

**Excerpt from the draft of the forthcoming book *The Lawyer's Guide to Online Marketing Tools*, by Stephanie Kimbro, ABA LPM Publishing, Spring 2013**

**Introduction**

This book is about starting a conversation between lawyers, the public, and the online companies providing legal services to the public. Instead of marketing legal services *to* the public, lawyers need to understand how to create a better marketplace *around* legal services. In order to do this, we need to focusing on three broad goals: 1) restructure the lawyer advertising vocabulary, 2) reevaluate some long-held, inaccurate assumptions about lawyer advertising to the public and how it affects legal service delivery, and 3) let go of protectionist sentiments that hold lawyers back from staying relevant in the public's eye. This book proposes ways to begin accomplishing these goals while providing practical tips for lawyers to grow their business using online marketing tools.

Given the nature of online communities and ecommerce, it is natural that this is a book centers around collaboration - collaboration with technology vendors, nonlawyer legal service companies, marketing companies, the legal services community, and the public. This book strives to find the "we" in the concept of marketing legal services that will allow lawyers to balance their professional duties as part of a larger legal community with their financial needs as independent business owners. This book will help lawyers become part of the online conversation related to legal services and provide a new way of thinking about marketing services from a collaboration standpoint.

To do this, we need to examine what is actually happening on the Internet because it permeates the everyday lives of all of us, even those who continue to protest that it does not impact them. It affects us culturally and socially whether we engage on the Internet as individuals or choose to passively lurk online without contributing to the conversations. The Internet has and will continue to affect the way we communicate in-person and in more traditional settings. Our brains are becoming rewired with a new set of "normal" social habits based on this digital, global marketplace of ideas and commerce.

Online marketing should not be considered a distasteful practice by lawyers if it is conducted as part of a larger conversation with the public. 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 term of art; it is the way that any lawyer obtains paying clients. Concepts of 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. 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.

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.

To restate the obvious, technology and specifically the Internet and cloud computing, have changed the game across the board. 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.

The ABA Commission on Ethics 20/20 specifically studied the issue of the use of the Internet in client development in a paper entitled "Issues Paper Concerning Lawyers' Use of Internet Based Client Development Tools."<sup>1</sup> In response to their request for comments and feedback, the Standing Committee on the Delivery of Legal Services drafted a recommendation that included several sweeping changes to the Model Rules pertaining to attorney advertising. The recommendations were intended to increase access to justice for the public by increasing the methods by which individuals may locate lawyers online and find online legal services provided by licensed professionals. These benefits were briefly acknowledged, but the changes were aggressively shot down by the ABA Standing Committee on Lawyer Referral and Information Service in a response letter to the Commission "in light of long-established jurisprudence on kickbacks and ambulance chasing, and the very real potential for the undermining of both the letter and the spirit of the solicitation prohibition."<sup>2</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 are 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? Is a collaborative approach a way of compromising? 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?

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<sup>1</sup> ABA Commission on Ethics 20/20 Working Group on the Implications of New Technologies Issues Paper Concerning Lawyers' Use of Internet Based Client Development Tools (September 20, 2010) at [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/ethics\\_2020/clientdevelopment\\_issuespaper.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/ethics_2020/clientdevelopment_issuespaper.authcheckdam.pdf). A Resolution to make changes to the rules applying to the use of technology in client development were adopted by the ABA House of Delegates at the ABA Annual Meeting in August, 2012. The adopted resolution and report to the House of Delegates is accessible here: [http://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/2012\\_hod\\_annual\\_meeting\\_105b\\_filed\\_may\\_2012.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/2012_hod_annual_meeting_105b_filed_may_2012.authcheckdam.pdf)

<sup>2</sup> See the ABA Standing Committee on Lawyer Referral and Information Service letter to the Commission on Ethics 20/20 responding to the Standing Committee on the Delivery of Legal Service's feedback on changes to lawyer advertising rules (January 27, 2012) at [http://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/ethics\\_20\\_20\\_comments/standingcommitteeonlawyerreferralandinformationservice\\_2012\\_louisiana\\_publichearing.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/ethics_20_20_comments/standingcommitteeonlawyerreferralandinformationservice_2012_louisiana_publichearing.authcheckdam.pdf)

Up to this point, regulation of lawyer advertising has remained fixated on maintaining the existing rules and attempting to apply them to new methods of online communication. Regulators have analogized that a website is no different than a printed advertisement, that a chat room or web conference, such as Google Hangout, is no different from a group meeting, and emails are like snail mail or phone calls. However, there are different nuances built into the cloud-based technologies that lawyer may use today to connect and work with clients. Lawyers are nervous about whether they may adequately interpret the existing advertising regulations to ensure compliance. Maybe a new approach to regulation is needed. Maybe we need a greater understanding by the bar that starting an open, online conversation with the public about legal services and access is more important than self-preservation. The use of online marketing tools may be a first step for lawyers to ease into the online conversation and gain more of a presence. But to do so, these tools and the technology that services them must not be construed as another form of ambulance chasing; it is a more efficient and cost-effective way to connect lawyers with individuals needing legal services.

This book will serve as an analysis of legal market trends and online marketing tools. It will also be a practical, how-to guide for the law firm wanting to develop an innovative marketing strategy that focuses heavily on online methods. This book will also emphasize that in the coming years it will become increasingly necessary for the legal profession to open up to marketing collaboration with nonlawyer legal service companies, legal aid organizations, courts, and other legal clinics with technology vendors that connect these different entities with lawyers.

### **Sidebar: Restructuring Lawyer Marketing Vocabulary to Adapt to eCommerce**

A 2010 BIA/Kelsey report found that 97 percent of all consumers use online methods of researching and selecting services *in their local area*.<sup>3</sup> Even those law firms that claim their practice is “only local-based” or that they meet with all their clients in-person, in the office and at the courthouse, have no excuse to continue to ignore the Internet as a marketing tool. Online marketing methods are impacting all law firms. Below are some suggestions for redefining the legal profession’s marketing vocabulary.

The term “Market” should not be used as a verb, but as a noun. Marketing is not something a lawyer does “to” or “at” prospective clients. A market is a place where individuals come together to discuss common interests and to create relationships based on supply and demand. The focus in lawyer marketing should be on engagement and conversation.

Separate the concepts of “moral duty” from “etiquette” or not being “tacky” in advertising online. Lacking good taste is subjective. Being immoral or misleading is another matter. Lawyer regulations should not attempt to dictate taste.

The Internet is not a tool; it is a place. We don’t do things through it or on it; we do them “in” it. Welcome to the party.

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<sup>3</sup> BIA/Kelsey Report press release at <http://www.biakelsey.com/Company/Press-Releases/100310-Nearly-All-Consumers-Now-Use-Online-Media-to-Shop-Locally.asp> (March 10, 2010).

Commercialism and professionalism: these two concepts do not have to be at odds with each other. Does maintaining an attitude of sitting up on a high-horse of education and presumed privilege hinder the ability to interact with the average client? Of course it does. Intimidation may be useful in the courtroom or during negotiations, but it should not completely define the professional image of lawyers. The legal profession should refocus on the respect, trust, and expertise that falls under professionally rendered services, but present it in a way that is not condescending or intimidating to the average American citizen. Movies and television shows with negative or hostile images of lawyers will be difficult to supplant, but if lawyers start engaging more in open, online dialogue with the public, this can change.

Customer service is a concept most law firms do not think about, but it is a basic best practice for business owners in every industry. There are online methods of providing customer service. For example, sending a simple “thank you for being a client” email or providing free, basic legal education and content on a firm website or in an online marketing tool. These provide a platform for delivery of educational legal material. Content controls the Internet. Sharing is both good online customer service and a method of starting conversations with prospective clients and other lawyers.

Lawyers should not rely too strongly on the term “consumer” when thinking about marketing strategies for client development. Consumption implies a swallowing up of something in return for monetary value. We do not want our clients consuming legal services because in many cases the relationship between the attorney and client is what is so valuable to them and what makes our work meaningful beyond the financial rewards. Let’s remember they are our clients, but balance this with the knowledge that they are also our customers which implies another level of care beyond the attorney/client privilege; one that includes their satisfaction with our work and their overall experience with the delivery of legal services and the legal profession.

## The Opportunity

Lawyers start their careers with an existing image problem. The American public has overwhelmingly lost trust in lawyers.<sup>4</sup> The law firms that maintain their reputations do so with clients who are able to afford traditional, billable hour, full service representation. For the majority of the lower and middle class citizens, lawyer is someone you avoid. The image of a lawyer is someone who takes advantage of individuals who are in need for their own personal gain. Television shows, both dramas, sitcoms and reality television, have dramatized the world of lawyers and courtrooms to the detriment of our profession.<sup>5</sup> While these images may in some ways educate the public about the justice system, they create an unfortunate generalization about lawyers and the work that we provide as counselors and advocates.

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<sup>4</sup> See for example, “Time to Deregulate the Practice of Law”, Clifford Winston and Robert W. Crandall, *Wall Street Journal*, August 11, 2011 at <http://online.wsj.com/article/SB10001424053111903918104576502132536596092.html>.

<sup>5</sup> See William H. Simon, Moral Pluck: Legal Ethics in Popular Culture, 101 *Colum., L. rev.* 421 (2001) and Stephen Gillers, Taking L.A. Law More Seriously, 98 *Yale L.J.* 1607 (1989).

Accordingly, we can expect an uphill battle in altering these misperceptions. This will require rebranding of the profession as a whole which is not easily done with the blessing of the ABA or other larger national or state-wide consensus. For example, the ABA could pay for advertisements that run against LegalZoom's letting the public know about the ABA referral services or the benefits of working with a licensed lawyer versus paying for nonlawyer legal services and proceeding as a self-help representative. But the profession does not operate in an entrepreneurial fashion. Bureaucracy and lack of funding and support stunts our profession from pulling together to take quick actions to repair or defend media attacks against the profession.

This means it is up to the individual law firm to rebrand its image. The lawyers in the firm must become comfortable with the concept of taking responsibility for marketing the lawyer and the firm. Lawyers need to adopt the mindset that online methods of client development are nothing more than starting a long-overdue conversation with the people they hope to work for. The return on investment for restructuring their thinking and practices provides an opportunity for the firm to obtain a competitive advantage over other firms that cling to outdated stereotypes of what a lawyer is and how he or she should engage with the public. By coming down to the level of online communication that the majority of the public engages in, the legal professional will struggle less with maintaining an image and be able to focus more on enjoying the actual practice of being a lawyer.

## **Chapter One: Background on Online Lawyer Advertising**

### The Profession's Use of the Internet

Where are lawyers currently engaging with the public online for the purpose of client development? The 2012 ABA Legal Technology Survey Report (Report) provides a starting point for analysis, but is limited in its scope based on the demographics of the respondents. Of the different online marketing tools listed on the survey, which are linked to social media applications, the firms surveyed stated that they maintained a presence most often in LinkedIn and Facebook.<sup>6</sup> The Report did not list other potential online marketing tools for lawyers, such as collaborating with a direct-to-consumer legal services company. However, given the indications by respondents to slim use of different forms of online social networking, it is doubtful the numbers would have been significant other than to deny involvement with online marketing tools. Interestingly, when asked if the lawyer personally used any of the social networking applications, the numbers increased significantly from usage of these applications by a law firm. Again, LinkedIn and Facebook topped the list of most used applications for personal online social networking by the lawyers responding to the Report.<sup>7</sup>

Regarding the amount of time spent in online communities or using social networking for professional purposes, 68.2% of respondents reported less than one hour per week.<sup>8</sup> When asked

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<sup>6</sup> See ABA 2012 Legal Technology Survey Report at Section IV, page 33, showing that 49.1% of respondents maintain a law firm presence in LinkedIn and 30.3% of respondents maintain a presence in Facebook. 29% of respondents indicated that they did not maintain any presence on online communities or social networks.

<sup>7</sup> See ABA 2012 Legal Technology Survey Report at Section IV, page 38, showing that 74% of respondents maintain a personal presence in LinkedIn and 29.4% maintain a personal presence in Facebook.

<sup>8</sup> See ABA 2012 Legal Technology Survey Report at Section IV, page 39.

why the lawyer respondents use online communities and social networks, the primary reason was for career development/networking and 41.9% for client development.<sup>9</sup> Sixty-five percent of respondents stated that they had never had a client retain their services directly or via referral as a result of their interactions in online communities or social networking for professional purposes.<sup>10</sup> Only 46.7% of the firms surveyed indicated that they have policies in place regarding the use of online communities and social networks, but almost half at 48.9% did not know if any firm policy existed.<sup>11</sup>

How are lawyers communicating with clients online? According to the report, an overwhelming number of lawyers are still meeting with clients face to face.<sup>12</sup> The second and third most used forms of communication are phone conversations and email.<sup>13</sup> Lawyer respondents were not as accustomed to communicating with clients through web conferencing.<sup>14</sup> Similarly, in communicating with non-clients on work-related matters, the respondents gravitate toward the same patterns of communication.<sup>15</sup> Yet, 89% of respondents reported using a smartphone for work-related activities while not in the office.<sup>16</sup> Thirty-three percent report using a tablet device.<sup>17</sup> In contrast to work-related methods of communication, almost 95.7% of respondents reported using some form of online community or social network personally for non-work related activity.<sup>18</sup>

The demographics of the report indicate that these numbers most likely do not reflect an accurate picture of the legal professions online activities using various forms of online marketing tools for client and professional development. Most respondents were partners in their law firm, had been practicing over twenty years, and were over the age of 50.<sup>19</sup> Even among respondents, most indicated high use of online communities and social networking for personal purposes. Many of them stated they frequently used smartphones and other mobile devices for work. However, it is not uncommon for mobile devices used for work purposes to also end up used for personal as well. With young associates in law firms, it may be particularly difficult to separate the use of a single mobile device for only work-related functions.

For the online lawyer, it is difficult to separate the personal from the professional in terms of the use of online communities and social networking tools. There are two interests that come into play in this gray area. The first is ethics; the lawyer's duty to comply with ethics rules of his or her jurisdiction. The second is the concept of professionalism which might loosely be defined as the expected behavior of a professional for which there is no clear ethical rule, but which he or she is expected to comply with as part of that profession. Because the concept of professionalism is subjective and is not something that is clearly taught in law schools except as a course for bar

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<sup>9</sup> See ABA 2012 Legal Technology Survey Report at Section IV, page 40.

<sup>10</sup> Id at page 41.

<sup>11</sup> Id. at page 46.

<sup>12</sup> Id. at page 56, showing that 58.4% regularly meet with clients in person and 33.6% occasionally do so.

<sup>13</sup> Id at page 56, showing that 89.3% of respondents communicate by phone with clients and 87.8% of respondents communicate by email.

<sup>14</sup> Id. at 59, showing that 2.6% of respondents used web conferencing and 1.4% used video conferencing to communicate with clients.

<sup>15</sup> Id. at 61.

<sup>16</sup> Id. at Section VI, page xvi.

<sup>17</sup> Id. at Section VI, page xxii.

<sup>18</sup> Id at page 47.

<sup>19</sup> Id. at Section VI, page 2 and 3.

passage of professional responsibility exam questions, lawyers across generations and from different educational backgrounds may have different definitions of what constitutes professional behavior.

### What is the Public' Use of the Internet to Communicate?

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>20</sup> This percentage has increased by eleven percent since the year before.<sup>21</sup> Mobile data traffic internationally is expected to increase eighteen fold between 2011 and 2016.<sup>22</sup> One report states that by the end of 2012, the number of mobile devices will surpass the number of individuals on earth.<sup>23</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>24</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>25</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

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<sup>20</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>21</sup> Id.

<sup>22</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)

<sup>23</sup> Id.

<sup>24</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>25</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.

client development tools. This book will attempt to provide basic best practices for the lawyer who wishes to engage in collaborative online marketing methods and begin a conversation with online prospective clients.

Is there empirical research showing a correlation between lawyer advertising and misled consumers?

Society no longer holds lawyers to the same prestige that it once did. The bar has been desperate to preserve this dying image over the years, but one could argue that the nail hit the coffin years ago. The public's image of the legal profession is uncontrollably altered by the proliferation of television shows and movies depicting dramatized versions of lawyers, both positive and negative. For better or worse, these are the images that the public has when they find themselves in need of legal assistance. Unless they personally know a lawyer or have had a previous experience with one, often not in a positive situations, their initial reaction to the thought of having to find and retain a lawyer may be one of dread. If we are going to be that unapproachable as a profession, there should be a substantial reason for deterring access to justice.

Requiring lawyers to continue to set themselves on a high pedestal of isolation from the lay public only creates a wider disconnect from the public we are supposed to serve. It does not resurrect the prestige the profession may have once had, nor will it do anything on a grand enough scale to improve the public's impression of lawyers. However, for a handful of elite lawyers and law firms, restrictions related to online marketing tools would not affect their practices at all and competition is not as much of a pressing issue.

There is a caste system in the profession which the Internet has only brought more clearly to light. The caste system is determined by perceived difficulty and prestige of practice area, the legal education and experience of a firm's lawyers, the economic status and education level of their existing client base, whether they provide "personal legal services" or work with corporations, how many years the firm has been in existence, among other factors. As with any caste system, those at the top must carefully preserve their position. Lawyers in the upper-caste as well as regulators must hope that unclear advertising rules or additional restrictions will somehow frighten most lawyers into behaving less "flamboyantly."<sup>26</sup>

Online marketing however stirs up the pot in a way that makes this image control more difficult. It also exposes the clients of the elite firms to the prospect of more affordable, convenient alternatives in the form of lawyers who are technology savvy, use cloud computing and can deliver legal services online. The online marketplace is something most individuals and companies must now be well-versed in for survival. Accordingly, they may be seeking out law firms that understand their world and whom they can find online when they go searching. Elite law firms are not happy being dragged into playing the online game with firms in a lower caste. Many of these elite lawyers sit on the boards and ethics committees of various state bars and ABA entities.

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<sup>26</sup> This assertion and a wonderful analysis of the direction that lawyer advertising should take is offered in an unpublished article by the late Professor Fred Zacharias as part of a Legal Studies Research Paper Series No. 07-16 (October 2005) from the University of San Diego School of Law, accessible at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=829305](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=829305).



Unfortunately, the majority of the public does not understand that what the legal profession is really doing is attempting to maintain control over self-regulation of the profession. A study conducted by the ABA Commission on Legal Advertising over ten years ago found that there was “significantly more acceptance of the idea of lawyer advertising among consumers than among lawyers.”<sup>27</sup> Considering the growth of online advertising methods in all industries since the early 1990s, the ability of the public to filter out and digest advertisements has likely improved out of necessity. Yet, those who would limit online advertising by lawyers use arguments of restricting lawyer’s self-promoting activities and commercialization as a way to show the public that we are really acting in the best interests of the public. In fact, it may be a thinly veiled attempt at self-preservation by elite lawyers and to keep the federal government from sweeping in to control regulation of lawyer advertising. If lawyers want to maintain self-regulation, the profession will need to reevaluate the way that existing advertising regulations are handled in light of online marketing tools available to lawyers.<sup>28</sup>

In fact, as in most other professions, competition is good for lawyers because it forces us to be innovative. That innovation is what benefits our clients because we must find ways to make our legal services more affordable, efficiently delivered, and flexible for the modern needs of our clients and how they want to work with us.

In this chapter we will look at the assumptions behind the existing advertising rules that will affect a lawyer’s use of online marketing tools. We will discuss the ambulance chasers, the difference between traditional print advertising and online advertising as it affects the public’s decisions in choosing legal services providers, and consider how online marketing tools may impact access to justice, including both the benefits and risks inherent in its use.

### What are the Marketing Industry Standards for Online Advertising?

Internet advertising operates by measuring the effectiveness of the advertisements and charging the advertiser based on how many clicks that ad receives. This is also termed the “pay-per-click” advertising model or PPC. Compare this modern standard to the less effective methods of judging the effectiveness and reach of advertising through print or television ads. Those ads were quoted on a flat fee basis. To stay competitive with Internet advertising, some publications, such as the Yellow Pages, are changing their pricing model to include pay-per-call rather than the flat fee model. However, Yellow page and other print publication ads were and mostly still base their pricing on circulation numbers, or the number subscribers or readers of the publication. Ads are then further priced by size and other variations on the ad which may potential attract the eye of the reader. Television ads are priced based on the number of audience viewers the station projects it has and these numbers are determined by Neilson ratings and other estimates from Cable companies. Prices then also vary based on the time of day or night, the

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<sup>27</sup> ABA Commission on Advertising, Survey on the Image of Lawyers in Advertising (1990) at 14.

<sup>28</sup> There are even some consumer groups that attack regulation of lawyer advertising. See for example, Public Citizen, Inc. which was successful in its suit challenging the constitutionality of Louisiana’s amendments to its lawyer advertising provisions. *Public Citizen, Inc. v. Louisiana Attorney Disciplinary Board* (September 23, 2008) at <http://www.lsba.org/2007NewsResources/2008-09-23PublicCitizenvLADB.pdf>

channel and other factors that would ensure that the ad reaches the optimal number of viewers who might have an interest in the subject of that ad.

By contrast, Internet advertising provides a much more accurate assessment of the number of viewers of an advertisement. For example, with pay per click advertising, when a consumer runs a keyword search on a search engine, such as Google, the results may feature one or two “sponsored” ads. These ads will include the name of the company, and a line or two about the service or product with a link to the landing page that the advertiser has designated for that ad. The consumer’s browser is then directed to that site. Whether or not the consumer actually stays on the site and reads the text or continues to learn more about the company, that advertiser will be charged for the click the consumer made on the link to their site. Many companies using pay-per-click advertising will direct the consumer to what is termed a “landing page.” This page will be optimized to engage the new visiting consumer in a way that prompts them to provide their contact information for follow up. In this sense, the advertiser must then convert that prospective lead into an actual customer.

Group advertising with pay-per-click advertising works when a group of sponsors which may be individuals or companies will put their resources into a single landing page so that they may increase the amount of money spent on pay-per-click advertising with a search engine. This means that when a consumer goes to search for keywords, this group’s advertisement has a better chance at being one of the first sponsored ads on the page and therefore, will received the most page views. One of the criticisms of pay-per-click advertising is that it may give an unfair advantage to larger law firms with greater marketing budgets or those who have the ability to retain the services of a marketing firm that understands how to purchase the correct keywords in a pay-per-click campaign to be the most cost-effective. Those firm’s ads will appear at the top of a search for a particular practice area within a jurisdiction whereas a solo or small firm’s link would appear in the regular search results and most likely not even on the first page of results. Selecting the correct keywords for a campaign can be tricky and requires that someone understand how to monitor the analytics provided for these campaigns and adjust them so that money is not wasted. This is discussed more in Chapter Two. Money invested in a pay-per-click campaign may easily be eaten away with visitors who are not prospective clients clicking on the link and not finding exactly what they were searching for. Instead, group advertising for pay-per-click has the potential for lawyers to pool their resources into a single pay-per-click marketing campaign so that they may compete against larger firms. This also means that the public may have more chance of finding a lawyer that is from a solo or small firm which might provide more appropriate legal services for their need.

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