networks and to review the different forms of online marketing tools they provide. Included in the full book is a background on online lawyer advertising with a discussion about

the underlying assumptions behind our existing restrictions on methods of advertising legal services. The full book also goes into the many ethical issues that may arise from the use of online marketing tools without the lawyer's attention to best practices. **This ebook will serve as a practical how-to manual with best practices for lawyers wishing to collaborate with branded networks to market their practice, deliver legal services to clients online, and for overall lawyer brand building and client development.**

## What is the Consumer Law Revolution?

In the past, clients have selected a lawyer based on reputation and standing in the community. Word of mouth and the recommendations of friends and family were the primary methods of selection. People were less mobile and their options were limited to the lawyers within driving distance and whose services they could afford. In small towns, most lawyers were general practitioners taking on a variety of different legal matters for clients because the opportunity to do so was readily available.

The affordability and accessibility of mobile technology, more specifically the Internet and cloud computing, have changed the commerce across every industry. The legal profession is no exception. Some law firms have been able to adapt by integrating online marketing tools into their traditional marketing strategies. Other firms have been shot down by their state's regulatory entities with fear-provoking ethics opinions or they have been deterred from experimenting with newer forms of online marketing because of the lack of any authoritative guidance regarding the use of these tools.<sup>1</sup>

Lawyers are clearly missing the boat in adopting online forms of communicating with the public. As of February 2012, forty-six percent of adults in the States are smartphones owners.<sup>2</sup> This percentage has increased by eleven percent since the year before.<sup>3</sup> Mobile data traffic internationally is expected to increase eighteen fold between 2011 and 2016.<sup>4</sup> One report states

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<sup>1</sup> In order to evolve as a profession, it is necessary to evaluate why the idea of changing advertising rules to fall more in sync with the realities of online marketing and consumer needs is so threatening to many in the profession and to understand the arguments behind these protests. What are the underlying assumptions upon which these rules were created and upon which objections to changing them are being made? How can lawyers compete with nonlawyer legal service companies in the coming years if they are unable to reach the public in ways that the public is seeking legal assistance? Without guidance and with the fear of running afoul of existing rules, will lawyers be able to effectively use new online marketing tools as they develop? While the full book discusses these questions, this ebook will move forward on the assumption that regardless of the resistance to change, lawyers are and will continue to collaborate with branded networks to deliver legal services online and to market their private practices.

<sup>2</sup> "Nearly half (46%) of American adults are smartphone owners as of February 2012, an increase of 11 percentage points over the 35% of Americans who owned a smartphone last May." Report from the Pew Internet and American Life Project "Nearly Half of All American Adults are Smart Phone Owners" by Aaron Smith <http://pewinternet.org/Reports/2012/Smartphone-Update-2012/Findings.aspx>

<sup>3</sup> Id.

<sup>4</sup> See Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2011–2016 at [http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white\\_paper\\_c11-520862.html](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.html)

that by the end of 2012, the number of mobile devices will surpass the number of individuals on earth.<sup>5</sup>

The increasing use of mobile technology and the Internet are not exclusive to the younger generation of the public sending text messages to their friends or posting on Facebook. Over half of all Americans over the age of 65 report using the Internet or email.<sup>6</sup> This indicates a significant change and acceptance in the form of communication for a significant percentage of the population. Individuals are using their devices to schedule events with others, solve a problem or answer a question for themselves or someone else, and make purchasing decisions among other things.<sup>7</sup>

The statistics from the ABA Tech Report when compared with other surveys taken about the public's use of the Internet and mobile technology, indicates a serious disconnect between the way that lawyers communicate with their clients and the way that clients are communicating with everyone else. Likewise, the Report suggests that lawyers in their personal lives may also conform to the rest of the public in their dependence upon the Internet to perform many of their daily personal tasks. As a legal profession, the lack of lawyers willing to communicate information with the public online regarding legal services cannot be helpful to increasing access to justice in our country.

The skills to use online communication with the public exist and the Report indicates that lawyers are familiar with some forms of online marketing tools, although largely those related to social networking sites. A lack of guidelines or best practices for interacting with the public and with nonlawyer legal service companies may be what holds many lawyers back as well as a perceived lack of return on investment from the use of the systems as client development tools.



In February of 2011, the American Bar Association's Standing Committee on the Delivery of Legal Services published the results of a public opinion poll that included statistics regarding the public's opinion on unbundled legal services, the main format of services delivered online.<sup>8</sup> The report noted that the primary method of locating a lawyer was handled by asking "a friend, family member or colleague" for a referral.<sup>9</sup> Only seven percent of individuals who responded to the poll reported searching online to find a lawyer.<sup>10</sup> But how does the public communicate with their friends and family and make these requests for referrals to lawyers? They ask for

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<sup>5</sup> *Id.*

<sup>6</sup> "As of April 2012, 53% of American adults age 65 and older use the internet or email. Though these adults are still less likely than all other age groups to use the internet, the latest data represent the first time that half of seniors are going online. After several years of very little growth among this group, these gains are significant." "Older adults and internet use" Jun 6, 2012 by Kathryn Zickuhr, Mary Madden the Pew Internet and American Life Project

<sup>7</sup> See "Just-in-time Information through Mobile Connections" by Lee Rainie and Susannah Fox from the Pew Internet and American Life Project, May 7, 2012, reporting that 62% of the adult population in America in one month will use a mobile device to perform a "just-in-time" activity, defined as an Internet-based, real-time activity.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 8.

<sup>10</sup> *Id.*

recommendation on Facebook, Twitter, Skype, over email or in an online forum where several of their friends are engaged at the same time and receive multiple suggestions. Their friends and family respond with a name and maybe a link to the lawyer's website.

When lawyers think about online marketing, they need to think of the Internet as the first resource for lawyer referrals for their prospective clients. Recent studies have indicated that mobile technology, in particular smartphones, is the primary way that Americans of all income levels are accessing the Internet.<sup>11</sup> Lawyers need to recognize that the Internet is the place where the majority of our communications are occurring rather than just a placeholder for a "real" location such as the lawyer's physical office space. Once this mindset is changed, the lawyer will have a better chance at understanding and adopting productive online methods of marketing his or her services.

Online marketing should not be considered a distasteful practice by lawyers if it is conducted as part of a larger conversation with the public about legal services. For a law firm, advertising legal services is necessary to operate a successful business. A law practice is first and foremost a business or it cannot keep its doors open to provide services to clients. "Closing on leads" is not a tacky or unprofessional term; it is the way that any lawyer obtains paying clients.

Market forces are making it necessary to reevaluate long held assumptions in the professional community about how we hold ourselves out to the public but also about how the public actually seeks assistance for their legal needs. Numerous other industries, including those that are professional, have adapted to changes in the marketplace and the increased globalization and Internet-based economy. Concepts of online marketing in the legal profession need to be reconsidered for the benefit of our profession as well as the public who depend on our services. This ebook will provide a starting point. Below are the ethics issues to be aware of and the basic best practices for the lawyer to engage in collaboration with branded networks.

## **What is Lawyer Collaboration with a Branded Network?**

A branded network is a company that has created a single brand around their products and services which are marketed direct to the consumer (often abbreviated as "D2C"). In the case of legal services, these branded networks are providing legal forms and documents through document automation and assembly programs and various other delivery methods. These branded networks invite lawyers to join them in order to provide consumers with access to a licensed lawyer and to generate content for the company's website. The branded network receives the benefit of the association with licensed lawyers and the lawyer receives the benefit of having their name and brand extended to a larger pool of potential clients. Because these companies have marketing budgets that far exceed those of most law firms, they are able to build online brand recognition that drives consumers seeking legal services online to their company's website. Lawyers cannot compete with the online reach and marketing power of a branded network.

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<sup>11</sup> See *Survey: New U.S. Smartphone Growth by Age and Income*, Nielsen Wire, February 2012, <http://blog.nielsen.com/nielsenwire/?p=30950> (last accessed July 28, 2012).

What are the online marketing tools these branded networks provide to lawyers who collaborate with them? Online marketing tools are cloud-based technology services produced by these branded networks which allow a lawyer to market services or products through a number of different techniques. Some of these include the following:

- direct contact with consumers seeking a specific need through online forums or question and answer sites,
- hosting online profiles with contact information,
- hosting and sharing content,
- online brand building,
- providing a secure online communication space,
- providing video conferencing tools,
- hosting document automation and assembly systems and document libraries,
- integrating expert systems to advise decision making, and
- matching services to connect the user to a consumer.

One well-known example of an online marketing tool is Rocket Lawyer, a company interviewed as a case study in the full book. Lawyers enter into a relationship with Rocket Lawyer when they subscribe to join the network. Consumers enter into a relationship with Rocket Lawyer when they choose to purchase one of the Rocket Lawyer legal forms online. Rocket Lawyer also provides methods of connecting the lawyers in its network to the consumers who have additional legal questions or require services that go beyond the scope of the legal forms and documents it provides. Lawyers who join up with one of these networks receive the exposition to the consumers who are drawn to the company's website and may also use the services of the company to list their law firm website and services on a profile page as well as post content that increases the lawyer's online presence and thus, the potential to increase traffic to the lawyer's business. The lawyer is using the services provided by the company to engage with the prospective client about legal services in some form. In most cases, this is simply to provide general legal advice and guidance online. In other cases it includes the initiation of the lawyer-client relationship and delivery of limited scope legal services online through the company's platform. Yet in other cases, the company's platform is used to transfer the relationship offline for the lawyer to provide full service representation. Throughout the process of engaging with prospective clients online, the lawyer's profile is being exposed to additional prospective clients as a result of the company's direct-to-consumer marketing strategies.

There are many variations on this model as the online technology used to deliver different forms of legal services evolves. The author has profiled many of the different tools from both the consumer side and the lawyer side of the process. These reviews and case studies are included in the full book.

## **The Lawyer Mindset**

Before you begin a conversation with anyone, especially someone you would like to work with, gathering basic information about who they are is important. To start out, this means understanding a few basics about how that person prefers to communicate. The Internet has greatly simplified this process. People gravitate toward online mediums in which they feel most

comfortable sharing information with friends and family. How do lawyers tactfully and ethically enter into that conversation? They remember the human connection. People share information with individuals when they know that the person experiences the same issues in life as he or she does, such as births, deaths, marriage, work experiences, and stress. It is the commonalities we have as human beings that makes us able to engage in initial conversation with each other.

To find out from the public exactly what they want from the legal profession, the help they need, the services they require, and the methods of delivery they prefer, requires online listening skills. Lawyers will need to listen to the needs of the local communities they serve. How does a lawyer listen and up a dialogue with the public when the legal profession has been so closed off for so long? Go online. Find the tools to communicate. Start mingling, listening and find small ways to interact, show concern for the lives and interests of your prospective clients and above all, be human. Nothing shows up more clearly online than insincerity and inauthentic behavior and statements. Lawyers should not be online opening selling your law practice or yourself. First, be online to learn from peers who are engaged with the public online and to better understand and work with your prospective clients in this environment.

Lawyers who begin listening and engaging with the public online will learn that there is an etiquette that applies to engaging with prospective clients over the Internet and it involves the willingness to share information as well as listen. Lawyer collaboration with branded networks that are already engaged in the dialogue with the public is a significant step in this process. It may help lawyers to enter into the dialogue and influence the quality and direction of online legal service delivery.

# HOW BRANDED NETWORKS OPERATE

## The Basics

With the increase in lawyer mobility and mobility with the public in general, the methods of selecting a lawyer to work with have changed dramatically over the past ten years. Accordingly, methods of marketing across industries has had to quickly adapt. The most popular form of marketing online is called “inbound marketing.”<sup>12</sup> This form of marketing focuses on the content that is provided by the business to the consumer. The business strives to be approachable, accessible, provide useful, related content and thus earn the trust of the consumer visiting the website. Branded legal services networks aim to provide this.

A key component of inbound marketing success is the constant analysis and readjustment of the business owner’s methods of providing valuable content to generate prospective paying customers. Along with this method comes the acceptance that consumers are more empowered to educate themselves online and will be conducting research and reviews before making the decision to purchase a product or service. Accordingly, the business may focus its time and money in sales on the end of the purchasing process rather than on selling a product or service before the consumer even knows they need or want it. In theory, this raises the efficiency of the company’s marketing.

Marketing is a method that involves the use of different forms of advertising to create a brand for a business or individual. This brand is a positive, recognizable image and/or reputation intended to attract prospective, paying customers to the services of that business. In marketing terms, prospective customers are called “leads.” Lawyers need to become more comfortable with the terminology of current marketing and may wish to refer to prospective clients as “leads” when establishing an online marketing strategy.

There are different stages of leads that come in through a marketing strategy. There are cold leads, warm leads, hot leads and some that shift back and forth. A cold lead is an individual seeking services online, but he or she is not certain about exactly what services he or she needs or even about whether there is an actual need for services in the first place. A warm lead is an individual who recognizes that he or she has a need, but is not sure how to fulfill that and is engaged in the educational process of figuring this out. A hot lead is an individual who has identified that they have a need and they have a clear intention of how to obtain assistance to meet that need.

A “quality” lead is a lead that has a good chance of being converted from a prospect into a paying client. At all stages, leads may be empowered by various tools provided free of charge on

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<sup>12</sup> See also Seth Godin’s book “*Permission Marketing: turning strangers into friends, and friends into customers.*” New York: Simon & Schuster (1999) which expounds on the inbound marketing model.

the Internet. These tools may or may not provide correct assistance in identifying a need or getting that individual to the correct place to have those needs met, but the average consumer has become well-versed in how to locate and use these online tools.

Leads come to the branded network site through general online traffic. Traffic is the term for the individuals that land on your website when surfing the Internet. Traffic flows through a website and these views or “hits” may stay on a page for a specific amount time, follow other links on the page or jump to a completely new site. Traffic comes through a variety of methods: direct links to the website from an entered URL, from a link on another website or directory, from a search engine result linking to the page, among other methods. Leads must also to be nurtured and managed. This means keeping track of leads at different stages and nurturing them from a cold lead into a warm lead and into a paying client.



Lawyers wishing to understand how online marketing tools operate within the scope of the larger online advertising industry should be familiar with the above basic terminology and process. More importantly, they should understand how these concepts may be applied to their own marketing strategies within the restrictions of lawyer rules for advertising.

A successful business is one that has developed a fluid business plan that adapts its marketing strategies to the changes in the marketplace for that business. A law practice should be no different. Marketing strategies are detailed plans for how a firm is going to establish its reputation and brand within the jurisdiction(s) where it desires to conduct its client development. A complete marketing strategy would include traditional advertising methods and in-person networking as well as the collaboration with branded networks and use of online marketing tools and techniques.

A law firm website has become a standard for lawyer advertising, much as twenty years ago, it was almost a necessity for a law firm to take out a print ad in the Yellow Pages directory in order for prospective clients to find them. Today, if a law firm does not have a website, it is unlikely that they “exist” for the majority of the public that goes online searching for a lawyer.

Unfortunately, most law firms are still using websites as only placeholders on the Internet. They assume that having a website means they are “online.” Having a static website does not make a law firm part of the Internet community. For the most part, the public does not care about the esteemed history of the firm detailed on the homepage as much as it cares about whether the lawyers working there can get the job done that they need. This ebook will not focus on websites or blogging. ***For the purposes of collaborating with branded networks, the website and blog are just the beginning of a larger conversation that the firm needs to start with the public.***

## What are the Online Marketing Tools?

There are two different categories of online marketing tools provided by branded networks. There are those that are intended for direct client development and there are those intended to build referral networks with other lawyers and professionals. Within those two categories there are online marketing tools that are specifically law-related which means that only licensed lawyers are able or at least intended to be the primary ones using them and those methods that are available to anyone in the public to use for online marketing purposes.

Many of these branded networks are combining services and products so that they do not fit neatly into any single category of online marketing tool. However, here are certain features that most of these companies have in common. These include basic geography and practice area based lawyer directories and Q & A services to their sites. The addition of these components assists the company in its direct-to-consumer online marketing efforts by providing content that raises the SEO for the company's website. This means that the more valuable content the lawyers provide in the Q & A forum and the more listings the company can collect, the higher their name will fall in a search conducted online by a prospective client seeking legal services. This is just one part of their marketing efforts to pull in prospective leads which may be funneled to the lawyers with whom they collaborate. Additionally, the structures of lawyer collaboration with these platforms may change as the companies develop additional strategies for growth based on consumer and lawyer feedback.

*Many of the companies and legal technology start-ups reviewed for this ebook and the full book may not be around in another year or two. This is the nature of the cloud-based business industry. Entrepreneurs in this area either fail to scale their models for lack of adequate funding or planning or they are acquired by larger companies and integrated into other services. However, each of the models of delivery discussed below are variations on the same theme. Lawyers would benefit from understanding the different models and evolution in this industry, both successes and failures, as they evaluate which companies to use for online marketing purposes.*

### 1. What's Happening Behind the Scenes?

Most cloud-based companies collect and analyze the activity of visitors to their website. This includes both the actions taken by the public seeking legal assistance online through the site and the lawyers who register for the services provided by the company. This data may be used by the company to improve their site design and SEO and LPO practices, by telling them how long visitors stay on a site and which links they follow or items they download. The information may be used to assist them in creating marketing campaigns that generate additional traffic to their website and ultimately to the lawyers who have joined their network. Most of these companies

have finely-tuned their skills at using analytic tools and will adjust their marketing to the consumer on a regular basis based on the results and changes to search engine algorithms that might affect existing campaigns.

The company may also use collected site usage data as a way to provide a report to the lawyer regarding the number of views of the lawyer's profile or contact information. This information might then be used as a basis for the advertising fee arrangement between the lawyer and company. For example, pay-per-lead services for lawyers, discussed more in the full book, will store the user's content in its database in the event that the lawyer disputes that a lead was converted to a paying client. The company may need to recall that data to resolve the lawyer's dispute over payment for advertising fees for the lead generation service. The data collected by the company from a prospective client of the lawyer, which typically includes basic contact information and a description of a client's legal matter, may remain in the company's databases.

It is also worth noting that the existing collaboration of lawyers with these companies is often based more in one state or region than equally distributed across the country. Typically, these companies will gather lawyer participation from their local legal community and then expand outward. For this reason, there is a disproportionate number of lawyers based in California listed as part of these networks because California is where a number of the legal technology startups are based. Accordingly, lawyers in some states may not be able to participate until the company is ready to build out the platform to meet the needs of lawyers and consumers in that location. This also means that the company may be placing more of its marketing energy on the generation of leads to those larger networks of lawyers that it has rather than focusing on the smaller cities for targeted marketing.

## WORKING WITH LAWYER-FOCUSED COMPANIES

Lawyers may choose to work with companies that market their services online directly to consumers who are seeking legal services or those that appeal to the general public searching online for products and services across multiple industries and professions. Many companies that are focused on providing legal services or information to the public will have fine-tuned their marketing skills to define the target demographics for the legal products and services they are offering. They know the keywords to use in online marketing campaigns and the questions to ask of consumers that will identify a “warm” lead for services from a “cold” lead before pushing them on to their lawyer network. Working with these companies has the advantage of connecting the lawyer directly with consumers seeking legal services and in many cases with direct leads ready to be converted to paying clients. These companies are used to working with lawyers and in many cases are founded and managed by lawyers themselves.



Every website the author reviewed contained disclaimers and terms of service for the public regarding the content of the company site and services provided. Most of these companies had separate terms of use for the lawyers wishing to join their network and others combined the terms of use into a single document for both consumers and the lawyer network. Companies not focused on delivering legal services or matching consumers with lawyers do not contain the same provisions in their disclaimers that relate to the establishment of the lawyer-client relationship and other potential ethical issues of online advertising. Accordingly, for both reasons of maximizing potential marketing impact and using systems in compliance with professional rules of conduct, lawyers may wish to focus their use of online marketing tools on those companies which are focused on reaching out to consumers seeking legal services online.

### Online Directories

There are dozens of online directories listing contact information for lawyers. Some of the more recognized lawyer directories include LexisNexis' Lawyers.com, Findlaw, Nolo and Justia.<sup>13</sup> These directories are typically free for the public to use without registration on the site and are searchable by state and practice area. Lawyers may add their information to one of these directories, but depending on the company, there may be different levels of membership. A lawyer may be asked to provide a one-time membership fee to the company to have a more detailed profile listed that includes additional contact information or a law firm logo. This

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<sup>13</sup> LexisNexis' Lawyers.com at [www.lawyers.com/](http://www.lawyers.com/); Nolo at [www.nolo.com/lawyers](http://www.nolo.com/lawyers); Findlaw at [lawyers.findlaw.com/](http://lawyers.findlaw.com/); and Justia at <http://lawyers.justia.com/>.

enhanced membership in the directory comes with the promise that more prospective clients would select that lawyer over a lawyer with only the free, basic listing. Other directories will charge for premium membership listings that will bump the lawyer's profile up to the top so that it is highlighted above the rest when a prospective client runs a search in the lawyer's jurisdiction or practice area.

Many online directories that have developed enough to contain a significant number of lawyers in each jurisdiction will allow an individual searching through the directory to limit their matches based on zip code. This is unfortunate for lawyer with virtual law practices who deliver legal services online across jurisdictions and who are not limited to specific zip codes to work with clients. However, it benefits the company because by using this method, they are able to charge lawyers for listings in specific zip codes and tailor the price for the listing based on the popularity of that zip code. For example, if a lawyer who lives outside Chicago wants to have his local zip code but also the larger Chicago-area zip code listed, he or she must pay for two listings rather than a single Illinois-wide listing in the directory. For a lawyer who deliveries legal services online or who wants to expand his or her prospective client base across a jurisdiction, the use of an online directory for advertising, other than with free, basic listings, may not be the most cost-effective method.

Some online legal directories that are not backed by reputable companies will actually collect information from other sites and state bars to populate their database with free listings that include the law firm and individual lawyer's information. The company hopes that the lawyer will approve the listing and then will use that opportunity to sell the lawyer other services, such as premium listings on the site, or attempt to engage the lawyer to provide answers to the public in a legal question and answer forum. Q & A sites as marketing tools are discussed in more detail below.

These are some of the reasons that it is critical for lawyers to monitor their online presence and be aware of which sites may have created free online profiles for them without their knowledge or consent based on free information the company found online. One reason why this may pose a danger to the law firm is because the listing may provide the public with the chance to rate or review the lawyer or it may provide outdated contact information or if the company does not have good security, it may be possible for someone else to "claim" this profile and provide false information.

At its core, the use of an online directory is no different than in the past when a law firm would purchase a Yellow Pages print advertisement and the lawyer who invested the most would have the ad that was featured on the back cover of the book or that stood out the most in size or graphics under their listed practice area. Similarly, the law firms that will stand out to the public searching online in these directories are the firms that have paid top-dollar to the companies to be listed at the top of their zip code. Additionally, some of the more well-known online directories will not publicize that they provide free online listings. Lawyers may have to directly contact one of the company's sales representatives and request this option. Acquiring a large number of accurate and updated listings is important for the directory, but many will first attempt to charge you for a more detailed online listing that you may not need.

The companies that own these directories almost always own them in addition to another service that they are selling either directly to the consumer or to lawyers. For example, companies without a well-known reputation in the legal profession may be generating revenue from the ads that appear on the directory's pages. With some of the listings, they may also promise the lawyer that a premium listing will result in a number of prospective clients directly contacting the lawyer via email that is sent through their site to the email address that the lawyer has provided to the directory. The directory may keep a list of the number of direct contacts sent to the lawyer from their system and use those statistics to justify the cost of the premium listing service. However, as with any such system, the lawyer is going to be responsible for the conversion of that lead into a full-paying client. In some cases, if the company's service does not provide a more specific lead intake process, the individual contacting the lawyer may simply be attempting to get free legal advice from the lawyer or is seeking general information rather than actually wanting to retain a lawyer for a legal need. A lawyer using directories for the purpose of online lead generation as an online marketing tool would be better off finding a form of referral service or a direct lead-generation advertising service.

## **Online Lawyer Matching Services**

What is the difference between an online lawyer directory and a lawyer "matching" system? Some online directories enable the public to select their lawyer from any number of lawyers listed in the directory. As discussed above, searches are primarily focused on jurisdiction and practice area. However, other companies have been developing more robust matching process that allows prospective clients to select a lawyer in the company's network using a more intelligent system. These tools range from algorithms designed by the company to narrow in on the individual's legal need and lawyer who best fits the bill to tools that rely on the interactive contributions of the individual with the network to find the lawyer appropriate to solve the legal need. Other systems are creating unique communities of lawyers within their networks to work with specific groups of prospective clients.

Results to consumers who use the systems provided by the company may be displayed instantly on the website, provided on a secure account page for the consumer, or emailed to them as a report. The information provided may include anything from simple contact information for the lawyer, to a detailed profile, photographs, links and other legal guidance, fee listing and even competitive lawyers in that practice area and geographic location.

## **Lawyer Review, Bidding and Fee Comparison Sites**

Online review and rating mechanisms have become an Internet standard; it is the current method of sharing and expressing our opinions about products and services. Most individuals have learned how to filter out the messages conveyed through overt marketing efforts and hard selling tactics. The most productive marketing campaigns on the Internet tend to be ones that are fan-created, homemade, go viral on YouTube or entertain the viewer in some way. When an advertisement does not provide entertaining or useful content, we have learned to filter it out and only see it as the busy graphics contained in the sidebars, in the peripheral vision of the website content we actually want to be viewing online. If the public does not trust the advertisements

and ignores most of them, how do they filter out the products and services to find what they are actively seeking online?

Before entering the marketplace to shop, most of us turn to review sites or rankings to let us know whether the product or service is worth our time and money. These reviews and rating mechanisms are found both as standalone website services, such as Yelp!, and imbedded in other company platforms, such as reviews in Amazon or the “Like” button on a company Facebook page. Individuals seeking legal services without the benefit of a recommendation from a family member or friend, may take the same approach to filtering out the best options for legal service delivery. Several companies have developed business models that assist the public in comparing their options for retaining a lawyer. While some are focused on lawyer reviews and rankings, such as the AVVO model discussed above, others have taken a different approach by inviting the public to present their legal needs and have lawyers bid on working with that client. Other companies invite lawyers to showcase their legal fees for prospective clients to make comparisons and select based on price and rankings.

Consumers have become used to selecting products and services from comparison websites and mobile applications, such as Google Shopper, Decide.com, Price Check by Amazon, and Consumer Reports Mobile Shopper.<sup>14</sup> These services supplement the recommendations from family and friends or provide solutions to needs when the consumer has no existing knowledge to base his or her decision upon. The focus of these comparison sites is the price of the product or service. Ratings and reviews are mixed into the comparisons, but the price appears to be the motivating factor for use. Popular rating and review sites, such as Angie’s List which claims to have more than 1.5 million members, does not include legal services in its listings.<sup>15</sup> Consumers who are used to using similar services before making a purchasing decision may look for alternatives that will guide them on the selection of a lawyer. Accordingly, there are many companies that have sprung up to address this market need and provide a combination of rating and review services with different comparison and bidding models.

## **Law Q&A/Law Related Public Chat Rooms and Forums**

Many of the companies reviewed in this book rely on lawyer-generated content for their success. Lawyers may be invited to respond to the public’s questions related to the law through online forums or question and answer platforms. Depending on the company, the public has the ability to view all of the content from these services and use different filtering or searching functions. Typically, the consumer may filter the public responses by jurisdiction and practice area. The quality of this service depends on whether or not the company verifies that the lawyer providing the content is in fact a licensed lawyer in good standing in the jurisdiction where he or she posts questions on the website pertaining to that state(s)’ laws.



Public online forums, websites, and chat rooms where the lawyer would be providing expert responses that may be

<sup>14</sup> See Google Shopper at <http://www.google.com/mobile/shopper/>, Decide.com at <https://www.decide.com/> Price Check by Amazon at <http://tinyurl.com/99r2xac>, and Consumer Reports Mobile Shopper at <http://tinyurl.com/9bo987y>.

<sup>15</sup> See Angie’s List at <http://www.angieslist.com/quicktour.aspx?cid=13231>.

reviewed by the public raises many different ethics red flags, including unauthorized practice of law in other jurisdictions and duties to prospective clients among other issues discussed in the ethics chapter of the full book. Several state bars have issued opinions on the subject of providing online legal advice and concluded if the lawyer's intention is to avoid forming the lawyer/client relationship, he or she must avoid specifically addressing any single prospective client's questions and instead limit the communication to posting online only items that cover general legal issues that are educational in nature.<sup>16</sup>

It is impossible for the company and the profession to control how the public takes this free legal information and applies it to their individual circumstances. Unless there is a system in place which funnels the user to viewing only responses pertaining to the jurisdiction of their legal matter, there is the possibility that the individual will take the incorrect guidance from a lawyer posting about a state's laws which do not apply to their legal need. While some online tools are becoming more adept at identifying legal needs and matching lawyers with consumers, the existing technology may only go so far to provide suggestions. An individual lawyer's analysis of the legal matter is still required on a case by case basis in situations where the legal need goes beyond basic legal education and assistance. Consumers often visit Q & A sites because their matter cannot be solved through one of the online legal service delivery options that systematizes and packages the delivery of common legal matters, such as estate planning, no-contest divorces or small business set-ups. Consumers may also visit Q & A sites because their legal matter involves an emotional or stressful issue for them and posting this information and seeking assistance may be a therapeutic process as much as the hope that they will receive the needed guidance. For these reasons and more which are discussed in the chapter discussing ethics in the full book, legal question and answer services offered by nonlawyer legal service companies should be approached with caution and best practices should be observed.

Companies have tied the question and answer format into the services where they provide consumers with paid-for legal documents or simply use the content to increase the SEO for the advertising revenue generated by the company's website. Lawyers may be rewarded for participation with rankings or labels associated with the number of questions the lawyer answered. Lawyers providing content for these sections of the site should understand that while there is the possibility for their responses to generate leads through the system or to improve their profile ranking, they are essentially providing free content to the Company with little guaranteed return on investment. Most of the terms of service for legal question and answer sites state that the content provided by the lawyer to the system becomes the sole property of that company granting them rights to use, reproduce, edit, modify, sell, distribute, etc. the content in any form. Considering the value of the lawyer's expertise, time spent generating thoughtful responses to prospective clients might better be spent generating content for repurposing on the lawyer's own website or blog, or turned into whitepapers or presentations which might be provided to prospective clients online or through other online document sharing sites, such as JDSupra.

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<sup>16</sup> See for example, D.C. Bar Legal Ethics Comm., Op. 316, (2002), [http://www.dcbbar.org/for\\_lawyers/ethics/legal\\_ethics/opinions/opinion316.cfm](http://www.dcbbar.org/for_lawyers/ethics/legal_ethics/opinions/opinion316.cfm) (accessed February 4, 2011); State Bar of Ariz., Formal Ethics Op. 97-04 (1997) <http://www.myazbar.org/Ethics/opinionview.cfm?id=480> (accessed February 4, 2011); Ass'n of the Bar of the City of New York, Comm. on Prof'l and Judicial Ethics, Formal Op. 1998-2 (1998) <http://www.abcnyc.org/Ethics/eth1998-2.htm> (accessed February 4, 2011).



so that they are attracting traffic to landing pages with legal education and content that appeals to the prospective clients the company's lawyers want channeled to them.

Furthermore, some of these companies will provide some exclusivity in the delivery of leads to the lawyers. This means the company may only allow a limited number of lawyers in their network that may provide services within a particular jurisdiction or zip code. This ensures that the lawyers in their network are receiving quality leads rather than having to share those leads among a large number of lawyers on a rotating basis or leaving the selection of choosing a lawyer from a list up to the consumer. Some of these services will use live call centers to vet the consumer's need for legal services before sending them to a lawyer in the network. Other companies will use a combination of a live call center service along with an online form designed to determine how ready the consumer is to purchase legal services and whether one of their lawyers is capable of and willing to handle that matter on the budget and in the time frame requested by the lead.

## **Legal Document and Form Sharing/Publication Sites**

Several of the companies discussed in the full book provide lawyer members with the opportunity to contribute content to the website in the form of articles, blog posts, and legal forms. In exchange, lawyers who contribute to the sites are able to provide the public with information about their practice and additional contact information.

## **Direct Communication with Prospective Clients Through a Platform**

Some online marketing companies go a step further in the process of connecting the lawyer to the prospective client. These companies are providing additional cloud-based platforms to allow for online delivery of legal services in addition to the potential to meet with the lawyer in-person. Lawyers collaborating with these companies must not only be aware of compliance with lawyer advertising rules and regulations, but must also be aware of ethics issues that come up in online delivery, such as the establishment of the lawyer-client relationship online and defining the scope of representation.<sup>18</sup> Video conferencing, real-time chat, and virtual law office platforms set this category of online marketing companies apart from the others listed above. These companies may also integrate legal question and answer sites, lawyer listings, or directories with profiles and showcase content provided by lawyers in the network. However, the real value to these companies is their ability to increase the conversion rate of the warm lead generated by the system into a paying client for the lawyer. For the consumer, the value of these companies rests on their use of technology, such as online conferencing tools or document automation and assembly platforms, to deliver the legal assistance.

This model may also raise some unique ethics questions with regard to the hosting and ownership of the confidential data entered into the system by the consumer. As discussed more in the full book and below in the best practices section, a lawyer using these systems must clearly understand the process the consumer goes through when transferring from working with the

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<sup>18</sup> Lawyers interested in learning more about the ethics issues involved in the online delivery of legal services, may wish to read the author's book [Virtual Law Practice: How to Deliver Legal Services Online, ABA LPM 2010](#).

company over to the lawyer and at what point and through what process is the establishment of the lawyer-client relationship occurring online through that platform.

## **Expert Systems**

The use of expert systems in online marketing tools may be the future of matching lawyers with consumers seeking legal services when combined with platforms for online delivery. The technology serves the purpose of educating the consumer on a legal need while at the same time identifying the client's specific legal needs and increasing the probability that the lawyer he or she is connected to through the platform is the most qualified to handle the specific situation. The systems may also be used to assist the lawyers using the platform by handling the bulk of the initial intake process and even providing decisions-based reporting to advise the lawyer on the best course of action to take with that legal matter. Both laws, legal reasoning and expertise may be captured by these systems.

The Access to Justice Author (A2J Author) sponsored by the Chicago Kent College of Law and the Center for Computer-Assisted Legal Instruction ("CALI") is one of the most well-known web advisors developed for the self-help individual to walk them through different legal matters.<sup>19</sup> While this technology serves the pro bono community, expert systems and advisors are being developed for use as marketing tools for private law practices.

For example, data including the processes and outcomes from multiple legal cases pertaining to a single law or statute might be compiled into an expert system. A user entering his or her own data set into the system would contribute another case to the system for the benefit of the entire program, but also generate for that user a suggested course of action based on the outcomes that occurred in previous, similar fact sets. As the user goes through the process, they are educated on each facet of the legal issue as they are prompted to provide responses.

Now imagine a powerful tool like this incorporated into an online marketing platform. Consumers who begin this walkthrough process are more likely to continue to complete it because of the handholding and guidance it provides along the way and because there would be no waiting for a lawyer to schedule a time for a consultation or a middle-man process, such as a call center or receptionist, in-between the user and his or her access to legal assistance. Such services as real-time chat or video could be added to an expert system to provide human assistance through the process, but the appeal for marketing purposes would be the immediate ability to get a quality legal response. Lawyers who were part of a network connected to these systems would receive the recommendations from the tool along with leads who are educated on their needs and ready to retain their services whether those are taken offline at that point or the report and client are pushed to an online platform provided by the online marketing company.

***The full book contains an additional section about working with non-legal services focused online marketing tools, such as advertising through search engines (ex., Google AdWords), directories and question and answer sites (ex. Quora or Craig's List), and other social media marketing platforms.***

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<sup>19</sup> See the Chicago-Kent College of Law Center for Access to Justice and Technology at <http://www.kentlaw.edu/cajt/>.

## **BEST PRACTICES FOR COLLABORATION WITH ONLINE MARKETING COMPANIES**

Once a lawyer has decided to create a marketing strategy that incorporates the use of one or more online marketing tools, he or she must adhere to best practices for the use of those methods. This will involve keeping up to date with the state bar rules of professional conduct and ethics opinions which may provide guidance. In 2003, the ABA Elawyering Task Force, ABA Law Practice Management Section and ABA Standing Committee on the Delivery of Legal Services published a Best Practice Guidelines for Legal Information Web Site Providers.<sup>20</sup> These best practices apply to individual lawyers as well as companies marketing legal services directly to consumers online.

Aside from these Best Practice Guidelines, with many of these online marketing methods, there may be no specific published guidance for lawyers about maintaining and communicating with the public through these tools. The ABA's Law Practice Management Section's eLawyering Task Force is in the process of drafting another set of best practices for online legal document providers which may provide additional guidance for the companies providing this service and the lawyers who use it. This section will review best practices for the lawyer from the beginning of the collaboration process to the termination of the lawyer's relationship with the online marketing company.

### **Understanding the Terms of the Collaboration**

Before signing up to use an online marketing tool, the lawyer should review the user agreement for the company. The name used for this agreement differs across companies and is sometimes called "terms of use," "terms of service," "user agreement", "terms and conditions" and often incorporates a privacy policy. Some companies will have separate user agreements for the consumer and lawyer using their system. Other companies will separate out the terms pertaining to their lawyer users within a single user agreement written for both the consumers and the lawyers. Most of these companies provide a link to the agreement at the bottom of their website. Almost all of the companies require that the user click to accept the agreement as part of a clickwrap agreement found in the registration process for the website.



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<sup>20</sup> See ABA Elawyering Task Force, ABA Law Practice Management Section and ABA Standing Committee On the Delivery of Legal Services published Best Practice Guidelines for Legal Information Web Site Providers at [http://www.americanbar.org/groups/law\\_practice\\_management/committees/elawyering-best-practices.html](http://www.americanbar.org/groups/law_practice_management/committees/elawyering-best-practices.html)

The terms of these agreements tend to be standard and are typically not negotiable with the company. If the lawyer does not agree with the terms, he or she will have a difficult time getting the company to alter them for a single lawyer or law firm. It is important for the lawyer to ensure that the practices used by the company are in no way misleading to the prospective client. A lawyer should not engage in collaboration with a company that misleads the public about the services it provides or engages in any other practices that violate the lawyer's duties under the Rules of Professional Conduct. One of the best ways to verify the company's practices is through a review of the terms of its user agreement. A user agreement should be easily accessible to the public and the lawyer at all time on the company's website.

Lawyers reviewing the user agreement should look for the following provisions:

- A disclaimer regarding the website content as not constituting legal advice.
- A statement that no lawyer-client relationship is formed through the individual's submission of a legal question, request for legal services, purchasing legal form or document or use of any other feature on the website.
- Suggestions that the individual conduct his or her own research to determine the expertise, education, licensure and good standing of any legal professional collaborating with the company.
- Some terms of use will actually link out to resources where the individual may find the links to state bar membership directories to confirm licensure and good standing of the lawyer he or she might retain online through the system.
- A provision that states that the company is not a referral service and that no fee sharing is involved in the process.
- The company will claim that it will not recommend, endorse or quality any specific lawyer and that the choice must be made by the individual user.
- A statement that the company makes no direct assessment of a legal need.
  - o This is to avoid claims of unauthorized practice of law. The company may provide technology that walks the consumer through a legal need, such as through the use of a document automation and assembly tool, but at the end of the process, the company must still warn the consumer that he or she may want to contact a lawyer regarding the legal issue and that they proceed as a self-help individual at his or her own risk.
- The company should include provisions regarding the intellectual property rights that the lawyer has to any of the content posted by the lawyer through the service.
  - o For example, if the lawyer writes legal articles or blog posts or responds to legal question and answer services online, the lawyer should be aware if the company has the right to repurpose that content and how it will be used.
  - o Most companies reserve the right to republish and feature the lawyer's posted content in various ways such as featuring it on the company's website, but may also specifically retain the right to reuse it in its own marketing materials, such as email newsletters to users.
- Any payment or subscription services for the use of the service should be laid out in the user agreement with the lawyer including any renewal policies.

- Check for hidden fees or costs for use of premium services, such as form libraries or online platforms for engaging with prospective clients online.
- Lawyers using direct lead generation services will especially want to understand the policies regarding what constitutes a lead for performance-based marketing and any methods for contesting leads with the company.
- Explanation of the rules and expectations for communication in any public online forum or question and answer submission process.
  - These terms typically restrict individuals from advertising their businesses or products in the forums or from posting content that is illegal, inappropriate, or not related to legal services.
- Provisions found in a typical company's user agreement, including termination provisions, limitations on liability, arbitration clauses, venue, copyright and trademark, privacy policies, and restrictions on unlawful or prohibited use of the service.

## **Disclaimers**

Lawyers should ensure that the company has placed the necessary disclaimers throughout the website and within any public user-facing portion of the application. These disclaimers need to remind the public that the services provided on the website do not constitute legal advice and that the individual should contact a lawyer in his or her jurisdiction to obtain legal services that are based on his or her individual circumstances and legal needs. This same disclaimer may also be found as a provision inside the user agreement for the site. Some companies will even go so far as to directly state that the use of the website and engagement with anyone on it is “at your own risk.”

## **Security of the Hosted Content**

Several of the online marketing tools discussed above involve the collection and storage, at least temporarily, of confidential information submitted by the consumer. This means that the lawyer needs to find out what security is in place to protect the prospective client's information. In many cases, the collected contact may be no more than the basic contact information, but it almost always in these systems involves the inclusion of the request for legal services. Some companies may provide a warning to the consumer not to post confidential information in the submission of their request for services to one or more of the lawyer in the network. However, this is understandably going to be a difficult task for most individuals seeking legal assistance. Lawyers should ensure that the communication from both the client and lawyer sides is encrypted and secure transactions. Lawyers should look for the HTTPS in the browser and/or the lock icon to indicate that the page they are using is secure.

Collaboration with legal service companies raises some interesting questions regarding the lawyer's obligations to understand where the data collected by the company is being stored. There are several state bar ethics opinions related to the lawyer's use of cloud computing technologies in law practice. However, these opinions relate to the lawyer's collection and storage of confidential information through a third-party provider and not a separate company's

collection of data. Because of the changes to the comments in Model Rule 5.3 which clarified for the lawyer his or her responsibilities for the actions of nonlawyer assistance with regards to confidentially requirements in Model Rule 1.6, it raises an interesting question about the time at which the confidential information in the company's system falls under the care and ownership of the lawyer.



For example, if the lawyer uses a company's system to acquire a prospective client and then also uses the system to convert that lead into a paying client, establishing the lawyer-client relationship online through the use of some mechanism in the company's system, such as the ability to upload to the individual an engagement agreement, then at that point, does the lawyer become responsible for ensuring that the data the client previously entered into the system is hosted and returned in a manner that is comparable to the lawyer's use of cloud computing in his or her own private cloud-based practice management system?

There is also the interesting issue of ownership of the client's data. After the user has become a client with the lawyer through the signing of an engagement agreement or other process to establish the lawyer/client relationship, should the company then relinquish to the lawyer any information it has related to the client and his or her legal matter. The company will understandably want to retain the basic contact information for the user for the purposes of additional marketing of their services and follow-up purposes. However, with regards to any saved versions of legal forms or completed walkthroughs with responses from the client or any written legal requests, should this information be expected to be returned to the lawyer? Accordingly, the lawyer may wish to understand the data return and retention policies of the company with respect to its user data. It may also want to understand the company's policies with regard to the deletion of data hosted on its system. For example, if a lead is converted to a paying client and transferred to the care of the lawyer, how long does the client's confidential information remain on the servers of the company? Is it archived for a period of time or deleted?

## **Using the Marketing Tool to Engage with the Public**

There are different types of interaction with the public that might be available to the lawyer through the company's platform. There are a few basic best practices of which lawyers should be aware.

Before posting anything to a prospective client on a public forum or legal question and answer site, the lawyer should check that there is a disclaimer listed that reminds the users that the information posted publically is for legal guidance only and is not intended to be legal advice. Some lawyers may wish to go an additional step and remind the readers in his or her post that they should contact a lawyer in their jurisdiction regarding their unique legal needs.

If the forum or legal question and answer site does not provide a way for the public to filter the content based on their jurisdiction, the lawyer will want to be careful to state that the information

he or she is providing is based on the laws of the state that the lawyer is licensed to practice in and that the laws of other states may differ. Some lawyers may wish to be cautious and not provide responses in public forums or legal question and answer site where the questions are not filtered out by jurisdiction.

As a result of posting public profiles in directories or listings, lawyers may receive emailed request for legal services from these individuals using these platforms. While this unsolicited communication does not create a lawyer/client relationship, the lawyer should respond to the request for assistance in some way. Most of the companies will require the lawyer to log back into the platform in order to respond to the client through their system. This allows them to keep track of the responses provided to clients and keeps the communication on their system. In either case, the lawyer should provide a response either declining the representation or agreeing to work with the individual. This will help to prevent any potential misunderstanding on the part of the individual requesting services and give the lawyer a record of having refused to retain the client if that is the case.

Lawyers should be clear on the pricing of their legal services offered through these tools. For example, they should not list a fixed fee for unbundled services and then after being chosen by the individual, represent the fee arrangement differently in the engagement agreement. Some of the companies profiled above reminded lawyer of this in the terms of use for their platform. This amounts to obtaining a client under false pretenses. Instead, if the lawyer does not wish to provide fixed fees for unbundled services or provide their actual billable hour rate and this information is required on the platform, the lawyer should either not use that particular online marketing tool or should direct the client to ask for specific pricing information based on the scope of the individual's legal needs. A lawyer's profile must also comply with any state bar restrictions regarding advertising in lawyer or law firm biographies posted on a website. For example, lawyers should not provide information regarding the lawyer or firm's services which exaggerates experience, education, or any other qualifications.

Prior to signing an engagement agreement with a client obtained through an online marketing tool, the lawyer must ensure that the client is located in the jurisdiction where the lawyer is licensed to practice law. The lawyer should not rely on the company to have filtered the client through the correct jurisdiction or on the client to know whether their legal matter pertains to the laws of the state where he or she is physically located. With companies that market to consumers across multiple jurisdictions, it is possible that users end up requesting legal services from lawyers who are not in their jurisdiction. After verifying the jurisdiction, the lawyer should conduct a conflict of interest check just as he or she would with any traditionally obtained client.

Establishment of the lawyer/client relationship should be a clear process that takes place outside of the control of the online marketing company. The platform provided may be used to transfer an engagement agreement to the prospective client, but the actual agreement itself should be returned to the lawyer's control. Most of the online marketing companies prefer that this process occurs outside of their platform because it further separates them from any risk that their services would be viewed as creating a lawyer-client relationship. As discussed above, a provision to this affect is found in most of the company's user agreements to remind both the lawyer and the prospective client that the formation of this relationship is in their hands.

After the relationship has been formed, the lawyer should suggest to the client that further communications be handled securely either through the lawyer's secure practice management system or virtual law office and/or at the lawyer's traditional office location. The lawyer advising the client would most likely want to avoid the client's continued reliance on the legal resources of the company and its network which might cause confusion if the client continues to search for answers to their legal needs even after retaining the services of the lawyer. There is also the risk that the lawyer's client will post confidential information about his or her case after retaining the lawyer's services. Reminding clients of the need to keep this information confidential and off of the company's public forums is in their best interests.

## **Termination of the Collaboration**

When a lawyer decides to no longer use an online marketing tool, the company should provide a method for the deletion of the lawyer's profile. It may not be possible for the lawyer to delete the content provided by the lawyer that may be hosted in the company's public forums, legal resource libraries or question and answer services. For most company's offering their platforms for free to lawyers, this shared content was essentially the lawyer's cost to join the network.

Some companies are better about letting lawyers leave their network than others. This termination process may be something the lawyer wants to understand before working with the company. The best options are profiles with an easy-to-locate "delete profile" link. The link may ask the lawyer to verify that he or she wishes to delete the profile but will then completely remove it from the system. Other companies will not provide this option and the lawyer will have to locate the contact information for the company in order to request that a representative remove the profile.

Lawyers who have engaged with prospective clients online through the platform may want to ensure that any conversations held with the client and any documents or other items uploaded from the client to the lawyer that are hosted on the system are exported to the lawyer's care prior to the termination of the relationship with company. The lawyer may also want to verify that his or her profile and the account associated with it have been deleted. Additionally, if the lawyer provided the company with third-party access to his or her Facebook, LinkedIn or other social media accounts, the lawyer should go to the account settings on those sites and ensure that access has been revoked.

## **How does the company market directly to the consumers?**

Lawyers should pay attention to the marketing methods used by the companies they wish to collaborate with. These companies do not have to abide by lawyer advertising rules but the lawyer must make sure that any company's services that it uses for its law practice are in compliance with the lawyer's obligations under the Model Rules. Accordingly, the lawyer should be aware of and understand the methods that the company is using to generate traffic to its site and ultimately to the lawyer's profile.

Most of these companies are using targeted marketing methods that narrow in on specific sets of consumers based on demographics and legal needs. Many of the nonlawyer legal service companies, especially those that contain a document automation and assembly technology, are focused on family law, small business and estate planning services. These are the most commonly searched for online legal needs by the average-income American. They are also transactions-based which means that providing free legal forms for basic services on the company site provides a source of valuable online content for the search engines to rate as useful to the public and raises the SEO of the site.

More recently, some companies, such as Shpoonkle will host contests on various forms of social media on a regular basis as a way to connect with potential consumers of legal services. For example, a company might host a contest related to the number of Likes or Shares it receives on its Facebook page. A t-shirt design or homemade video contest judged by the company or its viewers might be another contest. The idea with these techniques is to get potential users of the services to share information about the company with friends and family. As we've discussed above, when information comes from a trusted source, even if it's a "like" or a quick sharing of a URL, we are more likely to remember it and to rely on what is said about it by the sharing individual. Likewise, rather than over marketing methods, such as sidebar advertisements or annoying pop-ups, these companies are relying on consumers to spread their brand.

Based on existing advertising rules and ethics opinions, there is nothing objectionable about these marketing practices. However, the lawyer may not always be privy to the marketing practices of the company. For example, what would happen when a company uses SEO tactics and metatags to game the system on behalf of the network. If the lawyer's state opposes such methods, is the lawyer in violation of the rules for engaging with that company?

### **What questions should the lawyer ask of the company?**

1. How is the attorney/client relationship formed between the prospective client and the lawyer through your system?
2. How is the consumer "matched" with the lawyer?
  - a. Is there any vetting of the individual's legal need that occurs?
  - b. If information about a legal matter is collected by the company, who is doing the collecting if it is in person? How is that person trained?
  - c. If it is a form of AI, how often is the program audited or updated by a licensed lawyer to reflect changes in the law or to ensure that the users can clearly understand and respond to the questions that are presented to them?
3. What type of quality control exists on the legal forms that are offered and the final legal product that is provided to the consumer?
4. What flexibility does the participating lawyer have in defining the scope of representation with the consumer following his or her interaction with the company?
5. Is the consumer educated about the difference between unbundled legal services and full-service representation?
6. Before a consumer is channeled to the participating lawyer, how does the lawyer have the chance to conduct a conflict of interest check on that prospective client before receiving the client's confidential information in the form of information about their circumstances or a completed legal document ready for the lawyer's review?
7. Understand the payment structure for the consumer so that when they come to the lawyer through the system, you know how much and how they have paid for service up to that point.
8. Ensure that no part of the fee received from a client will be taken by the company as part of a fee splitting arrangement or as a referral fee.

Lawyers and regulators should realize that the main benefit of collaboration with online marketing companies is that they are able to speak directly to the public across jurisdictions about legal services. They are not restricted in their communications as a lawyer might be which allows them to reach a broader market and allows the public increased options for access to legal assistance and resources. Lawyers who focus on maintaining best practices for engaging with prospective clients while using marketing tools should be able to steer clear of any ethical violations without having to monitor the regular marketing practices of the different companies with which they engage.

#### Checklist for Ethics Compliance

- Is the description of the law firm or lawyer's services or experience exaggerated or contain any false information about certifications or specializations?
- Does the company's website make any statements that might be misleading or false about the lawyer's in its network or its services in general? These statements might be imputed to the lawyer using the network. For example, the statement "[w]e provide you with the best lawyer for your legal need" is probably not an accurate statement for each consumer using the service.
- Is all information on any online profile, signature or other static website listing for the lawyer or law firm contains updated contact information?
- Are disclaimers provided to prospective clients by the nonlawyer legal service company on each page or application where a prospective client may travel within the company's site?
- May the lawyer export and/or access his or her profile or a copy of any messages posted to prospective clients online through the company's system?
- Questions of Access and Ownership are important. The author had signed up for profiles with several companies and after reviewing the operation of the system, decided not to work with them. However, with several of these companies, it was difficult to locate a way to delete the profile or even to find contact information for a representative who would provide assistance to delete the profile.
- What mechanism is in place for the lawyer and consumer to verify the quality of the legal forms or documents or process in the expert system or walkthrough?
  - o Is there an indication of the author who submitted the document? Is it dated? Are versions provided or indications of changes made?
  - o Has the author been verified as a licensed professional by the company?
  - o How often are the documents checked for accuracy? Is there a third-party who audits this process? What form of user feedback or lawyer review is available?
  - o If a lawyer finds an error in a document or form, may the template be changed for that individual lawyer manually?

## COMBINING COLLABORATIVE METHODS

Choosing which branded networks to collaborate with depends on a number of factors involved in a return on investment and risk/benefit analysis. However, the decision to engage in the online conversation around legal services essentially rests on two necessary components: 1) the lawyer must have a comfort level communicating online with nonlawyers using the form of media provided by the company whether that's video conferencing, text-based discussion or sharing content, and 2) the lawyer's prospective client base must be communicating online using these tools. The frequency with which the lawyer's prospective clients will be seeking legal services online will differ with practice areas, demographics and other socio-economic factors. Just as everyone learns and retains information in different ways, the way that individuals communicate online with lawyers and with companies in seeking to provide online legal services is going to depend on the preferred method of digesting, filtering and applying online information.

Because not every method will apply to every individual with a legal need, multiple methods of engaging in this online conversation needs to occur between lawyers and the public. Diving into each of these different online methods provides ways to reach different types of clients with different needs. For example, some of these platforms may simply be preferred for ease of use but with some clients with physical handicaps, these methods may provide access that they would not receive otherwise. The use of online marketing tools to match the lawyer with the client that best will work with that lawyer is of great value to our society and greatly increases access to justice. Lawyers need to identify the ways that their potential clients best communicate and what their needs are and then find the online marketing tools that will best fit those needs.

Many online applications that are not focused on the delivery of legal services are used by the lawyer-focused online marketing companies discussed above to share and disseminate lawyer profiles and content. Cross-posting lawyer submitted content using social media platforms allows the company to reach a broader online audience. Accordingly, lawyers need to understand how



to integrate a variety of online marketing tools, both lawyer-focused and general in order to create effective online marketing campaigns that engage the public. Lawyers must maintain websites, blog and learn how to set-up and maintain social media accounts for themselves and their law firms. Even if the lawyer or firm does not want to publish comments or firm content directly using these platforms, they may need to have these set up as a form of road map for the public to find their website or blog where the firm does feel comfortable hosting its

content. These platforms may be thought of as bridges between where the public is interacting online and the information about the lawyer's services. A lawyer may wish to try out the

company's services to the extent possible by registering as a member of the general public. This will allow the lawyer to understand the process a prospective client goes through in the selection of a lawyer from the network, what options are available to them, and whether it provides a process that their prospective clients would find easy to use and navigate. It may also provide the lawyer with a perspective on how he or she should create their user profile and other content within the service to best appeal to the user from their side of the system.

Lawyers will need to do a return on investment analysis when selecting which online marketing tools to invest time and money in using. Part of this analysis will depend on the lawyer's goals for using each tool and whether those will meet with what each company provides. For example, the objective for using an online legal document repository such as JDSupra might be to have a tool that hosts the lawyer's written content and firm newsletters and may be used to share it on the law firm's page on LinkedIn. The law firm may choose to spend the monthly subscription fee for the premium version of JDSupra because it has committed to authoring legal articles and blog posts on a regular basis and needs this tool to help maximize its online reach.

For another example, the lawyer may be more interested in increasing his or her volume of direct lead generation from within the firm's geographic location and wishes to invest in paying a company for warm leads. The firm will also sign up for multiple free listings in online directories and link back to the law firm website to increase general traffic. The firm has other effective methods in place to assist it in the conversion of those leads into paying clients so the cost per lead is a good investment. Another example might be a law firm with an advertising budget that includes traditional offline advertising. The firm may want to feature in its traditional advertising methods the URL for the lawyer's website or social media account page or profile on one of the online marketing platforms.

As the technology behind the online marketing tools evolves, lawyers may want to integrate these tools into other private delivery systems so that their clients may use the tools as part of the counseling that comes with working with that law firm. Using innovative and affordable methods of delivering legal services through technology, is a marketing strategy in itself.

## **Closed Loop Marketing**

Listening to prospective clients for legal services and adjusting marketing strategies accordingly is a form of "closed-loop" marketing. This term simply means that the law firm continues to listen to the public discuss its needs for legal services and then regularly readjusts its own methods to provide the supply side in the manner that meets these needs. This constant loop of feedback between the public and the legal professional becomes a much needed two-way conversation.

Because of the nature of communication on the Internet and the speed at which online companies develop and evolve their platforms, any form of online marketing strategy is going to require regular analysis. Lawyers may either pay an online marketing company to provide online tools that will handle the monitoring and analysis of their campaigns using different online marketing tools or the lawyer will have to use their own methods of constantly reevaluating their success and readjusting. A successful online strategy for a law firm is one that keeps up to date on where

the conversation surrounding legal services is flowing online. One month the party may be happening in a social media platform, but in another six months it may be trickling over to another larger company providing online legal forms and documents.

Regardless of which combination of online marketing tools the law firm decides to use, in order to find the conversations online and to be included in them, lawyers will need to learn how to categorize the work that the firm does and to identify keywords that will assist the public in finding its services online through these tools. Keywords are the way that consumers search for the specific legal services online. Keywords are placed into a search engine that uses various algorithms to determine what content on the Internet best matches those keywords and ranks them in order. Keywords might be individual words, but they might also be phrases. They may be entered with quotation marks surrounding them to indicate phrases or other combinations like equations or statements may be made. Depending on the search engine and the combination of keywords entered, it may or may not produce what the individual is looking for. If the same keywords are placed into different search engines, the results generated will differ slightly. Keywords are also used in different social media tools to help individuals find topics of interest to them. For example, in Twitter, one may use a hashtag as a way to aggregate tweets related to a single keyword. This could be a simple word, such as “#law,” a phrase “#accesstojustice,” or a specific event “#abatechshow.”

Consumers have become familiar with the idea of using keywords to locate what they need. Therefore, a critical first step to online marketing is identifying the keywords that will best help consumers to locate the law firm’s website and other online marketing. This will push more traffic to the firm’s website, which will result in more leads that may be converted to clients. Keywords can be optimized both on the firm website and in most of the online marketing tools that are discussed in this book. Even online profiles and listings will provide an opportunity to help the consumer narrow down to find the legal services they need.

## Mobile Applications Used as Online Marketing Tools

More law firms are developing mobile applications or creating mobile-friendly law firm websites for use with existing clients and as advertisements. Several of the companies discussed above have developed versions of their platform that are available as mobile applications.<sup>21</sup> Some of these are native to iPhone or iPad, others are browser-based but designed to render well within mobile devices. Google Advertising provides mobile analytics that will advise whether consumers prefer to view the firm’s ads on a website or mobile devices.<sup>22</sup> Law



<sup>21</sup> See for example, the Total Attorneys iPad App that incorporates its lead generation tool at <http://itunes.apple.com/us/app/total-attorneys/id490227105?mt=8>; LawZam is in the process of developing mobile device platforms according to its website at <https://www.lawzam.com/>

<sup>22</sup> See Google Mobile Analytics at <http://www.google.com/analytics/features/mobile.html>.

firms may consider posting in their mobile sites the introductory videos or links to profile pages hosted by online marketing companies. Several of these companies provide tools to embed the content from the lawyer's profile in websites or blogs. The law firm could ensure that its website is designed to work well with mobile devices and may feature this link out to the company profile where the prospective client may engage with them via the platform's featured service, such as scheduling a video consultation, asking a text-based legal question or purchasing an online legal form with lawyer consultation. As mobile increases as the primary method of online communication, companies working with lawyers will most likely add mobile enriched features to their services and other companies may provide tools for lawyers to build their own mobile device applications for marketing purposes.

## CONCLUSION

Online marketing tools will continue to be most effective when used in multichannel marketing campaigns when the lawyer collaborates with and connects multiple online marketing tools. However, branded networks and their online marketing tools will evolve in two major ways. First, they will be developed more for customers than for businesses.<sup>23</sup> Consumers will be empowered beyond the current use of social media to exert personal influence over the companies they wish to do business with. This means that the public will have the ability to directly educate themselves and tell the legal profession through these tools exactly how it wants legal services to be delivered, the price points for services, and what other services, such as more interdisciplinary and holistic care, it wants to see added to a firm's offerings.

There is some indication that the Internet is moving to become the semantic web. This means that it is shifting to become more conversational in nature. Currently, most Internet users rely on search functions that gather data from across the Internet. These search engines use algorithms specific to their company and compile and rank the data for surfers to select the most relevant results according to that company. With the semantic web, navigating the Internet is based more on "if this, then that" or "what if" principles. The user of the semantic web must also have more of an idea of what he or she is seeking to understand or locate on the Internet. This makes it more conversational in nature because it requires the search system being used to provide computational knowledge, or a result that takes into consideration the reason behind the request and not just pull data from whichever keywords were entered by the user. If this evolution of the nature of searching on the Internet is our future, then it only facilitates the shift to a more consumer-controlled system of matching individuals with lawyers.<sup>24</sup> This would mandate a significant shift in online lawyer marketing.

Second, companies including branded legal services networks, that have amassed personal information from users (big data) will be able to parse it to predict legal needs. This will be outside the control of the legal profession and in the hands of the companies that are both legal and non-legal related. For example, a social media site would be able to identify keywords, actions or GPS tracking recorded by the platform by users which might indicate a situation where a legal need would arise. That platform could then push specific information related to that legal issue to the user, perhaps even sending them legal forms or directing to another third-

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<sup>23</sup> One of the more exciting concepts that will impact the future of the lawyer's online marketing strategy is the growth of Vendor Relations Management or VRM. See Project VRM at [http://cyber.law.harvard.edu/projectvrn/Main\\_Page](http://cyber.law.harvard.edu/projectvrn/Main_Page); see also Customer Commons website at <http://customercommons.org/>; and "The Customer as a God," Wall Street Journal, by Doc Searls (July 20, 2012) at <http://online.wsj.com/article/SB10000872396390444873204577535352521092154.html>; and Searls, Doc. *The Intention Economy: When Customers Take Charge*. Harvard Business Review Press (May 1, 2012).

<sup>24</sup> See for examples of the semantic web, Wolfram Alpha, a computational knowledge engine, at <http://www.wolframalpha.com/> or Silk, a semantic web site creator, at <http://www.silkapp.com/>; See also "Serving Justice with Conversational Law," David Johnson in World Future Society's magazine, *The Futurist*, (Sept-Oct. 2012) at <http://www.wfs.org/futurist/september-october-2012-vol-46-no-5/serving-justice-conversational-law>.

party legal service provider. This push would be located within the platform where the user is sharing with friends and family, yet it would clearly be a marketing tool for the law firm that learns to collaborate with that company's service. Remember that when individuals join these online marketing tools, such as Facebook and Twitter, they are users providing content for those companies; they are not customers and ownership and control of the content they provide is at whim of those companies. However, because of the enormous popularity and number of users, the use of big data to identify legal needs and match legal services based on those needs is inevitable.

Aside from these two major potential shifts in online lawyer advertising, basic online marketing tools will also become more accurate at matching prospective clients with lawyers and they will become increasingly rich and interactive. For example, matching tools will extend beyond the basic jurisdiction and legal practice area and pricing searches. The public will be able to adjust online metrics within a platform according to the qualities they believe are important to have in their legal representation. For example, one user may rate the trial experience of a lawyer more than another user with a similar legal need who values the personal experiences or religious morals the lawyer has indicated he or she has through the platform. The establishment of the lawyer/client relationship will occur but after the use of an online marketing tool that allows the user to control the next step in his or her journey to receive legal assistance.



The Internet has always been built on the interaction and participation of the users. More interactive features added to online marketing tools will facilitate the ability of the public to locate legal assistance but also provide more rich, online legal resources and education for the self-help individual and the legal profession. For example, mobile augmented reality allows a user to pull a part of the Internet out into his or her physical life through the use of a mobile device. It is the mixing of different forms of anything web-based from video to 3D models with the physical world. Further on in the future of online marketing tools for lawyers, we will see the first firms using mobile augmented reality to

connect with the public. As Google Glasses make the news, most mobile devices will remain the most practical method of conveying this marketing tool. Sometimes being able to reach out and touch an object or view it from multiple perspectives provides us with a closer attachment to that object. Other uses of mobile augmented reality will become apparent as the services are developed and integrated into existing online marketing platforms.

The largest road blocks for lawyers in online marketing will be addressing data privacy concerns, especially if online lawyer matching services do not place control over user data with prospective clients. The second road block will be state bar ethics committees that may not understand the value of these online models for both the public and the profession. They will let technology and security concerns cloud the potential increased access to the legal marketplace making lawyers hesitant to innovate and keeping our profession from entering the online community discussing legal services. Additionally, because of regulations on lawyer advertising, particularly related to

nonlawyer ownership of law firms, unclear unauthorized practice of law rules, fee splitting, and referral restrictions, companies wishing to innovate and collaborate with legal professionals to provide legal services to the public will continue to have difficulty finding ways to monetize their services without running afoul of existing lawyer rules and ethics opinions.

What is the true impact on access to justice by the legal profession's use of online marketing tools? There is no measurable data available on this, except to note the large number of individuals served by nonlawyer legal service companies. However, we can assume that increased lawyer use of online marketing tools raises the awareness in the public of the scope of the legal marketplace and the availability of legal services to match specific needs.

Engaging the legal profession in the online conversation surrounding legal services and the law will serve to increase healthy competition in the market forcing lawyers to tighten their concept of the value they provide to clients and to be more flexible in using alternative and complementary delivery methods. A wider legal marketplace also means an increase in the availability of access to justice; it puts the lawyers collaborating with branded networks in touch with the individuals seeking legal assistance. Accordingly, lawyers who embrace the use of online marketing tools and collaborate with branded networks will have a significant competitive edge over firms that are not willing to enter the online conversation about legal services.

## ABOUT THE AUTHOR

Stephanie Kimbro, MA, JD, is member of [Burton Law LLC](#), a virtual law firm offering online unbundling and traditional full-service representation in North Carolina and Ohio. Prior to working with Burton Law, Stephanie operated a web-based virtual law office for six years delivering unbundled North Carolina estate planning to clients online. She is the recipient of the [2009 ABA Keane Award for Excellence in eLawyering](#), was named an *ABA Journal* Legal Rebel in 2010 and won the *Wilmington Parent Magazine* Family Favorite Attorney Award six years in a row for her virtual law office.



Stephanie has published two books, [Virtual Law Practice: How to Deliver Legal Services Online](#), ABA, October, 2010 and [Limited Scope Legal Services: Unbundling and the Self-Help Client](#), ABA, March 2012. She is also the co-founder of Virtual Law Office Technology, LLC (VLOTech), which was acquired by Total Attorneys in the fall of 2009.

In addition to practicing law, Stephanie writes about the ethics and technology issues of delivering legal services online and is interested in the use of technology to increase access to justice. She authors the blog: [Virtual Law Practice](#). She has provided presentations and guest lectured for many state bars, law schools and other organizations interested in legal technology and other law practice management topics. She is currently an adjunct professor of law for the University of Dayton School of Law and has developed their Digital Lawyering Program.

Kimbro is a member of the ABA Standing Committee on the Delivery of Legal Services and is Chair of the ABA LPM's Ethics and Professional Responsibility Committee. She is also a member of the North Carolina Bar Association (NCBA) [Law Practice Management](#) (LPM) Council, and the NCBA Tech Advisory Committee.

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