Online Legal Services: The Future of the Legal Profession

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Introduction

This statement discusses the delivery of online legal services over the Internet, and how rules of professional responsibility can function as a deterrent to innovation in the delivery of legal services. Certain ethical rules have the effect, in my opinion, of making legal services higher in cost than they should be, uneven in quality, and unresponsive to what the average consumer really wants.

The legal profession is highly stratified, with the largest number of practitioners, who are either solo practitioners or who work in small law firms, serving consumers and small business. Our largest law firms generally serve large corporations and their interests. My experience has been primarily with solos and small law firms serving consumers and small business. I am also a solo practitioner, operating a virtual law firm in Maryland, where I am a member of the bar, from my home in Palm Beach Gardens, Florida. Thus my remarks should be understood from that perspective, although some of my analysis also applies to large law firm.

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Background: Information Technology and the Legal Profession

In general, the American Bar Association (ABA) has urged the legal community to get online. In 2000, ABA President William G. Paul established the "eLawyering Taskforce: Lawyers Serving Society through Technology" with the purpose of enabling lawyers to figure out how to deliver legal services online. At the time, President Paul observed that many industries were being transformed by the Internet and that consumers were conducting transactions online in such industries as the travel industry, the brokerage industry, the insurance industry, and the banking industry. Since then there has been an explosion in ecommerce of all kinds. Few industries have been untouched by the wide spread expansion and accessibility of the Internet. President Paul observed that it was equally important for lawyers to offer their services online as well or become increasingly irrelevant as the Internet becomes more widely accessible. President Paul's vision was that lawyers would be able to use the power of the Internet to serve clients of moderate means who have been priced out of the legal market and law firms of all kinds would become more efficient and effective by adopting Internet-based information technologies.

At that time, several companies emerged to meet a perceived demand such as USLaw.com, AmeriCounsel.com, MyCounsel.com, MyLawyer.com., and The Law.com and in England, DesktopLawyer.co.uk. At about the same time that President Paul called for the legal profession to go online, we experienced what is known as the dot.com bust, and almost all of these companies ran out of cash and subsequently went out of business.

The eLawyering Task Force which President Paul created survived and survives to this day. The Task Force, of which I am co-chair, is now housed within the Law Practice Management Section of the American Bar Association, which continues to promote and implement President Paul's vision. Annually and for the past two years, we have awarded the James Keane Award in Excellence in eLawyering to a law firm that demonstrates exceptional innovation in the delivery of legal services on-line. Our group has also published guidelines for legal information Web sites that were approved by the ABA House of Delegates

and we just released a draft copy of recommended guidelines for law firms delivering online legal services, a copy of which is attached to this statement.

Unfortunately I wish I could report that during the past 10 years, the legal profession has embraced the Internet as a major platform for the delivery of online legal services, as President Paul envisioned. While information technology is widely used in the legal profession to manage back office operations in such areas a case management, litigation support, and timekeeping and billing, there is very little innovation that involves the actual delivery of legal services to clients over the Internet.

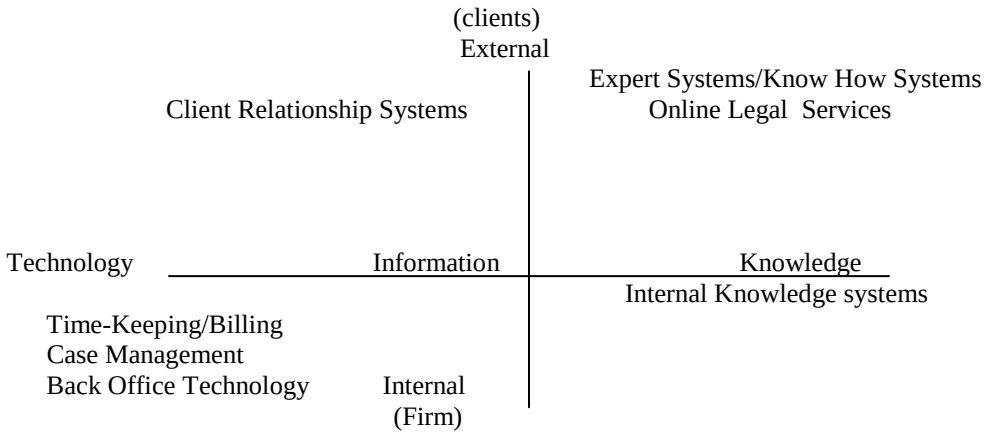
Almost all law firms have a Web site, but their web sites are passive Web sites, little more than yellow page ads, with the best of these law firms sites containing legal information, but very few have what we call a "client portal" that enables a client to interact with their law firm online. Lawyers use e-mail extensively, may use certain legal applications that are stored online, such as litigation support, and use desk-top Windows applications, such as document automation. But none of this use of Internet technology enables the law firm to connect and serve their clients over the Internet.

Many law firms have what could be called "first generation" Web sites that consist of little more than expanded yellow-page advertisements. A much smaller number of law firms have "second generation" Web sites that provide rich substantive content and legal information. Finally, a much smaller number of law firms actually provide applications that help clients solve their legal problems over the Internet.

Recent technology surveys conducted by the ABA Legal Technology Resource Center document the extension throughout the profession of all manner of technology The surveys indicate the vast majority of large firms provided computers for lawyers to use when away from the office as well as remote access to computers in firm offices. Approximately 78 percent of the firms surveyed reported use of computers in depositions and the courtroom; and more than 85percent in client meetings. In the courtroom, computers were used for litigation support, presentation of charts, graphs and text, e-mail contact with the firm office, legal research on-line as well as computer animation. All of the law firms surveyed reported the use of word-processing software and virtually all reported use for accounting, time and billing, external e-mail, spreadsheets and databases None of these uses of information technology involve the use of client-facing applications which result in lowering legal fees and making legal services more accessible. In fact, legal fees have increased and legal services have become more accessible because of costs.

The best analysis of how information technology maps to the legal profession has been developed by Richard Susskind, the English lawyer and legal profession theorist, and is contained in: *Transforming the Law: Essays on Technology, Justice, and the Legal Marketplace.*

Susskind created what is known famously as the Susskind grid which plots a vertical internal-external axis against a horizontal technology-information-knowledge axis. The resulting quadrants then define four general categories into which law-related IT applications might fall. Here is a simplified reconstruction of the grid.



The up/down dimension is clear enough. Words on the upper part of the grid relate to a firm's external activities, its relations with clients (and presumably other outside actors, like suppliers, partners, the public, etc.) Words on the bottom part of the grid are internal to the firm.

The left/right dimension represents a spectrum of processing sophistication, from "bare" technology handling simple data, through more generic information processing, and on into manipulation of advanced knowledge representations.

In the bottom left quadrant would be found the basic hardware, software, and networking infrastructures, along with such applications as timekeeping and accounting systems, document management, and litigation support – namely those "back office" technologies supportive of law office operations, but not generally visible to clients or the public, and also not particularly high in programmed knowledge content. These are the foundational technologies no firm can afford to neglect.

The top left quadrant contains outwardly focused, operations-oriented applications, like e-mail links with clients, "deal rooms," and client-accessible matter management systems. Some law firm extranets have this character. You can think of these technologies as better ways of doing traditional legal services.

The top right, finally, maps technologies that are high in both outward-orientation and knowledge content. These include online advice systems, self-help document assembly solutions, compliance audits, and computer-based training for clients. This is the world of online legal services. In Susskind's opinion this is where the action will be during the next decade. One of the trends in today's legal marketplace is the impact of technology on and the commoditization of law, leading to potentially the End of Lawyers, as Richard Susskind so provocatively phrased it in: "The End of Lawyers: Rethinking the Nature of Legal Services", p.2 :

> "I argue that the market is increasingly unlikely to tolerate expensive lawyers for tasks (guiding, advising, drafting, researching, problem solving, and more) than can be equally or better be discharged by less expert people, supported by sophisticated systems and processes. It follows, I say, that the jobs of many traditional lawyers will be substantially eroded and often eliminated."
>
> "In other words, the challenge for legal readers is to identify their distinctive skills and talents, the capabilities that they possess that cannot, crudely be replaced by advanced systems, or by less costly workers supported by technology or standard processes, or by lay people armed with online self-help tools."

Not surprisingly, the only strategy Susskind enthusiastically endorses for a law firm "that wishes to enjoy commercial success in the new economy" is one of full commitment to all four corners of the grid. ("[L]aw firms should be fully committed across all four quadrants by 2005.") Top-notch back-office and client relationship systems will be expected as a matter of course, good internal knowledge management will increasingly be required, and competitive advantage will mainly be achieved by aggressive activity in the top-right.

Most private practice lawyers today provide customized solutions for individual clients at high hourly rates, which is expensive for the client and unscalable for the lawyer. The democratization of information and forms on the internet, client demands for more cost effective solutions and the increasing encroachment on the profession by non-lawyers using new technologies will result in significant changes to the legal profession.

It is my theory that the ethical rules governing the US legal profession function to deter innovation in the upper fourth quadrant – in the area of online legal services- and that over time it will make solos and small law firms less competitive when compared to non-lawyer alternatives that have emerged on the Internet, and big law firms less competitive with their international counterparts.

The Internet and Competition to the Legal Profession

The market for consumer legal solutions is changing in fundamental ways, primarily because of the ascendancy of the Internet. We have estimated that there is a huge latent market for legal service, approximately $20 billion annually, that is not now being served by the legal profession.

During the last decade we have seen the emergence of a new category of non-lawyer - legal information Web sites that offer very low-cost solutions directly to the consumer. The legal information industry of self-help books/forms has gone on-line. It has the solo and small law firm segment of the legal profession squarely in its sights. A legal information solution can often substitute for the professional service of an attorney. This is the new reality that the legal profession now faces.

During the past 10 years, literally hundreds of legal information Websites have emerged offering services in the area of wills, divorce, adoption, bankruptcy, business incorporations, child support enforcement, living trust creation, debt counseling, immigration, trademark search, copyright registration, patent registration, and landlord-tenant law. These sites offer Web-enabled legal forms, legal information services, advisory systems, law guides, FAQ guides, and other tools for legal problem resolution, short of delivering what could be called "full legal services".

These new alternatives are capturing or acquiring clients from both the "latent market for legal services" and from existing law firms.

These new non-lawyer legal Web sites are very efficient. Once content is published to the site there is little else that the publisher has to do to generate cash flow, except to market the site on the Internet. Consumers pay with a credit card. Cash flows directly into the publishers account within 48 hours of purchase. The economic models for these Web sites are an excellent demonstration of *"how to make money when you sleep*." We have a first hand –knowledge of this business model, having built a multi-million dollars on-line legal form business through our affiliate company, Epoq, US, Inc.

The impact of these legal information Web sites on that segment of the legal profession is hardly being felt, but it is not insignificant. In one area alone, *no-fault divorce*, we estimate that on-line divorce sites, such as

completecase.com, legalzoom.com,selfdivorce.com mylawyer.com, divorcelawinfo.com, divorcenet.com, docupro.net, and uslegalforms.com, have processed more than 50,000 on-line divorces in the past 18 months.. If the normal legal fee for an uncontested, no-fault divorce is approximately $1,500, then approximately $75,000,000 in legal fees has just been drained from lawyers' practices on a nationwide basis. This not a small amount and will increase, at the expense of the legal profession. These legal information sites will become more sophisticated and incorporate more rule-based and intelligent Web applications that substitute for the judgment and the labor of an attorney.

LegalZoom as an example of a new non-lawyer company helping people solve their legal problems.

LegalZoom is the most notable and branded player among non-lawyer entities seeking to fill the void created by an unresponsive legal profession. Based in Hollywood, California LegalZoom is a legal document preparation company the offers its services only on the Internet and on a nation-wide basis. Licensed as a "legal document preparer" in the State of California it offers it services in every state because it offers its services exclusively on the Internet. The company provides legal documents and forms in such areas as wills, powers of attorney, no-fault divorce, name change, incorporation, trademarks, copyright, etc., which are the bread and butter of many solos and small law firms.

Funded several years ago by Polaris Venture Partners, a venture capital firm based in Boston, for approximately $25,000,000, LegalZoom is well capitalized. LegalZoom been using these funds to advertise widely in the media with the objective of becoming the dominant legal brand on the Internet. We estimate that LegalZoom will be doing more than $60,000,000 in volume this year largely at the expense of the legal profession.

Legalzoom claims that it doesn't offer legal advice. Its fine print disclaimers make this very clear. Instead the company collects information from consumers through an on-line questionnaire and the inputs this data into a desk-top document assembly program to create the consumer's legal forms or documents. The documents are then delivered to the consumer either by email or in paper format by regular postal mail.

The reality is that there is very little added value when compared with just the form itself, since the paralegal can't provide legal advice, and can't do much more than check to see whether the consumer has spelled their name correctly or whether the user has provided all of the answers in the questionnaire.

A close examination of LegalZoom's advertising reveals misrepresentation in the statements that they make about their services. The advertising is designed to imply that the service is a "legal service" despite the disclaimers which appear in fine print.

For example consider these statements from the LegalZoom web site.

> "Save time and money on common legal matters! Created by top attorneys, LegalZoom helps you create reliable legal documents from your home or office. Simply answer a few questions online and your documents will be prepared within 48 hours.* We even review your answers and guarantee your satisfaction."

> "LegalZoom was developed by expert attorneys with experience at the most prestigious law firms in the country."

> **"You save $481.00 with LegalZoom!**
> A lawyer would charge you approximately $550.00 for a standard Last Will and Testament."

> **"You save $1,831.00 with LegalZoom!**
> A lawyer would charge you approximately $2,080.00 to obtain a divorce if you have property but no minor children."

LegalZoom is a good example of a non-law provider that is going after the traditional market of solos and small law firms without being constrained by the rules of professional conduct that govern the practices of attorneys.

What are the Online Legal Services Offered by Law Firms?

Marc Lauritsen, co-chair of the eLawyering Task Force in an article in Law Practice Magazine in January-February, 2004, p. 36, succinctly defined eLawyering as:

> "all the ways in which lawyers can do their work using the Web and associated technologies. These include new ways to communicate and collaborate with clients, prospective clients and other lawyers, produce documents, settle disputes and manage legal knowledge. Think of a lawyering verb—interview, investigate, counsel, draft, advocate, analyze, negotiate, manage and so forth—and there are corresponding electronic tools and techniques."

This is a good start to understanding the concept of eLawyering. The core of this business model is a law firm web site that incorporates interactive and web-enabled applications that supports interaction between lawyer and client along a number of dimensions.

Online legal services are legal services delivered over the Internet directly to clients through a password protected and secure Web space where both the attorney and client may interact and legal services are consumed by the client.

We would not consider a law firm that that has a first generation Web site, as defined above, as one that is engaged in what we called in the delivery of online legal services. These sites do not have any interactive applications and are little more than brochures in digital format. Often these sites are found within a larger law firm directory [such as http://www.findlaw.com or http://www.lawyers.com] and the firm has no control or access to the Web site itself in order to be able to add interactive applications. For these law firms, the Internet is no more than another media channel for communicating about the law firm's capabilities. They are not "interactive service" sites. For these firms, law practice is business as usual.

On the other hand, a law firm Web site that is based on eLawyering concepts involves moving beyond a law firm Web site that contains only legal content to one that helps clients collaborate with their lawyer and to perform legal tasks over the Internet. The impact of these Web based, interactive applications is to save lawyer time, and often increase lawyer productivity and profit margins, while providing a more satisfying experience for the client.

Here is a brief summary of interactive law firm applications that online law firms are offering:

Client Extranets. A client extranet is a secure and private space for each client, where the client can communicate with his or her attorney securely, documents can be archived, the client can check the status of a case or matter, and legal fee billings can be presented and reviewed, if not actually paid electronically. A client extranet permits personalization of the client experience; security of communication; and convenience of having all of one's documents and transactions with the attorney document and in a private and secure Web space. A client extranet can be costly to create if you program the entire application yourself. Few lawyers will possess this level of programming skill. A more practical alternative is to create

a client extranet around applications that are hosted by third parties, such as Findlaw, Microsoft's Sharepoint, and WebEx Web Office, which are easy to set up and which the cost of entry substantially, as no custom programming has to be done.

Web-Enabled Document Automation. Within a secure extranet client space, clients can provide data through an on-line questionnaire which results in document assembly through the use of Web-enabled document solutions such as HotDocs OnLine, and Rapidocs On-Line, using the DirectLaw Service offered by Epoq, US, Inc. Enabling the client to provide the data directly into an on-line interview reduces the time that the attorney has to spend on the interview process and results in an instantaneous generation of a draft ready for a lawyer's more detailed review. Web-enabled document assembly enlists the client's effort in providing the data that is used to create a customized document without initial lawyer intervention. Document automation, traditionally, has been used by lawyers within the office environment to speed up the production of documents of all kinds. Speeding up internal document assembly within the law firm is important, but does not have as dramatic a change in law firm work process as client-centered and Web-enabled document automation. By moving the document automation process onto the Web and enabling the client to provide data on-line, a major increase in lawyer and client productivity occurs.

Productizing Legal Services

Productizing a legal service means systemizing the production of the service, rather than custom crafting the service every time you produce it. Often, this means integrating a digital application with the production of the legal service.

Here is an example of productizing a legal service using the Web-enabled document automation described above:

> "We run a virtual law firm in Maryland from the web address http://www.mdfamilylawyer.com . We specialize in helping parties in family law represent themselves in routine divorce matters. We offer legal forms bundled with legal advice for a fixed price. When a client enters their secure client space they have the option of completing an on-line questionnaire for a Marital Separation Agreement and a set of divorce pleadings. When the client is finished entering their information and clicks on *submit*, all of the documents are instantly created as a first draft ready for me to review. A paralegal on my staff reviews the documents and emails the client if there is a need for additional information. By the time I get the documents they are 90 per cent complete and ready for sign off. If I have to do custom drafting I do it at that point, after entering in an email dialogue with the client. Our selling price for a divorce package is $299. On average, we spend 20 minutes per transaction. My paralegals and the digital application do most of the work. Our operating profit margin for this unit of service is approximately 80 per cent. One can apply the same principles to other areas of law practice."[1]

On-Line Calculators. On-line Web interview forms can be used to collect financial data that is the basis for a calculation and offers the client an immediate, useful legal result..

Examples of this kind of application are the child support calculator on the http://www.mdfamilylawyer.com web site and the Chapter 13 Eligibility calculator on the http://www.njchapter13.com web site.

Client Data Intake. Clients can provide data through on-line forms that are the basis for an office consultation. Providing the data in advance enables the lawyer to fully prepare for the office consultation

[1] From Presentation at ABA TECHSHOW, Richard Granat.

and often reduces the time required for the in-house consultation. http://www.mdbankruptcylaw.com is using an on-line form to collect client financial information prior to the first office interview in order to determine whether the client will have to file a Chapter 7 or a Chapter 13 under the new bankruptcy law.

Interactive Legal Advisors. Some law firms are creating interactive legal advisors.
Like on-line document assembly, the client answers questions through an on-line questionnaire, but instead of a legal document being created, the intelligence engine generates a legal answer by manipulating a series of statements that offers a legal answer to the client immediately. While these interactive legal advisors are not easy to program, once they are completed, they can be used for a long time without major revision. Interactive legal advisors can be designed with a trap-door to alert the lawyer of potential problems that require more sophisticated analysis and direct legal advice. The US Immigration Service has several such legal advisors on its site which make a determination, for example, of the immigrant's eligibility for US citizenship.

On-Line Legal Advice. Lawyers are providing legal advice by telephone and email, publishing both the questions and the answers to a client's secure Web space for future reference by the client. Often such legal advice is offered at a fixed price per incident. See for example, http://www.legaladviceline.com and http://www.mdfamilylawyer.com. This is a convenient service for clients who have relatively narrow questions and want a quick answer. Lawyers can answer these questions during times of the day when they are not busy, maximizing use of time that normally has marginal billing utility.

Different applications will emerge to respond to the needs of different kinds of law practices – all with the same goal, increasing the quality of the client experience

Why Do Consumers Look for Alternatives to Lawyers?

Our research supports that consumers will avoid using a lawyer unless they really have to for the following, major reasons:

- Consumers can't afford lawyers; consumers can't afford $125-$150 per hour.
- Consumers don't trust lawyers as professionals to always represent their best interests, despite what the canons of ethics require.
- Lawyers are inconvenient and inefficient to use.
- Consumers dislike hourly rates.
- Consumers perceive lawyers as high risk in terms of outcomes and cost/benefit.

Rather than seek legal assistance, many consumers will search for a solution that is "good enough." Consumers will sub-optimize and seek the assistance of an independent paralegal, for example, rather than the full services of an attorney in the interest of economy, even though it is a far from the perfect solution.

Very little market research data exists on the opinions of US consumers and their view of the legal profession. For good, in-depth research on this issue one has to turn to the United Kingdom. In that country, an organization called Which?, the largest consumer organization in Europe and the equivalent of our Consumer's Union, has extensively studied consumers' opinion of lawyers. Their most recent findings are that:

- 29 percent of consumers reported that legal services were poor value for their money.
- 23 percent said that their solicitor did not listen to their opinion.
- 30 percent did not feel well informed about charges.
- 40 percent said that despite being unhappy with the service, there was no point in complaining because the Law Society would not do anything any way.
- 63 percent think it would be a good idea to get legal services at supermarkets or retail banking institutions.

It is for these and other reasons that the United Kingdom is in the process of de-regulating the legal profession in the interest of promoting greater consumer choice and creating the framework for introducing modern methods of management, greater technology, and capital into the delivery of legal services. Sometime in 2007 these reforms will take effect. These reforms include:

- Independent regulation through a Legal Services Board that is not dominated by the legal profession;
- Independent complaints handled by a new Office for Legal Complaints;
- The authorization of Alternative Business Structures that would permit non-lawyer entities to invest and develop law firms and create new legal service delivery structures;
- Abolition of the prohibition on splitting fees with non-law firms in order to encourage more innovative marketing arrangements; and
- Narrowing of the prohibition against unauthorized practice of law that enables non-lawyers in many areas to provide legal advice and create legal documents for consumers.

It will be a long time, if ever, before these kinds of reforms will happen in the US, but it will be interesting to see what happens in the United Kingdom during the next few years as these reforms take hold. The US legal profession can learn from the experiments that are being carried out in the UK, and the impact of these experiments on consumer choices.

What Do Consumers Want?

Which? has also done extensive research on what consumers want from their lawyers. The dominant theme is better customer service. In particular, consumers want to know:

- What their case is going to cost;
- How long will their case take?
- Progress updates on their cases;
- Prompt response to letters and phone calls;
- Complaints responded to promptly.

Which? also reports that consumers want legal advice and legal services to be delivered :

- Online, by phone, even by text;
- After hours - not just the traditional 9:00 to 5:00;
- Linked with related services, such as the purchase of a home;
- Together with unbundled and DIY legal services.

These findings mirror some of our own market research in the United States. Consumers of legal services in the UK are not much different from consumers in the US, so there is much to be learned from this research.

From the consumer's perspective, the system for delivering legal services needs to be re-designed to conform to their values by creating a new value proposition. A new value proposition could involve elimination of the need to go to the lawyer's office, increasing speed of the transaction, and offering services at a flat fee. It is a waste of marketing dollars to market legal services to consumers who don't want legal services in their present form. Marketing is more than just "selling" or getting the word out about your law firm; or publishing a web site that is a bit more than a Yellow Page advertisement; or radio and TV commercials that make claims about what a great law firm you are. You can't sell a product or service to a consumer if they don't want to buy it. Marketing is more than "promotion."

We believe that fixing the system for the delivery of common legal services requires more radical surgery if the migration of consumers towards less valued alternatives is to be stopped. These include:

1. Increasing the transparency of the transaction between client and lawyer by moving away from hourly pricing towards fixed pricing and pricing by result. The lack of transparency in lawyer pricing creates tremendous anxiety on the part of consumers. A consumer can get a fixed price from a home builder to build a $1,000,000 house (with allowances for unforeseen circumstances), but can't get a fixed price from a lawyer for a relatively simple divorce.

2. Increasing productivity of the legal transaction and passing the savings on to the client. Consumers suspect that lawyers are using information technology to increase their productivity by automating more routine legal tasks such as document production. They resent the fact that productivity enhancements are not passed along to the consumer in terms of lower prices. Without competition from other kinds of providers, the legal profession has no incentive to lower prices. Instead, legal fees tend to move up over time. Full service stock brokers were impacted by on-line discount stock brokers in terms of price reductions. A competitive economic environment for legal services would have the same result.

3. Compounding the lack of transparency of lawyer-client transactions and the increasing level of fees is the inconvenience of communicating and working with a lawyer. While it is necessary to appear in a doctor's office for a physical examination, it is not necessary to be physically present in a lawyer's office in order for the law firm to do its' work. Yet the prevailing mode of doing business requires that the client

give up half a day of work and travel to a lawyer's office for advice at the lawyer's convenience, not the consumer's.

The pressures to change the patterns of delivery of legal services for consumers will increase dramatically in the next few years, as a "connected generation" comes of age.

Whatever trends are now in place will accelerate over the coming years as "the connected generation" comes of age and matures into the age where they need legal services. The "connected generation" includes those born since 1970. It is this generation that has grown up on the Internet and looks to the Internet first, before checking the Yellow Pages, reaching for a telephone, or consulting with a professional face-to-face.

If the years 1970-1986 are used, as is common in market research, then the size of Generation Y in the United States is approximately 76 million. Coming right behind this generation is the **internet generation** which includes those born since the mid-to-late 1990s. The defining cultural-historical event to distinguish this cohort is that they spent their formative years in an age of the birth and rise of the Internet. Thus, the Internet Generation has no recourse to a memory of (or nostalgia for) a pre-Internet history, a factor which greatly differentiates them from older generations, who had to learn to adapt to 'new' technologies. The iGeneration simply takes the Internet for granted as 'natural,' with new sites that are launched past 1998 such as MySpace, YouTube, iFilm, and the ever-growing use of Internet Forums, Wikipedia and Google as part of its global cultural ecosystem.

Connected consumers value:

- Innovation – the better way;
- Immediacy- e.g., I want it now;
- Authentication and Trust;
- Interactivity defines the culture;
- High customization: services and products that fit unique needs.

Consumer behaviors emphasize:

- Looking to the Net as the first place to go for seeking information, alternatives, and options;
- Comparison sites are a focus;
- Consumers want to try before they buy;
- Connected consumers look for communities of interest when opinions and information can be exchanged;
- Connected consumers look for digital spaces that are interactive;
- Connected consumers would rather interact with a Web site before talking to a professional;
- Eventually, consultation with a professional may occur, but only after this digital exploration.

The "connected generation" wants to do business over the Internet with attorneys and intuitively understand the idea of online legal services.

II. The Rules of Professional Responsibility and their Impact on the Delivery of Online Legal Services.

The rules of professional responsibility, as adopted by the various states, often have the impact of impeding innovation in the delivery of online legal services.

State bars have been slow to respond to the challenges facing the legal profession by widespread access to the Internet by the general public and the impact of Internet technologies on the practice of law. Rules to govern the profession were developed in an earlier print era when all lawyers had physical offices, advertising was largely in print media, and the major use of information technology in law firms was to generate documents using desk-top word processing programs or to manage accounting functions such as time keeping and billing.

In contrast, rules that require law firms to archive their Web site pages every time a change is made, that require a physical law office within the jurisdiction where an attorney practices, and that challenge the right of non-lawyer organizations to disseminate legal information and legal forms over the Internet on the theory that such activity is the "unauthorized practice of law" are out of touch with market realities and what consumers want from their attorneys.

Issue #1: Unauthorized Practice of Law (UPL) Rules: expert systems software as the practice of law.

As software technology becomes more powerful, it will be possible to create Internet-based expert systems of the kind that can generate a legal answer based on questions posed to a client through a questionnaire or alternatively a "smart" legal document that conforms itself to the client's specific set of facts, referred to previously as Web-enabled document automation. Because these software applications are capital intensive to develop, they are likely to be created by non-lawyer software companies and sold directly to consumers, as well as licensed to law firms for use in their law practice. Because there is a great confusion among the states about what the definition of the "practice of law" means, different states can interpret their UPL statutes in a way that protects existing methods of law practice from change and at the same time excluding more innovative entrants to the legal marketplace.

Unfortunately, the ABA's power over the profession is merely advisory. The conflict and resistance is most likely to come from the state bar associations, which actually regulate legal services. The organized bar strictly enforces requirements that those who practice law must not only be licensed, but licensed in the jurisdiction in which they practice.

In the only court test of this question, the Texas Bar's Unauthorized Practice of Law Committee brought suit in U.S. District Court in Texas claiming that Parsons Technology, Inc., doing business as Quicken Family Lawyer, engaged in the unauthorized practice of law by distributing software that created legal documents. The court sided with the bar, characterizing the software as a "cyberlawyer" and enjoined its sale in Texas, depriving Texas consumers of an easy and cheap means of writing their own wills. An appeal of the ruling was mooted, however, after the Texas legislature changed the definition of unauthorized practice to read: "the 'practice of law' does not include the design, creation, publication, distribution, display, or sale . . . [of] computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney."

The concern is that online law companies will be challenged in other states over the same issue with the effect of deterring innovation by both law firms, non-lawyer solution providers, and publishing companies that specialize in publishing for the Internet.

As recently as last month, a Task Force of the Connecticut Bar Association, accused non-law firm providers of legal information services as violating Connecticut's UPL rules.

Attorney Louis Pepe, Chair of the Connecticut Task Force said that:

"After looking at these Web sites, what they're offering is considered the unauthorized practice of law in Connecticut," Analyzing the Web sites, Pepe said, "was eye-opening because I had no idea how many there were and how they hawk services to consumers. It's scary how attractive and user-friendly these Web sites are."

Last week, the task force filed its report with the Department of Consumer Protection alleging that the online legal providers also were engaged in deceptive advertising because the companies are offering legal advice by providing relevant legal documents.

The Connecticut Bar Association also is presenting to the General Assembly's Judiciary Committee a proposed bill that would make the unauthorized practice of law a felony rather than a misdemeanor.

The threat of a charge of UPL can chill innovation. My concern is that other Internet-based software companies will be challenged in other states over the same issue. There needs to be a clear definition of what constitutes the "practice of law" so that it is clear that the practice of law is limited to when a licensed lawyer serves a client in a trusted relationship. My own view is that "practice of law" means only that you can represent a client in a court of law and claim that you are a lawyer. I am not the only lawyer who shares this point of view; so does the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice. [See letter in the Appendix from the Federal Trade Commission and the Department of Justice to the American Bar Association on the anti-competitive effect of the profession's "definition of the practice of law."

Some commentators have questioned whether consumers "protected" by the market need regulatory protection from the unauthorized practice of law. This is a slippery slope. It makes sense to protect consumers from misrepresentation and deceptive advertising, as for example, when a non-law firm claims that its service is the equivalent of a service provided by an attorney, but at a much lower fee. It is overly paternalistic in this day and age to carve out a market space solely for the legal profession that is so broad that anything that has to do with "the law" is considered "the practice of law." There are other ways to solve one's legal problems than using an attorney. It would be disingenuous to make the claim that the only way that consumers can solve their legal problems is by employing an attorney.

The reach of the Internet makes it practical to invest resources into "expert systems" that can now have wide distribution, nationally or internationally. I would envision that these systems would be used by both law firms and published by non-law firm companies to serve the common needs of consumers and small business in a variety of areas. These innovations will never happen if these software products are characterized as the "practice of law" and can only be developed and distributed by law firms, at least in the United States. In other countries, which have a less balkanized system of regulation, these innovations will flourish, enabling foreign law firms to offer legal services at less cost than their American counterparts. The use of expert systems distributed over the Internet will offer great value to consumers, but may pose the greatest threat to the core professional values that the profession seeks to protect for clients. Perhaps it is time to update those core professional values in the light of emerging technology.

Issue 2: Existing UPL rules prevent sharing fees with non-lawyers and prevent a non-lawyer or non-lawyer organization from owning an interest in a law firm.

I believe that the ownership structure of law firms is a deterrent to innovation. Most solos and small law firms are under-capitalized and individual lawyers do not have the requisite technology or management skills to develop the software and system delivery innovations that result in lower fees, better quality and more efficient client services. There is a wide variance is the quality of legal services offered by solos and small law firms, not all of it related to the legal expertise of the practitioner. Law schools, except for a single course in practice management, do not see it as their mission to train lawyers how to practice law. Instead, most law schools produce graduates for the large law firm market, despite the fact that the largest percentage of their graduates end up in small law firm practice. Thus, except for the rare individual, the average solo and small law firm practitioner knows nothing about management and technological service systems and how to scale an organization so that it has the resources to deliver high-quality services at a price that the average consumer can afford. The proof is in the low regard that the general population has for the legal profession. The average consumer would rather go to a dentist rather than a lawyer.

It is arguable that if non-lawyers were permitted to own and have a management and investor role in law firms, the management structure would eventually change, leading to consolidation and the introduction of modern management technology into the operation of law firms. At least that is the theory of the Alternative Business Structure changes that are now being instituted in the United Kingdom under the Legal Services Act of 2007. (UK). Alternative Business Structures (ABS), in the United Kingdom will allow outside investors to take a share in a legal services business. Multidisciplinary practices, providing legal and other services such as accountancy, surveying, health care and so on, are also likely to emerge under the authority of the Act.

While it is too early to see how these reforms will work out in practice, American bar leadership should watch these developments carefully and see what can be adopted in the U.S. market. Of course with the balkanized nature of legal profession regulation in this country, it will be difficult to institute these reforms on a nationwide basis, but it would be foolish to ignore them as UK firms will have access to management and capital resources that will give them a competitive advantage over their US counterparts.

Issue #3: Lack of clarity about confidentiality rules impedes use of "Cloud Computing" which in turn is an obstacle to technology innovation in law firms of all sizes.

Cloud computing or "Software as a Service" (SaaS) refers to a category of software that's delivered over the Internet to a Web browser rather than installed directly as an application on the user's local computer. Almost always data associated with the application is also stored "in the cloud" on the Internet. This is the way our DirectLaw virtual law firm platform works. The entire application, including the document assembly application, is stored and works solely through the Web browser, not unlike Google Docs. The created documents and other related client data are also stored on a server that is not the law firm's Web server. With traditional software, data is stored locally on a user's computer or server within the office.

Our servers are hosted by what is known as a Tier 4 data center, the equivalent of what a bank or large insurance company would use, which has industrial-strength security, redundancy, and back-up in multiple sites, one site of which is not in the same center where the primary servers are housed. Thus these servers are under the control of the data center and are contracted to us as the SaaS vendor, which in turns enters into a hosting agreement with the end user law firm.

This arrangement causes concern for many lawyers, who are worried about the security and confidentiality of client data and work product stored outside of their immediate control.

In our case, the data center that we use is at least as secure, if not more so, than data stored locally within a law firm, and the technology and expertise that we use to protect the data are greater than one would find in all but the largest law firms.

There are critical advantages to offering Software as a Service over the Internet, which enables vendors like DirectLaw to bring the most sophisticated software applications to the smallest law firms at a very low price.

The primary advantages of a "Software as a Service" approach are:

- The reduced cost that result from a single instance of a software application being used by hundreds or thousands of law firms;

- Maintenance and installation of updates is significantly easier. One application has to be updated, rather than thousands. Updates can be done instantly and the idea of an annual "release" date no longer has any meaning. As quickly as a new feature is completed, it can be updated on the "Software as a Service" platform.

- The front end license fee is eliminated and replaced with a monthly subscription service that is paid over time. For example, in our own area, Web-enabled document automation, one major vendor charges a front-end license fee of $100,000 which limits purchase by only the largest law firm. Our "software as a Service" approach enables even the smallest of law firms to access a highly sophisticated, Web-enabled document automation technology for as little as $200.00 a month.

- Accessing software applications and data from the Internet facilitates anywhere, anytime legal work. The mobility of the attorney is facilitated, enabling the attorney to work easily from home, a client's office, or visit with a client at home. Cloud computing enables the lawyer to have access to all of his tools and client data wherever he is. "Cloud computing" is consistent with the accelerated trend towards mobile computing.

- Furthermore, because most SaaS is accessed through a Web browser, system requirements are minimal. Rather than requiring the latest version of Windows and a heap of RAM, SaaS usually just requires a modern Web browser. It also allows many SaaS solutions to be accessed via smart phones like the BlackBerry and iPhone.

When considering SaaS solutions, a law firm should carefully evaluate potential vendors to ensure that they're stable, reliable and employing best possible practices for data security.

Attached in the Appendix, is a sample hosting agreement that details our relationship as an SaaS vendor and the law firm that, specifies that the data belongs to the law firm and can be downloaded at any time by the law firm and that our company functions as if it were the staff of the law firm with respect to access to any law firm data, and access is limited to administrative purposes only. We also maintain our own multi-million dollar liability policy as insurance for any breaches of Internet security.

Issue #4: Client Identification Rules and Online Legal Services

A principal of "good practice" is to know your client. How do you reconcile the concept of "know your client," with the idea of online legal services over the Internet? Should a face-to-face meeting be required between lawyer and a client before the attorney/client relationship is created? I have heard many lawyers state that I can't deal with a client who I have met exclusively online. These lawyers assert that they have to know who they are dealing with and they can't tell with the client or some one who is impersonating the client.

I suggest that this is a much smaller problem than it seems at first impression and there are many ways to fix this problem.

First, a large majority of clients who work with their attorneys over the Internet are already existing clients of the law firm. For these clients the addition of an interactive and secure client space is just an additional capability of the existing client's firm that results in a more efficient, cost-effective, and satisfying client experience. For this group of clients, there is no client identification issue because the clients are already known to the law firm and are existing clients of the law firm.

Second, if the transaction is a large cash transaction, the anti-laundering statutes apply and these rules, of course, must be followed. These statutes, that exist in the United States, Canada, and in the United Kingdom have safeguards to authenticate the identity of the client when large cash transactions are made.

In England for example, the anti-money laundering regulations only apply to certain solicitors' activities where there is a high risk of money laundering occurring. As such, they apply where solicitors participate in financial or real property transactions concerning:

- buying and selling of real property or business entities
- managing of client money, securities or other assets
- opening or management of bank, savings or securities accounts
- organization of contributions necessary for the creation, operation or management of companies
- creation, operation or management of trusts, companies or similar structures

In terms of the activities covered, note that:

- managing client money is narrower than handling it
- opening or managing a bank account is wider than simply opening a solicitor's client account. It would be likely to cover solicitors acting as a trustee, attorney or a receiver

The following would not generally be viewed as participation in financial transactions:

- preparing a home information pack or any document or information for inclusion in a HIP - it is specifically excluded under Regulation 4(1)(f)
- payment on account of costs to a solicitor or payment of a solicitor's bill
- provision of legal advice

- participation in litigation or a form of alternative dispute resolution
- will-writing, although solicitors should consider whether any accompanying taxation advice is covered
- publicly-funded work

Third, there are many kinds of online legal services where even if I have not met the client, I can usually confirm identity by telephone and e-mail. As a matter of good business practice, when we work with an online client for the first time, we authenticate the user's e-mail address with a verification procedure. While it is true, the user could be stealing someone else's e-mail address, it has never happened in our practice.

Furthermore, identity may be beside the point, when I represent a pro se litigant who has accepted a limited retainer agreement. For example, if I represent a party in a no-fault divorce and give legal advice, the service I am providing is making sure that the forms are completed properly and providing guidance on how to complete the transaction. Clients are responsible for filing their own documents, taking responsibility for representation in the no-fault hearing and making sure that all of the papers are filed properly according to the instructions that I provide. Clients can check back with me as often as they need to if they have a question about procedure. In this case, I have already confirmed by the client's address that it is a person I can provide services to, and I have completed a conflicts-of-interest check. I don't have a duty to confirm what the client represents to me is true and it is actually not relevant. This is true of many common transactions that I handle in my practice, such as child support modifications, child support petitions, name changes, business incorporations, the preparation of marital separation agreements, the preparation of pre-nuptial agreements, and QDRO orders to name only transactions where the nature of the transaction takes care of the identity problem.

The most controversial area, in my opinion, is when a client, not previously known to the law firm, registers at my law firm Web site and wants to buy a will and other asset protection documents.

One commentator has observed that in the area of online wills that:

> "Attorneys have historically been viewed as the gatekeepers to assure that the person that is having a Will or trust prepared has capacity and/or is not subject to undue influence. California law creates a strong presumption that the person who has a Will or trust prepared and executed before an attorney had capacity to do so. This presumption must be rebutted by the person challenging the document. In a Will or trust contest, it is highly likely that the drafting attorney and whoever was present at the execution of the Will or trust (attorney / signing paralegal) will be called to testify as to the capacity and/or lack of undue influence of the client, testify to the demeanor and health of the client, testify as to who else might have been present in the client meeting, etc? I do not know how an attorney could effectively defend the competency and lack of undue influence of his client without being able to testify that he personally met with the client and was able to assess these things for himself."

The implication of this statement is that an attorney must always meet with a client in a face-to-face meeting when preparing a will and other asset protection documents, particularly because of the duty of the attorney to assess diminished capacity and undue influence on the testator.

In my experience, however, there are very few cases where diminished capacity or undue influence is an issue with an online client for a variety of reasons. In those cases, where it seems to be an issue, a face-to-face meeting should be required, but they are the exception rather than the rule.

I have generated many wills online through our law firm model and have always been able to make a judgment that the client knows what they are doing based on telephone and e-mail correspondence. We are also beginning to use Skype for client conferences which enables me to see the client directly. I believe that the use of video conferencing will continue to become easier to use with the cost of a video conference over the Internet trivial.

Moreover, the model for creating a will at a distance is not without precedent. Thousands of wills are created every year at a distance by attorneys who work for pre-paid legal insurance plans for employees of the Plan, based on a telephone call, without a face-to-face meeting. To insure proper execution, the Plan Attorney will often require that the signature page be faxed back to the attorney, with the notarial seal, plus a copy of the client's license to authenticate client identity. I do the same when I work through my virtual law firm at http://www.mdfamilylawyer.com .

From a policy point of view, it is critical that the legal profession figure out how to respond to changing demographics. The new generation of clients will want to deal with their lawyers online, whether they are an existing client of the law firm, or a new client that is acquired directly from the Internet.

LegalZoom claims that they have prepared over a 1,000,000 wills for customers using their document preparation service. Nolo Press has also generated thousands of wills for consumers during the past 20 years with their Willmaker product. All of these disruptive activities have the result of reducing the market share of solos and small law firms in serving the broad middle class in the preparation of wills and other asset protection documents such as powers of attorney, living wills, health care powers of attorney, and living trusts.

My goal, in creating the DirectLaw service is to level the playing field so that lawyers don't lose this business to non-law firm entities. The vast majority of clients do not need or want to be assessed for competency or undue influence. To penalize lawyers who want to serve this 99 percent of the market in an innovative fashion just opens the door to disruptors who have no such obligations, such as LegalZoom.

In my view, the question of whether there is a requirement that a lawyer meet with a client in a face-to-face meeting should depend on the circumstances and the attorney's good judgment. If an 82-year-old client registered on my law firm Web site, and is one who I did not know previously, and whose address was in an assisted living facility, I would call that client immediately on the phone to ascertain where an online service was appropriate.

This kind of client should be distinguished from a 40-year-old software engineer who works for Microsoft and who needs a will and other asset protection documents by next Tuesday because she is being assigned to a new position in China.

The English rule, in my opinion, is a workable model: There is no rule or regulation that requires a face-to-face meeting in every case. The relevant rule [rule 2 of the Solicitors Code of Conduct 2007 (as amended) – which is a general rule, not solely applicable to Wills] requires a solicitor to satisfy himself/herself that

the instructions represent the client's true and uninfluenced instructions and wishes before acting or continuing to act in the following circumstances:

- where the instructions are given 'on behalf of' the client by a third party, or by only one of joint clients; or
- where the solicitor knows or has reasonable grounds to believe that the instructions are affected by duress or undue influence

A face-to-face meeting may be a means of obtaining the required element of satisfaction, but it is not suggested anywhere that it is the only means.

In the fullness of time, the legal profession's market share of wills and other asset protection documents will continue to decline, to the point where law firms will only be serving a very affluent clientele with more complex estate planning problems. In my opinion, a blanket rule that a face-to-face meeting is always a requirement would do further damage to the legal profession's role in estate planning for the broad middle class. For the legal profession to abdicate the broad middle class market to non-lawyer will-makers would be a tragedy.

Issue #5: Clarify rules on legal referral to permit technology-based innovation to increase access to the legal system.

The legal referral system in the United States was created in a pre-Internet and pre-Google age. Consumers searching for a suitable lawyer would call the legal referral organization sponsored by the local bar, pay a small fee ($25.00 or $35.00) and would be given the names of three law firms in their geographic area that were randomly generated from a list. The law firm would provide a free half consultation for the $35.00 fee. Could there be any process that has been made more obsolete than Bar-sponsored legal referral agencies?

Today, the typical consumer would search for an attorney on the Internet, or through any of the major law firm directories such as http://www.findlaw.com . Detailed information about the qualifications and specialties of lawyers appear on their web sites or on profiles on the on-line lawyer directories. New attorney rating services like http://www.avvo.com that provides even more detailed information about a lawyer's background , including records of bar disciplinary actions, have emerged. Online matching services, such as http://www.legalmatch.com are available to help clients select the most appropriate attorney to handle their cases. A company called TotalAttorneys, based in Chicago, sponsors practice specific Websites with detailed legal information for consumers in divorce and bankruptcy, plus a panel of available attorneys in the consumers community who are available for hire. All of these services are for free. Many of these services have had to contend with attacks from state bars because they violated some legal referral rule and they were profit-making, rather than nonprofit. Only the State of California permits a "legal referral agency" to be a profit-making organization. In every other state, the legal referral agency must be a "nonprofit", an obvious attempt to restrict the legal referral business to entities operated by local bar associations. The new entrants portray there services as "marketing" or "advertising services, not "legal referral agencies", but the reality is that the outcome of their efforts is to connect clients with lawyers.

The most recent conflict in this area was a series of complaints filed by an attorney in Connecticut, Zenas Zelotes, against lawyers nationwide enrolled in the Total Attorneys marketing program in 27 different states. Zelotes alleged that the attorneys enrolled in the program were violating UPL by giving something of value to a non-attorney. The chief disciplinary counsel found cause to file charges against five attorneys alleging that they were obtaining referrals through sharing fees with Total Attorneys in violation of legal ethics rules. Just last week, the Connecticut Statewide Grievance Commission dismissed the complaints against the five attorneys. Other states have dismissed similar complaints, but some complaints are still pending. Zelotes apparently is not backing away from his claim that attorneys who participate in Total Attorneys violate ethics rules. . He told the *Chicago Tribune* that he will participate in a hearing this week on his complaints in North Dakota. "This is not the end of the debate in Connecticut and elsewhere," he said.

Because legal referral rules are obscure and subject, obviously to many interpretations, the result is the innovators who want to develop new ways to connect clients with lawyers over the Internet are either afraid that they will be attacked by the bar if they try something different, or try and force fit their models into a set of referral rules that have outlived their usefulness.

The ethical rules that govern client development support the notion that the practice of law is a professional endeavor, serving to separate the legal profession from all other businesses. However, regulating the business-getting activities of lawyers in a way that recognizes the practice of law as a business, as the Supreme Court has directed, argues against the legal profession as a distinctive public service unless such regulation can be shown to be consonant with consumer protection and not limiting of an individual's access to legal services.

III. Conclusion: Principles for Regulating Online Law

The Internet will continue to revolutionize law just as it has many other areas of business. There are many questions about ethics and propriety that may arise over the delivery of online legal services. In each instance, the questions must be asked: Do consumers need protection, or is the protection in place really just to ensure the continued protection of traditional lawyers' practices?

From a policy point, I think that the development of on online legal services by law firms and other legal solution providers must be encouraged. These providers promise to offer consumers and businesses with affordable, quality legal assistance they need. The organized bar should expeditiously remove any impediments to the growth of online legal services in current and proposed rules.

This is not to say that lawyers should check their ethical responsibilities when they offer legal services online. Law firms should be encouraged to create ethically-compliant Web sites that offer legal services directly to consumers over the Internet. In the Appendix of this paper appears a copy of "**Suggested Minimum Requirements for Law Firms Delivering Legal Services Online,"** published by the eLawyering Task Force of the Law Practice Management Section of the American Bar Association.

The Internet as a platform for the delivery of legal services has the power to significantly enhance the productivity of law firms. Yet, the cost of legal services for consumers has increased significantly during the past decade. We have already witnessed how the Internet has the potential to increase productivity within law firms, resulting in lower legal fees for American consumers.

The expansion of innovative approaches to delivering legal services online will only happen if the "bricks and mortar" legal industry does not attempt to transfer existing rules, developed in an era before the widespread expansion and accessibility to the Internet, onto online legal services without modification to reflect current realities.

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Suggested Minimum Requirements for Law Firms Delivering Legal Services Online.

Background

On February 10, 2003, the American Bar Association House of Delegates approved a set of best practices guidelines for legal information web sites that were developed jointly by the *Elawyering Task Force, ABA Law Practice Management Section and ABA Standing Committee On the Delivery of Legal Services.* The purpose of these guidelines was to improve the quality and accuracy of legal information published both by law firm web sites and non-law firm legal information web sites. These guidelines can be found here.

Since then, innovative law firms have sought to deliver legal services directly to clients through their web sites or to set up what some call - "virtual law offices." Unlike a simple law firm site that may have just a description of a firm's practice, biographical information about the partners and employees of the firm, and some legal information, a "virtual law firm" is characterized by access by the firm's clients to a password protected and secure web space where both the attorney and client may interact and legal services consumed by the client. Some of these legal tasks may include the delivery of online legal advice, legal review of documents that have been received by the client from another party, discussions between the lawyer and the client, and the creation, assembly, and review of legal documents and forms. Examples of law firms that are delivering legal services online include: http://illionisdivorce.com; http://www.kimbrolaw.com; and http://www.mdfamilylawyer.com. As more law firms become interested in adding a "virtual" dimension to their practice, there is increasing interest in making sure that the "practice" meets requirements for the delivery of legal services on-line directly to clients.

These minimum requirements are designed to help lawyers resolve these questions so that their "virtual practices" comply with the applicable professional rules of conduct. Since every state develops and enforces its own rules for the legal profession, these requirements will be advisory only.
The following draft requirements provide a framework for further discussion and are likely to evolve over time as more law firms move their practices online and encounter novel and unique situations that are not anticipated by rules that were aimed at law firms purely operating in the physical world.

Suggested Requirements

Law firms that wish to deliver legal services on-line should meet the following requirements:

1. **Web Site Architecture**: The basic structure of a law firm web site that offers legal services online requires a secure client web space that is accessible only with a user name and secure password. Without such a mechanism it is difficult or impossible to comply with the rules of professional conduct that deal with UPL, client confidentiality, establishing the lawyer/client relationship, and conflict of interest issues.
   .
   a. **Ethics Issues:** The Rules of Professional Responsibility are not revoked just because you are delivering legal services online and through the law firm's web site. Mechanisms such as the following must be put in place:
   b. Conflicts of Interest still must be checked.
   c. The law firm must not violate UPL rules and must serve only clients who are residents of the state where the firm is authorized to practice, or clients who have a matter within the state where the law firm is authorized to practice. A procedure must be in place to verify that the law firm is authorized to provide service to the client.

   d. If the state has residency requirements, then the attorney will have to comply with those by adding a statement to their site that informs the public that there is no physical law office in that state or that the attorney resides in a state other than the one in which he or she is offering services.

2. A **disclaimer** should be published on the site that makes UPL limitations clear.

3. A **Terms and Conditions Statement** should be published on the public section of the site that describes precisely limitations on services, the requirements to establish a lawyer-client relationship, and disclaimers related to the creation of the lawyer-client relationship. It should make clear that any legal information that appears on the web site is not legal advice, and that a lawyer/client relationship must be established before any legal services are provided.

4. The client must accept and agree to a **retainer agreement** outlining the scope of legal services at the time they become a client. The acceptance of the retainer agreement establishes the lawyer/client relationship. The attorney should not provide legal services until the lawyer/client relationship is established.
   a. If the jurisdiction in which the law firm operates has “client-identification” rules, these rules must be complied with even though the client is an ”on-line” client.
   b. Retainer agreements may be handled in different formats online whether that is through a traditional click-wrap agreement, sending a traditional engagement letter for signature and then uploading it into the client’s online file, using a digital signature service on a letter, or creating an online HTML form that requires the client to click to accept each provision of an engagement letter that is then stored in their file.

   Marketing Rules: The law firm web site must comply with the marketing rules incorporated into the state’s Rules of Professional Responsibility that apply to the law firm. This usually requires a disclaimer that the public section of the web site is a form of advertising. Usually a disclaimer must appear in the footer which indicates that the law firm’s public web site (the “front-end”) is a form of advertising and information contained herein should not be relied on for legal advice.

   Note: A “best practice” would be adherence to the ABA’s Guidelines for Legal Information web sites.

5. **On-Line Payment of Legal Fees:** Payment of legal fees on-line by credit card will have to comply with the state rules that govern attorney trust accounts.
   a. If the method of collecting online payments is such that the attorney is collecting and storing credit card information on their virtual law practice, it must comply with federal regulations, such as PCI Compliance.

6. Protecting Client Confidences:

   a. All data that is transferred online between the law firm’s web site and the server must be encrypted.

   b. Third-party hosting providers should have policies and procedures in place for security breaches, data theft, privacy and other concerns.

   c. The contract with the hosting provider should make clear under what circumstances the provider’s staff has access to client files and also make clear that if the vendor’s staff is accessing client data for technical reasons, they are functioning as agents of the law firm as if they were the law firm’s internal staff.

d. A procedure should be in place that guarantees the security of the firm's client data, provides for redundant back-ups, and offers a procedure for exporting the data on behalf of the law firm at the request of the law firm.

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[There is another set of issues that a law firm must consider when selecting a hosting provider for the provision of a "Software as a Service" This subject is beyond the scope of this discussion of minimum requirements.]

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7. The law firm should consider securing various certifications that confirm the security and the privacy policy of the web sites, such as the Hacker safe NORTON Safe seal and the Truste Certificate. These are examples. There are other alternatives which vary in cost. This would provide notice to the consumer that the law the secure portion of the law firm's web site complies with industry standards for security.

We are confident that as law firms respond to the needs of clients who want to deal with attorneys on-line, they will adapt to delivering services in ways that are consistent with the legal profession core professional values. Reactions to the draft requirements outlined above would be most welcome. We also welcome participation in the eLawyering task force. If you are an ABA member, you can sign up for our email discussion list by visiting http://www.abanet.org/abanet/common/email/listserv/listcommands.cfm?parm=subscribe&listgroup=LPM-ELAW.

Appendix: (To be Completed).

1. Sample Retainer Agreements for On-Line Delivery of Legal Services.
2. Sample Disclaimers