

Digital Marketing in the Legal Profession: What's Going on and Does it Matter?

Justine Rogers and Anthony Song¹

UNSW, Australia

Abstract

Law firms are importing 'digital marketing' into their practices. 'Digital marketing' is using the internet and online technologies, such as computers, mobile phones, websites, social media and data tools to achieve marketing objectives. These objectives are usually to acquire customers, build customer preferences and loyalties, promote brands and increase sales. Digital marketing is being introduced (directly and indirectly) by legal marketers, who are selling their expertise as solutions to the current pressures faced by firms. This is new territory for a profession that has historically opposed advertising and explicit self-promotion. For some, digital marketing is simply a modern twist on the personal referral of medieval times. But there is little in the current legal literature that looks closely at digital marketing in law and what it means for legal professionalism. This article presents digital marketing as a new form of entrepreneurial and managerial practice, adding to others operating in law firms as they become 'target audiences' of new business disciplines. We examine what digital marketing entails, the ideas and technologies behind it, the trends in and types of digital marketing in law, and the implications for lawyers' identities, expertise, and professional and legal obligations. Digital marketing is now unavoidable. Firms today must understand the technologies and underlying 'market' logic that underpin digital marketing and support its responsible use by their lawyers and marketing teams.

Keywords: Digital marketing; legal profession; professionalism; law firms; legal ethics.

I. Introduction

Law firms face increasing competition for clients, with the entry of the 'Big Four' accounting firms, the rise of substitute suppliers and offshore options, and downward pressure from clients themselves.² The contest for clients is taking place within a longer series of 'turf wars' within and by the legal profession to increase, secure and defend its special knowledge and jurisdictional (or work) boundaries.³ In recent times, one of the many responses of firms to secure clients within this pressurised environment has been to introduce more sophisticated marketing practices, in particular, 'digital marketing'.⁴

'Digital marketing' is the activity of using the internet and online technologies, such as computers, mobile phones, digital media channels and data tools to achieve marketing objectives.⁵ These objectives are typically 'to acquire customers, build customer preferences, promote brands, retain customers and increase sales'.⁶ In practice, digital marketing is about the management of an organisation's online presence, notably its website and social media accounts, and the implementation of certain

¹ Justine Rogers is Associate Professor at UNSW Law & Justice, Sydney. Anthony Song is a Research Fellow at the Centre for the Future of the Legal Profession, UNSW Law & Justice, Sydney.

The authors would like to acknowledge Dr Felicity Bell and Talina Hurzeler for their feedback on earlier versions of this article and thank the peer reviewers.

² Benchmarking, "From the Courtroom." See also Faucon, "Black Market Law Firms."

³ Webb, "Turf Wars and Market Control."

⁴ Kartson, "Future of Legal Marketing."

⁵ Chaffey, "Digital Marketing," 5.

⁶ Kannan, "Digital Marketing," 23.



Except where otherwise noted, content in this journal is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/). As an open access journal, articles are free to use with proper attribution. ISSN: 2652-4074 (Online)

communication techniques, such as search engine marketing, content marketing and social media marketing, among others.⁷ Marketing activities vary. Organisations might have a minimalist website sharing contact details through to multiple social media accounts, podcasts for each of the organisation's practice areas and multiple blogs.⁸ The latter is known in marketing speak as 'multichannel' or 'omnichannel' marketing.⁹ Digital marketing is usually cheaper and more effective than traditional forms of advertising through print, television, radio or billboards,¹⁰ though usually (or ideally, according to marketers), they work in tandem.¹¹

While initially met with resistance, in the last few decades, marketing firms and personnel have more successfully marketed themselves to the legal industry. In other words, the law firms have themselves become the clients or 'target audiences' of 'legal' marketers. This has expedited in the last five or so years, with considerable uptake and investment in digital marketing by law firms.¹² Many firms now retain public relations experts and hire marketing professionals,¹³ while a number of the large law firms employ permanent chief marketing officers.¹⁴ The decisions, priorities and operations of the large firms are significant because they tend to shape those of the rest of the profession.¹⁵ According to the American Bar Association's (ABA) TechReport in 2022,¹⁶ over 94% of law firms in the US have websites, and of these, 27% are being managed by internal marketing staff (up from 18% in 2019) and 20% are managed by outside consultants.¹⁷ As we illustrate in this article, marketing professionals and their emerging discipline, directly and indirectly, influence law firms' day-to-day operations, firm-wide decision-making and the nature of their interactions with the public. A study of digital marketing is also timely given that lawyers now routinely acquire clients online, and a large proportion uses marketing discourse and organisation, such as 'business development' (BD) and 'client relationship management' (CRM).¹⁸ Indeed, staff members, lawyers and outside experts versed in the methods and ideas of digital marketing are now in high demand.¹⁹

This is new territory for a profession that has long had not only an aversion to but a prohibition on advertising and self-promotion or marketing. Yet, for at least one commentator, these changes and the online medium are not especially significant; they are simply a modern twist on the personal referral of medieval times.²⁰ Concluding his (2022) comprehensive history of legal marketing in Australia and New Zealand, Professor Keith Thompson submits that 'legal marketing has not needed to change much in the last one hundred years despite advances in technology'.²¹ For Thompson, direct advertising (including online) communicates competence in the same way word-of-mouth referrals do but, unlike the latter, direct advertising is unlikely to inspire the level of trust needed for longer-term lawyer-client relationships to develop.²² Moreover, word-of-mouth referrals are still the primary way in which the 'most successful lawyers' are promoted.²³ While this observation seems valid—and in our article, we present research that supports the primacy of word-of-mouth advertising—we suggest that digital marketing *has* impacted and will continue to impact the legal profession in important ways that make it not simply 'the same message but in a different [and less effective] medium'.

This article presents digital marketing as a new and growing entrepreneurial and managerial practice that is adding to other business disciplines now operating in law firms. These are practices aimed primarily at profit and efficiencies that are

⁷ Chaffey, "Digital Marketing," 6. Others include online advertising, email marketing, and partnership arrangements with other websites or businesses (e.g., influencers, affiliates, etc.).

⁸ A blog is a website that features regularly updated content or insight into a certain topic.

⁹ Chaffey, "Digital Marketing," 6.

¹⁰ Charlesworth, *Absolute Essentials of Digital Marketing*, 1–2.

¹¹ Chaffey, "Digital Marketing," 6.

¹² A 2022 survey of 160 law firms across Australia and New Zealand by the professional association body the Australasian Legal Practice Management Association (ALPMA) found that the two biggest areas where firms are focusing their strategy for are information technology (61%) and marketing (60%). ALPMA, *Reaching New Heights*, 25.

¹³ Gillers, *Regulation of Lawyers*, 685–686.

¹⁴ For example, in the US, up to 82% of large law firms have chief marketing offices: Bloomberg Law and Legal Marketing Association, "78% of Attorneys Rely on Business Development Professionals."

¹⁵ "Rogers, "Large Professional Service Firm"; Flood, "Re-Landscaping of the Legal Profession"; Muzio, "Professions and Organizations."

¹⁶ The ABA Legal Technology Survey Report is 'the most comprehensive study available of lawyers' actual technology use' and has been published annually for more than 20 years in the US. See ABA, "ABA TechReport 2022."

¹⁷ See Johs, "ABA TechReport 2022 Websites & Marketing." Larger firms in general had much higher rates of marketing adoption across the board.

¹⁸ We define these terms shortly.

¹⁹ Commonwealth Bank of Australia, *CommBank Legal Market Pulse*, 12.

²⁰ Thompson writes, 'public relations (PR) releases and social media endorsement at base are arguably just a modern take on the personal referral of the thirteenth century'. Thompson, "The History of Legal Marketing in Australia and New Zealand," 102.

²¹ Thompson, "The History of Legal Marketing in Australia and New Zealand," 102.

²² Thompson, "The History of Legal Marketing in Australia and New Zealand," 103.

²³ Thompson, "The History of Legal Marketing in Australia and New Zealand," 99.

changing—combining with, challenging and/or surpassing—elements of traditional, professional logics.²⁴ ‘Logics’ are belief systems that, in this context, inform a lawyer’s expertise and ethical commitments, as well as their work processes, demands and relationships.²⁵ We see digital marketing as reinforcing the discourse and practice of law as ‘legal service delivery’ and, as others have noted, exposing tensions in the current ethical rules and asking difficult questions of lawyers seeking to take advantage of it.²⁶ Indeed, at its extremes, digital marketing at least raises significant questions about the profession’s autonomy and distinctiveness,²⁷ including as to how lawyers are changing their own practices in response to its requirements. Our article contributes, then, to a rich literature that investigates organisations as the primary sites for this top-level change, resulting in a broad movement from the (archetypal) partnership model to a more managed professional business (MPB).²⁸ MPBs treat the professional organisation as a business focused on profit maximisation and on centralised, coordinated management to make this more efficient,²⁹ including by bringing in marketing teams and marketing ideas.³⁰

Marketing via technology is now unavoidable,³¹ and law firms today must understand and ensure their lawyers and marketing teams understand the underlying ‘market’ logic and technologies that underpin digital marketing practices. Having lawyers and marketing teams employ such practices in a way that is supportive, rather than undermining, of legal professionalism is another matter—yet one that is left under-examined in the literature thus far. In addition to Thompson’s historical work, to date, the literature has largely focused on the controversies around the restrictions on legal advertising,³² the regulatory gaps exposed by new digital media technologies,³³ and the ethics risks of lawyers’ use of social media, particularly when used in court.³⁴ There are also studies on how law firms and the profession market themselves to new recruits.³⁵ These studies complement and overlap with our topic of interest, which includes the ethical implications of digital marketing. However, we are interested in the way firms are interacting with digital marketing as a discipline—its concepts, methods and technologies—and what else this means for them and their employee-lawyers.³⁶ Moreover, there is little in the current legal literature about what explicitly digital marketing encapsulates and who or what ideas and technologies are behind it. Our article looks especially at website content, social media and search engine marketing as the main forms identified by digital marketers and those we see from an outsider’s (desktop) view as the common types being used by the firms.

This paper is structured as follows. Part II further defines digital marketing and provides a brief methodological note about the study. Part III outlines the enabling conditions and drivers behind marketing’s inroad to law, including the activities of marketers who have honed their expertise to focus on the legal industry. Part IV discusses the impacts of marketers and marketing practice on law firms, both generally across the profession and in the form of specific digital marketing practices, particularly in large law firms, namely websites, social media and data analytics. Part V considers the wider implications of digital marketing’s diffusion into law firms, looking at three dimensions: (i) the manner in which the lawyer’s professional identity and work arrangements are being gradually hitched to the firm’s digital marketing agendas; (ii) how digital marketing has accelerated the changes in the lawyer–client relationship to become more ‘client-centric’ but in certain respects more vulnerable; and, to extend this last point, (iii) the risks digital marketing poses to the ethical and legal responsibilities of lawyers and firms. Our Conclusion considers what we should make of this new discipline as a form of institutional change, recognising that, as with others, it is tempting to either overplay its significance for professionalism as entirely negative or ‘contaminating’³⁷ or else underestimate it completely.³⁸ We also suggest further avenues for research. Our paper focuses on Australia, with comparisons to other common law jurisdictions, particularly the US, the site for most legal digital marketing activity.

²⁴ Logics are belief systems that then absorb into guidance for practice action, identities, structures and norms: Canning, “Regulation and Governance,” 171.

²⁵ See Rogers, “Legal Project Management”; Bell, “‘Fit and Proper’ Coders?”; Rogers, “Transforming the Legal Profession.”

²⁶ Lackey, “Lawyers and Social Media,” 149–150.

²⁷ Professor David B. Wilkins describes this as the ‘paradox of professional distinctiveness’: Wilkins, “Making Global Lawyers.”

²⁸ Greenwood, “‘P2-Form’ Strategic Management.”

²⁹ Pinnington, “Archetype Change,” 86–87.

³⁰ Lander, “Drift or Alignment?”

³¹ Bender, *Marketing and the Law*, 428.

³² See Gray, “Advertising by Professions”; Brock, “Court Took a Wrong Turn”; Tuft, “Rethinking Lawyer Advertising Rules”; Hale, “Lawyers at the Keyboard”; Shely, “From Bates to Blogging.”

³³ See Bromberg, “Tweet at Your Own Risk”; Endo, “Ad Tech & The Future of Legal Ethics.”

³⁴ Krawitz, “May It Tweet the Court”; Janoski-Haehlen, “The Courts Are All a Twitter”; Zawacki, “Social Media Use in the Legal Profession.”

³⁵ Collier, “Be Smart”; Manderson, “Coffee House”; Rogers, “Representing the Bar.”

³⁶ Our article focuses on law firms and the solicitors’ profession. For analysis of marketing at the Bar (of England and Wales), see Goulandris, “Reshaping Professionalism”; Rogers, “Representing the Bar.”

³⁷ Goodrick, “Constellations of Institutional Logics”; Blomgren, “Coping with Contradictions”; Noordegraaf, *Public Management*; Lander, “Drift or Alignment?”

³⁸ Rogers, “Transforming the Legal Profession,” 150.

II. What is Digital Marketing?

Digital marketing is difficult to precisely define because both ‘digital’ and ‘marketing’ are changing terms. Digital marketing is a growing and inherently dynamic discipline, trying to find its boundaries.³⁹ However, as mentioned, scholars and marketers agree that it comprises the use of the internet and online technologies to market or promote and usually then sell goods or services, as well as to reach customers and allow them to interact with the brand. Digital marketing also allows the business to know more about the customers, what they value and what motivates them. Digital marketing’s objectives are to increase profits and achieve and support other business goals (such as value and satisfaction for customers, brand loyalty and the growth of the business). As part of the professionalisation of marketing, associations for marketing have emerged, many who have endeavoured to settle the scope and meaning of digital marketing. Recently, the American Marketing Association redefined digital marketing as centred on creating value for customers, clients, partners and ‘society at large’.⁴⁰ In other words, from a leadership perspective, the definition of marketing extends beyond the profits and growth of the business to something hopefully more publicly minded.

The definition of digital marketing is inextricably linked to the development of technology. Digital marketing corresponds to the internet revolution (from the 1990s) and the proliferation of information and community channels and platforms, as well as the innovation in, and availability of, desktop computers and (‘smart’) mobile phones.⁴¹ This is occurring against a dramatic change in our economy and society in which some of the most powerful businesses (financially, culturally and politically) are tech companies (e.g., Amazon, Alibaba, Shopify, Google and Facebook), and approximately 20% of all retail shopping is done online.⁴² To foreshadow some of the Part III discussion on drivers, companies today are very aware that they need a ‘digital relationship’ with their customers.⁴³

Digital marketing experts have endeavoured to clarify the domain, with two leading marketing practitioner-scholars, Dave Chaffey and Fiona Ellis-Chadwick, saying there are distinct ‘pillars’ that make it up as a practice: the business aims (and whether they require a single marketing campaign or an always-on approach); the type of audience (consumer or business, and understanding their ‘personas’ to deliver more relevant content and experiences); the devices with which ‘audiences’ engage with the business (the relative importance of the major digital platforms—such as Facebook, Google and TikTok—versus specialist platforms); the type of digital marketing (websites, social media marketing, search engine marketing and email marketing—digital PR); digital data or data analytics (gleaning and applying insights about audience); and the marketing technology or ‘MarTech’ used to create an interactive experience for the customer/audience, and then measure and report what has been done (e.g., websites, mobile apps, software-as-a-service,⁴⁴ marketing automation, AI and VR).⁴⁵ Digital marketing involves the organisation’s own media (e.g., their website, blogs and social media presence); paid media (e.g., paying someone else to host an ad or promote your business); and earned media (publicity generated from others having conversations about your business).⁴⁶

To expand on the types of digital marketing on which we focus in this article, website marketing involves driving traffic to a website and ‘optimising’ ‘user experience’ (UX) design to help induce desired actions.⁴⁷ Website marketing often entails content marketing, which is the ‘management of text, rich media, audio and video content aimed at engaging customers’.⁴⁸ Social media marketing also includes producing and/or sharing ‘content’ online to enhance business visibility and may sometimes be considered a subset of content marketing or otherwise a standalone type of marketing. Social media marketing also includes someone else sharing something about the business via social media, as well as the business paying for advertising on social networks (such as Facebook or Instagram). It is also usually more interactive and, for example, can involve joining in conversations about the company online and providing customers or potential customers with information and support. Search engine marketing, as our third type of digital marketing, seeks to increase business visibility on a search engine (such

³⁹ Busca, “A Framework,” 1.

⁴⁰ American Marketing Association, “What is Digital Marketing.”

⁴¹ Prices of personal computers have dropped 99.9% since 1980: Ito, “Six Things Technology.”

⁴² Statista, “E-commerce.”

⁴³ Phillips, “Retailers Scale Up.”

⁴⁴ Software-as-a-service as a type of cloud technology is a way of delivering applications over the internet that omits the need to install software or manage hardware: Salesforce, “SaaS.”

⁴⁵ Chaffey, “Digital Marketing,” 8–9.

⁴⁶ Chaffey, “Digital Marketing,” 6.

⁴⁷ Chaffey, “Digital Marketing,” 288–291.

⁴⁸ ‘... to meet business goals published through print and digital media including web and mobile platforms, which is repurposed and syndicated to different forms of web presence such as publisher sites, blogs, social media and comparison sites’: Chaffey, “Digital Marketing,” 329.

as Google or Bing) and therefore encourage ‘click throughs’ to the business website. Search engine marketing includes paid placements (called ‘pay-per-click’ or PPC, where the business must pay each time their ad is clicked) and search engine optimisation (SEO), in which the business website is improved to make it more likely it will ‘organically’ rank higher in search results.⁴⁹

Marketers have developed their own frameworks, both marketing and digital marketing, to concretise and streamline their knowledge. Two such models that are predominant in the field are the conventional ‘five C’s’⁵⁰ framework and advertising scholar Neil Borden’s ‘four P’s’,⁵¹ used by marketers to understand the environments in which businesses and their customers find themselves in, and, in the case of digital technologies, how they interact with these elements. Digital marketers are developing their knowledge largely through communities of practice or content marketing groups online. A specific digital marketing framework is Chaffey’s RACE (reach-act-convert-engage) digital marketing framework.⁵² This framework instructs businesses to reach out, meaning generate awareness of the brand and drive visits to their websites and social media; engage an audience with the brand and encourage interaction; achieve conversion to generate sales; and build connections, achieve retention and deepen relationships. Marketers sell such frameworks and the tools and technologies needed to enact them to businesses when helping them design and then measure a ‘marketing strategy’.

Chaffey and Ellis-Chadwick want people to know that this digital marketing is not just ‘quick, cheap and easy’.⁵³ They mean in comparison to traditional marketing options (like newspapers and radio), but it could also be about the discipline generally. To successfully market on digital channels requires, they say, continually personalising and refining; monitoring and responding to competitors (usually with the use of technology) to see how they are adapting their digital marketing; staying up to date with the policies of the big platforms; handling costs (digital marketing is sometimes expensive); and understanding the blind spots of customers when it comes to ‘paying attention’.⁵⁴ This all needs to be managed. They report that it can be challenging to develop and oversee digital marketing—especially when there are no specific objectives, uncertainty about who is in charge of what, an insufficient budget or wasted budget, no appetite for innovation, little oversight and review, and poor integration.⁵⁵ This is important to note for the purposes of this discussion because it might explain in part the fitful progress of digital marketing in the legal profession (in addition to longstanding cultural and organisational factors⁵⁶) and warn us against concluding, without empirical inquiry, that because digital marketing is being used, it is being used successfully.

Finally, digital marketing responds to and reinforces the changes in the ways in which people engage with (and ‘want to’ engage with) marketing—driven by the business models of the Big Tech platforms. We now ‘consume’ media in habitual, fragmented interactions and increasingly through mobile phones.⁵⁷ In Part III drivers, we outline some of the attractive features of digital marketing, but it is important to note one of its potential downsides, which is that while internet technology allows businesses to shape and amplify ‘brand awareness’, businesses also have less control over what happens once a marketing message is released than they might with traditional marketing. With the affordances of digital media, potential consumers do not just rely on what the company says about their brand, but they can listen to what the media and their friends, people they admire, and others in similar positions are saying as well.⁵⁸ Consumers can now easily indulge in the longer-standing habit of finding validation from others (called ‘social proof’) before making a purchase.⁵⁹ These reviews, either formal testimonies or off-the-cuff comments, form the core of what marketing literature calls ‘electronic word of mouth’ or ‘e-WOM’—a term covering all online statements consumers make about individual practitioners, companies, services or products.⁶⁰ Overall, online marketing is driven by ‘chatter’, with conversations about brands in real-time.⁶¹ The marketing literature, including in law, has picked up on this phenomenon, redefining digital marketing as a co-creation process between businesses, their consumers and potential consumers.⁶² Businesses are expected to put out marketing that is not just persuasive one-way, but that also has ‘added value’

⁴⁹ In search engines, ranking of websites is determined by an algorithm matching the relevant site page content with the phrase entered. Charlesworth, *Absolute Essentials of Digital Marketing*, 18.

⁵⁰ The five Cs are customers, collaborators, competitors, context and company (firm): Kannan, “Digital Marketing,” 23.

⁵¹ The four Ps are product, price, place and promotion: Kannan, “Digital Marketing,” 31–36.

⁵² Chaffey, “Digital Marketing,” 10.

⁵³ Chaffey, “Digital Marketing,” 14.

⁵⁴ Chaffey, “Digital Marketing,” 14–15.

⁵⁵ Chaffey, “Digital Marketing,” 17–18.

⁵⁶ For an in-depth analysis of the barriers to change, see Rogers, “Transforming the Legal Profession.”

⁵⁷ Google calls these ‘micro-moments’, which can include notifications, texts, news, or just checking the time. Ramaswamy, “Micro-Moments Are Changing the Rules.”

⁵⁸ Yasmin, “Effectiveness of Digital,” 69–70.

⁵⁹ Sprout Social, “Social Proof.”

⁶⁰ Dammann, “Electronic Word of Mouth and Consumer Protection.”

⁶¹ Holland, *Social Media Law and Marketing*, 124.

⁶² Kao, “Co-Creating Value with Consumers through Social Media.”

for the consumers.⁶³ They must be prepared for customers to ‘chat’ about them, their products and services, values, cultures and prices. Writing some 20 years ago now, American Professor of Marketing, Jerry Wind, said that digital marketing had ‘shaken marketing to its core’,⁶⁴ making buying and selling more like ‘the street bazaar’.⁶⁵ He saw the new digital media landscape as tough terrain for businesses: ‘Empowered by digital technology, customers are unforgiving. Pity the poor company that fails to see this or refuses to play by their rules’.⁶⁶

Before we turn to the drivers of this move to legal digital marketing, a quick note on methodology. Our investigation is a desk-based study of digital marketing in law as a foundation for further empirical research. In addition to academic and practitioner-orientated journals on (legal) digital marketing and related areas, to conduct this research, we also reviewed all the industry reports, practitioner association surveys and marketers’ ‘thought leadership’ pieces we could find on or related to digital marketing in law. In concert, our research showed how practically all firms (small, medium and large) are using some type of digital marketing. Though we found some indication of innovation among smaller firms, as our findings show, most of the research highlights the activities and motivations of the large law firms, particularly in the US (with large American global firms generally leading these changes). Our selection of website (content), social media (content) and search engine marketing came from an iterative process between seeing the main categories of digital marketing covered by the scholars and practitioners in the field, and seeing from the reports what the firms are focusing on or where they are investing their efforts.

One of the limitations of our approach is that a notable portion of the data we rely upon have been collected by marketers themselves, who have an interest in showing the importance and diffusion of digital marketing. There is no need, though, to go as far as to treat their (widespread) findings as, therefore, not useful. Moreover, their claims informed our analysis of how marketers are selling their expertise to law firms, including through survey research. By the nature of internet research, we were also limited in how much we could say about the other types of digital marketing being used that are not reported in survey research, that is, about the popularity of in-house marketing teams versus external consultants. As we state in the Conclusion, an empirical study would reveal the challenges for marketers working with lawyers and the successes and failures of digital marketing endeavours.

III. Why is Digital Marketing Diffusing Across the Profession?

In contemplating the advance of digital marketing into the profession, we have identified and now examine what we see as four main drivers or enablers that we discuss in two sections: first, the moves to a market-orientated profession and the rise of the consumer/client-care movement; and, second, the appeal of digital marketing as well as actions of marketers to transform law firms into clients and otherwise apply their expertise to their organisations.

A. The Market and Consumer-Orientated Profession

Marketing is about promoting and selling to clients, better understanding and shaping the clients’ habits, needs and loyalties, increasing the company’s profits and otherwise enhancing the business within the context of its market(s) (or institution of exchange). There are broad reasons why marketing as a discipline, and specifically digital marketing, would be appealing to and regarded even as natural and necessary by contemporary law firms. First, the profession has undergone a process of ‘marketisation’ over the past several decades. Marketisation involves the transformation of professional organisations from the so-called pure partnership model into MPBs or at least into organisations with several corporatist features; the profession’s exposure to ‘free’ market forces as opposed to state ownership and/or protections; and the introduction of managerial methods to more aggressively pursue efficient and profitable commercial exchange.⁶⁷ For certain professional leaders and scholars of the professions, this shift is, largely, an unwelcome intrusion, arriving at the expense of the ‘professional’ emphasis on public-mindedness and collegiality, and autonomous, ethical and customised work for individual clients.⁶⁸ Research shows how many of these changes, particularly increased standardisation and oversight/performance review, can be to the detriment of the autonomy,⁶⁹ wellbeing⁷⁰ and career progression of individual lawyers.⁷¹ However, in the context of rapid globalisation,

⁶³ Wind, “Digital Marketing,” 43.

⁶⁴ Wind, “Digital Marketing,” 43.

⁶⁵ Wind, “Digital Marketing,” 44.

⁶⁶ Wind, “Digital Marketing,” 44.

⁶⁷ Malloy, “Law, Market and Marketization,” 167–168.

⁶⁸ Malloy, “Law, Market and Marketization,” 169; Mescher, “The Business of Commercial Legal Advice,” 913–926; Chow, “Constrained Morality,” 216–221; Caserta, “Digitalization of the Legal Field,” 7–9. For a discussion against simply pitting traditional professionalism and managerialism, see Noordegraaf, Public Management; Lander, “Drift or Alignment?”; and Rogers, “Legal Project Management.”

⁶⁹ Thornton, “Hypercompetitiveness or a Balanced Life?”; Flood, “Re-Landscaping of the Legal Profession.”

⁷⁰ Thornton, “Work/Life or Work/Work?” See also Legg, *The Impact of Technology and Innovation*.

⁷¹ Ackroyd, “Reconstructed Professional Firm,” 741.

governments and firms themselves (generally the large firms), who have influenced each other in this process of de-regulation, decided it was no longer feasible to 'reject the market'.⁷²

Much of the concern about marketing, though, stems from the history of the profession, both real and idealised. The legal profession, as with other professions, perceived and treated advertising or any self-promotion as incompatible with the dignified self-image and altruistic values of the profession.⁷³ Gentlemanly lawyers, it was thought, did not or should not concern themselves with 'filthy lucre'.⁷⁴ Perhaps less provocatively, it was thought by professional leaders and the state that lawyers could not properly enact their duties to the client and the court while also competing with their colleagues. Thus, in most (common law) countries, advertising by lawyers was strictly prohibited.⁷⁵ As Khurana and Wilkins explain, 'at its earliest origins, there were anti-market mechanisms built into the legal profession's self-understanding'.⁷⁶

However, by the late-twentieth century, such arrangements were renounced by several groups as protectionist and anti-competitive and thus against the interests of the now-called 'consumers'. As part of a wider program of liberalisation that commenced in the 1980s, market-based incentives and consumer protection regulation were introduced to the Australian profession.⁷⁷ Driven by the federal and state governments and the Australian Competition and Consumer Commission, the reforms (representing both de-regulation and re-regulation) 'sought to weaken professional monopolies, dismantle restrictive arrangements, and challenge entrenched privileges'.⁷⁸ As a result of these interventions, firms could now have greater choice over their organisational structure and services on offer.⁷⁹ As indicated, the large law firms were especially quick to accept the demands of competition policy and, in some areas, insisted on it.⁸⁰ In the new regulatory environment, many large law firms, seeking to represent international clients, have merged or acquired others to become global conglomerates and alliances.⁸¹ These firms dominate others in terms of 'power, wealth and scale'.⁸² Like their corporate clientele, their focus is on maximum productivity and profits, minimal costs⁸³ and, especially pertinent to this discussion, the curation of salient and coherent organisational brands.⁸⁴ In the context of increased competition, these firms increasingly prize their 'rainmakers'⁸⁵—the lawyers naturally adept at developing business by selling the firm's expertise and brand ethos.⁸⁶ Fasterling notes that 'in this sector, law firms have proved most successful when they have systematically embraced and implemented strategic management concepts to achieve competitive advantages, installed a central command structure, and heavily invested in human resources'.⁸⁷ These firms accept the need for elaborate management and that this means employing significant numbers of non-legal professionals, on which they now rely.⁸⁸ For example, joining human resource staff and performance review systems,⁸⁹ new roles within firms now include change managers or transformation leaders,⁹⁰ legal project managers,⁹¹ pricing specialists,⁹² and,

⁷² Khurana, "Changing Nature of Professionalism."

⁷³ Reed, "Advertising and the Legal Profession."

⁷⁴ For a history, see Herbert, "Filthy Lucre."

⁷⁵ For example, see NSW: Parker, "Justifying the New South Wales Legal Profession," 8; UK: Zander, "The Thatcher Government's Onslaught on the Lawyers"; Canada: Margolis, "Regulation of Advertising"; US: Kasper, "Did Five Supreme Court Justices Go Completely Bonkers" (advertising by attorneys was restricted under the Sherman Act of 1890, 15 USC §§ 1 and 2 until *Bates v. State Bar of Arizona*, 433 US 350 (1977)).

⁷⁶ Khurana, "Changing Nature of Professionalism."

⁷⁷ For a history in the Australian context, see Rogers, "Large Professional Service Firm," 218. For the New Zealand context, see Thomas, "Marketing and Service Orientation."

⁷⁸ As it was put in the UK context: Muzio, "On the Consequences of Defensive Professionalism," 622.

⁷⁹ Mark, "Incorporated Legal Practices." See also Thornton, "Legal Professionalism in a Context of Uberisation," 4–7.

⁸⁰ Rogers, "Large Professional Service Firm," 240.

⁸¹ Rogers, "Large Professional Service Firm," 241. Some describe this process as the rise of 'mega-law': Faulconbridge, "Organizational Professionalism in Globalizing Law Firms," 8–9.

⁸² Rogers, "Large Professional Service Firm," 232.

⁸³ Bagust, "The Legal Profession and the Business of Law."

⁸⁴ Collier, "Be Smart," 51–92; Petrini-Poli, "Law Firm Marketing"; Fishman, "Branding a Firm's Progressive Personality."

⁸⁵ Fenton, *The Rain Dance*, 2.

⁸⁶ Bird, "Teach Lawyers to 'Do' Business Development?"

⁸⁷ Fasterling, "The Managerial Law Firm."

⁸⁸ Baron, *Ethics and Legal Professionalism in Australia*, 26–28.

⁸⁹ Khurana, "Changing Nature of Professionalism."

⁹⁰ Rogers, "Transforming the Legal Profession."

⁹¹ Rogers, "Legal Project Management."

⁹² According to legal consultancy Altman Weil's 2020 survey of 810 US law firms, 70% of firms with 250 or more attorneys employ a pricing specialist: Seeger, *Law Firms in Transition*.

as we explore in this article, marketing staff. These new professionals working in or consulting firms are likely to have expertise and methodologies overlapping with or reliant upon marketing, such as legal design⁹³ and CRM.⁹⁴

Turning back to government reform, many of the profession's rules and monopolies were, to varying degrees, self-serving. However, a significant number were and are in place to protect the client given their special vulnerability in circumstances in which they seek legal assistance and the lawyer's role as a trusted fiduciary. Unlike tangible goods, the value of legal services is often difficult for clients to assess or quantify. This is due to the exclusivity of legal knowledge, language and processes; limited 'pre-purchase' information such as price guides/signals; the typical delay between retaining a lawyer and attaining results; the complexity of court trials; and the infrequent use of legal services, certainly by individuals.⁹⁵ We mentioned above how lawyers, until recently, had to rely on word-of-mouth marketing. Clients were, at the other end, reliant upon those recommendations as signalling something about the lawyer's value (and integrity) while also being, whether they knew this or not, dependent on the disciplinary and liability systems acting as deterrents against any poor lawyer behaviour. However, the government reforms, for example, also sought to deal with consumerist claims of limited consumer choice, poor service and, in the case of law, high prices of legal services restricting access to justice.⁹⁶

Indeed, as part of its intervention in the legal profession, the government decided that professions were no longer trusted to guarantee the competence and ethicality of their lawyers (at least not exclusively). As a result, substantial regulative power was granted to independent regulators and government agencies. Moreover, the increased power and protection of the client are symbolised and to some extent enforced in the new language of 'service providers' 'delivering services' to 'consumers'; marketing-friendly language that is now found in professional conduct and practice regulation.⁹⁷ Regarding marketing regulation more directly, there are no longer any express prohibitions on advertising, so long as it is not false, misleading or deceptive, offensive or illegal.⁹⁸

Many of these pro-client and, therefore, pro-marketing conditions can be traced to the most influential corporate clients of the large law firms. At least by the 1980s, these clients were 'more knowledgeable in selecting, using, evaluating and replacing professional service firms'.⁹⁹ They began shopping around, seeking the 'right legal advice at the right price'.¹⁰⁰ Fealty to a particular firm now depended on the expertise of the firm as a whole (and less any one individual).¹⁰¹ Indeed, after the global financial crisis of 2007–8, the legal profession underwent what has been called 'a fundamental paradigm shift'—'a global age of more for less'.¹⁰² Some commentators now deem the legal profession, certainly the commercial/corporate sectors, a 'buyer's market'.¹⁰³ In this environment, and going somewhat against Thompson's picture of the esteemed lawyer who can rely on their skills and reputation alone, simply being able to do the work is no longer enough.¹⁰⁴ The most powerful clients now have access to a full range of low-cost 'providers'. In certain contexts, they divide work among in-house legal teams, alternative legal service providers and other professional workers, including offshore, or otherwise unbundle and repackage legal services.¹⁰⁵ At the very least, legal marketers are aware of these pressures law firms face and remind firms that today there is often little to differentiate legal 'deliverables' from the other 'lawyer [and their deliverables] three blocks down the street'.¹⁰⁶

⁹³ Legal design is the use of design methods and tools to rethink and improve legal processes and solve problems through innovation: see Bell, "Legal Design," 3.

⁹⁴ Customer (or Client) Relationship Management has been defined as the process of building and maintaining profitable client relationships by delivering superior customer value and satisfaction: Clio, *Legal Trends Report 2020*, 56–57.

⁹⁵ See Crockett, "Measuring Legal Services."

⁹⁶ Rogers, "Large Professional Service Firm," 237.

⁹⁷ See, for example, *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*, rule 4.1.3 ('deliver legal services competently, diligently and as promptly as reasonably possible') and definition of 'client' ('means a person...for whom the solicitor is engaged to provide legal services for a matter').

⁹⁸ Legal Services Council, *Australian Solicitors' Conduct Rules 2015*, rule 36. See also guidelines on advertising by legal professional associations, for example, Queensland Law Society, *Guidance Statement No. 24 Ethical Considerations on the Use of Social Media and Law Practice Websites*; The Law Society of South Australia, *Guidelines for Legal Services Advertising, Marketing and Promotion Guidelines*; The Law Society of Western Australia, *Ethical & Practice Guidelines*, rule 13. See also below Part V.C.1: Consumer law and protection.

⁹⁹ Gaedeke identified this trend in his 1988 study of 63 business respondents and 72 attorneys. Gaedeke, "Understanding How Clients Select and Evaluate Law Firms," 200.

¹⁰⁰ Bachman, "How Do Corporate Clients Choose Firms."

¹⁰¹ Gaedeke, "Understanding How Clients Select and Evaluate Law Firms," 205.

¹⁰² Center On the Legal Profession, "The Global Age of More for Less."

¹⁰³ Furlong, *Law is a Buyer's Market*.

¹⁰⁴ The 'more-for-less' challenge was one of three drivers of change (others being liberalisation and information technology) foreseen by Richard Susskind in his seminal book: Susskind, *Tomorrow's Lawyers*, 3.

¹⁰⁵ Legg, "Legal Regulation in a Changing World," 10–12; Legg, "Recognising a New Form of Legal Practice."

¹⁰⁶ Newton, *Client-Centered Law Firm*, 45.

Meanwhile, even for individual clients, their relationship with the legal profession has changed. Some of this is due to the reforms above: the re-regulation process stripped conveyancing and probate—two largely private-client practice areas—of their legal monopolies, freeing up those areas for more competition and choice for consumers. Of course, this depiction of the increased power of the individual client needs to be qualified by the fact that many of the areas that deal with non-business matters, such as family law, tenancy or employment, for example, have faced drastic cuts to their legal aid budgets. Notwithstanding, largely due to the affordances of internet technologies mentioned in the section above, individual members of the public can now also ‘shop around’ for legal services. In 2016, Google found 76% of Australians use a mobile phone to find legal professional services, while 75% said the information sourced from the internet helped them decide about using local professional services.¹⁰⁷ As with consumers generally (described above), former clients, possible clients and members of the public can and do ‘chat’ about and rate lawyers and law firms online, reducing the ‘information asymmetry between buyers and sellers’.¹⁰⁸ Finally, clients are now more than ever, open to working remotely with lawyers.¹⁰⁹ For the lawyer, these trends mean a more complicated relationship with the client and the critical importance of an online image. Law firms may be more tempted, as a result, to engage in online marketing strategies including, to flag our Part V discussion, those that pose significant ethics risks.

Finally, it is important to mention a specific type of marketing strategy that has taken hold in several law firms because of the client and marketing movements. There are now marketing practices dedicated to making businesses, including in law, more ‘human-centred’¹¹⁰ and focused on the ‘client experience’, the latter term known as ‘CX’.¹¹¹ CX overlaps with but is not the same as the ‘consumer protection’ values (touted by regulators and consumer groups) of being, for example, honest, timely, dependable and keeping clients informed on a regular basis.¹¹² Marketers have reframed legal services such that the clients’ experiences on their ‘path to purchase’¹¹³ and then experiences of interacting with the firm are all part of the product on offer; ‘you don’t just provide a legal deliverable – you provide a legal experience’.¹¹⁴ In marketing speak, the CX asks firms to consider the client ‘journey’.¹¹⁵ It is easy to see how CX might interact with digital ‘touch points’—all the interactions the client has with the firm before and during the purchase, both in person and online. Again, this move towards ‘the client as central’¹¹⁶ interacts with the distinct attribute of digital marketing highlighted above: its co-creative nature in which the client and others are more directly involved in the construction and reputation of a brand and, of course, the standing and success of the organisation.

B. ‘Marketing’ Digital Marketing to Law Firms

Other catalysts for the application of digital marketing ideas and frameworks to law are the enticing nature of digital marketing broadly and the specific endeavours of ‘legal’ marketing professionals to advance their discipline in the legal context. In the early days of law firm marketing, such personnel might have been lawyers who sought to step back from practice while remaining in the firm or those ‘who drew the short straw when volunteers performed necessary marketing tasks’.¹¹⁷ However, as part of the corporatisation of law firms, marketing staff have joined the ranks of firms or have been hired as external consultants,¹¹⁸ joining the other new roles we identified above.¹¹⁹

To start with some general marketing principles (the starting point for digital marketing as well), Kartson and Mariam, marketing and communication professionals working within large American law firms, assert that branding,¹²⁰ the giving of

¹⁰⁷ Google, Micro-Moments Guide.

¹⁰⁸ Center On the Legal Profession, “The Global Age of More for Less,” 2.

¹⁰⁹ Comparing surveys in the US, clients open to the idea of working remotely with a lawyer rose from only 23% in 2018 to 79% in 2021: Clio, Legal Trends Report 2018; Clio, Legal Trends Report 2021.

¹¹⁰ For a discussion on the humanisation of law, see Jacob, Liquid Legal – Humanization and the Law.

¹¹¹ Newton, Client-Centered Law Firm.

¹¹² Gaedeke, “Understanding How Clients Select and Evaluate Law Firms”; Herbig, “Market Signaling in the Professional Services,” 77.

¹¹³ Chaffey, “Digital Marketing,” 46.

¹¹⁴ Newton, Client-Centered Law Firm, 77.

¹¹⁵ Newton, Client-Centered Law Firm; Namdarian, “Mapping the Client Journey”; Clio, “Client Journey”; Lawyers Design School, “Customer Journey Map.”

¹¹⁶ Khurana, “Changing Nature of Professionalism.”

¹¹⁷ Kartson, “Future of Legal Marketing.”

¹¹⁸ See Kartson, “Future of Legal Marketing.” Quoting a chief operating officer of one Am Law 100 firm, ‘We want our lawyers to focus on being lawyers and we want professionals to do our professional services work’.

¹¹⁹ See above Part III.A: The Market and Consumer-Orientated Profession, discussing the new roles within firms, including change managers, legal project managers, pricing specialists and technology gurus.

¹²⁰ A brand is a name, term, design, symbol or any other feature that identifies one seller’s goods or service as distinct from those of other sellers. American Marketing Association, “Branding.” See also Khamis, “Self-branding,” 192.

some sort of identity to a product, service and/or organisation (law firm), is the crux of legal marketing.¹²¹ Where such values were once implicit or taken for granted as profession-wide, legal marketers now encourage law firms to articulate and employ their own distinct organisational values for (digital) marketing purposes.¹²² Marketers, including legal marketers, also see ‘target marketing’ as critical to planning a digital marketing strategy. Firms likely assumed the ‘target market’ was simply their areas of practice. Marketing consultants now advocate for law firms to define their ‘target market’ or their preferred client base¹²³ and the different ‘persona’ (e.g., the interests, needs and financial means) of those clients. For example, one Sydney-based legal marketing consultant commends the marketing efforts of consumer firms like Slater & Gordon, Shine Lawyers and Maurice Blackburn Lawyers for ‘know[ing] exactly what sort of clients they want to attract and what sort of services those clients need’.¹²⁴ Marketing practitioners also suggest treating each practice area like an individual business with its own unique target markets and segments within it.¹²⁵ Part of this process means thinking about what they can ‘cross-sell’ to these customers once they are clients. Recognising that they are entering a particular type of industry with ongoing features of ‘traditional’ professionalism, one legal marketer suggests that lawyers use the term ‘cross-serve’ instead of ‘cross-sell’¹²⁶ and approach it as a means to help clients run their business or manage their affairs, rather than simply to sell more services.¹²⁷ But, marketers are aware of the wider, competitive environment, with one marketing team calling cross-selling for law firms ‘the fastest path to new revenue (it’s cheaper and more effective to sell your services to existing clients than to seek new clients) [and] also a strong defensive strategy that helps protect you from losing your best clients to other firms’.¹²⁸

With marketing finding its foothold, digital marketing is not hard to sell to law firms, as natural and needed, within the broad shifts charted in section A, where online promotion and sales are established parts of the economy, and when searching for firms and lawyers online is commonplace. Digital marketing is also easier to sell to the firm management than traditional marketing, and this applies to whoever has to advocate for it within the firm, a professional marketer or a lawyer taking on this role. First, marketing through the internet and online digital technologies is more accessible and usually, as we indicated (but not always, say the digital marketers!), cheaper than marketing through print, television, radio or billboards.¹²⁹ Digital technology means that information about a business or individual can now reach wider audiences immediately and more reliably.¹³⁰ Subject to what we said about its co-constructed (and sometimes unforgiving) nature, digital marketing is more directly in the control of the business; its marketing staff can go straight to its website or social media accounts to send out messages. They can also provide more and clearer information via the website about the product and service, and the history and values of the company, for example, without relying on a salesperson, for instance, and, again, update this information at any point.¹³¹ This information or these messages can be tailored to different audiences or clients, making them feel as if there is a personal relationship with the business or brand. Digital marketing is also more ‘agile’. For instance, if a campaign is not working based on audience feedback, then marketers can make the appropriate changes on the spot fairly easily, while with traditional marketing, this is usually impossible.¹³² Marketing technology can also capture, as we have said, marketing research data that can help improve processes or at least provide direction. Also, having mentioned the risks of its co-constructed, interactive nature, businesses are not simply vulnerable parties in this co-creation. Digital marketers employ tactics to try to control the behaviour of potential customers. They can (and do) also seek out and publish customer/client reviews and testimonies, getting on the front foot about and taking advantage of the psychological need for ‘social proof’ mentioned above.¹³³ They may ask customers for feedback about products or services.¹³⁴ Meanwhile, some elements of digital marketing do not translate as easily to professional settings or at least not as uniformly. For the customer/client, digital marketing and digital technologies should mean greater price transparency and less delay between seeing the marketing and making the purchase—in the case of products or pre-paid services, as distinct from most legal services, digital marketing means customers

¹²¹ Kartson, “Future of Legal Marketing.”

¹²² Fishman, “Branding a Firm’s Progressive Personality.”

¹²³ See, for example, Cramond, “Business Development - the Nuts and Bolts”; Thomson Reuters, “Law Firm Client Engagement Needs a AAA Approach.”

¹²⁴ Carroll, “Why Your Small Firm Can’t Afford to Disregard Advertising,” 1. As discussed above in Part II, this reflects the broader shifts in approaches to marketing generally, from mass marketing to building direct, deeper relationships with a carefully selected group: see Armstrong, *Principles of Marketing*, 16.

¹²⁵ Barrett, “How to Market Your Practice During the Holidays”; Cramond, “Business Development - the Nuts and Bolts.”

¹²⁶ See Carroll’s comments: ‘let us ditch the term “cross-sell” because “cross-serve” is more accurate as firms should be all about serving the needs of clients’. Carroll, “Do You Want a Will with That.”

¹²⁷ ALPMA, *Taking the Pulse*.

¹²⁸ ALPMA, *Referrals and Cross-Selling in Practice*, 24.

¹²⁹ Charlesworth, *Absolute Essentials of Digital Marketing*, 1–2.

¹³⁰ Susskind, *Future of the Professions*, 73; Watson, “The Birth”; Sheth, “International E-marketing,” 612.

¹³¹ Desai, “Digital Marketing”; Bala, “A Critical Review,” 335–336.

¹³² Bala, “A Critical Review.”

¹³³ Cialdini, *Influence*.

¹³⁴ See Bala, “A Critical Review,” 331.

can pay right away, and there is no time restriction on when they can make this payment.¹³⁵ Notwithstanding, there are several compelling advantages and possibilities for law firms that legal marketers know and exploit when selling their expertise.

Turning to the *types* of digital marketing that marketers call for in law firms, as we detail in the next part of this article on impacts, nearly all law firms today have websites.¹³⁶ Digital legal marketers are, therefore, now calling for firm websites to reflect marketing ‘best practice’—best practice frameworks that the marketers have produced.¹³⁷ As part of this, they are pressing for the display of a ‘clear and differentiating positioning strategy’ on the firm’s homepage.¹³⁸ A ‘positioning strategy’ is a statement describing the business’s product or service framed in such a way that is likely to appeal to its ‘target audience’.¹³⁹ Others urge firms to include personable and empathetic messages about a firm’s ‘story’, ‘mission’ and ‘value’.¹⁴⁰ This advice is based on the digital marketing concept that firm websites are very likely not ‘destination sites’—meaning that when visitors first arrive at the site, they will also likely visit at least a few other firm websites, representing a shortlist of choices.¹⁴¹ Therefore, they advise, a website must be approached by firms with a view to how it is positioned in relation to their competitors. Digital legal marketers also encourage firms to use ‘content marketing’ language and tactics on their websites, like sharing ‘thought leadership’ material,¹⁴² to convey that their expertise is above market standards,¹⁴³ that they are authorities on the biggest concerns of their target audiences, and that they have credibility.¹⁴⁴ Content Pilot, a digital marketing strategy firm serving the legal industry and other professions, also recommends that law firm websites are accompanied by information that is ‘snackable and consumable’ (reflecting the wider dynamic between technology and consumer) and in accessible, friendly language that may not usually be ‘associated with the law’.¹⁴⁵ The focus on customer needs and preferences echoes the general CX trend introduced above and promoted to law firms by marketing agencies as part of ‘knowing your audience’.

In addition to websites, digital marketers are now rapidly developing best practices for law firms’ use of social media. For example, Good2BSocial, the legal digital marketing agency mentioned above, publish its annual United States Am Law 200 findings on best practices in an annual report titled, ‘The Social Law Firm Index’.¹⁴⁶ The report aims to capture the ‘adoption of digital marketing technologies by law firms [in order] to demonstrate the value of digital marketing for business development’.¹⁴⁷ The report also describes what the marketers see as the characteristics of the worst performing law firms in their digital marketing, including having a poorly defined target audience; failing to engage in conversations; poor reporting and analytic capabilities; treating all social media platforms the same; and placing too much focus on firm-centric and promotional content.¹⁴⁸ Other marketing consultants recommend specific actions, such as for law firms to ‘newsjack’ (a marketing term for the practice of converting news into stories to promote a business or brand).¹⁴⁹ Marketing scholars have also published findings suggesting a positive correlation between a law firm’s social media activity and its reputation (i.e., firms that rank higher in prestige use more social media).¹⁵⁰

Marketers have also begun to advocate for digital marketing strategies, notably SEO, to law firms. For example, digital marketing firm Turnkey Digital advocates the usage of tools such as Google Analytics, which can measure and quantify data ‘provid[ing] valuable insight for fine-tuning ongoing marketing efforts’.¹⁵¹ The marketers then issue a call to action to firms: ‘One thing is certain in the digital shopping world, if your firm isn’t on display there—if consumers can’t find you when searching—a competitor will get their business’.¹⁵² Similarly, Australian digital marketing agency Safari Digital plugs, ‘For

¹³⁵ Bala, “A Critical Review,” 336.

¹³⁶ See ALPMA, *Winning Work in a Digital World*, 4 (finding 97% of firms surveyed had websites); Johs, “ABA TechReport 2021 Websites & Marketing” (finding 94% of firms in the US have a website, up from 77% in 2018).

¹³⁷ See Alvarez, *The Social Law Firm Index 2021*; Alvarez, *The Social Law Firm Index 2022*.

¹³⁸ Content Pilot, *How Do They Measure Up?*, 17.

¹³⁹ Content Pilot, *How Do They Measure Up?*

¹⁴⁰ Lantz, *The Essential Attorney Handbook for Internet Marketing*, 61–62.

¹⁴¹ Siskind, *The Lawyer’s Guide to Marketing on the Internet*, 16–17.

¹⁴² Thought leadership refers to a type of content marketing that is used to build credibility for individuals within a firm, with the goal of becoming recognised as an expert in a field. Fishman, “Lawyer’s Guide to Thought Leadership.”

¹⁴³ Schaller, “How Thought Leadership Complements.”

¹⁴⁴ Charlesworth, *A Practical Approach*, 41; Fishman, “Lawyer’s Guide to Thought Leadership.”

¹⁴⁵ Content Pilot, *How Do They Measure Up?*, 56.

¹⁴⁶ The Index ranks firms based upon overall effectiveness of social media, using measurements related to reach, engagement, thought leadership, search engine optimisation and conversion. Alvarez, *The Social Law Firm Index 2021*; Alvarez, *The Social Law Firm Index 2022*.

¹⁴⁷ Alvarez, *The Social Law Firm Index 2021*, 5.

¹⁴⁸ Alvarez, *The Social Law Firm Index 2021*, 9–10.

¹⁴⁹ Burns, “Are Law Firms Falling Behind on TikTok?”

¹⁵⁰ Taken Smith, “Social Media Usage by Law Firms.” Results attained after surveying the 100 largest firms in the US in 2017.

¹⁵¹ McClurg, “Digital Marketing is Key to Practice Growth,” 28.

¹⁵² McClurg, “Digital Marketing is Key to Practice Growth.”

law firms that are serious about longevity and creating a recurring stream of leads, SEO for Lawyers is the only option',¹⁵³ while Canadian SEO marketing agency Pedestal Search proclaims that, 'lawyers who understand the law firm search engine optimization purpose (SEO) are much better positioned to attract new clients to their firm'.¹⁵⁴

Having looked at the types of messages legal marketers are sending to law firms and the arguments in favour of digital marketing at their disposal—both generally and specifically as needed solutions for law firms—we now consider what we know about its uptake by firms.

IV. The Impacts of Digital Marketing on Law Firms

In this part, we first outline what we know from the research about the uptake of digital marketing practices and technologies by law firms generally and their legitimacy at the collective, associational level. We then look closely at three digital marketing activities in law: website/content marketing, social media marketing and, finally, digital data or data analytics.

A. Overall Snapshot of Digital Marketing Practices in Law Firms

The existing research provides some sense of how fast and widespread and by what means digital marketing is entering the profession. It seems natural that large firms in a strongly 'marketised' and entrepreneurial jurisdiction like the US would be rapidly embracing marketing functions within their organisations.¹⁵⁵ In 2018, pre-pandemic, the Legal Marketing Association and online legal research service, Bloomberg Law, surveyed 190 marketers and 135 attorneys,¹⁵⁶ all US based. Two-thirds of their respondents reported that legal marketers were already participating in strategic planning committees, firm leadership meetings and lawyer professional development.¹⁵⁷ The study also found that these priorities and the related resource allocation to the marketing function were consistent across all law firms, irrespective of their size.¹⁵⁸ Meanwhile, in the UK, and as a smaller but important trend, certain multidisciplinary law firms have begun to offer marketing as one of their services, an intriguing twist on the more common combinations of law with tax or accountancy. For example, UK firm Hillyer McKeown executed a joint venture with public relations consultants Mason Media to provide marketing consultancy as part of its matrix of services.¹⁵⁹

Locally in Australia, reflecting the smaller market size, the adoption of substantial marketing practices has been slower. Three studies benchmarking marketing and BD in Australasian law firms demonstrate this. The Australasian Legal Practice Management Association (ALPMA) conducted annual studies between 2014 and 16, investigating firms of all sizes and practice areas.¹⁶⁰ The first (2014) study, *Taking the Pulse*, reported the survey responses of 151 participants and found that 45% rated their firm's marketing and BD function as under-developed, 31.8% as adequate and only 2.6% as sophisticated.¹⁶¹ It was by then a component of legal practice, though, with almost 65% of respondents indicating that their firm's lawyers spent, on average, up to five hours per week on marketing and BD activities, while about 25% reportedly did not track lawyer time spent on those activities.¹⁶²

The (2015) study that followed, *Winning Work in a Digital World*, noted that the 'use of digital technologies is relatively new to legal marketing'¹⁶³ and that, 'though firm websites are rated as the most effective digital marketing and BD activity for generating new business enquiries', they were still less effective than traditional approaches, including referral relationships, networks or events.¹⁶⁴ The final (2016) report, *Referrals and Cross-Selling in Practice*,¹⁶⁵ found that referrals and

¹⁵³ Ridings, "SEO for Lawyers."

¹⁵⁴ Levenstadt, "Understanding Law Firm SEO."

¹⁵⁵ Although we also note that innovative digital marketing approaches are also being practiced by smaller firms or solo practitioners outside the US, see Heuston, "To Social or Not to Social."

¹⁵⁶ Legal Marketing Association, *Where Are We Now?*

¹⁵⁷ Legal Marketing Association, *Aligning Marketing and Business Development for Law Firm Growth?*

¹⁵⁸ Legal Marketing Association, *Aligning Marketing and Business Development for Law Firm Growth?*

¹⁵⁹ Duncan Wood, "King of the Hill."

¹⁶⁰ The researchers split up respondents roughly into thirds: small firms (up to A\$3 million annual revenue), mid-sized firms (A\$3 million to A\$10 million annual revenue) and large firms (more than A\$10 million annual revenue). ALPMA, *Taking the Pulse* (151 respondents); ALPMA, *Winning Work in a Digital World* (161 respondents); ALPMA, *Referrals and Cross-Selling in Practice* (123 respondents).

¹⁶¹ ALPMA, *Taking the Pulse*, 22.

¹⁶² ALPMA, *Taking the Pulse*, 63.

¹⁶³ ALPMA, *Winning Work in a Digital World*, 4.

¹⁶⁴ ALPMA, *Winning Work in a Digital World*, 3–5.

¹⁶⁵ ALPMA, *Referrals and Cross-Selling in Practice*.

recommendations were considered by firms as the most important approach to BD. Other survey research in this period came to the same conclusion.¹⁶⁶

However, more recent survey research indicates that marketing and digital marketing have matured significantly, becoming top priorities for Australian law firms. In ALPMA's 2019 Legal Industry report surveying 172 Australasian firms, the two main areas for which these firms self-reported to have developed formal firm-wide strategies were information technology (63%) and marketing (62%).¹⁶⁷ The report concluded that firms now see digital marketing as critical, given the competitive environment in which they operate.¹⁶⁸ Similar results were found in 2022.¹⁶⁹ Meanwhile, in a report by GlobalX and the Australian Legal Technology Association, marketing and BD concerns were the primary motivators for those firms creating their own LegalTech solutions.¹⁷⁰ More specifically, the three most cited reasons for tech investment included to 'appeal to new customers or customer segments', 'market their own LegalTech software as a part of firm promotional benefits' and 'generate incremental revenue from existing clients'.¹⁷¹ Indeed, research shows some firms are even adopting new organisational models that focus specifically on 'promoting the brand of the firm'.¹⁷² Similar to how consumer brands are marketed, this approach builds 'equity' into the firm's brand itself, mitigating the traditional need for personal connections and loyalty that firms have long relied on for business.¹⁷³ In other words, and as further evidence of the increasing marketisation of the profession, certain firms are adopting an approach akin to how Apple or Starbucks market themselves—by investing in 'brand equity', they build brand awareness, position their brand consistently within the market, emphasise positive brand associations (such as 'quality' or 'convenience') and focus on building relationships with customers.¹⁷⁴

As a final point about changes across the board, marketing and digital marketing have been accepted by the professional associations, finding their place within the wider ambit of 'practice management'.¹⁷⁵ Articles about digital marketing often feature in the professional associations' journals and magazines in this category. For example, the Law Society of England and Wales Law Management Section has a section dedicated to BD.¹⁷⁶ The ABA 'Law Practice' Division publishes articles and practical tips on 'marketing and client development, practice management, legal technology, and finance'.¹⁷⁷ The Law Society of New South Wales' 'Marketing Toolkit' includes various tips for lawyers to build a profile, a brand or a social media presence. We now move to examine specific digital marketing activities and tactics among law firms in the form of websites, social media and data analytics.

¹⁶⁶ The 2012 Legal Australia-Wide Survey of 20,716 respondents (aged 15 years old or over, contacted using random digit dialling) found that, in three-quarters of cases, respondents used their own personal resources or network to source a 'main adviser' for a legal dispute. Coumarelos, *Legal Australia-Wide Survey*, 120–121. Similarly, in the US, Clio's annual *Legal Trends Report* (surveying tens of thousands of legal professionals) found that in 2017, 62% of people got a referral from friends or family compared to 37% from using an online search engine: Clio, *Legal Trends Report 2017*, 16. See also comments from Alvarez, *The Social Law Firm Index 2021*, 5: 'When we first started [Good2BSocial] seven years ago [in 2014], law firm digital marketing was still in its infancy, and digital marketing strategies weren't a reality for many firms'.

¹⁶⁷ ALPMA, *Move Forward with Confidence*, 28.

¹⁶⁸ ALPMA, *Move Forward with Confidence*.

¹⁶⁹ Information technology (61%) and marketing (60%), surveying 175 participants across 160 law firms: ALPMA, *Reaching New Heights*, 25.

¹⁷⁰ GlobalX, *2020 GlobalX + Alta Research Report*, 19–20.

¹⁷¹ GlobalX, *2020 GlobalX + Alta Research Report*.

¹⁷² Nehme, "The Future of Legal Service Delivery," 40. See also marketing being the second highest investment (behind hiring staff) for Alternative Business Structures (ABS) in the UK: Legal Services Board, *Evaluation*, 24.

¹⁷³ Nehme, "The Future of Legal Service Delivery." As one research interviewee described, 'professional services when it's so heavily based on people, when the key person leaves a lot of clients leave with them. That's not really our business model. We're really about creating equity in the brand'.

¹⁷⁴ Williams, "What is Brand Equity?" Brand equity refers to the premium or commercial value that is derived from the brand name of a particular product or service, rather than the product or service itself.

¹⁷⁵ See, for example, The Law Society, "Business Development and Marketing."

¹⁷⁶ The Law Society, "Business Development and Marketing."

¹⁷⁷ American Bar Association, "Law Practice Magazine."

B. Websites

In general, law firm websites have developed beyond their original use as an ‘online Rolodex’¹⁷⁸ to a fuller means of promoting the firm and attracting clients.¹⁷⁹ Law firm websites today use marketing language and methods,¹⁸⁰ including branding,¹⁸¹ ‘hooks’¹⁸² and tag lines.¹⁸³ In addition, many firms—or their marketing teams—instruct staff to contribute to and update the website’s ‘content’, and with certain keywords in mind as well, to take advantage of SEO.¹⁸⁴ US international law firm Holland and Knight, for example, relies on Google Search Console and marketing tool SiteImprove to decide which keywords to include on their site.¹⁸⁵ Fellow US global firm McDermott Will & Emery train all their staff on ‘SEO best practices’¹⁸⁶ and Canadian firm Blaney McMurtry hires copywriters to update their website to improve its search engine rankings.¹⁸⁷

Law firms also follow marketing trends, such as those recommending ‘thought leadership’ content. Reflecting a more business-minded approach, many lawyers and firms now use their websites to engage with and establish a voice in wider public and industry discussions.¹⁸⁸ Marketers see this as subtler than and a complement to direct messages about expertise. For example, Australian firm Sydney Criminal Lawyers publishes over a dozen articles per week on their site,¹⁸⁹ covering news, legal updates and commentary, including more professionally orientated social justice stories.¹⁹⁰ As another illustration, US corporate law firm Goodwin hosts a ‘Big Molecule Watch Blog’, a website that combines practice guides, industry updates and case studies. Of note, this blog is separate from the firm website so that it can reach a wider audience and, again, act as a softer form of marketing about the firm’s brand.

C. Social Media

The use of social media or interactive, community-based technologies, such as Twitter, Facebook, TikTok, Instagram and LinkedIn, is also central to law firm digital marketing.¹⁹¹ Marketing specialists sell social media as a ‘canonical element’ of branding for firms¹⁹² that is critical for ‘gaining a competitive edge’¹⁹³, and it seems that law firm leaders now agree, with some calling it a ‘functional imperative’ to practice.¹⁹⁴

This represents a dramatic change. In 2012, litigation lawyers Lackey and Minta observed that US law firms were only ‘experimenting with how social media fit into their marketing models’—for example by using Twitter accounts to tout case victories and firm accomplishments.¹⁹⁵ A decade later, surveys suggest that close to 90% of law firms (globally) are actively using social media.¹⁹⁶ Social media now plays a significant role in networking, acquiring clients and maintaining relationships

¹⁷⁸ Center On the Legal Profession, “Thought Leadership as Marketing.”

¹⁷⁹ Lantz, “Build an Integrated Marketing Platform.”

¹⁸⁰ See Tsakalakis, “The Importance of Lawyer Websites.”

¹⁸¹ Kartson, “Future of Legal Marketing.”

¹⁸² Hooks are content that attract the reader and may include using news, humour, resources, or opinions: Charlesworth, *A Practical Approach*, 90.

¹⁸³ Tag lines are a marketing strategy, comprising short memorable phrases that companies use to summarise their value proposition. For example, Maurice Blackburn’s website has long used ‘We Fight for Fair’. Carroll, “Why Your Small Firm,” 2. See a marketing agency’s discussion of the slogan: Deepend, “We Fight for Fair.”

¹⁸⁴ See for example, Evans, “PPC Google Ads for Law Firms.”

¹⁸⁵ Alvarez, *The Social Law Firm Index 2021*, 30.

¹⁸⁶ Alvarez, *The Social Law Firm Index 2022*, 29.

¹⁸⁷ Berding, “Marketing for the Modern-Day Law Firm.”

¹⁸⁸ Gillers, *Regulation of Lawyers*. One study found blogs were the most common vehicle of advertising on websites: Bell, “The Impact of Blogging on the Practice of Law,” 75.

¹⁸⁹ For example, their ‘Weekly Rundowns’ show approximately 15 articles written a week: Jakubowski, “Sydney Criminal Lawyers Weekly Rundown.”

¹⁹⁰ Gregoire, “Capturing Tibetan Culture in Photos.”

¹⁹¹ Twitter is a micro-blogging platform where users share short posts (‘tweets’) of 280 characters. Facebook is a social media platform that allows users to create a profile and connect, share and chat with others. TikTok is a social media platform that hosts short-form video content from 15 seconds to 10 minutes. Instagram is a social media platform for sharing photos and videos. LinkedIn is a social media platform for professionals and businesses to network and connect with each other.

¹⁹² Rogozinski, “Data-Driven Marketing.”

¹⁹³ Zawacki, “Social Media Use in the Legal Profession,” 122.

¹⁹⁴ Chester, “Social Media Networking for Lawyers.”

¹⁹⁵ Lackey, “Lawyers and Social Media,” 153.

¹⁹⁶ In the US, 86% of firms use social media: American Bar Association, *Tech Survey 2021*; Taken Smith, “Social Media Usage by Law Firms,” 72. An international survey found 88% of firms use LinkedIn (a social media platform for businesses and professionals): International Legal Technology Association, “Inside Legal Technology Purchasing Survey.”

with clients and colleagues.¹⁹⁷ For example, to acquire new clients, international law firm Baker McKenzie uses paid advertising on LinkedIn ‘to target the right audience with the right content’.¹⁹⁸ Firms are also using ‘hashtags’¹⁹⁹ to enhance their social media posts. US law firm Orrick, for example, researches which hashtags are trending,²⁰⁰ while Australasian law firm Allens has been praised by marketing agencies for using well-chosen hashtags in its digital marketing.²⁰¹ Law firms are experimenting with the types and number of social media applications they use to promote themselves. American legal digital marketing agency, Good2BSocial, mentioned, found that every Am Law 200 firm has a social media presence on at least two digital media platforms.²⁰² In particular, on these platforms, they are using new forms of content such as video, ‘short-form video’²⁰³ and podcasts. In fact, it is fair to say that podcasts are now standard among the large commercial firms at least, with about three-quarters of the Am Law 100 having active ‘firm podcasts’ across a range of topics.²⁰⁴ Moreover, some firms are concurrently using TikTok to market themselves²⁰⁵ or otherwise supporting their lawyers’ use of it.²⁰⁶

D. Data Analytics

Finally, many law firms (or their marketing teams) are building and refining their marketing strategies using data analytics or digital data. This marketing tactic involves computer-led analysis of vast volumes of data to find patterns or correlations, which are used to make predictions or otherwise provide insights into (consumer) behaviour.²⁰⁷ Data analytics technology makes it possible for targeted advertising to be pursued through websites, email, social media and SEO,²⁰⁸ known in digital marketing as ‘online behavioural targeting’ (OBT).²⁰⁹ In further marketing speak (and perhaps euphemistically), this ‘personalisation’ seeks to ensure that specific marketing activity reaches the desired audiences²¹⁰ and can be seen as another, grounded example of the wider moves to make organisations, including those in the legal industry, more efficient and profitable.

To illustrate how this technology is being used in the legal profession, during the peak of the pandemic, Baker McKenzie’s data analytics detected “‘content fatigue’ as longer form [social media] content dropped in popularity’.²¹¹ In response, their marketing team shifted the firm’s focus to mobile phone users and adopted what they described as a ‘digital-first approach to content, delivering more bite-sized campaigns and increasingly serializing content’ (or breaking it into instalments). This change in their marketing apparently ‘resonated well with clients and [drove] higher engagement rates’.²¹² Firms are also using analytics to target and secure leads. For example, the Australian firm LegalVision uses Adobe Marketo Engage²¹³ to analyse all client and potential client (or lead) ‘touch points’,²¹⁴ from clicking on a Google Ad to whatever other online content the client interacts with.²¹⁵ This data is then ‘scored and passed on to sales (once meeting the threshold) so the right person can reach them [the lead] at the most opportune moment’.²¹⁶

Taken together, there is evidence, at least in the Australian context, that the impacts of digital marketing have been slow-going until very recently, where its uses probably remain patchy or less widely diffused than they are in the US. However, it seems digital marketing is becoming increasingly important to firms, even if word-of-mouth referrals remain a primary source of client acquisition. For our discussion, it does not especially matter how law firms and lawyers attract clients; it is clear that they are using digital marketing experts and tools to, at the very least, better track these processes, make them more targeted and efficient, and foster reputational goodwill beyond their known networks.

¹⁹⁷ Jacobowitz, “Chaos or Continuity?,” 292; Millist-Spendlove, “Websites, Social Media and a Barrister’s Practice,” 51; US Chamber Institute for Legal Reform, “The Plaintiff’s Bar Goes Digital.”

¹⁹⁸ Alvarez, *The Social Law Firm Index 2021*, 21.

¹⁹⁹ Hashtags are keywords or phrases (preceded by the # symbol) used on the internet to help categorise and search topics.

²⁰⁰ Alvarez, *The Social Law Firm Index 2021*, 26.

²⁰¹ Zunenshine, “7 Law Firms That Are Getting Social Media Right.”

²⁰² Alvarez, *The Social Law Firm Index 2021*, 5.

²⁰³ Shorter videos, ranging from a couple of seconds to 10 minutes in length.

²⁰⁴ Alvarez, *The Social Law Firm Index 2022*, 6.

²⁰⁵ Boss Digital, “Socials for Solicitors.”

²⁰⁶ Headley, “Big Law’s TikTok Stars.”; Song, “Lawfluencers.”

²⁰⁷ Strandburg, “Free Fall”; Paterson, “Data Protection in an Era of Big Data”; Floridi, “Big Data and Their Epistemological Challenge,” 436.

²⁰⁸ Charlesworth, *Absolute Essentials of Digital Marketing*, 5.

²⁰⁹ Bromberg, “Tweet at Your Own Risk,” 186; Charlesworth, *Absolute Essentials of Digital Marketing*, 5. See Endo, “Ad Tech & The Future of Legal Ethics.”

²¹⁰ Chakravarthi, “Using Analytics to Uncover Market Opportunities”; Wong, “Big Data and Analytics”; LexisNexis, “Survey.”

²¹¹ Alvarez, *The Social Law Firm Index 2022*, 36–37.

²¹² Alvarez, *The Social Law Firm Index 2022*, 37.

²¹³ Adobe Marketo Engage is a marketing automation software: Adobe, “Marketo Engage.”

²¹⁴ Being marketing speak for the points of contact between law firm/lawyer and client.

²¹⁵ Adobe, “LegalVision Saves \$100K in Agency Costs with Marketo Engage.”

²¹⁶ Adobe, “LegalVision Saves \$100K in Agency Costs with Marketo Engage.”

V. The Meanings of Digital Marketing for Legal Professionalism

Against this backdrop of law firms becoming, in effect, the clients of legal marketers, we now consider the meanings of legal digital marketing for their employee-lawyers' professionalism, or lawyers' identities and work, relationships with clients, and their legal and ethical commitments. Being online in a professional capacity is still a relatively new proficiency for lawyers. Practitioners, including those who lead firms and supervise juniors, may already find the application of their professional and legal obligations confounding in these contexts generally. Meanwhile, legal marketers who have not been trained in law may not be familiar with its extensive regulation or collective values—values that have historically included individualised attention to the client's matter, civility and collegiality, and public interest commitments. As a form of managerialism and new expertise, digital marketing supports efficiency and profit by aligning the firm's brand and services with 'customer' preferences, thereby shaping each. A lawyer's or firm's engagement in digital marketing may pose challenges to professional judgement and independence. As we illustrate in this part, law firm management and lawyers themselves need to be aware of these tensions and competing interests—between broader strategic firm profitability, marketers' own commercial interests, and lawyers' autonomy and commitments in the face of these pressures.²¹⁷ Further, if firms do not take reasonable steps to ensure their employees adhere to and support their ethical duties, they (firms) may be vicariously liable.²¹⁸

A. Lawyers' Work and Professional Identities

In each of the digital marketing activities outlined in Part III, for instance, websites and social media, the branding and promotion are centred on the firm. Yet, they depend on the engagement and efforts of individual (employee) lawyers, not solely the firm's marketing teams or external consultants. As we have argued, digital marketing is more than simply another means of (online) client acquisition/referral. It also has significant implications for lawyers' work, both what is required and what is expected. For example, it is now common for firms to advise their employees to construct LinkedIn profiles and use consistent firm branding to present a coherent image online.²¹⁹ These changes are particularly relevant for global firms.²²⁰ To illustrate, Baker McKenzie expressly encourages their lawyers to participate in its marketing by offering an employee 'social media advocacy' program that is said to show the 'positive impact that a social presence has on an attorney and their personal brand'.²²¹ The firm's training program also 'provides their attorneys with one-on-one, group, and on-demand learning resources' alongside a 'network' of so-called 'social media advocates' throughout the firm who share best practices and provide advice. Meanwhile, global law firm Jones Day trains its lawyers on its firm 'message' and encourages its lawyers to attach either YouTube videos (including educational videos about legal issues, as well as training and recruitment) or their LinkedIn profiles to client emails.²²² Within global firm McDermott Will & Emery, meanwhile, sits a 'deep roster of attorneys who actively create content, participate in interviews by the media or launch industry-specific microsites'.²²³

These work activities might act as creative outlets for lawyers,²²⁴ we note that the initiatives that we have found are ostensibly optional. However, the lawyers who do decide to engage in digital marketing (and social media more broadly) remain tethered to the firm and its brand. Even in their own efforts at marketing and personal expression via social media, lawyers must consider the firm's existing marketing policy and practice, and performance oversight. The approach of international firm White & Case demonstrates this: 'we encourage our people to use their own LinkedIn profiles to share White & Case content that is relevant to their practices, industries, and business areas. And we also advise them on how to do that effectively'.²²⁵ As firms adopt more elaborate digital marketing practices, it is likely these sorts of requests of lawyers as employees will increase, possibly weakening the autonomy and identity-attachments of individual lawyers as professionals. Digital marketing thus represents another way in which legal practice is becoming more business-like and in which professionalism is being centred within the organisation as its 'site and source'.²²⁶

²¹⁷ Proper training in navigating and understanding these priorities can also help.

²¹⁸ *Legal Profession Uniform Law 2014* (NSW) ss 34–35.

²¹⁹ Chester, "Social Media Networking for Lawyers." Zawacki also notes firms in Australia, like Colin Biggers & Paisley, actively encourage their employees to use LinkedIn: Zawacki, "Social Media Use in the Legal Profession," 125.

²²⁰ The Taking the Pulse study found nearly 80% of large firms provided training to staff for marketing and BD, compared to only 40.8% of mid-size firms and 23% of small firms. ALPMA, *Taking the Pulse*, 30.

²²¹ Alvarez, *The Social Law Firm Index 2021*, 23.

²²² Alvarez, *The Social Law Firm Index 2021*, 44.

²²³ Alvarez, *The Social Law Firm Index 2021*, 29.

²²⁴ Alvarez, *The Social Law Firm Index 2021*, 32; Headley, "Big Law's TikTok Stars."

²²⁵ Alvarez, *The Social Law Firm Index 2021*, 18.

²²⁶ Flood, "Re-Landscaping of the Legal Profession," 510.

B. The Lawyer–Client Relationship

In addition, digital marketing appears to be changing how lawyers engage with their clients. Of the 123 Australasian firms surveyed in ALPMA’s (2016) *Cross-Selling* report, the second most popular approach to building and maintaining referral networks was using social media (58%), after attending in-person networking events (65%).²²⁷ What is surprising in light of Thompson’s thesis²²⁸ is how close these two preferred approaches are—in-person networking and social media. Moreover, these two ways of relating to clients are likely to overlap in practice: a word-of-mouth referral may come from someone who knows the lawyer through social media—or has kept up with that relationship in this way. Or a client might supplement a word-of-mouth referral by searching for online reviews or the lawyer’s social media presence. In any case, the findings suggest that digital marketing is more than simply an extension of online word-of-mouth referrals and that it is being used in an active way to acquire and sustain client relationships.

Another change in the lawyer–client relationship is in the service-provider/consumerist language and dynamics we described in Part III. In general, and as the profession itself has put it, lawyers and legal practices today are much more ‘publicly informative and accessible’ and less exclusive and hidden than they were historically.²²⁹ To some extent, widespread digital marketing in the profession could mean (or reinforce) the consumer movement at the individual level and the competition movement for corporate clients where the balance of power is no longer always in the lawyer’s favour. It might represent widely attainable knowledge about lawyers and law firms; greater scope for clients to pick and choose, evaluate and rate lawyers (as so-called collaborative or co-created marketing); and contribute to access to justice initiatives, with firms using their websites and social media to educate and inform.

Moreover, it appears that the competition and consumer protection movements are intermingling with and being exploited by marketers in their advocacy for the ‘client-centred law firm’. This appears at this stage of primary benefit to corporate clients via the large law firms but could also be making the law more friendly or accessible for the public generally. Firms are generally improving the designs of their marketing to be more ‘visitor focused’,²³⁰ such as using ‘magazine-style’ (i.e., high-quality and flashy) images²³¹ to appeal to certain target audiences, while also, for example, sharing photo portraits of their lawyers (on Facebook posts) to demonstrate the ‘human face of the brand’.²³² A senior director of digital channels at Baker McKenzie has observed that ‘human-centric content elicits more comments than announcements’.²³³ Again, this activity is the product of marketers’ CX (client-centred) methodology, which seeks to ‘humanise’ organisations to generate trust and rapport with clients, where the firm, far from being beyond reach, appears and behaves in ways that the client needs, demands or expects and helps them on their ‘journey’.

On the other hand, professional trust is typically forged and secured through the ‘real life’, in-person relationship itself, and it would be fair to say that certain elements of client trust built via marketing activity are both standardised and superficial. Moreover, having just said that marketing may mean greater transparency and less ‘professional’ esoterism, it is possible that consumers could be misled or otherwise confused in other ways now by the prevalence of glossy advertising online. Where digital marketing is taken too far, risks can arise, to which we now turn.

C. Risks to Lawyers’ (and Therefore Law Firms’) Legal and Ethical Duties

In this section, we outline six areas in which digital marketing presents potential threats to the legal and ethical duties of lawyers and firms: (1) consumer law; (2) confidentiality; (3) inadvertent retainers; (4) cybersecurity; (5) privacy; and (6) being a fit and proper person.

I. Consumer law and protection

In following the advice of marketing professionals on how to self-promote online, lawyers and firms risk breaching not only their professional duties when it comes to advertising²³⁴ but also consumer laws. Conduct, engaged with in trade or commerce,

²²⁷ ALPMA, *Referrals and Cross-Selling in Practice*, 10.

²²⁸ Thompson, “The History of Legal Marketing in Australia and New Zealand,” 102–103.

²²⁹ Law Society of Western Australia, *Future of the Legal Profession*, 10.

²³⁰ Content Pilot, *How Do They Measure Up?*, 55.

²³¹ Content Pilot, *How Do They Measure Up?*, 45.

²³² Alvarez, *The Social Law Firm Index 2022*, 41.

²³³ Alvarez, *The Social Law Firm Index 2021*, 22.

²³⁴ Legal Services Council, *Australian Solicitors’ Conduct Rules 2015*, rule 36. See also guidelines on advertising by legal professional associations, for example Queensland Law Society, *Guidance Statement No. 24 Ethical Considerations on the Use of Social Media and Law Practice Websites*; The Law Society of South Australia, *Guidelines for Legal Services Advertising, Marketing and Promotion Guidelines*; The Law Society of Western Australia, *Ethical & Practice Guidelines*, rule 13.

that is misleading or deceptive or is likely to mislead or deceive is prohibited by Australian Consumer Law.²³⁵ The onus is on law firms (and their lawyers—and, indeed, their marketing teams) to ensure that all statements made in the course of trade and commerce abide by consumer law,²³⁶ including posts or comments by visitors or third parties on the firm’s websites/social media.²³⁷ As a preliminary issue, it might be difficult for practitioners to spot whether certain conduct when enacted online is classified as ‘in trade and commerce’, an element necessary for the legislation to apply. In practice, this is a question of fact, and the courts will consider the impugned conduct as a whole.²³⁸ However, posts on websites and social media platforms have been held to be ‘in trade or commerce’.²³⁹ For example, a lawyer’s blog posts aimed at tarnishing competitors were held to have underlying commercial interests.²⁴⁰

Another risk area is where law firms use the marketing method of ‘social proof’ to influence members of the public to ‘buy’ their services. Examples include endorsements, testimonies or subjective statements from clients, colleagues or their own marketing team or lawyers. Where these communications constitute advertising, and the statements are not substantiated with facts, the courts may deem this to be deceptive advertising. Conduct is misleading or deceptive when the overall impression of the conduct induces or is capable of inducing error; it is not necessary to prove that the conduct *actually* misled or deceived anyone.²⁴¹ However, the application of this threshold test is context-dependent²⁴² and some novel risks arise with digital marketing. For instance, a disclaimer on a smart phone or smart watch advertisement can be less discernible and, therefore, an insufficient counter to any misleading and deceptive impression than a disclaimer on a television advertisement or billboard.²⁴³ While to date, Australian courts have rarely had to consider whether a lawyer’s or law firm’s behaviour amounts to misleading or deceptive conduct (whether in marketing or in general),²⁴⁴ as digital marketing ramps up, this is likely to change. In a more developed market, for example, in the US, various cases have been brought under analogous consumer protection rules.²⁴⁵

2. Confidentiality

As indicated above, digital marketing presents risks to the traditional lawyer–client relationship, a relationship centred on confidence and trust and sourced from contract, equity²⁴⁶ and the professional conduct rules.²⁴⁷ The duty of confidentiality imposes an obligation on lawyers to maintain client confidences—to not abuse clients’ trust by disclosing or misusing clients’ secrets or information concerning their affairs.²⁴⁸ This assurance supports public confidence in the legal system.²⁴⁹ However, the pressures and opportunities for firms and lawyers to self-promote online may expose client information to risk, which, in the process and over time, reduces the profession’s collective authority based in trust. For example, in *Hunter v Virginia State*

²³⁵ *Competition and Consumer Act 2010* (Cth) s 18 or the *Australian Consumer Law*.

²³⁶ Commission, “Social Media Promotions.”

²³⁷ *Australian Consumer Law* s 29(1)(f); Bender, *Marketing and the Law*, 468; *ACCC v Allergy Pathway Pty Ltd (No. 2)* [2011] FCA 74; Fogarty, “Beware the Social Network.”

²³⁸ *Concrete Constructions (NSW) Pty Ltd v Nelson* (1990) 169 CLR 594, 604; *Madden v Seafolly Pty Ltd* (2014) 313 ALR 1, 97–98 (Rares and Robertson JJ).

²³⁹ *Comite Interprofessionnel du Vin de Champagne v Powell* (2015) 330 ALR 67, 191–192 (Beach J); *Seafolly Pty Ltd v Madden* (2012) 297 ALR 337, 80–83 (Tracey J).

²⁴⁰ *Fletcher v Nextra Australia Pty Ltd* (2015) 229 FCR 153, 35–38.

²⁴¹ *Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd* (1982) 42 ALR 1, 6 (Gibbs CJ).

²⁴² *ACCC v TPG Internet Pty Ltd* [2011] FCA 1254, 37 (Murphy J); *ACCC v Singtel Optus Pty Ltd* [2010] FCA 1177, 5 (Perram J). See *Bazzi v Dutton* [2022] 289 FCR 1, where the full Federal Court of Australia found that the tweets must be read in the context of the tweet ‘as a whole’ to ascertain the meaning conveyed. However, there is nonetheless still a risk that members of the public may still take a single tweet out of context, such as by not clicking an embedded extract, link or ‘chain’ (thread) of tweets and be misled.

²⁴³ Coorey, “Proving Misleading or Deceptive Conduct,” 104.

²⁴⁴ See *Liu v Barakat* (unreported, District Court of NSW, Curtis J, 8/11/11); *Baker Johnson Lawyers v Narelle Karen Jorgensen* [2002] QDC 205, where it was found that reference to the term ‘no win-no fee’ was misleading and deceptive whether the lawyer’s true intention was the retainer to be on the terms of the Authority to Act.

²⁴⁵ American Bar Association, *Model Rules of Professional Conduct* (2020) Rule 7.1. See *Hunter v Virginia State Bar ex rel. Third District Committee*, 744 S.E.2d 61 I (Va. 2013), where a blog was found to be misleading advertising for not containing the appropriate disclaimers (that past performance is not indicative of future outcomes) in circumstances where the attorney conceded the blog served a commercial purpose to market himself and his case victories. See also *LegalZoom.com v. Rocket Law, Inc.*, No. 12-CV-00942 GAF, 2015 WL 12832823 (N.D. Cal. Mar. 23, 2015) at *1 (whether Rocket Lawyer engaged in false advertising and unfair business practices when it used the term ‘free’ in advertising its services); Hawkins, “The Behavioral Economics of Lawyer Advertising,” 1014; Noah, “Giving Personal Injury Attorneys Who Run Misleading Drug Ads a Dose of Their Own Medicine.”

²⁴⁶ *Taylor v Blacklow* (1836) 132 ER 401; *Baker v Campbell* (1983) 153 CLR 52 [65] (Gibbs CJ); *Beach Petroleum NL v Abbott Tout Russell Kennedy* (1999) 48 NSWLR 1.

²⁴⁷ *Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015*, rule 9; *Legal Profession Uniform Conduct (Barristers) Rules 2015*, rule 114.

²⁴⁸ Tur, “Confidentiality and Accountability.”

²⁴⁹ *Prince Jefri Bolkiah v KPMG (a firm)* [1999] 2 AC 222, 236 (Lord Millett).

Bar,²⁵⁰ a US attorney was alleged to have breached confidentiality by using real client names without consent in his blog. While the court ultimately found that the blog posts did not breach confidentiality because the names were already on the public record and thus protected by the First Amendment of the US Constitution,²⁵¹ the case was widely criticised,²⁵² and the ABA subsequently issued a Formal Opinion about maintaining confidentiality obligations for lawyer blogging.²⁵³

An inadvertent breach of confidentiality is also a risk for firms and lawyers when writing or publishing anything as part of their digital marketing activities.²⁵⁴ The internet is a public forum that can seem quick and transient but is essentially permanent.²⁵⁵ In one US case, a lawyer responded to a negative review from a client by detailing why it was the client's own fault that the case was lost, breaching confidentiality in the process.²⁵⁶ As Parker and Evans note, practitioners should be wary because the business model of social media platforms thrives on such trivial breaches of confidence: controversy attracts more clicks and, ultimately, advertising revenue for the platforms.²⁵⁷ It is now exceptionally easy for a scandal to go 'viral'²⁵⁸ through digital channels from where we now access much of our news and entertainment.²⁵⁹

3. Inadvertent retainer

Marketing 'best practice' encourages high levels of engagement with and responsiveness to prospective clients. However, if overstepped, there is a risk of creating unintended or implied lawyer–client relationships before any retainer has been formalised.²⁶⁰ As signalled, it is common for members of the public to search the internet for 'answers' to their legal problems and to rely on the results, especially if the source is perceived to be authoritative and credible.²⁶¹ Lawyers must ensure that their marketing posts or messages cannot be construed as legal advice.

There is also a danger when non-legal conversations or online chit-chat transforms into legal discussion.²⁶² The informal environment of social media sites may result in lawyers providing 'off-the-cuff', ill-considered legal advice, perhaps to bolster their personal branding or to 'hook' potential clients.²⁶³ It has been held that it is reasonable for clients to expect that advice given over a brief phone call represents considered, prudent advice in circumstances where no disclaimer is provided.²⁶⁴

4. Cybersecurity

As part of their marketing strategies, law firms are increasingly using tools such as social media dashboards,²⁶⁵ CRM software and other cloud-based SaaS programs. However, greater use of marketing technologies increases exposure to cyberthreats.²⁶⁶ Anything that firms publish online, including their brand messaging, website, phone number, email and physical location, can be used by cybercriminals to identify other, exploitable vulnerabilities.²⁶⁷

²⁵⁰ *Hunter v Virginia State Bar ex rel. Third District Committee*, 744 S.E.2d 61 I (Va. 2013).

²⁵¹ *Hunter v Virginia State Bar ex rel. Third District Committee*, 744 S.E.2d 61 I (Va. 2013) 620. The First Amendment protects freedom of speech, religion, press, assembly and petition.

²⁵² Jacobowitz, "Fidelity Diluted."

²⁵³ ABA Committee on Ethics and Professional Responsibility, Formal Opinion 480.

²⁵⁴ Browning, "Your Facebook Status," 211; Rigertas, "How Do You Rate Your Lawyer?"

²⁵⁵ Rosen, "The Right to be Forgotten."

²⁵⁶ Gillers, Regulation of Lawyers; compare to *Cheng v Lok* [2020] SASC 14 (where a lawyer was awarded A\$750,000 in defamation damages against a woman who gave his practice a bad review on Google My Business).

²⁵⁷ Parker, *Inside Lawyers' Ethics*, 98.

²⁵⁸ Going viral refers to the rapid dissemination of content across online platforms, such that once the 'word is out' it is effectively impossible to stop its spread—like a virus. Charlesworth, *Absolute Essentials of Digital Marketing*, 6.

²⁵⁹ Hutchinson, "How Instagram and YouTube Users Share News."

²⁶⁰ Marcum, "Legal Marketing through the Decades," 253; Gergacz, "Using the Internet to Attract Clients," 17; Pixler, "Social Media," 35; Office of the Legal Services Commissioner, "Social Media Practice Note."

²⁶¹ Zawacki, "Social Media Use in the Legal Profession," 122; Leavitt, "Attorney Advertising in the Age of Reddit."

²⁶² Leavitt, "Attorney Advertising in the Age of Reddit," 1118.

²⁶³ Burns, "E-Professionalism," 162.

²⁶⁴ *Carmody v Priestley & Morris Perth Pty Ltd* (2005) 30 WAR 318, 130–136 (Hasluck J).

²⁶⁵ For example, Hootsuite and TweetDeck are 'all-in-one' social media management platforms that provide interfaces to manage social media.

²⁶⁶ On average, Australian adults have four different devices connected to the internet: Australian Communications and Media Authority, *Communications and Media in Australia*. Cybersecurity risks can include data breaches, data loss, account/service hijacking, and denial of service (DoS) attacks (where a machine or network is shut down and made inaccessible).

²⁶⁷ Rockwell, "How Marketing Campaigns Pose Cybersecurity to Law Firms."

Client information gathered from CRM or data analytics can also be at risk. The hacking of high-profile databases emphasises the need for appropriate measures to protect client information.²⁶⁸ It is reported that Australian law firms are now frequent targets of cybercrime,²⁶⁹ representing attractive targets or ‘honeypots’ of valuable data, including corporate secrets, details of large transactions and sensitive personal data.²⁷⁰

Moreover, using digital marketing cloud services involves the transfer of data to third parties.²⁷¹ This data is then outside the direct control of the firm or lawyer, exposing them to unauthorised access or inadvertent disclosure if the third-party systems are compromised. As such, firms are now encouraged to take out cyber insurance²⁷² and adopt additional precautionary measures, including using secure browsers, performing local data backups and reviewing vendor privacy policies or terms of service.²⁷³

5. Privacy

When conducting digital marketing, law firms and lawyers must not infringe on the privacy of either existing or prospective clients. Today, every part of a person’s ‘digital footprint’ is recorded, including every click of a web page, email and social media post. Such personal data are a commodity that can be sold to third parties for commercial purposes. Where a law firm outsources its marketing to third-party agencies or collects this data for the purposes of marketing, privacy law stipulates that the firm must know where the data is being held, processed and stored, and be satisfied that it is secure.²⁷⁴

Privacy issues will become more significant the more marketing teams and personnel rely on data analytics to ‘optimise’ their ‘campaigns’. In a 2018 survey by LexisNexis of 321 lawyers at Am Law 200 firms, 90% of respondent lawyers said analytics ‘added value’ to their law practice, and one-third described their impact as ‘invaluable’.²⁷⁵ The salient question is whether the use of data analytics is an ethically suitable method for lawyers to advertise their services. Endo argues that the invasiveness and manipulation of online behavioural advertising by lawyers and law firms are not adequately dealt with by current regulations.²⁷⁶ Indeed, neither US nor Australian privacy laws or regulations prohibit activities involving using data for targeted advertising—there is only currently anti-spam legislation.²⁷⁷ Endo gives the example of divorce lawyers sending daily offers to individuals who had recently conducted an online search for marriage counsellors.²⁷⁸ As law firms increasingly use analytics, it is important to understand the privacy and other professional trust issues that arise.

6. Being a fit and proper person

Arguably, the potentially predatory marketing just mentioned in the divorce law context could be said to bring the profession into disrepute. Certain social media platforms also encourage a style of language that can add further complexity to judging what is appropriate. For example, LinkedIn calls for a more professional, formal tone than Twitter does.²⁷⁹ Communication through messaging apps is often quicker and less cumbersome than email and phone calls, but also more casual.²⁸⁰ Firms and marketing teams need to ensure their lawyers maintain (and have the appearance of maintaining) professional independence and propriety across all platforms, even if those platforms give different cues about what is expected. This is illustrated by the case of Sydney Criminal Lawyer’s Facebook page, ‘Sydney Drink Driving Lawyers’. The firm (or presumably their marketing team) posted a meme photo of an Australian Disability parking bay with the text: ‘Every 48 seconds a drunk driver makes

²⁶⁸ Simshaw, “Legal Ethics and Data Security.”

²⁶⁹ Neilson, “One in Five Law Firms under Attack”; Nische, “Australian Law Firms Remain Vulnerable.”

²⁷⁰ Herbert-Lowe, “Cyber Security: Protecting Client Confidentiality in the Digital Era.”

²⁷¹ The term ‘cloud computing’ is commonly used to refer to the delivery of ‘hosted services’ (or ‘web services’) over the internet: see Office of the Legal Services Commissioner, “Cloud Computing Practice Note.”

²⁷² For example, the Law Society of England and Wales recommends supplementing professional indemnity insurance with additional insurance which covers costs and losses: The Law Society, “Cybersecurity for Solicitors.”

²⁷³ Johs, “ABA TechReport 2021 Websites & Marketing.”

²⁷⁴ In Australia for example, privacy rights are under the purview of the *Privacy Act 1988* (Cth), which is supplemented by state and territory laws that regulate information handling: *Information Privacy Act 2014* (ACT); *Privacy and Personal Information Protection Act 1998* (NSW); *Information Act 2002* (NT); *Information Privacy Act 2009* (Qld); *Personal Information Protection Act 2004* (Tas); *Privacy and Data Protection Act 2014* (Vic).

²⁷⁵ LexisNexis, “Survey.”

²⁷⁶ Endo, “Ad Tech & The Future of Legal Ethics.”

²⁷⁷ See the European Union’s General Data Protection Regulation (GDPR), Regulation (EU) 2016/679; the UK’s *Privacy and Electronic Communications (EC Directive) Regulations 2003* (UK); Australia’s *Spam Act 2003* (Cth); and in the US, various state-based legislation such as the California Consumer Privacy Act (CCPA), Cal. Civ. Code §§ 1798.100-.199.

²⁷⁸ Endo, “Ad Tech & The Future of Legal Ethics,” 109.

²⁷⁹ Culnan, “How Large US Companies Can Use Twitter.”

²⁸⁰ Myrland, “Social Media Trends.”

another person eligible to park here'.²⁸¹ The post attracted public criticism online, and the firm was advised by the New South Wales Attorney-General's office to change its advertising strategy.²⁸² This case demonstrates the dangers of firms attempting to spruce up their marketing, in this case, with humour gone wrong. While some clients may appreciate or desire less formality in their relationships with their lawyers, as the NSW regulator points out, it can result in improper communications.²⁸³

Burns and Corbin point out that improper uses of social media that are not dealt with by specific conduct and practice rules are likely captured by the broader rules requiring lawyers to be fit and proper persons, uphold their paramount duty to the court and protect the integrity of the profession.²⁸⁴ However, law firms might not be aware of how easy it is to engage in questionable behaviour online given the nature and number of electronic communications today. They also may not be closely monitoring their marketing teams' approaches. For example, a marketing consultant, without some training in the law of this area, may, in their marketing campaigns, breach disability discrimination laws²⁸⁵ or misappropriate intellectual property rights either inadvertently (out of ignorance of laws) or intentionally (as an efficiency trade-off).²⁸⁶

VI. Conclusion

Current conditions are prime for digital marketing's foray into law. The legal industry offers an opportune environment for legal digital marketers looking to sell their expertise to law firms (and the professional associations), and we saw how the marketers are trying to 'market' and apply, with more or less finessing, their ideas, tools and 'best practices' to the firms. Digital marketing meets the firms' overwhelming need to compete and impress clients, a need that is dramatised by the firms themselves²⁸⁷ and reinforced by marketers. Our research showed that Australian law firms have significantly increased investment in and prioritisation of digital marketing in recent years. Law firms, therefore, need to be aware of the meanings and methodologies of digital marketing, including those provided in our article. They and their lawyers and marketing teams also need to understand its implications for the identities, work demands, relationships and values of their employee-lawyers, both from a wellbeing/retention perspective, and their legal and ethical responsibilities. Firms need to train and monitor their lawyer and marketing staff in these risk areas, including those we outlined.

Without further in-depth empirical study and given its ongoing emergence as a field, it is difficult to provide a final assessment of the meaning of digital marketing for professionalism. At the very least, our article reveals some of the specific, everyday and grounded ways that the wider trends are occurring, in which 'professionalism' has become more decidedly about profits and efficiencies, and centred in the organisation. As with other forms of professional change, it can be easy to take an extreme view: in this case, either downplaying digital marketing as a new channel to attract clients or else taking it as a corrupting force. There are certainly some intriguing tensions. As digital marketing practices diffuse across the profession, it could have positive spillover effects on the consumer movement. These potential benefits of digital marketing include more 'pre-purchasing' knowledge, greater ability to pick and choose (and engage in 'chatter'), wider access to justice, and adding to the 'humanisation' of the law. On the other hand, digital marketing could just mean more risks for the client-consumer of the sort we detailed, such as lapses in confidentiality and privacy. Consumers may also be more likely to be misled or otherwise confused by the prevalence of online, 'slick' marketing; in other words, it is possible (though it needs further investigation) that digital marketing represents a reworking of the exclusivity and opacity associated with 'traditional' status.

From what we do know at this stage, though, it is unlikely that digital marketing represents the most concerning form of managerialism—compared to, for example, the 'tyranny' of the 'billable hours derby'²⁸⁸ or other organisational arrangements and management methods that have standardised and commodified legal work. Evidence at this point suggests that the demands of digital marketing on lawyers, or the extent of those demands, since lawyers must at least consider the firm's marketing policy, appear to be mostly optional or 'encouraged'. We can perhaps just see digital marketing as adding to the new

²⁸¹ Stuart, "Law Firm Under Fire."

²⁸² The Attorney-General stated, 'Any law firm that glorifies or makes light of drink driving should change its advertising strategy'. The principal of the firm, Ugur Nedim was consequently convicted for high-range drink driving himself in 2022: Rawsthorne, "'Lawyer from 'Drink-Driving Meme' Firm Convicted."

²⁸³ Office of the Legal Services Commissioner, Annual Report 2020-2021, 12.

²⁸⁴ Burns, "E-Professionalism," 162-164.

²⁸⁵ Chaffey, "Digital Marketing," 115 provides an example, where a marketer fails to abide by accessibility legislation for visually impaired or blind people if such persons are the main audience of a campaign.

²⁸⁶ Nowadays, it is especially easy to copy web content or photos from other sites: Chaffey, "Digital Marketing," 116-117. More complex still, are the concerns over the intellectual property rights of AI-generated content and images.

²⁸⁷ For an example of how the discursive construction of the 'demanding client' can in fact serve as a cover for the time and work demands of the firm itself, see Campbell, "Salaried Lawyers and Billable Hours," 110-111.

²⁸⁸ Fortney, "The Billable Hours Derby," 171; Legg, "Lawyers' Fee Arrangements and Their Wellbeing," 267.

managerialist language the lawyers are expected to adopt, where marketing terms and methodologies then support other managerial systems and mindsets. Yet, in a highly competitive context, where lawyers are also often competing with colleagues as well, digital marketing is likely adding to a sense among lawyers that they are less ‘trusted advisors’ and more ‘creative and dynamic’ service providers²⁸⁹ who must continually engage with prospective clients as well. Given the regulatory and technological affordances, it is easy to see how a lawyer might approach advertising in a carefree, self-promotional fashion.

Our investigation invites further research. A future study might examine more closely the aims and perspectives of legal digital marketers and those lawyers asked to run the firm’s digital marketing—their aims, perspectives, metrics and training programs, whether digital marketing is being embraced or resisted by lawyers, and how digital marketing interacts with other management systems within firms and the daily work of lawyers. As mentioned in Part II, an insider look at the successes and failures of legal digital marketing would be beneficial to better understand the reality of these new methods and technologies and their interactions with professional norms and values. Our article also invites further contemplation on what digital marketing means for the law degree, as with all these new business disciplines. Certainly, a lawyer’s legal nous and integrity will remain critical determinants of success, but they will also include the ability to develop business, create and maintain client relationships, and promote the firm’s brand image—including through marketing tools and an online presence.

Correspondence: Justine Rogers, Associate Professor, UNSW Law & Justice, Sydney, Australia. j.rogers@unsw.edu.au

²⁸⁹ Terrell, “Rethinking Professionalism,” 415.

Bibliography

- Ackroyd, Stephen, and Daniel Muzio. "The Reconstructed Professional Firm: Explaining Change in English Legal Practices." *Organization Studies* 28, no 5 (2007): 729–747. <https://doi.org/10.1177/0170840607073077>.
- Adobe. "LegalVision Saves \$100K in Agency Costs with Marketo Engage." <https://business.adobe.com/customer-success-stories/legalvision-case-study.html>.
- Adobe. "Marketo Engage." <https://business.adobe.com/products/marketo/adobe-marketo.html>.
- Alvarez, Guy, Kevin Vermeulen, and Victoria Zimmon. *The Social Law Firm Index 2021*. (Good2BSocial, 2021).
- Alvarez, Guy, Kevin Vermeulen, and Victoria Zimmon. *The Social Law Firm Index 2022*. (Good2BSocial, 2022).
- American Bar Association. *ABA TechReport 2021*. (American Bar Association, 2021).
- American Bar Association. *ABA TechReport 2022*. (American Bar Association, 2022).
- American Bar Association. "Law Practice Magazine." https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/.
- American Bar Association. *Tech Survey 2021*. (American Bar Association, 2021).
- American Bar Association. Model Rules of Professional Conduct. 2020.
- American Bar Association Committee on Ethics and Professional Responsibility. Formal Opinion 480: Confidentiality Obligations for Lawyer Blogging and Other Public Commentary. 2018.
- American Marketing Association. "Branding Archives." *American Marketing Association* (blog). <https://www.ama.org/topics/branding/>.
- American Marketing Association. "What is Digital Marketing." *American Marketing Association* (blog). <https://www.ama.org/the-definition-of-marketing-what-is-marketing/>.
- Armstrong, Gary, Stewart Adam, Sara Denize, Michael Volkov, and Philip Kotler. *Principles of Marketing*, 7th ed. (Australian ed.). Pearson Education Australia, 2018.
- Australasian Legal Practice Management Association and Dye & Durham. *Reaching New Heights: An Understanding of Current Legal Industry Trends*. (Australasian Legal Practice Management Association and Dye & Durham, August 2022).
- Australasian Legal Practice Management Association and Julian Midwinter & Associates. *Referrals and Cross-Selling in Practice*. (Australasian Legal Practice Management Association and Julian Midwinter & Associates, 2016).
- Australasian Legal Practice Management Association and Julian Midwinter & Associates. *Taking the Pulse*. (Australasian Legal Practice Management Association and Julian Midwinter & Associates, 2014).
- Australasian Legal Practice Management Association and Julian Midwinter & Associates. *Winning Work in a Digital World*. (Australasian Legal Practice Management Association and Julian Midwinter & Associates, 2015).
- Australian Communications and Media Authority. *Communications and Media in Australia: How We Use the Internet*. (Australian Communications and Media Authority, 2021).
- Bachman, William. "How Do Corporate Clients Choose Firms: Symposium Part II Orchestrating Client/Firm Relationships." *Legal Management* 8, no 4 (1989): 13–19.
- Bagust, Joanne. "The Legal Profession and the Business of Law." *The Sydney Law Review* 35, no 1 (2013): 27–52. <https://doi.org/10.3316/agispt.20132126>.
- Bala, Madhu, and Deepak Verma. "A Critical Review of Digital Marketing." *International Journal of Management, IT & Engineering* 8, no 10 (2018): 321–339.
- Baron, Paula, and Lillian Corbin. *Ethics and Legal Professionalism in Australia*. 3rd ed. Docklands, Victoria: Oxford University Press, 2020.
- Barrett, David A., and Mike O'Horo. "How to Market Your Practice During the Holidays." *GPSolo* 30, no 6 (2013): 26–29.
- Bell, Felicity. *Legal Design*. (University of New South Wales FLIP Stream, 2020).
- Bell, Felicity, and Justine Rogers. "'Fit and Proper' Coders? How Might Legal Service Delivery by Non-Lawyers Be Regulated?" *Legal Ethics* 24, no 2 (July 3, 2021): 111–140. <https://doi.org/10.1080/1460728x.2022.2049522>.
- Bell, Tom W. "The Impact of Blogging on the Practice of Law: Hit the Snooze Button." SSRN Scholarly Paper. Rochester, NY, August 8, 2006. <https://papers.ssrn.com/abstract=922127>.
- Benchmarking. "From The Courtroom to The Boardroom: The New Battle Ground in The Australian Legal Services Industry." <https://benchmarking.com.au/insights-trends/competition-in-australian-legal-services-industry/>.
- Bender, Mark, Simone Lockhart, Susan Carter, and Samantha Christie. *Marketing and the Law*. 6th ed. LexisNexis Butterworths, 2020.
- Berding, Rafe. "Marketing for the Modern-Day Law Firm." *Lawyers Weekly*, November 2, 2017. <https://www.lawyersweekly.com.au/sme-law/22191-marketing-for-the-modern-day-law-firm>.
- Bird, Tom. "How Do You Teach Lawyers to 'Do' Business Development?" In *Business Development: A Practical Handbook for Lawyers*, 2nd ed., edited by Stephen Revell. London, United Kingdom: Globe Law and Business, 2020.
- Boss Digital. "Socials for Solicitors: 5 Law Firms Using TikTok That Are Going Viral," January 24, 2022. <https://boss-digital.co.uk/blog/law-firms-tiktok/>.

- Bloomberg Law and Legal Marketing Association. “78% of Attorneys Rely on Business Development Professionals, up 21% From 2016, Annual Legal Marketing Association-Bloomberg Law Survey Finds.” *Bloomberg Law* (blog), April 10, 2018. <https://pro.bloomberglaw.com/press-releases/78-of-attorneys-rely-on-business-development-professionals-up-21-from-2016-annual-legal-marketing-association-bloomberg-law-survey-finds/>.
- Blomgren, Maria and Caroline Waks. “Coping with Contradictions: Hybrid Professionals Managing Institutional Complexity.” *Journal of Professions and Organization* 2, no 1 (2015): 78–102. <https://doi.org/10.1093/jpo/jou010>.
- Brock, Ralph H. “This Court Took a Wrong Turn with Bates: Why the Supreme Court Should Revisit Lawyer Advertising.” *First Amendment Law Review* 7, no 2 (2009): 145–209.
- Bromberg, Marilyn and Andrew Ekert. “Caution: Tweet at Your Own Risk: Social Media and the Australian Legal Profession.” *Journal of Civil Litigation and Practice* 6, no 4 (2017): 183–193.
- Browning, John G. “Your Facebook Status – Served: Service of Process Using Social Networking Sites Facebook Service, Judgespeak & More.” *Reynolds Courts & Media Law Journal* 2, no 2 (2012): 159–184.
- Burns, Jacqueline. “Are Law Firms Falling Behind on TikTok?,” *Lawyers Weekly*, July 21, 2022. <https://www.lawyersweekly.com.au/biglaw/35017-are-law-firms-falling-behind-on-tiktok>.
- Burns, Kylie, and Lillian Corbin. “E-Professionalism: The Global Reach of the Lawyer’s Duty to Use Social Media Ethically.” *Journal of the Professional Lawyer* 2016 (2016): 153–172.
- Campbell, Iain, and Sara Charlesworth. “Salaried Lawyers and Billable Hours: A New Perspective from the Sociology of Work.” *International Journal of the Legal Profession* 19, no 1 (2012): 89–122. <https://doi.org/10.1080/09695958.2012.752151>.
- Carroll, Trish. “Do You Want a Will with That? The Subtle Art of Cross-Selling.” *Law Council of Australia Legal Practice Section*, no 1 (Summer 2016): 10–11.
- Carroll, Trish. “Why Your Small Firm Can’t Afford to Disregard Advertising.” *Australasian Law Management Journal*, (June 2017): 1–3.
- Caserta, Salvatore. “Digitalization of the Legal Field and the Future of Large Law Firms.” *Laws* 9, no 2 (June 2020): 14. <https://doi.org/10.3390/laws9020014>.
- Center On the Legal Profession. “The Global Age of More for Less.” *The Practice* 1, no 1 (December 2014). <https://thepractice.law.harvard.edu/article/the-global-age-of-more-for-less/>.
- Center On the Legal Profession. “Thought Leadership as Marketing.” *The Practice* 3, no 1 (2016). <https://thepractice.law.harvard.edu/article/in-the-news-november-2016/>.
- Chaffey, Dave. “SEO CTR Stats to Inform Your 2022 SEO Strategy.” *Smart Insights*, January 25, 2022. <https://www.smartinsights.com/search-engine-optimisation-seo/seo-analytics/comparison-of-google-clickthrough-rates-by-position/>.
- Chaffey, Dave, and Fiona Ellis-Chadwick. *Digital Marketing*. 8th ed. Pearson, 2022.
- Chaffey, Dave, and P. R. Smith. *Digital Marketing Excellence: Planning, Optimizing and Integrating Online Marketing*. 5th ed. London: Routledge, 2017. <https://doi.org/10.4324/9781315640341>.
- Chakravarthi, Sriram. “Using Analytics to Uncover Market Opportunities.” In *Business Development: A Practical Handbook for Lawyers*, 2nd ed., edited by Stephen Revell. London, United Kingdom: Globe Law and Business, 2020.
- Charlesworth, Alan. *Absolute Essentials of Digital Marketing*. 1st ed. Absolute Essentials of Business and Economics. Routledge, 2020.
- Charlesworth, Alan. *Digital Marketing: A Practical Approach*. 3rd ed. Routledge, 2018.
- Chester, Simon, and Daniel Del Gobbo. “Social Media Networking for Lawyers: A Practical Guide to Facebook, LinkedIn, Twitter and Blogging.” *Law Practice* 38, no 1 (2012).
- Chow, Dawn Yi Lin, and Thomas Calvard. “Constrained Morality in the Professional Work of Corporate Lawyers.” *Journal of Business Ethics* 170, no 2 (May 1, 2021): 213–228. <https://doi.org/10.1007/s10551-020-04634-x>.
- Cialdini, Robert B. *Influence: The Psychology of Persuasion, Revised Edition*. Rev. ed. New York: Harper Business, 2006.
- Clio. “How to Improve the Client Journey at Your Law Firm.” *Clio* (blog), May 9, 2018. <https://www.clio.com/blog/client-journey-law-firms/>.
- Clio. *Legal Trends Report 2017*. (Clio, 2017).
- Clio. *Legal Trends Report 2018*. (Clio, 2018).
- Clio. *Legal Trends Report 2020*, (Clio, 2020).
- Clio. *Legal Trends Report 2021*. (Clio, 2021).
- Collier, Richard. “‘Be Smart, Be Successful, Be Yourself ...’: Representations of the Training Contract and Trainee Solicitor in Advertising by Large Law Firms.” *International Journal of the Legal Profession* 12, no 1 (March 1, 2005): 51–92. <https://doi.org/10.1080/09695950500081366>.
- Commonwealth Bank of Australia. *CommBank Legal Market Pulse: November 2021* (Commonwealth Bank of Australia, 2021).
- Content Pilot. *How Do They Measure Up? 2020 Global 50 Websites: Ten Foundational Best Practices*. (Content Pilot, 2020).

- Coumarelos, Christine, Deborah Macourt, Julie People, Hugh McIntosh McDonald, Zhigang Wei, Reiny Iriana, and Stephanie Ramsey. *Legal Australia-Wide Survey: Legal Need in Australia*. Access to Justice and Legal Needs, vol. 7. Sydney, NSW: Law and Justice Foundation of New South Wales, 2012.
- Cramond, Katie, and Julia Randell-Khan. "Business Development - the Nuts and Bolts." In *Business Development: A Practical Handbook for Lawyers*, 2nd ed., edited by Stephen Revell. London, United Kingdom: Globe Law and Business, 2020.
- Crockett, Andrew, and Liz Curran. "Measuring Legal Services: A Practical Methodology for Measuring the Quality and Outcomes of Legal Assistance Services." *University of Tasmania Law Review* 32, no 1 (2013): 70–95.
- Culnan, Mary J., Patrick J. McHugh, and Jesus I. Zubillaga. "How Large US Companies Can Use Twitter and Other Social Media to Gain Business Value." *MIS Quarterly Executive* 9, no 4 (2010): 243–259.
- Dammann, Jens. "Electronic Word of Mouth and Consumer Protection: A Legal and Economic Analysis." *Southern California Law Review* 94, no 3 (2020): 423–470.
- Deepend. "We Fight for Fair: Maurice Blackburn Lawyers Website." Accessed May 26, 2023. <http://www.deepend.agency/our-work/work/-/we-fight-for-fair/> 2F our-work 2F - 2F 2F technology 2F Umbraco%20CMS/.
- Desai, Dr Mrs Vaibhava. "Digital Marketing: A Review." *International Journal of Trend in Scientific Research and Development*, Special Issue, Fostering Innovation, Integration and Inclusion Through Interdisciplinary Practices in Management (2019): 196–200.
- Endo, Seth Katsuya. "Ad Tech & The Future of Legal Ethics." *Alabama Law Review* 73, no 1 (2021): 107–158.
- Evans, Paul. "PPC Google Ads for Law Firms: Should My Law Firm Pay for Branded Search Terms?" *Toro Digital* (blog), October 31, 2018. <https://www.torodigital.com.au/law-firm-branded-ppc-google/>.
- Fasterling, Bjorn. "The Managerial Law Firm and the Globalization of Legal Ethics." *Journal of Business Ethics* 88, no 1 (2009): 21–34. <https://doi.org/10.1007/s10551-009-0104-2>.
- Faucon, Casey E. "Black Market Law Firms." *Cardozo Law Review* 41, no 6 (2019): 2283–2368.
- Faulconbridge, James, and Daniel Muzio. "Organizational Professionalism in Globalizing Law Firms." *Work, Employment and Society* 22, no 1 (2008): 7–25. <https://doi.org/10.1177/0950017007087413>.
- Fenton, Jane, Anna Grutzner, and Brian Kogler. *The Rain Dance: A Marketing Book for Lawyers*. Melbourne: Fenton Communications, 1996.
- Fishman, Noreen. "The Lawyer's Guide to Thought Leadership." *Good2bSocial* (blog), May 16, 2022. <https://good2bsocial.com/guide-to-lawyer-thought-leadership/>.
- Fishman, Ross. "Branding a Firm's Progressive Personality." *Law Practice* 34, no 1 (2008): 10–11.
- Flood, John. "The Re-Landscaping of the Legal Profession: Large Law Firms and Professional Re-Regulation." *Current Sociology* 59, no 4 (2011): 507–529. <https://doi.org/10.1177/0011392111402725>.
- Floridi, Luciano. "Big Data and Their Epistemological Challenge." *Philosophy and Technology* 25, no 4 (2012): 435–437. <https://doi.org/10.1007/s13347-012-0093-4>.
- Fogarty, John. "Beware the Social Network." *Law Institute Journal* 85, no 8 (August 2011): 37–41. <https://doi.org/10.3316/agispt.20113788>.
- Fortney, Susan. "The Billable Hours Derby: Empirical Data on the Problems and Pressure Points." *Fordham Urban Law Journal* 33, no 1 (2005): 101–122.
- Furlong, Jordan. *Law is a Buyer's Market: Building A Client-First Law Firm*. Law21 Press, 2017.
- Gaedeke, Ralph. "Understanding How Clients Select and Evaluate Law Firms." *Journal of Professional Services Marketing* 3, no 3/4 (1988): 199–207. https://doi.org/10.1300/J090v03n03_17.
- Gergacz, John. "Using the Internet to Attract Clients and the Attorney-Client Privilege." *Rutgers Computer & Technology Law Journal* 33, no 1 (2006): 17–40.
- Gillers, Stephen. *Regulation of Lawyers: Problems of Law and Ethics*. 11th ed. Aspen Casebook Series. New York: Wolters Kluwer Law and Business, 2017.
- GlobalX and Australasian Legal Practice Management Association. *Move Forward with Confidence: Your Roadmap to Transformation*. (GlobalX and Australasian Legal Practice Management Association, 2019).
- GlobalX and Australian Legal Technology Association. *2020 GlobalX + Alta Research Report: The Intersection of Legal + Technology*. (GlobalX and Australian Legal Technology Association, 2020).
- Goodrick, Elizabeth and Trish Reay. "Constellations of Institutional Logics: Changes in the Professional Work of Pharmacists." *Work and Occupations* 38, no 3 (2011): 372–416. <https://doi.org/10.1177%2F0730888411406824>.
- Google. "Micro-Moments Guide: How Australians Find and Choose Professional Services." Think with Google, February 2017. <https://www.thinkwithgoogle.com/intl/en-aunz/consumer-insights/consumer-trends/micro-moments-guide-how-australians-find-and-choose-professional-services/>.
- Goulandris, Atalanta. "Reshaping Professionalism: Branding, Marketing and the New Entrepreneurial Barrister." *International Journal of the Legal Profession* 22, no 3 (2015): 272–298.

- Gray, Anthony. "Advertising by Professions and the Competition and Consumer Act 2010 (Cth)." *Australian Business Law Review* 40, no 5 (2012): 336–347. https://doi.org/10.3316/agis_archive.20124923.
- Greenwood, Royston, C. R. Hinings, and John Brown. "'P2-Form' Strategic Management: Corporate Practices in Professional Partnerships." *Academy of Management Journal* 33, no 4 (1990): 725–755. <https://doi.org/10.5465/256288>.
- Gregoire, Paul. "Capturing Tibetan Culture in Photos as It Flourishes at Nepal's Boudhanath Stupa." *Sydney Criminal Lawyers* (blog), November 8, 2022. <https://www.sydneycriminallawyers.com.au/blog/capturing-tibetan-culture-in-photos-as-it-flourishes-at-nepals-boudhanath-stupa/>.
- Hale, Sarah. "Lawyers at the Keyboard: Is Blogging Advertising and If So, How Should It Be Regulated Current Developments 2006-2007." *Georgetown Journal of Legal Ethics* 20, no 3 (2007): 669–678.
- Hawkins, Jim, and Renee Knake. "The Behavioral Economics of Lawyer Advertising: An Empirical Assessment." *University of Illinois Law Review* 2019, no 3 (2019): 1005–1038.
- Headley, Tiana. "Big Law's TikTok Stars Embrace Industry's New Social Media Norms," *Bloomberg Law*, July 12, 2021. <https://news.bloomberglaw.com/business-and-practice/big-laws-tiktok-stars-embrace-industrys-new-social-media-norms>.
- Herbert, Christopher. "Filthy Lucre: Victorian Ideas of Money." *Victorian Studies* 44, no 2 (2002): 185–213.
- Herbert-Lowe, Simone. "Cyber Security: Protecting Client Confidentiality in the Digital Era." *LSJ: Law Society of NSW Journal*, no 56 (2019): 88–89.
- Herbig, Paul, and John Milewicz. "Market Signaling in the Professional Services." *Journal of Professional Services Marketing* 8, no 2 (1993): 65–80. https://doi.org/10.1300/J090v08n02_07.
- Heuston, Emma. "To Social or Not to Social?" *LSJ Online*, September 10, 2019. <https://lsj.com.au/articles/to-social-or-not-to-social/>.
- Holland, Geoffrey M., Kathryn Crossley, and Wenee Yap. *Social Media Law and Marketing: Fans, Followers and Online Infamy*. Pyrmont, NSW: Lawbook Co., 2014.
- Hutchinson, Jonathon, and Tim Dwyer. "How Instagram and YouTube Users Share News: Algorithms, Monetization and Visibility on Social Media." In *The Dynamics of Influencer Marketing*, edited by J. M. Álvarez-Monzonillo. Routledge, 2022.
- International Legal Technology Association. "2015 ILTA/InsideLegal Technology Purchasing Survey." International Legal Technology Association, 2015. https://insidelegal.typepad.com/files/2015/08/2015_ILTA_InsideLegal_Technology_Purchasing_Survey.pdf.
- Ito, Aki. "Six Things Technology Has Made Insanely Cheap." *Bloomberg*, February 5, 2015. <https://www.bloomberg.com/news/articles/2015-02-05/six-things-technology-has-made-insanely-cheap>.
- Jacob, Kai, Dierk Schindler, Roger Strathausen, and Bernhard Walzl, eds. *Liquid Legal – Humanization and the Law*. Law for Professionals. Cham: Springer International Publishing, 2022. <https://doi.org/10.1007/978-3-031-14240-6>.
- Jacobowitz, Jan, and Kelly Jesson. "Fidelity Diluted: Client Confidentiality Gives Way to the First Amendment & Social Media in *Virginia State Bar, Ex Rel. Third District Committee v. Horace Frazier Hunter*." *Campbell Law Review* 36, no 1 (2014): 75–106.
- Jacobowitz, Jan. "Chaos or Continuity? The Legal Profession: From Antiquity to the Digital Age, the Pandemic, and Beyond." *Vanderbilt Journal of Entertainment & Technology Law* 23, no 2 (2020): 279–300.
- Jakubowski, Victoria. "Sydney Criminal Lawyers® Weekly Rundown – Articles from 31 October to 6 November 2022." *Sydney Criminal Lawyers* (blog), November 6, 2022. <https://www.sydneycriminallawyers.com.au/blog/sydney-criminal-lawyers-weekly-rundown-articles-from-31-october-to-6-november-2022/>.
- Janoski-Haehlen, Emily M. "The Courts Are All a Twitter: The Implications of Social Media Use in the Courts." *Valparaiso University Law Review* 46, no 1 (2011): 43–68.
- Johs, Allison Shields. "ABA TechReport 2021 Websites & Marketing." American Bar Association, November 17, 2021. https://www.americanbar.org/groups/law_practice/publications/techreport/2021/webmarketing/.
- Johs, Allison Shields. "ABA TechReport 2022 Websites & Marketing." American Bar Association, November 17, 2022. https://www.americanbar.org/groups/law_practice/publications/techreport/2022/web-marketing/.
- Kannan, P. K., and Hongshuang "Alice" Li. "Digital Marketing: A Framework, Review and Research Agenda." *International Journal of Research in Marketing* 34, no 1 (2017): 22–45. <https://doi.org/10.1016/j.ijresmar.2016.11.006>.
- Kao, Tzu-Yi, Ming-Hsien Yang, Ji-Tsung Ben Wu, and Ya-Yun Cheng. "Co-Creating Value with Consumers through Social Media." *Journal of Services Marketing* 30, no 2 (2016): 141–151. <https://doi.org/10.1108/JSM-03-2014-0112>.
- Kartson, Despina, and Tom Mariam. "The Future of Legal Marketing: Law Firm Marketers Will Be Increasingly Important Communicators with a Firm's Clients, Prospects and Lawyers." *Law Practice* 48, no 2 (2022).
- Kasper, Eric T., and Troy A. Kozma. "Did Five Supreme Court Justices Go Completely Bonkers: Saul Goodman, Legal Advertising, and the First Amendment since *Bates v. State Bar of Arizona*." *Cardozo Arts & Entertainment Law Journal* 37, no 2 (2019): 337–72.
- Khamis, Susie, Lawrence Ang, and Raymond Welling. "Self-branding, 'micro-celebrity' and the Rise of Social Media Influencers." *Celebrity Studies* 8, no 2 (2017): 191–208. <https://doi.org/10.1080/19392397.2016.1218292>.

- Khurana, Rakesh and David B. Wilkins. "The Changing Nature of Professionalism." *The Practice* 1, no 3 (April 2015). <https://thepractice.law.harvard.edu/article/the-changing-nature-of-professionalism/>.
- Krawitz, Marilyn. "May It Tweet the Court: Ethical Considerations Involving Australian Lawyers' Social Media Use." *Journal of Civil Litigation and Practice* 2, no 2 (2013): 85–102.
- Lackey, Michael, and Joseph Minta. "Lawyers and Social Media: The Legal Ethics of Tweeting, Facebooking and Blogging." *Touro Law Review* 28, no 1 (July 18, 2012).
- Lander, Michel W., Pursey P. M. A. R. Heugens, and J. (Hans) van Oosterhout. "Drift or Alignment? A Configurational Analysis of Law Firms' Ability to Combine Profitability with Professionalism." *Journal of Professions and Organization* 4, no 2 (July 1, 2017): 123–148. <https://doi.org/10.1093/jpo/jow011>.
- Lantz, Jeff. "Build an Integrated Marketing Platform Using Your Website, Social Media, and Online Reviews." *GPSolo* 38, no 5 (2021): 43.
- Lantz, Jeffery W. *The Essential Attorney Handbook for Internet Marketing, Search Engine Optimization, and Website Development Management*. Esquire Interactive, 2009.
- Busca, Laurent and Laurent Bertrandias. "A Framework for Digital Marketing Research: Investigating the Four Cultural Eras of Digital Marketing" *Journal of Interactive Marketing* 49, no 1 (2020): 1–19.
- Lawyers Design School. "Customer Journey Map for Customer-Centric Lawyers." *Lawyers Design School* (blog), May 14, 2021. <https://lawyersdesignschool.com/customer-journey-map-for-customer-centric-lawyers/>.
- Leavitt, Isabella M. "Attorney Advertising in the Age of Reddit: Drafting Ethical Responses to Prospective Clients in Online Non-Legal Forums Current Developments 2015-2016." *Georgetown Journal of Legal Ethics* 29, no 4 (2016): 1111–1130.
- Legal Services Board. *Evaluation: ABS and Investment in Legal Services 2011/12-2016/17, An Analysis of Investment in Legal Services since the Introduction of ABS Licensing*. (Legal Services Board, 2017). <https://www.legalservicesboard.org.uk/wp-content/media/Investment-research-2017-Report-Main-report.pdf>.
- Legg, Michael. "Legal Regulation in a Changing World." SSRN Scholarly Paper. Rochester, NY, November 8, 2021. <https://doi.org/10.2139/ssrn.3961101>.
- Legg, Michael. "Recognising a New Form of Legal Practice: Limited Scope Services." *Law Society Journal*, no 50 (2018): 74–76.
- Legg, Michael, and Justine Rogers. "Lawyers' Fee Arrangements and Their Wellbeing." In *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession*, edited by Janet Chan, Michael Legg, and Prue Vines, 267–310. Intersentia, 2020. <https://doi.org/10.1017/9781839700408.012>.
- Legg, Michael, Prue Vines, and Janet Chan, eds. *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession*. Cambridge: Intersentia, 2020.
- Levenstadt, Aaron. "Understanding Law Firm SEO can Increase Client Count." *Pedestal Search*, August 15, 2022. <https://pedestalsearch.com/law-firm-marketing-seo-ppc/>.
- LexisNexis. "Survey: 90 Percent of Users Say Analytics Adds Value to Their Law Practice - Nearly a Third Call It 'Invaluable.'" January 31, 2018. <http://www.lexisnexis.com/community/pressroom/b/news/posts/survey-90-percent-of-users-say-analytics-adds-value-to-their-law-practice--nearly-a-third-call-it-invaluable>.
- Malloy, Robin Paul. "Law, Market and Marketization Articles & Essays." *University of Bologna Law Review* 1, no 2 (2016): 166–184.
- Manderson, Desmond, and Sarah Turner. "Coffee House: Habitus and Performance among Law Students." *Law & Social Inquiry* 31, no 3 (2006): 649–676.
- Marcum, Tanya M., and Elizabeth A. Campbell. "Legal Marketing through the Decades: Pitfalls of Current Marketing Trends." *St. Mary's Journal on Legal Malpractice and Ethics* 6, no 2 (2016): 244–269.
- Margolis, Josephine. "Regulation of Advertising and Soliciting by the Legal Profession." *University of British Columbia Law Review* 12, no 1 (1978): 102–126.
- Mark, Steven, and Georgina Cowdroy. "Incorporated Legal Practices - A New Era in the Provision of Legal Services in the State of New South Wales." *Penn State International Law Review* 22, no 4 (May 1, 2004): 671–693.
- McClurg, Robert. "Digital Marketing is Key to Practice Growth: Making Sense of SEO, PPC, DIY, DID, and Social Networking." *Family Advocate* 35, no 3 (2012): 28–31.
- Mescher, Barbara Robin. "The Business of Commercial Legal Advice and the Ethical Implications for Lawyers and Their Clients." *Journal of Business Ethics* 81, no 4 (2008): 913–926.
- Millist-Spendlove, Kathryn. "Websites, Social Media and a Barrister's Practice." *The Journal of the NSW Bar Association*, no 89 (Summer 2013–14): 49–53.
- Muzio, Daniel, and Stephen Ackroyd. "On the Consequences of Defensive Professionalism: Recent Changes in the Legal Labour Process." *Journal of Law and Society* 32, no 4 (2005): 615–642. <https://doi.org/10.1111/j.1467-6478.2005.00340.x>.
- Muzio, Daniel, and Ian Kirkpatrick. "Introduction: Professions and Organizations - a Conceptual Framework." *Current Sociology* 59, no 4 (July 1, 2011): 389–405. <https://doi.org/10.1177/0011392111402584>.
- Myrland, Nancy. "Social Media Trends: Where is it Going? What has Changed?" *Law Practice* 48, no 2: (2022): 60–63.

- Namdarian, Shay. "Mapping the Client Journey at Your Law Firm to Design More Memorable Moments." New Law Academy. Accessed May 26, 2023. [https://web.archive.org/web/20220819231509/https://www.newLawacademy.com/blog/mapping-the-client-journey-at-your-law-firm-to-design-more-memorable-moments](https://web.archive.org/web/20220819231509/https://www.newlawacademy.com/blog/mapping-the-client-journey-at-your-law-firm-to-design-more-memorable-moments).
- Nehme, Marina, and Felicity Bell. "The Future of Legal Service Delivery: Sources of Innovation in the Legal Profession." (University of New South Wales FLIP Stream, 2021).
- Neilson, Naomi. "One in Five Law Firms under Attack from Cyber Criminals." *Lawyers Weekly*, October 20, 2019. <https://www.lawyersweekly.com.au/sme-law/26742-one-in-five-law-firms-under-attack-from-cyber-criminals>.
- Newton, Jack. *The Client-Centered Law Firm: How to Succeed in an Experience-Driven World*. Blue Check Publishing, 2020.
- Nische, Christopher. "Australian Law Firms Remain Vulnerable to Cyberattacks, Experts Say." *Law.com International*, February 19, 2021. <https://www.law.com/international-edition/2021/02/19/australian-law-firms-remain-vulnerable-to-cyber-attacks-experts-say/>.
- Noah, Lars. "Giving Personal Injury Attorneys Who Run Misleading Drug Ads a Dose of Their Own Medicine." *University of Illinois Law Review* 2019, no 2 (2019): 701–742.
- Noordegraaf, Mirko. *Public Management: Performance, Professionalism and Politics*. London: Palgrave Macmillan, 2015.
- Noordegraaf, Mirko. "Hybrid Professionalism and Beyond: (New) Forms of Public Professionalism in Changing Organizational and Societal Contexts." *Journal of Professions and Organization* 2, no 2 (2015) 187–206. <https://doi.org/10.1093/jpo/jov002>.
- Office of the Legal Services Commissioner. *Annual Report 2020-2021*. (Office of the Legal Services Commissioner, 2021). <https://www.olsc.nsw.gov.au/Documents/2020%202021%20OLSC%20Annual%20Report%20Final.pdf>.
- Office of the Legal Services Commissioner. "Cloud Computing Practice Note." Last modified August 10, 2022. https://www.olsc.nsw.gov.au:443/Pages/olsc_education/olsc_education_notes.aspx.
- Office of the Legal Services Commissioner. "Social Media Practice Note." Last modified August 10, 2022. <https://www.olsc.nsw.gov.au/Documents/Practice%20Note%20Social%20Media%20SOCIAL%20MEDIA%20AC.pdf>.
- Parker, Christine. "Justifying the New South Wales Legal Profession 1976 to 1997." *Newcastle Law Review* 2, no 2 (1997): 1–29.
- Parker, Christine, and Adrian Hellier Evans. *Inside Lawyers' Ethics*. 2nd ed. Cambridge: Cambridge University Press, 2014.
- Paterson, Moira, and Maeve McDonagh. "Data Protection in an Era of Big Data: The Challenges Posed by Big Personal Data." *Monash University Law Review* 44, no 1 (2018): 1–31.
- Petrini-Poli, Christopher, and Paul Grabowski. "Law Firm Marketing: What's the ROI." *Law Practice* 37, no 6 (2011): 26–29.
- Phillips, Erica E. "Retailers Scale Up Online Sales Distribution Networks." *Wall Street Journal*, November 17, 2015, sec. Business. <http://www.wsj.com/articles/retailers-scale-up-online-sales-distribution-networks-1447792869>.
- Pinnington, Ashly, and Timothy Morris. "Archetype Change in Professional Organizations: Survey Evidence from Large Law Firms." *British Journal of Management* 14, no 1 (2003): 85–99. <https://doi.org/10.1111/1467-8551.00267>.
- Pixler, Carrie, and Lori A. Higuera. "Social Media: Ethical Challenges Create Need for Law Firm Policies Lawyers and the Cloud." *Arizona Attorney* 47, no 8 (2010): 34–39.
- Queensland Law Society, Guidance Statements No. 24 Ethical Considerations on the Use of Social Media and Law Practice Websites.
- Ramaswamy, Sridhar. "How Micro-Moments Are Changing the Rules." Think with Google, April 2015. <https://www.thinkwithgoogle.com/marketing-strategies/app-and-mobile/how-micromoments-are-changing-rules/>.
- Rawsthorne, Sally. "Lawyer from 'Drink-Driving Meme' Firm Convicted after High-Range Intoxication." *The Sydney Morning Herald*, January 22, 2022. <https://www.smh.com.au/national/nsw/lawyer-from-drink-driving-meme-firm-convicted-after-high-range-intoxication-20220114-p59obt.html>.
- Reed, James B. "Advertising and the Legal Profession." *Dicta* 28 (1951): 101–105.
- Ridings, Liam. "SEO for Lawyers." *Safari Digital* (blog). <https://www.safaridigital.com.au/seo-for-lawyers/>.
- Rigertas, Laurel A. "How Do You Rate Your Lawyer - Lawyer's Responses to Online Reviews of Their Services." *St. Mary's Journal on Legal Malpractice and Ethics* 4 (2014): 242–277.
- Rockwell, Eric, and James Waryck. "How Marketing Campaigns Pose Cybersecurity to Law Firms." *Law Practice* 48, no 2 (2022): 56–59.
- Rogers, Justine. "Representing the Bar: How the Barristers' Profession Sells Itself to Prospective Members." *Legal Studies* 32, no 2 (2012): 202–225. <https://doi.org/10.1111/j.1748-121X.2011.00213.x>.
- Rogers, Justine, Dimity Kingsford Smith, and John Chellew. "The Large Professional Service Firm: A New Force in the Regulative Bargain Thematic: Contemporary Professionalism and Regulation." *University of New South Wales Law Journal* 40, no 1 (2017): 218–261.
- Rogers, Justine, and Felicity Bell. "Transforming the Legal Profession: An Interview Study of Change Managers in Law." *Legal Studies*, January 14, 2022, 1–24. <https://doi.org/10.1017/lst.2021.43>.

- Rogers, Justine, Peter Dombkins, and Felicity Bell. "Legal Project Management: Projectifying the Legal Profession." *Law, Technology and Humans* 3, no 2 (2021): 133–157.
- Rogozinski, Melissa, and Minoo Razavi. "Data-Driven Marketing: Key Analytics & KPIs That Increase Sales." *Law.com*, June 14, 2022. <https://www.law.com/legaltechnews/2022/06/14/data-driven-marketing-key-analytics-kpis-that-increase-sales/>.
- Rosen, Jeffrey. "The Right to be Forgotten Symposium Issue: The Privacy Paradox: Privacy and Its Conflicting Values." *Stanford Law Review Online* 64 (2011): 88–92.
- Salesforce. "SaaS: Software as a Service." <https://www.salesforce.com/au/saas/>.
- Schaller, Jennifer. "How Thought Leadership Complements Account-Based Selling Strategies in Law Firms." *The National Law Review*, October 28, 2016. <https://www.natlawreview.com/article/how-thought-leadership-complements-account-based-selling-strategies-law-firms>.
- Seeger, Eric A., and Thomas S. Clay. *Law Firms in Transition 2020*. (Altman Weil, 2020).
- Shely, Lynda C. "From Bates to Blogging: The Evolution of Lawyer Advertising in 40 Years." *Computer and Internet Lawyer* 35, no 4 (April 2018): 16–19.
- Sheth, Jagdish N., and Arun Sharma. "International E-marketing: Opportunities and Issues." Edited by Nitish Singh and Sandeep Krishnamurthy. *International Marketing Review* 22, no 6 (January 1, 2005): 611–622. <https://doi.org/10.1108/02651330510630249>.
- Simshaw, Drew T. "Legal Ethics and Data Security: Our Individual and Collective Obligation to Protect Client Data Symposium: Practicing Law in the Age of Surveillance and Hackers." *American Journal of Trial Advocacy* 38, no 3 (2014): 549–574.
- Siskind, Gregory H., Deborah McMurray, and Richard P. Klau. *The Lawyer's Guide to Marketing on the Internet*. American Bar Association, 2007.
- Song, Anthony, and Justine Rogers. "Lawfluencers: Legal Professionalism on TikTok and YouTube." *Georgetown Journal of Legal Ethics* 37 (forthcoming).
- Sprout Social. "Social Proof: How to Use Psychology in Digital Marketing." *Sprout Social* (blog), May 24, 2021. <https://sproutsocial.com/insights/social-proof/>.
- Statista. "E-Commerce Worldwide - Statistics & Facts." Accessed May 1, 2023. <https://www.statista.com/topics/871/online-shopping/>.
- Strandburg, Katherine J. "Free Fall: The Online Market's Consumer Preference Disconnect the Frontiers of Consumer Protection." *University of Chicago Legal Forum* 2013 (2013): 95–172.
- Stuart, Riley. "Law Firm Under Fire after Posting Drink Driving Jokes on Facebook." *ABC News*, February 28, 2017. <https://www.abc.net.au/news/2017-03-01/law-firm-under-fire-for-joking-about-drink-driving-on-facebook/8301246>.
- Susskind, Richard. *Tomorrow's Lawyers: An Introduction to Your Future*. 2nd ed. Oxford, United Kingdom: Oxford University Press, 2017.
- Susskind, Richard, and Daniel Susskind. *The Future of the Professions: How Technology Will Transform the Work of Human Experts*. Oxford, United Kingdom: Oxford University Press, 2015.
- Taken Smith, Katherine, and L. Murphy Smith. "Social Media Usage by Law Firms: Correlation to Revenue, Reputation, and Practice Areas." *Services Marketing Quarterly* 40, no 1 (January 2, 2019): 66–81. <https://doi.org/10.1080/15332969.2019.1587867>.
- Terrell, Timothy P., and James H. Wildman. "Rethinking Professionalism." *Emory Law Journal* 41, no 2 (1992): 403–432.
- The Law Society. "Business Development and Marketing." <https://www.lawsociety.org.uk/topics/business-management/business-development-and-marketing>.
- The Law Society. "Cybersecurity for Solicitors," August 28, 2019. <https://www.lawsociety.org.uk/topics/cybersecurity/cybersecurity-for-solicitors>.
- The Law Society of New South Wales. "Marketing Toolkit," <https://www.lawsociety.com.au/marketing-toolkit>.
- The Law Society of South Australia, Guidelines for Legal Services Advertising, Marketing and Promotion Guidelines, (4 July 2022).
- The Law Society of Western Australia. *Ethical & Practice Guidelines*. (November 1, 2019).
- The Law Society of Western Australia. *The Future of the Legal Profession*. (December 12, 2017). <https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/2017DEC12-Law-Society-Future-of-the-Legal-Profession.pdf>.
- Thomas, Art, Jenny Darroch, and Wendy Galvin. "Marketing and Service Orientation of New Zealand Law Firms." *Marketing Intelligence & Planning* 19, no 2 (January 1, 2001): 103–111. <https://doi.org/10.1108/02634500110385345>.
- Thompson, A. Keith. "The History of Legal Marketing in Australia and New Zealand." In *The Impact of Law's History: What's Past is Prologue*, edited by Sarah McKibbin, Jeremy Patrick, and Marcus K. Harmes, 83–103. Palgrave Modern Legal History. Cham: Springer International Publishing, 2022.
- Thomson Reuters. "Law Firm Client Engagement Needs a AAA Approach." *Thomson Reuters Law Blog* (blog), May 20, 2021. <https://legal.thomsonreuters.com/blog/aaa-approach-to-client-engagement-for-law-firms/>.

- Thornton, Margaret. "Hypercompetitiveness or a Balanced Life? Gendered Discourses in the Globalisation of Australian Law Firms." *Legal Ethics* 17, no 2 (2014): 153–176. <https://doi.org/10.5235/1460728X.17.2.153>.
- Thornton, Margaret. "Legal Professionalism in a Context of Uberisation." *International Journal of the Legal Profession* 28, no 3 (2021): 1–21. <https://doi.org/10.1080/09695958.2021.1901715>.
- Thornton, Margaret. "Work/Life or Work/Work? Corporate Legal Practice in the Twenty-First Century." *International Journal of the Legal Profession* 23, no 1 (2016): 13–39. <https://doi.org/10.1080/09695958.2015.1093939>.
- Tsakalakis, Gyi. "The Importance of Lawyer Websites: From Static to Storytelling." *GP Solo* 38, no 5 (2021): 12–16.
- Tuft, Mark L. "Rethinking Lawyer Advertising Rules." *Professional Lawyer* 23, no 3 (2015): 1–7.
- Tur, Richard H. S. "Confidentiality and Accountability." *Griffith Law Review* 1, no 1 (1992): 73–97.
- Watson, Alan. "The Birth of the Legal Profession." Edited by Bruce W. Frier. *Michigan Law Review* 85, no 5/6 (1987): 1071–1082. <https://doi.org/10.2307/1289033>.
- Webb, Julian. "Turf Wars and Market Control: Competition and Complexity in the Market for Legal Services." *International Journal of the Legal Profession* 11, no 1–2 (March 2004): 81–102. <https://doi.org/10.1080/0969595042000317451>.
- Williams, Abigail. "What is Brand Equity?" *The Branding Journal*, 25 February 2021. <https://www.thebrandingjournal.com/2021/02/brand-equity/>.
- Wind, Jerry, and Vijay Mahajan. "Digital Marketing." *Symphony. Emerging Issues in Management*, no 1 (6 January 2002): 43–54. <https://doi.org/10.4468/2002.1.04wind.mahajan>.
- Wood, Duncan. "King of the Hill." *The Law Society*, April 7, 2017. <https://communities.lawsociety.org.uk/july-2017/king-of-the-hill/5062137.article>.
- Wong, Terry. "Big Data and Analytics." In *Digital Lawyering*, by Emma Jones, Francine Ryan, Ann Thanaraj, and Terry Wong. Routledge, 2021.
- Yasmin, Afrina, Sadia Tasneem, and Kaniz Fatema. "Effectiveness of Digital Marketing in the Challenging Age: An Empirical Study." *International Journal of Management Science and Business Administration* 1, no 5 (2015): 69–80.
- Zander, Michael. "The Thatcher Government's Onslaught on the Lawyers: Who Won?" *The International Lawyer* 24, no 3 (1990): 753–785.
- Zawacki, Alyce. "Social Media Use in the Legal Profession." *Alternative Law Journal* 43, no 2 (2018): 120–125.
- Zunenshine, Danielle. "7 Law Firms That Are Getting Social Media Right" (blog post). *WiseStamp*, March 4, 2020. <https://www.wisestamp.com/blog/social-media-for-law-firms/>.

Primary Legal Material

- ACCC v Allergy Pathway Pty Ltd (No. 2)* [2011] FCA 74.
- ACCC v Singtel Optus Pty Ltd* [2010] FCA 1177.
- ACCC v TPG Internet Pty Ltd* [2011] FCA 1254.
- Baker Johnson Lawyers v Narelle Karen Jorgensen* [2002] QDC 205.
- Baker v Campbell* (1983) 153 CLR 52.
- Bates v. State Bar of Arizona*, 433 US 350 (1977).
- Bazzi v Dutton* [2022] 289 FCR 1.
- Beach Petroleum NL v Abbott Tout Russell Kennedy* (1999) 48 NSWLR 1.
- Cal. Civ. Code §§ 1798.100–.199 (2018).
- Carmody v Priestley & Morris Perth Pty Ltd* (2005) 30 WAR 318.
- Comite Interprofessionnel du Vin de Champagne v Powell* (2015) 330 ALR 67.
- Competition and Consumer Act 2010* (Cth).
- Concrete Constructions (NSW) Pty Ltd v Nelson* (1990) 169 CLR 594, 604.
- Fletcher v Nextra Australia Pty Ltd* (2015) 229 FCR 153.
- Hunter v Virginia State Bar ex rel. Third District Committee*, 744 S.E.2d 61 I (Va. 2013).
- Legal Profession Uniform Conduct (Barristers) Rules 2015*.
- Legal Profession Uniform Law 2014* (NSW).
- Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (NSW Government, May 23, 2015).
- LegalZoom.com v. Rocket Law, Inc.*, No. 12-CV-00942 GAF, 2015 WL 12832823 (N.D. Cal. Mar. 23, 2015).
- Madden v Seafolly Pty Ltd* (2014) 313 ALR 1.
- Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd* (1982) 42 ALR 1.
- Privacy and Electronic Communications (EC Directive) Regulations 2003* (UK), SI 2003/2426.
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, pp. 1–88.
- Seafolly Pty Ltd v Madden* (2012) 297 ALR 337.

Spam Act 2003 (Cth).

Taylor v Blacklow (1836) 132 ER 401.