

Ethics of Technology-Based Delivery Models

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Technology has been a disruptive force in the delivery of legal services. At the same time it has created great conveniences and cost-efficiencies, it has also challenged the ethics of the legal profession. This workshop looks at ways in which technological innovations need to fit into the ethical norms of the practice of law. Rules governing confidentiality, conflicts and limited scope of representation will be discussed in this context.

Topical Outline:

- I. Introduction to Internet Technology
 - a. Overview
 - b. What the Internet does well
 1. Institutional communications - marketing
 1. websites, websites, websites
 2. AltaVista, Lycos, HotBot, Google
 3. Convergence of desktops and the web
 2. Personal communications – one to one marketing
 1. email
 2. list servs
 3. blogs
 3. Market creation
 1. E-Bay
 2. Amazon
 3. Napster, Grokster, BitTorrent
 - c. Internet capabilities and law practice
 1. Bill Paul's E Lawyering Initiative
 2. ABA Standing Committee on Delivery of Legal Services
 3. Non –lawyer market entrants
 4. LSC and TIG funded Statewide websites
 1. Client communications – best in state brochures and guides
 2. Collaboration and training
 - a. Private listservs
 - b. Directories with private phone numbers
 - c. Webcam training simulcasts and archives
 - d. Calendars
 - e. Forms and client service best practices

3. Direct service to clients
 - a. People's Law Library
 - b. Intake and triage
 - c. Document preparation and self representation
 - d. LexisNexis HotDocs Online and the NPADO Server
 - e. ICAN! and Access to Justice

- II. The ethics rules apply to cyberspace as well as any other place
 - a. It is ethical to practice online so long as the way you practice online is ethical
 - b. Even if the rules are not a good fit

- III. The first question is whether we form an attorney-client relationship
 - a. Various tests
 1. Would you provide the same service to opposing parties?
 2. Could the service be provided by a lay person and not be the unauthorized practice of law?
 3. Are you providing information but not advice?
 - b. Disclaimers

- IV. Is it Information or Advice?

- V. If the rules apply, what does that mean?
 - a. Limited scope of representation
 - b. Confidentiality
 - c. Conflicts of Interest
 1. MR 6.5 excusing conflicts checks under narrow circumstances
 - d. Candor toward the tribunal

- VI. The Unauthorized Practice of Law
 - a. Parsons Technology
 - b. In re Reynoso

- VII. Pro Bono Representation and Malpractice Insurance
 - a. Cases have resulted in claims
 - b. Low risk of liability
 1. Low dollar amounts at stake
 2. Malpractice cases are expensive
 - c. But, practitioners must be concerned about quality even if risk is low
 - d. Sources: Lawyer's policy, organization's policy

- VIII. Management of Email Anticipating Potential discovery in litigation
 - a. Multiple locations in a large organization
 - b. Regular maintenance routine – destruction of evidence?
 - c. Centralize all email? Not as easy as it seems
 1. Servers, caches, local email files, search indexes

- d. Google Desktop
 - 1. <http://desktop.google.com>
 - 2. Network drive hack:
http://users.tns.net/~skinger/firefox/GDA_Tips.html

- IX. Legitimate email/web page interception by employers and computer owners
 - a. How?
 - 1. Legitimate need
 - A. Spam, virus control. Contents are read
 - B. Diagnosis of email problems
 - C. Controlling oppressive work place environment
 - D. Avoiding aiding in illegal work: porn, fraud
 - 2. The computer where the email is viewed and stored may not belong to the client
 - 3. Owner of end storage point can view anything
 - 4. Logging and caching of webpage access creates multiple possibilities of legit interception
 - b. Who?
 - 1. Employers: legitimate interest in avoiding employment practice claims.
 - A. Nightmare: Employee with discrimination claim either views email at employer's office or completes intake form on employer's computer
 - 2. Other machine owners
 - A. Nightmare: Potential divorce client uses common home machine
 - 3. ISPs: US v. Councilman
 - c. You can do everything perfect on your end, but have no control on the other end unless encrypted. Interception in the middle is minor issue.

- X. Proof issues regarding the exact nature of services provided online
 - a. How do you prove what service was provided?
 - b. Database showing entries made into program, results, timestamp, prove not altered
 - c. Store every version of the web app

- XI. The paperless paper trail: Making sure your electronic copy is good evidence
 - a. Metadata in Word documents: an interesting and overblown danger?
 - 1. Final document to be transmitted should be reviewed, accept changes and make final
 - 2. PDF for transmission of final documents is a good solution, easy to make unchangeable. What you see is what you get. Also allows others to view regardless of word processor.
 - 3. Open source PDF creators
 - A. <http://sourceforge.net/projects/pdfcreator/>, download at http://sourceforge.net/project/showfiles.php?group_id=57796
 - B. GNU license better than AFPL, but technically very slightly worse

- b. Electronic documents as proof of what was sent
 1. Fields in word file – example
 2. Proof of no change: Word vs. PDF, electronic signatures/checksums

Bibliography & Website Links:

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2. Technology for Justice Customers, by Ronald W. Staudt, to be published by the *Maryland Law Journal of Race, Religion, Gender & Class* in Spring 2005.
3. Google Desktop: <http://desktop.google.com/>
4. Open Source PDF: <http://sourceforge.net/projects/pdfcreator/>