

The Fight Against UPL: Winning with Technology

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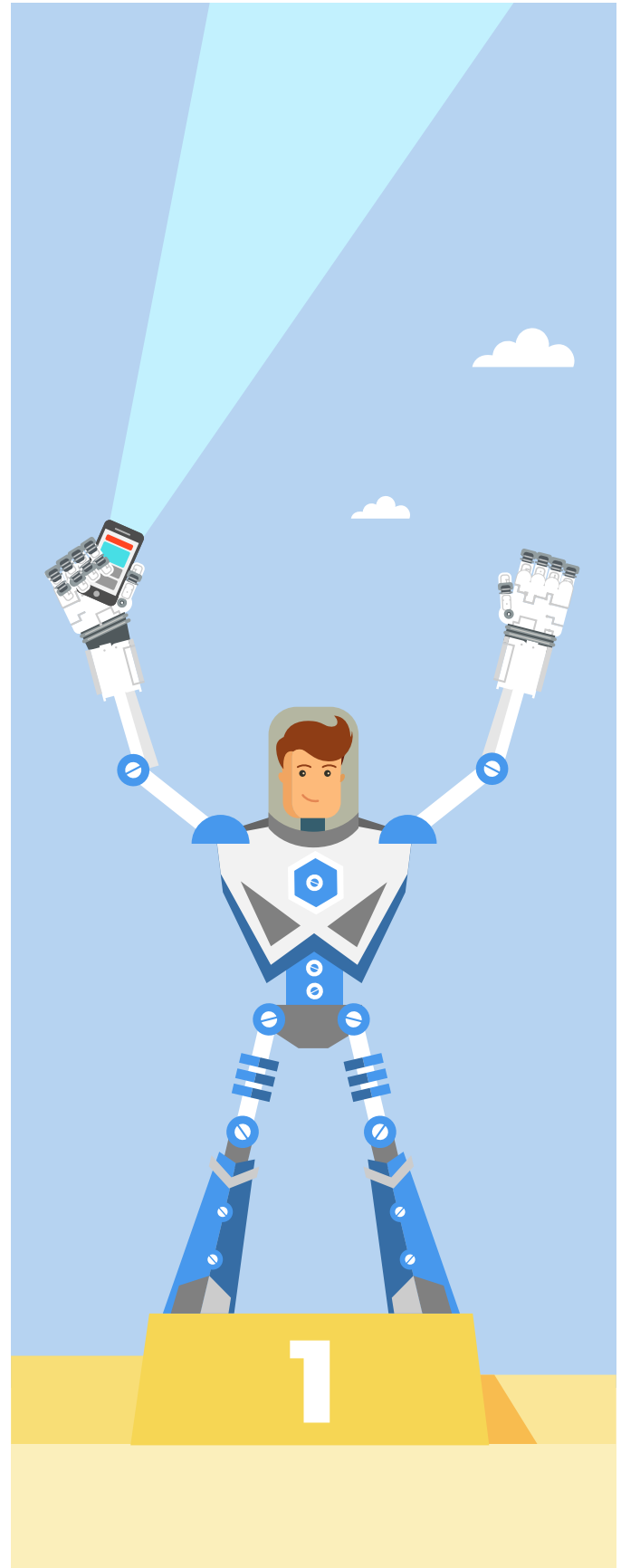
The Fight Against UPL: Winning with Technology

Nowadays, people take to the Internet first and foremost to find anything, including legal services. If and when those same clients seek actual legal help, they compare what they find online to what they find in-person—and the prices and interactions don't align. That erodes trust and negatively affects the public's perception of attorneys. What the public doesn't realize, though, is that many online services are engaging in the unauthorized practice of law ("UPL"). They have the budgets and unethical free reign to market how they see fit. How can a solo lawyer or small firm compete with the likes of LegalZoom, Rocket Lawyer, and online document preparers? UPL makes competition impossible.

So, why are bar associations allowing this to happen? Why aren't they stopping the encroachment of non-lawyers into the practice of law? What can we do? Before you throw your hands up in futility and shout "nothing," know this: Bar associations all over the country have tried to stop the "unauthorized practice of law" through technology and failed. Eight bar associations have sued LegalZoom; one lawsuit is still pending, but all others have been dismissed or settled. In Texas, the court found a tech company to be engaging in UPL, and the Texas legislature promptly changed the laws to specifically allow for tech companies to provide legal documents.

The fight against UPL is a losing battle. So, if you can't beat 'em, change your strategy. Attorneys must shift the paradigm from one of protectionism to one of technological acceptance and savviness. In this article, we will:

- define UPL;
- explain why the traditional practice model is dead and how to ethically change the game for solos and small firms; and
- detail instructions for domination.



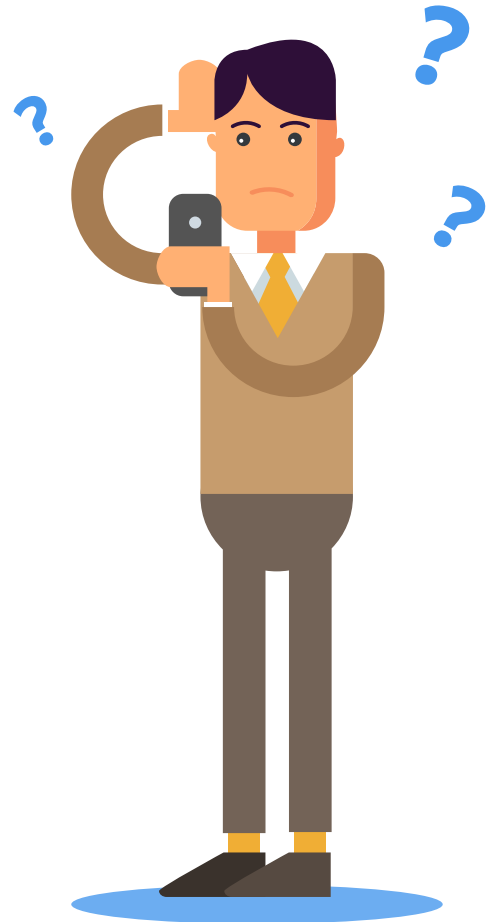
What is UPL?

Simple answer: UPL is non-lawyers practicing law. According to our home state of Arizona’s definition, the practice of law is “providing legal advice or services to another by:

- Preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
- Preparing or expressing legal opinions;
- Representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitrations and mediations;
- Preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or
- Negotiating legal rights or responsibilities for a specific person or entity.”¹

Reading the above definition immediately raises questions regarding UPL, including:

- Does it count as UPL when a person picks up free forms at the court or purchases legal forms at a bookstore and asks a trusted friend or parent to help them fill out the document.?
- Are services that provide documents—like LegalZoom, Rocket Lawyer, and Arizona-based Access Legal*—committing UPL?
- Are large law firms committing UPL when they provide free legal forms online?
- What about realtors and title companies that facilitate the sale or refinance of a house?
- What about online analysis of cases that have been released? Isn’t this preparing and expressing legal opinions?



It’s no surprise that Arizona established certified legal document preparers, a class of individuals who may prepare legal documents but may not provide legal advice.

However, if a legal tech company’s software—which is classified as “certified legal document preparer” — behaves too intelligently or intuitively, the company may be accused of providing legal advice rather than legal information. That’s where we get into UPL lawsuit pickles like the one we discussed above with LegalZoom. It’s a fine line between legal advice and legal information, and it’s a line that seems to constantly shift and blur. That’s why we advise to stop focusing on—and disputing—that line. Instead, move forward. Here’s why.

¹ Arizona Supreme Court Rule 31 (a)(2)(A)



The Traditional Model Can No Longer Compete

We've talked to hundreds of lawyers, and we've concluded that too many attorneys have it backwards: A law practice using an in-person intake process, email for document sharing, enterprise stand-alone practice management systems, and hourly billing rates is already old school. A Fortune 500 company may be able to avoid \$500 per hour billing rates, but the average American or small business cannot afford law served up at this price.

Bluntly speaking, practicing law without leveraging web-based, integrated technology or mobile apps for document creation, knowledge management, or practice development (a.k.a. sales) is no longer a sustainable business model.

Demand and Supply

Normally, we talk about supply and demand. However, what we have seen are attorneys building traditional practices as outlined before and expecting that everyone will recognize their legal needs and flock to them. That is naïve “build it and they will come” thinking at best. Providing a great supply of traditional law is not going to sway those four out of five consumers (or one in three small to medium-sized businesses) who have a legal need but don't seek the advice of an attorney² to seek out your firm.

² <http://legaltransformationinstitute.com/blog/2014/2/22/make-that-400-billion-for-us>



The supply-and-demand pendulum has swung the opposite direction with consumers demanding the supply of alternatives to a traditional approach. Whether it's 24/7 accessibility, technology, tiered pricing, or easy payment, legal service consumers are simply demanding technology and ignoring the supply of the traditional law experience.

Businesses and consumers are increasingly demanding alternatives to the traditional supply of legal services. The legal technology market is expanding with niche players appealing to an array of consumer needs—divorce, DUI, lease solutions, etc.—and copycats of the industry leaders, like LegalZoom, multiple weekly. Claiming UPL as a method of blocking legal tech has failed. Leveraging technology is the only way that small firms and solo practitioners can truly meet consumer demands, meet ethical obligations, and have a thriving and profitable practice. Other professions leverage technology. Think about it: artificial intelligence, collaboration platforms, automation tools, document and project management systems—the list goes on.

Still not convinced? Let's look at this from the consumers' perspective. When people seek help from a professional, they have two objectives:

- 1 Determine what I need.
- 2 Determine how to find what I need at an affordable price.

We all know they're going to attempt to meet those objectives first and foremost online. Look at consumer trends: By and large, the [millennial generation has rejected credit cards](#). How can law firms think that their young clients would prefer a traditional retainer paid by check in advance to a law firm? You know they definitely don't want to sit with a lawyer during the attorney's office hours to get answers to questions they already found online.

And it's not just individuals. Businesses, too, wait until they have an issue to seek out legal assistance—and they want that help fast, cheap, and at their convenience, too. Cue technology.

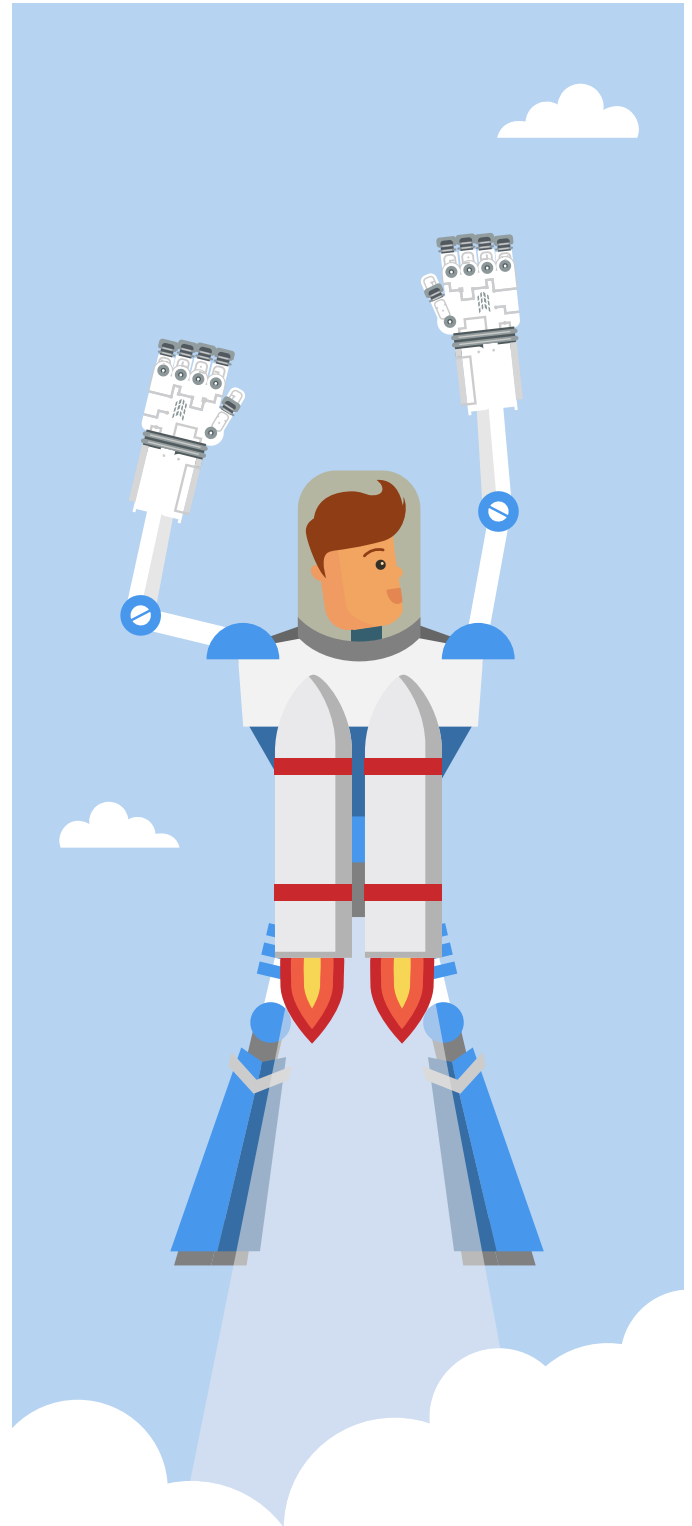
Technology: The Game-Changer

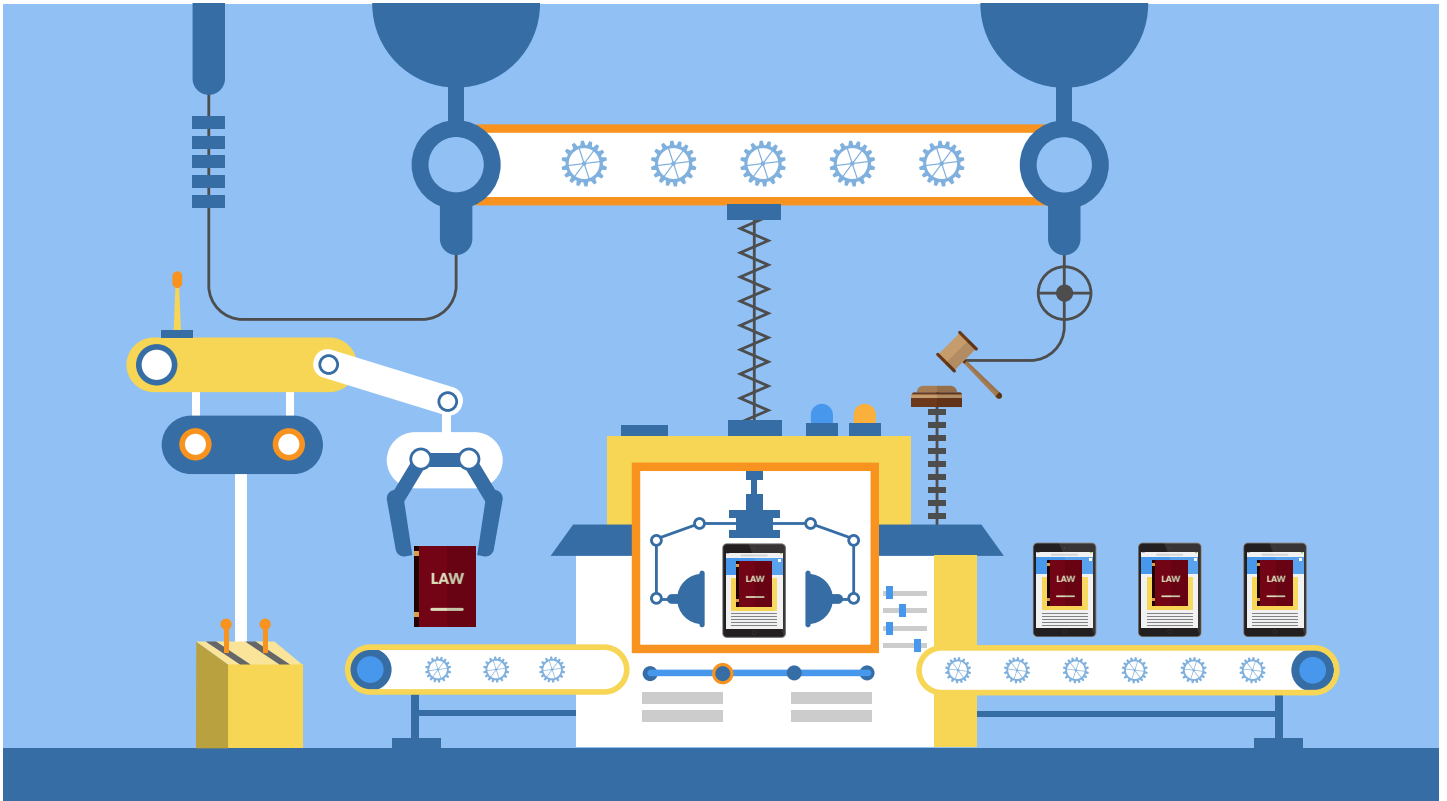
A recent article titled [“Four Areas of Legal Ripe for Disruption by Smart Startups”](#) by Bob Goodman and Josh Harder of Bessemer Ventures provides an excellent framework to analyze the use of legal technology. The article outlined areas for technology implementation as follows:

- Process automation
- Consumer platforms
- Legal research
- eDiscovery

Because legal research and eDiscovery software solutions are not revolutionary to most attorneys and, more importantly, have not raised serious UPL concerns, we will concentrate on how to implement technology without UPL for process automation and consumer applications. In this section, we'll discuss many software options. If you're currently shopping around for any software, in addition to price and quality of the experience for the attorney and the client, make sure the system also satisfies the following criteria:

- Web-based with a Software-as-a-Service model
- Integrated with other providers (such as zapier.com)
- Accessible on mobile
- Unlimited customer support
- Monthly pricing structure





Firm Process Automation

Process automation covers everything from automating your intake procedures to creating email auto-responders. By leveraging technology, firms can multiply their reach, increase conversion, and improve customer satisfaction and retention (which means [increased lifetime customer value](#)). Bottom line: lawyers can generate more revenue and higher profits.

Client Acquisition Automation

It's crucial you evaluate *before* you automate. To do so, chart how you are currently attracting and onboarding clients. Then, examine that process to pinpoint opportunities to incorporate technology. As they say in business, go after the low-hanging fruit. For example, an attorney's website—supported by the appropriate technology—can work 24/7 to attract and retain clients, all without practicing any law. Inbound marketing focuses on educating over advertising, and lawyers can learn from this tactic. (Check out HubSpot's and Marketo's blog for more on inbound marketing.) Focus on producing compelling content in

your area of expertise for your website. Present the content free of charge—or maybe in exchange for an email address. More and more consumers wish to educate themselves before they buy; capitalize on this.

Business Automation

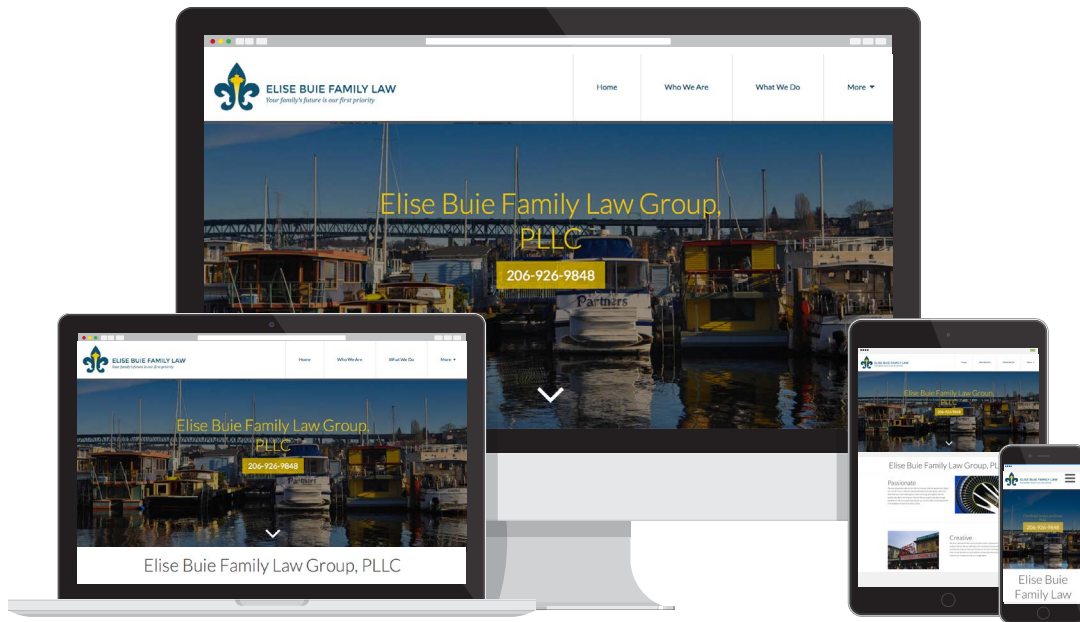
After you snag the low-hanging fruit, examine every process in your business for automation opportunities. Here are some systems that can help:

Sales Software

A customer relationship management (CRM) system allows you to track leads and referrals.

Practice Management Software

Time-keeping and invoicing are critical areas for automation.'



Website

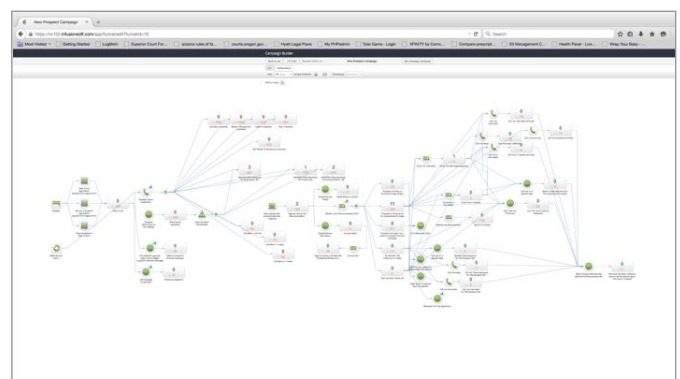
More than just a place for a “Contact Us” form, a website can be interactive, provide analytics, and integrate with email marketing systems to automate turning visitors into leads.

When it comes to developing your website:

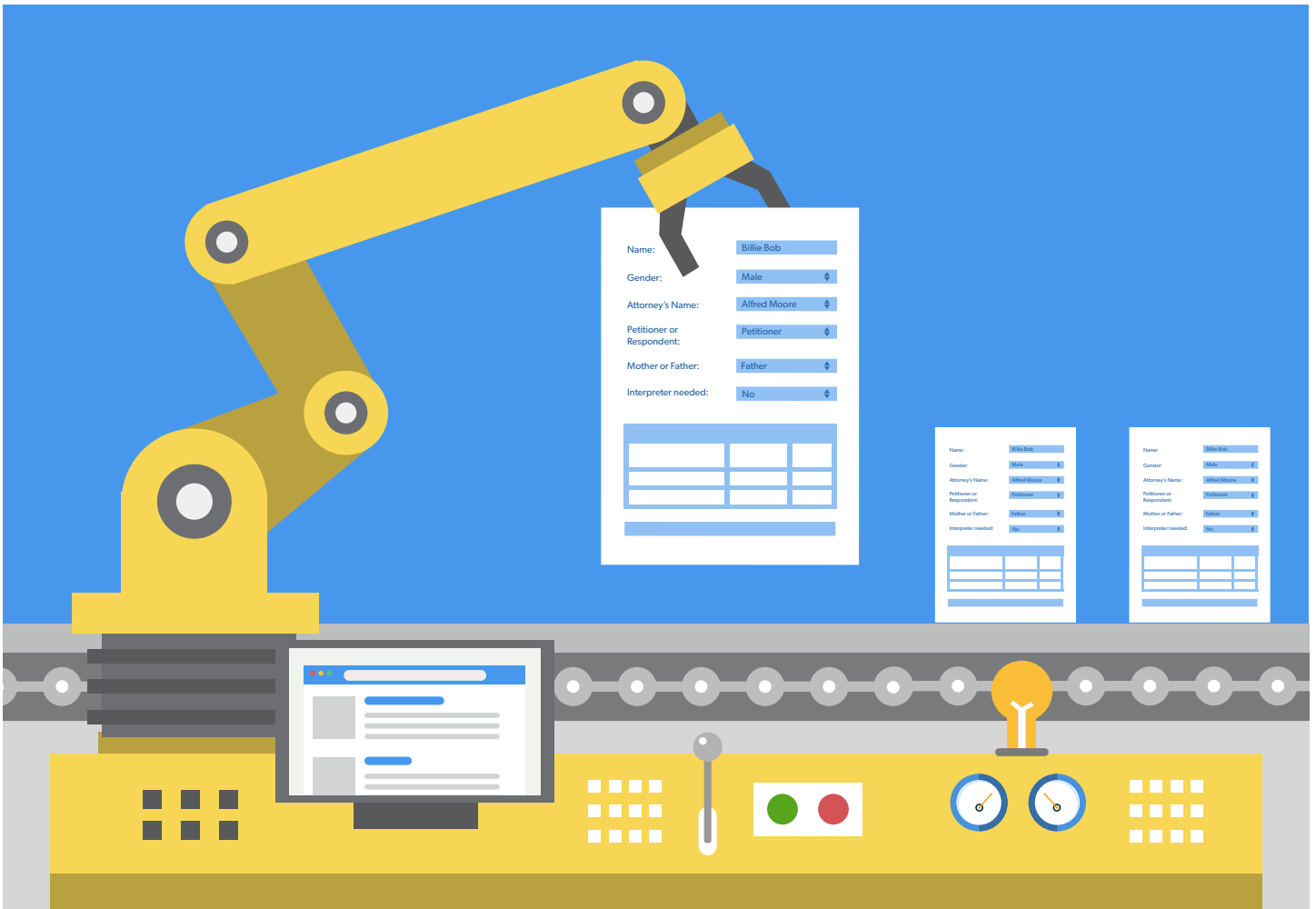
- Keep it simple in terms of design, organization, and text. Oh, and make sure it looks good on every device—including mobile!
- Assume those who land on your site want lots of education before they make a buying decision. (And by educated, we do not mean informing them of what law school you attended and how great your practice is.) This means you need a lot of solid content through an up-to-date blog. Also, consider providing whitepapers in exchange for email addresses. Providing legal education is not UPL, so use that to your advantage.
- Make sure you’re gathering analytics on your website. Not data savvy? We recommend [LawLytics](#), a niche technology company that helps lawyers with websites and content development.

Email Marketing System

Use this powerful tool to send mass emails (such as newsletters) or develop nurturing campaigns to provide customized content for prospective customers and current clients. Take a look at a sample potential client intake marketing campaign through software [Infusionsoft](#):



As you can see, the campaign starts with either a call or webform from the prospect, and it tracks the prospect until he or she either becomes a client or you determine it’s not a good fit. The system automatically takes care of tasking staff to call or follow up and sends personalized emails to prospects along the way.



Document Preparation Automation

You've identified the necessary documents; now it's time to automate the preparation, which means you no longer need to pay your staff to capture information—a mundane task that does not fall under the practice of law. So, how do you do that? Have your clients complete web-based questionnaires.

Access Legal* is a tech company that grew out a law firm. It has two primary functions: selling directly to consumers and automating the law firm. Here is how Access Legal does the latter:

- 1 New client receives a questionnaire via email, which states that the firm needs specific information in order to move forward with his or her case.

- 2 Client completes questionnaire, and the firm receives notification.
- 3 The attorney logs in to Access Legal and selects the document he or she would like to create. The information input by the client automatically populates any document the attorney may need for the case. As the attorney changes or adds information, the system remembers the information.

By using this type of process automation, the firm can increase profitability on drafting projects by 50%. There are fewer errors in paperwork, and you free up your staff for activities that can generate more revenue.



Consumer Process Automation

People are looking for legal information online. Companies like LegalZoom, Rocket Lawyer, or Upcounsel provide consumers with legal information, resources, and documents. As legal professionals, we know that information online may not be enough to solve a person's legal problem. They still need lawyers. Thus, attorneys now have to decide between competing with legal tech companies or strategically aligning with them.

By working with tech companies, customers of the tech companies and potential clients of lawyers both receive a more complete and comprehensive solution than by relying solely on one or the other.

Because they better understand their legal needs, clients can reduce their overall budget and use lawyers more efficiently. Meanwhile, lawyers can tap into a larger market of potential clients who may have never found the lawyer without the legal tech company facilitating the exchange. Think back to the four out of five Americans not using a lawyer to solve their issues.

As one attorney recently said, "It's wonderful when the client can do the heavy lifting." It's more than that, though; it's leveraging technology to clone the attorney, paralegal, or legal assistant's time. Time is not only expensive; it's finite.

A software that serves both the attorney and the consumer is Traklight.* Its platform provides a consumer-friendly, self-guided questionnaire to capture a wide range of business information, including intellectual property. Plus, Traklight's platform provides a secure file-sharing mechanism called Vault.

For attorneys, the software moves mundane interview questions out of the legal office and onto the web, while educating users on their legal needs. With Traklight, technology becomes the facilitator, and smart lawyers can leverage the power of the infinite cloud. Similar software exists in other areas such as incorporation, divorce, and immigration.

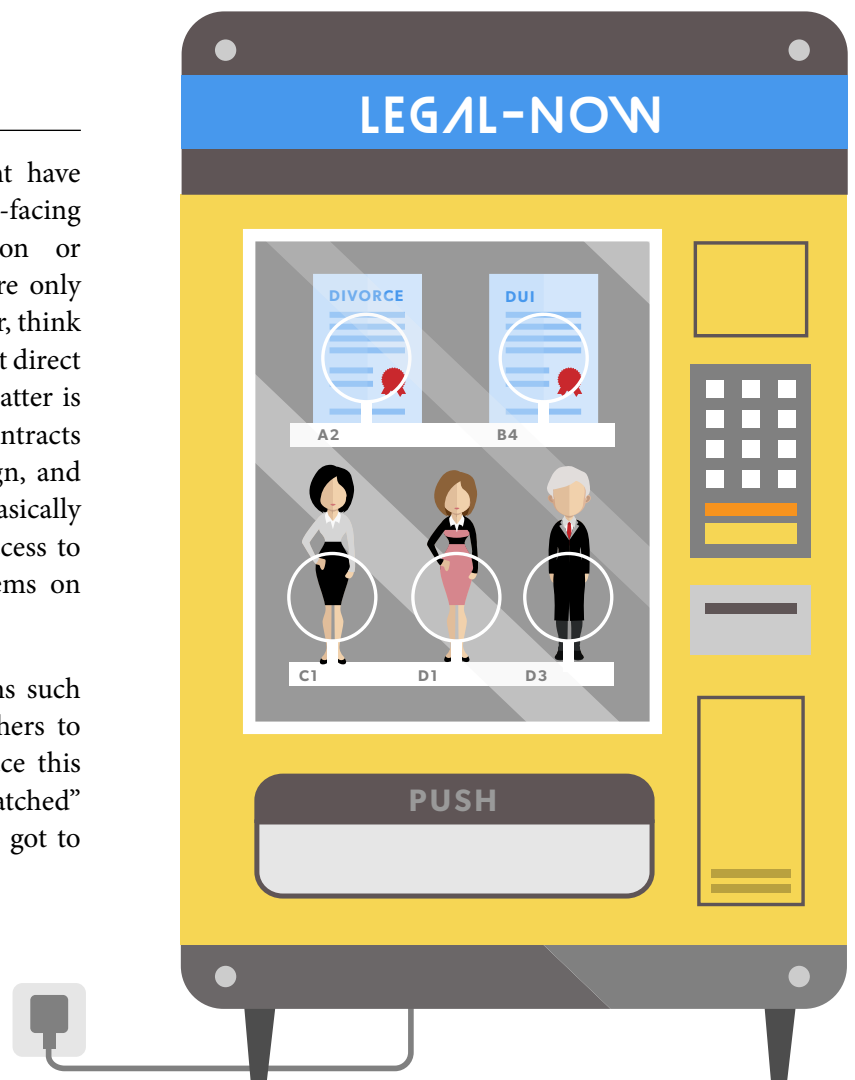
For the consumer, the Traklight platform sifts through all the questions and provides a detailed strategy report—without legal advice—and a visual risk chart. Traklight has found that clients don't necessarily want to read the report; instead, they want to present the report to a legal professional, who can assess their risks and solve their problems.

Legal firms have the option of using platforms as client intake tools. By doing so, you reduce internal staffing costs, increase the ability to scale your practice, and ensure consistency with the client intake process.

Consumer Platforms

Some platforms like Access Legal and Traklight have double-sided markets and produce consumer-facing reports in addition to providing information or documents for attorneys. Consumer platforms are only consumer-facing in terms of either finding a lawyer, think Upcounsel or Avvo, or providing a solution without direct interaction with an attorney. An example of the latter is Shake Law where users can execute simple legal contracts online without talking to an attorney. Create, sign, and send are the steps listed on Shake’s website—basically appealing to millennials who want immediate access to solutions or applications that solve their problems on devices as small as a phone.

UPL has failed to slay lawyer matching platforms such as LegalZoom, which has paved the way for others to allow the matching to take place online. Embrace this technology, and be one of the attorneys that gets “matched” with online consumers. To do so, though, you’ve got to have competitive pricing.





Commoditization or Flat Fees Model

Time to discuss the dreaded billable hour, legal outsourcing, and commoditization of legal services. Legal tech companies facilitate the commoditization of legal services by selling a defined product. LegalZoom sells business documents and the ability to secure a trademark. Access Legal sells documents and legal document preparation services specific to Arizona family law. Avvo and LawDingo provide consultations for a fixed amount and time period. Each of these providers has taken a portion of “legal services” and distilled it into a commodity. These companies sell the commodity for a flat fee—rather than billing an hourly rate in 10-minute increments. This is yet another reason why consumers are drawn to online legal services.

The unauthorized practice of law is regulated to protect the public, not to protect attorneys from the competition of legal technology companies. Crying UPL to stop the use of technology in the legal profession is not working but attorneys still need to understand the boundaries that exist when adopting technologies.

First, let’s take a look at the impact of legal technology on fees. Software platforms like Shake Law and Upcounsel are forcing attorneys to rethink the billable hour just to compete. However, there are ethical challenges with fee splitting and referrals.

On the legal technology company side, care has gone into the pricing and fees to avoid challenges when working with attorneys. LawDingo has an interesting model: Lawyers pay a subscription fee to be listed on its site and earn fees from the clients directly.

How many times has an attorney met with a potential client only to be told that they do not have the money to hire the attorney? Or they only have a fixed budget of \$5,000 for a matter that would cost the attorney \$10,000? What is an attorney to do? Turn away \$5,000? Take the matter on at a loss? How about leverage tech for a win-win?

That is exactly how Modern Law and Access Legal work together for the benefit of the client and the firm. If a potential client does not have the money for an entire case, they are pointed to the consumer-facing side of Access Legal. By handling part of their case on their own, they shave down their legal expenses and pay only for those tasks that are most appropriately handled by the attorney.



Referral Fees

Attorneys have to be very careful with respect to earning referral fees from a non-legal business. Based on a recent Arizona case³, a lawyer can earn a referral fee from a non-legal entity if referring someone who is *not* a client to that entity. How does this affect attorneys' collaboration with legal tech companies? Well, if a potential client comes to an attorney and it's not a fit, the attorney can send the client to a non-legal company in exchange for a referral fee.

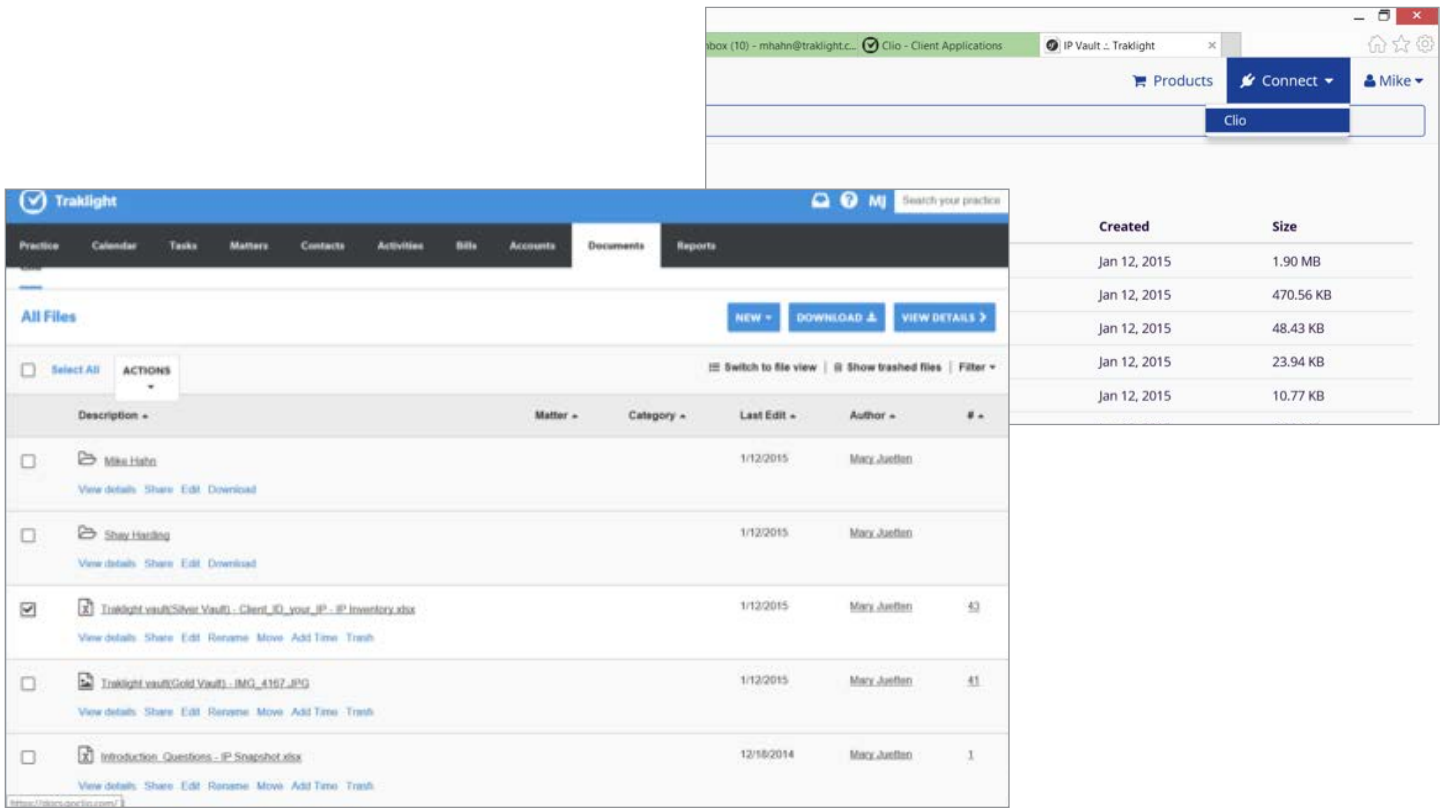
We recommend investigating the ethical rulings in your state as multijurisdictional issues can complicate matters quickly.

Ethical rules exist to protect the public as do the rules for the unauthorized practice of law. As the many hundreds of legal technology companies start to work together through automation, the legal industry should move its focus away from trying to stop progress and instead toward how to collaborate with legal technology for mutual benefit.

Limited-Scope Legal Services

With the availability of technology to assist lay people, more and more are requesting lawyers provide an alternate way to receive attorney services. Sometimes potential clients will approach attorneys with paperwork they've prepared themselves, or they will approach attorneys asking for in-court representation only. This provides attorneys with new opportunities, but also new ethical challenges. Most jurisdictions specifically allow limited scope legal services. It can be ethical, and it can be beneficial to both the client and the attorney, but the process requires careful analysis of all of the facts in the case and the specific ethical rules that apply.

³ <http://www.azbar.org/Ethics/EthicsOpinions/ViewEthicsOpinion?id=520>



Integration is the Key

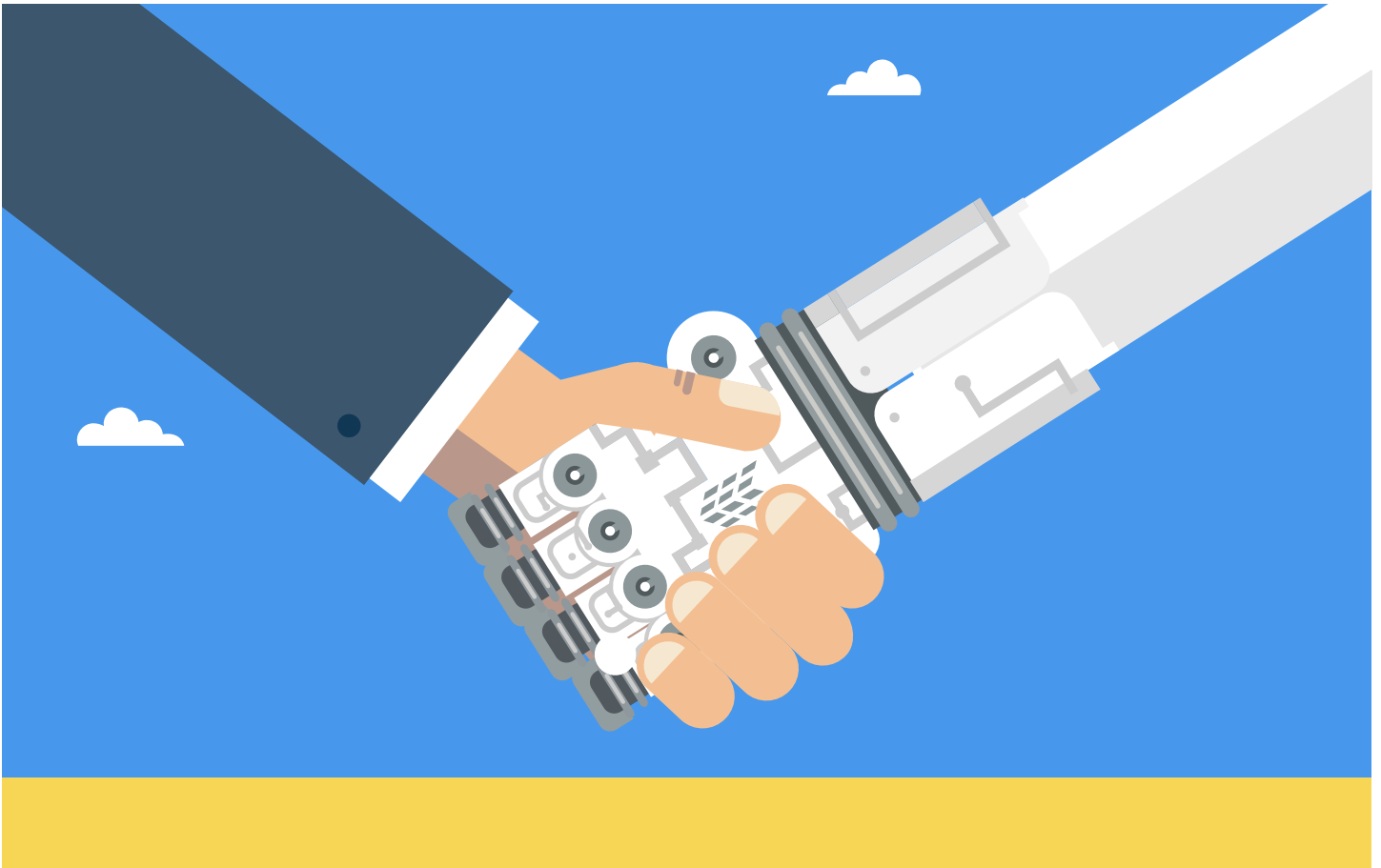
Technology implementation within law firms is not really optional with the newest model ethical obligations stating that competent attorneys must be reasonably informed regarding relevant technology. In order to be competent, lawyers must keep abreast of the changes in law and the benefits and risks associated with relevant technology.

Lawyers have been using technology to one degree or another for decades. They just haven't realized it. After all, IT firewalls and email systems aren't the most alluring or involved. Practice management and document automation software, on the other hand, can save clients' money while increasing law firms' profitability. Time management and billing software help attorneys collect information and efficiently bill and communicate with clients.

Secure client portals within practice management software allow for secure communications like email, document

uploading, and sharing with collaborators both inside and outside the firm. Thanks to cloud computing, clients and attorneys alike can easily access legal tech solutions anywhere, anytime.

From an attorney point of view, one of the biggest challenges of moving to the cloud is that there are so many different solutions to suit their practice. Practically speaking, you could end up with multiple systems all handling different aspects of your business, including client interactions. To ensure all of these systems communicate, many legal tech software systems are integrating. For example, Clio, the practice management solution, has come out with integrations for various partners, including Traklight. Weaving these solutions together allows clients and lawyers to use multiple platforms seamlessly.



Savings Tip: Malpractice Insurance Premium

Using technology to interview clients, gather information for documents, or review documents decreases the risk of errors or omissions. Several malpractice insurance companies offer discounts to firms that use legal technology. Check with your carrier to see how much you can save as a result of technology.

We are in an era of sharing, crowdsourcing, and collaborating. The profession of law must stop equating legal technology with UPL. Bottom line, to remain competitive, attorneys must not only embrace software solutions, but also accelerate the integration of technology into their practices. Lawyers who resist technology or hide behind UPL will be left behind.

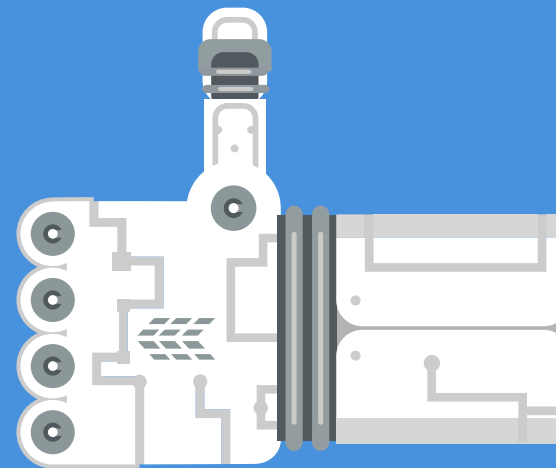
About the Authors

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Mary Juetten is the founder and CEO of [Traklight](#) and co-founder of [Evolve Law](#). She specializes in helping companies in transition, growth, or startup create sustainable, operational, and financial growth. She created the only self-guided software platform that creates a custom business risk assessment and intellectual property (IP) strategy and automates the client intake process for attorneys. Mary is an international writer, who contributes to Forbes and the ABA Legal Technology Today; speaker; and mentor. She's currently on the Emerging Enterprise Committee of the Licensing Executives Society and the Co-chair of the Arizona Technology Council's Law & Tech committee. Mary and her husband live in Washington State and Phoenix, AZ and try to spend as much time as possible not working now that they're empty nesters.

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Billie attended University of San Diego Law School and the University of Oregon School of Law, graduating in 2005. She worked at several firms in Eugene including the Department of Justice, Family Law Division, the non-profit A Family for Every Child and clerked at the Lane County Juvenile Court under Justice Kip Leonard. Her legal focus is on education law, including special education within schools, family law, adoption and mediation. Billie is a skilled practitioner, national speaker, law firm business consultant and a Martindale-Hubbel honored attorney. She was granted the prestigious "Client Distinction" award based on her Communications Ability, Responsiveness, Quality of Service, and Value for Money. Less than 4% of attorneys nationwide have been accorded this honor of distinction. Billie and her husband have three boys and live in Mesa, Arizona. In her spare time she enjoys singing at church, cooking and spending time outdoors.



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