

JUSTICE TECH

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ABSTRACT

Should the law regulate how digital platforms connect and foster communication among lawyers and consumers? Or should the law leave digital platform innovators free to explore their unique capabilities? The greater the regulation of digital platforms for legal services, the less access to legal services but the more alignment with legal ethics and professional responsibility codes. The less the regulation of digital platforms for legal services, the more the incentive to produce connectivity and communication between lawyers and consumers. This Article assesses how digital platforms for legal services drive innovation for access to justice—termed “Justice Tech”—and promote lawyer-consumer matching, engagement, and interaction. Recent scholarship highlights the adoption, growth, and transformation of service industries (such as transportation, homestays, and telemedicine) through online and app-based marketplaces while simultaneously cautioning about exploitative conduct and arguing for consumer protection. Digital platforms for legal services are a new phenomenon for digital portals that operate between the supply and demand sides of marketplaces to make access and exchange cheaper, easier, and more scalable while also presenting unique challenges with legal ethics and professional responsibility codes. These digital platforms can play a critical role in matching consumers’ legal needs with lawyers’ expertise, thus helping to promote access to justice. However, these platforms have tradeoffs.

The debates about professional regulation of lawyers and digital platforms present policy choice tradeoffs and have been polarized around market-driven and consumer-protection-driven approaches. In synthesizing these previously disconnected debates, this Article argues that the

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challenges to accessible legal services and protection of consumers through digital platform control are intertwined with the advent of digital platforms for legal services and the assessment of legal ethics and professional responsibility in their use. By studying the issues, implications, and regulation of digital platforms for legal services, this Article makes three major contributions by: (1) assessing the degree to which digital platforms promote access to justice and raise new duties for lawyers; (2) showing that digital platforms for legal services may drive concerns with potential restrictions on advertising, unauthorized practice of law, and referrals; and (3) suggesting that co-regulation offers a way for the legal profession to serve public interests while complying with the legal profession's objectives and increasing access to justice.

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[E]ach day the old, the unemployed, the underprivileged, and the largely forgotten people of our Nation may seek help. Perhaps it is an eviction, a marital conflict, repossession of a car, or misunderstanding over a welfare check—each problem may have a legal solution. These are small claims in the Nation’s eye, but they loom large in the hearts and lives of poor Americans.

—President Richard Nixon¹

INTRODUCTION

How does digital technology play a role in access to justice? This is a critical question given the crucial role digital platforms play in transmitting information about legal services and allowing consumers to gain access to that information.² Digital technology can help to transform the legal system by increasing access to justice for individuals.³

Access to lawyers in the United States is elusive for underserved populations and individual consumers.⁴ Delivery of legal services is also a major problem for lawyers who struggle to advertise and communicate their legal expertise to extend their reach and manage their work flows effectively.⁵ Instead of ineffective access and delivery of legal services via traditional mechanisms, this Article suggests a new digital technology avenue—that I term “Justice Tech”—to enhance access by the underserved and delivery of legal services by lawyers. Indeed, as scholars have recognized, digital platforms have disrupted other industries, and in so doing, created new considerations for both law and society.⁶ A different, but no

1. On July 25, 1974, President Richard M. Nixon signed into law the Legal Services Corporation in hopes of strength and commitment to America’s promise of equal justice for all.

2. See generally Julie E. Cohen, *Law for the Platform Economy*, 51 U.C. DAVIS LAW REV. 133 (2017); Orly Lobel, *The Law of the Platform*, 101 MINN. L. REV. 87 (2016); Kenneth A. Bamberger & Orly Lobel, *Platform Market Power*, 32 BERKELEY TECH. L.J. 1051 (2017); Sonia K. Katyal & Leah Chan Grinvald, *Platform Law and the Brand Enterprise*, 32 BERKELEY TECH. L.J. 1135 (2017); Terrell McSweeney, *FTC 2.0: Keeping Pace with Online Platforms*, 32 BERKELEY TECH. L.J. 1027 (2017); Giovanna Massarotto & Christopher S. Yoo, *Antitrust at a Crossroads: The Challenge of Digital Platforms*, 7 J.L. & Innovation 1 (2024).

3. Bryant G. Garth & Mauro Cappelletti, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 BUFF. L. REV. 181, 183, 277–78 (1978) (explaining the concept of “access to justice” and drawing motivations for changes in the methods for the delivery of legal services).

4. Fatma E. Marouf & Luz E. Herrera, *Technological Triage of Immigration Cases*, 72 FLA. L. REV. 515, 516 (2020); Deborah L. Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785, 1785 (2001); Raymond H. Brescia, *Uber for Lawyers: The Transformative Potential of a Sharing Economy Approach to the Delivery of Legal Services*, 64 BUFF. L. REV. 745, 767–68 (2016).

5. See John O. McGinnis & Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 FORDHAM L. REV. 3041, 3041–42, 3054, 3065 (2014); Renee Newman Knake, *Democratizing the Delivery of Legal Services*, 73 OHIO ST. L.J. 1, 1–3, 6 (2012); CLIO, LEGAL TRENDS REPORT 5, 24, 53, 56 (2020).

6. See generally David S. Evans & Richard Schmalensee, *The Industrial Organization of Markets with Two-Sided Platforms*, 3 COMPETITION POL’Y INT’L 151 (2007); David S. Evans, *How Catalysts Ignite: The Economics of Platform-Based Startups*, in PLATFORMS, MARKETS AND INNOVATION (A. Gawer ed., 2009); DAVID S. EVANS, ESSAYS ON THE ECONOMICS OF TWO-SIDED MARKETS: ECONOMICS, ANTITRUST & INDUSTRY STUDIES (2010); DAVID S. EVANS & RICHARD SCHMALENSEE, MATCHMAKERS: THE NEW ECONOMICS OF MULTISIDED PLATFORMS (Harvard Business Review Press ed., 2016) [hereinafter MATCHMAKERS]; GEOFFREY G. PARKER, MARSHALL W. VAN ALSTYNE & SANGEET PAUL CHOUDARY, PLATFORM REVOLUTION (W. W. Norton & Company

less important, challenge has arisen with digital platforms for legal services and their ability to empower consumers with Justice Tech. This Article argues that digital platforms should not be constrained by legal ethics and professional responsibility codes. Instead, a co-regulation model should align policymakers' interventions with guidelines and rules by state bars and the American Bar Association (ABA).

In this Article, I examine the innovative capacity of digital platforms and how law and policy can enhance access and delivery of legal services by them. Millions of Americans lack any access to legal services with over four-fifths of the poor's legal needs and two- to three-fifths of middle-income Americans' legal needs being unmet.⁷ First, consider an example provided by Professor Luz Herrera: a low-income individual fell behind on his mortgage payments due to illness and was unable to find legal assistance in time to save his home.⁸ He stated, "If I could have gotten an attorney, they would have known what to do."⁹ This first example fits within what has been termed "access to justice," or differential access to legal services in society with the most vulnerable having the least access.¹⁰ Consider a second example: a middle-income American who lacks awareness, experience, knowledge, and resources with the law but identifies a potential legal problem, and yet still encounters a disproportionate bargaining power in economic or social status in accessing a lawyer such that the individual considers forgoing legal help.¹¹ This second example represents "personal plight" legal needs of individuals and small businesses.¹²

Similarly, millions of lawyers cannot deliver legal services effectively despite striving to achieve better engagement with consumers. Unlike corporate-client lawyers who represent large corporations and complex institutions,¹³ most other lawyers represent individuals or mid-size or small businesses. With this different client base, their practice has distinct dynamics, including communicating in-person and meeting local needs, establishing a bond of trust based on empathy and emotional intelligence, representing legally inexperienced clients, or partaking in David v. Goliath battles against state or corporate adversaries with better

ed., 2016) [hereinafter PLATFORM REVOLUTION].

7. Deborah L. Rhode, *Access to Justice: A Roadmap for Reform*, 41 FORDHAM URB. L.J. 1227, 1228 (2016).

8. Luz E. Herrera, *Rethinking Private Attorney Involvement Through a "Low Bono" Lens*, 43 LOY. L.A. L. REV. 1, 3–4 (2009).

9. *Id.*

10. Amy J. Schmitz, *Measuring "Access to Justice" in the Rush to Digitize*, 88 FORDHAM L. REV. 2381, 2382 (2020).

11. *Id.*; Luz E. Herrera, *Training Lawyer-Entrepreneurs*, 89 DEN. U.L. REV. 887, 894–95 (2012).

12. Noel Semple, *Personal Plight Legal Practice and Tomorrow's Lawyers*, J. LEGAL PRO. 1, 13–16, 18–20 (2015); William Hornsby, *Improving the Delivery of Affordable Legal Services Through the Internet: A Blueprint for the Shift to a Digital Paradigm*, A.B.A. 3 (2009).

13. Cassandra Burke Robertson, *Online Reputation Management in Attorney Regulation*, 29 GEO. J. OF LEGAL ETHICS 97, 108 (2015).

resources.¹⁴ These personal plight lawyers strive to differentiate themselves based on: (1) advertising and reach, (2) expertise and local know-how, and (3) availability and capacity. For example, consider a study by Professor Carrol Seron that examined solo and small-firm lawyers. She showed that the primary business concern was attaining clients—such as through advertising—and that referral sources greatly influenced the financial well-being of such lawyers.¹⁵ Additionally, solo practitioners and small law firms that offer specialized expertise—which according to Professor Leslie Levin is half of such lawyers who devoted 70% or more of their time to a single practice area—would benefit from matching with clients seeking their expertise.¹⁶ And finally, consider that such lawyers find it a challenge to provide legal services even when they have the capacity to do so, such that they can benefit from more effective monitoring of their workflow, responding appropriately to client needs, and putting their skillset to productive use to ensure competent and timely representation.¹⁷

To address the deficiencies in access and delivery of legal services, I assess and analyze how digital platforms can be a solution. From the perspective of consumers who lack access to legal services or cannot find the right lawyer at the right time in the right location, allowing digital platforms to guide the search and selection of a lawyer may be expedient to attain appropriate legal representation.¹⁸ From the perspective of lawyers, relying on digital platforms that provide direct and interactive messaging, communication about capabilities, and just-in-time availability to consumers may be an expedient way to deliver legal services. Even for digital platform companies, however, addressing such deficiencies on both sides of the market—consumers and lawyers—may not be sustainable until the digital platform technology’s architecture can flourish amidst legal ethics and professional responsibility code restrictions. More importantly, however, to the extent that policymakers regulate and limit digital-platform-technology architecture’s ability to mediate consumer-lawyer interaction and to promote advertising and lawyer referrals, consumers’ access to justice will remain constrained. How can policymakers better align digital technology with access to justice? In this Article, I shift the focus of access to justice not on the critiques and divide among the practicing bar’s self-interests and the interests from consumers in calling for promoting access to justice but rather on the significant and

14. Semple, *supra* note 12, at 8, 10–11, 15, 18.

15. See generally CARROLL SERON, *THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL-FIRM ATTORNEYS* (1996) (suggesting that solo and small-firm attorneys, in contrast to large corporate law firms, are driven by entrepreneurial efforts that require a balance between legal professionalism and commerce).

16. Leslie C. Levin, *Preliminary Reflections on the Professional Development of Solo and Small Law Firm Practitioners*, 70 *FORDHAM L. REV.* 847, 858 (2001).

17. Brescia, *supra* note 4, at 745, 749, 756.

18. See Daniel W. Linna Jr., *What We Know and Need to Know About Legal Startups*, 67 *S.C. L. REV.* 389, 392, 400 (2016).

undoubtedly important effects of digital platforms.

My aim in this Article is to examine the innovative capacity of digital platforms, as well as how reforming legal ethical and professional responsibility can enhance them. While digital platform technology is synonymous with network effects in numerous applications and industries,¹⁹ I argue that digital platforms encompass additional, interrelated features that enhance access and delivery of legal services through a wide range of socially valuable innovations. The impact of legal ethical and professional responsibility codes has, of course, long been recognized as a potential cause of restricting the benefits of technological advances for the legal profession. Technological advances that challenged the reach of legal ethical and professional responsibility codes have resulted in major court decisions that have constrained digital technology's impact on the legal profession, such as with the practice of law. To make my perspective clearer, in this Article, I focus on digital platforms for legal services, and not on other forms of digital technologies for legal services to advance the emerging law and technology debate on a narrow and unaddressed issue.²⁰

In particular, I analyze and provide normative assessments of advertising and solicitation, unauthorized practice of law, and lawyer referral implications of legal marketplace digital platforms. Additionally, I seek to translate normative assessments of legal ethics and professional responsibility codes into legal and policy prescription of co-regulation in which government and private regulators co-operate jointly. While scholars, policymakers, and the Federal Trade Commission have devoted substantial attention to regulation of digital platforms, regulation of professional-services digital platforms, which entails a specialized service subject to self-regulation by professional associations, is lacking.²¹ The regulation of

19. David S. Evans, *Some Empirical Aspects of Multi-Sided Platform Industries*, 2 REV. NETWORK ECON. 191, 201 (2003).

20. There has been prior scholarship about legal tensions and debates with digital tools and the unauthorized practice of law, which I distinguish later in this Article in Part II.B. And there has been much promise with digital directories collecting information about lawyers in hopes of making access to lawyers easier for consumers, but there are limitations to these. Prototypical examples of digital directories include Avvo, Nolo, and Lawyers.com and prototypical examples of digital tools include LegalZoom, Rocket Lawyer, and Legal Shield.

Whereas digital directories give consumers a listing of lawyers and digital tools allow consumers to conduct basic legal tasks, digital platforms have great potential for enhancing access and delivery of legal services. While digital platforms mediate the search, matching, and interactions between consumers and legal service providers, they may become constrained by legal ethics and professional responsibility codes and raise new issues ripe for regulation of the platform economy.

21. See generally Abbey Stemler, Joshua E. Perry & Todd Haugh, *The Code of the Platform*, 54 GA. L. REV. 605 (2020); David S. Evans, *Deterring Bad Behavior on Digital Platforms* (Aug. 2, 2020), <https://elsevier-ssrn-document-store-prod.s3.amazonaws.com>; Lobel, *supra* note 2; Bamberger, *supra* note 2; Cohen, *supra* note 2; Herbert Hovenkamp, *Platforms and the Rule of Reason: The American Express Case*, 2019 COLUM. BUS. L. REV. 35 (2019); Geoffrey G. Parker & Marshall W. Van Alstyne, *Two-Sided Network Effects: A Theory of Information Product Design*, 51 MGMT. SCI. 1494 (2005); Thomas Eisenmann, Geoffrey Parker & Marshall W. Van Alstyne, *Strategies for Two-Sided Markets*, HARV. BUS. REV., Oct. 2006; *Featuring Online Customer Reviews: A Guide for Platforms*, FED. TRADE COMM'N (Jan. 2022), <https://www.ftc.gov/business-guidance/resources/featuring-online-customer-reviews-guide-platforms>.

digital platforms scholarship extols government intervention without recognizing what should be exceptions for professional services digital platforms (such as legal services enhanced by digital platforms).²² On a related note, I challenge several, widely-held views of regulation of digital platforms and argue that state bars and the ABA should work alongside the government to properly identify where lawyer conduct may be implicated by digital platforms for legal services. This co-regulation approach represents a midpoint in the continuum between self-regulation and full government regulation, essentially a compromise between market forces and intervention with standards to balance the potentially risky and uncertain trajectory of a technology that can impact the future of the legal profession.

This Article proceeds in three parts. Part I introduces the transformation of legal services in the United States from its origins to the proliferation of digital paradigms, which have changed the practice of law and brought the promise of digital marketplaces to the forefront. It also investigates how the marketplace model for legal services enables connectivity and interactivity via relatively effortless, frictionless, and on-demand interactions between consumers and lawyers to address the access-to-justice gap. Part II explores the implications of digital platforms for legal services with legal ethics and professional responsibility codes. It argues that advertising and solicitation, unauthorized practice of law, and lawyer referrals should not constrain digital platforms. Part II also explores further implications of digital platforms for the access to justice gap. Part III evaluates potential solutions to the aforementioned tensions with legal ethics and professional responsibility codes by addressing the market-focused versus regulation debate through innovations that address access to justice. Finally, Part III evaluates regulation and self-regulation, and proposes a co-regulation model for digital platforms for legal services.

I. JUSTICE-AS-A-PLATFORM

This Part explores the transformation of access and delivery of legal services into the emergence of digital platforms for legal services, which I term as “justice-as-a-platform.” After briefly introducing an overview of legal services and traditional issues of advertising, unauthorized practice

22. See generally Jing Li, *Platform Economy in Legal Profession: An Empirical Study on Online Legal Service Providers in China*, 35 PAC. BASIN L.J. 97 (2018) (providing an explanation of digital platforms for legal services in China and suggesting that issues related to their potential regulation leave room for evolution); *Guide on Lawyer's Use of Online Legal Platforms*, COUNCIL OF BARS & L. SOCIETIES OF EUR. (2018), https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/DEONTOLOGY/DEON_Guides_recommendations/EN_DEON_20180629_CCBE-Guide-on-lawyers-use-of-online-legal-platforms.pdf (highlighting the potential risks and pitfalls of digital platforms for legal services and suggesting considerations related to ethics and regulation); Derek Kan, *Four Benefits of Hiring Lawyers Through a Digital Platform*, AXIOM L. (April 2022), <https://www.axiomlaw.com/blog/hiring-lawyers-digitally> (describing the benefits of hiring lawyers through digital platforms); Pedro Petiz Viana, *Online Legal Platforms – The Beginning of the 4.0 Law Practice?*, 5 UNIO EU L. J. 43 (2019) (providing an explanation of digital platforms for legal services in Europe and explaining regulation and other issues raised by particular bar associations).

of law, and reviews in the legal services industry, it examines the substantial ways in which laws, regulations, and policies evolved with digital transformation in the legal services industry. A series of disruptive digital business models and digital technologies have altered the economic structure of legal services and as a result, have seriously challenged regulatory frameworks for the legal profession.²³ In the contemporary landscape, digital platforms play an important and increasing role in effectuating policy objectives concerning innovation in the legal services industry.

A. Overview of Legal Services

The social stratification among legal services can be classified into two hemispheres of legal practice: (1) personal/small business lawyers who represent individuals and (2) corporate client lawyers who represent large corporations and complex institutions.²⁴ Personal/small business lawyers serve individuals with personal plight legal needs (such as domestic relations, bankruptcy, criminal defense, traffic violations, guardianship, immigration, personal injury, real estate, tax, and wills and estates). This Article refers to such needs as those of consumers.²⁵ Corporate client lawyers represent organizational clients that have access and resources to highly competent lawyers and law firms with whom they have longer relationships, conduct intricate hiring procedures, or have higher-stakes needs.²⁶

Access and delivery have always occupied a central position for consumers of legal services. Unlike corporate clients, which wield more power in legal services, consumers tend to have limited financial resources and lack knowledge, connections, and social capital that would help them to select their lawyers.²⁷ The unmet legal needs of consumers are dramatic, and studies have shown that nearly half of moderate-income households reported having at least one legal need per year, yet less than half of those consumers consulted a lawyer.²⁸ Consumers have long sought a suitable lawyer for their personal plight legal needs.²⁹ At the same time, lawyers have long sought to differentiate their services based on billing arrangements and price, expertise, location, success rate, and referrals to fit the consumer's needs.³⁰ And yet, an inherent information asymmetry exists

23. See generally Ron Dolin & Thomas Buley, *Adaptive Innovation: Innovator's Dilemma in Big Law*, in LEGAL INFORMATICS 453 (Daniel Martin Katz, Ron Dolin & Michael J. Bommarito eds., 2015) (suggesting that a fundamental change to the legal services business model based on increased use of technology and a change to demand-driven market).

24. Robertson, *supra* note 13; William Hornsby, *Challenging the Academy to a Dual (Perspective): The Need to Embrace Lawyering for Personal Legal Services*, 70 MD. L. REV. 420, 420 (2011).

25. Hornsby, *supra* note 12, at 8.

26. Robertson, *supra* note 13, at 11–12.

27. *Id.* at 11.

28. Hornsby, *supra* note 12, at 2.

29. Hornsby, *supra* note 24.

30. See generally Michael Asimow, *Popular Culture and the American Adversarial Ideology*, in L. & POPULAR CULTURE 606 (Michael Freeman ed., Oxford Univ. Press 2005) (suggesting that lawyers differentiate themselves in the U.S. adversarial system based on knowledge and skills);

between lawyers and consumers, who as non-experts cannot accurately judge the quality of a lawyer's services and must delegate some power to a lawyer for representation of their affairs.³¹ This information asymmetry causes a difference in the power relationship between lawyers and consumers, hence the need for mechanisms that allow for balancing the power dynamic.³²

B. Proliferation of Digital Paradigms

Consumers have utilized various mechanisms to seek legal representation. Historically, consumers have sought legal representation through recommendations by friends and relatives, referrals by business associates, and lawyer directories, but the process can be daunting and confusing.³³ A transformation to digital paradigms for access and delivery of legal services has addressed deficiencies with traditional methods, such as scale and speed.

In contemporary times, digital directories and online search engines have increased the viability of digital mechanisms to search for lawyers.³⁴ Notably, digital directories have limited capabilities—they cannot identify whether a lawyer has available capacity, nor can they permit a consumer to choose from a variety of lawyers. Online search engines typically take consumers on a series of steps that can only be characterized as a seemingly endless research journey.³⁵ This process involves considerable effort, time, and iteration from a consumer.

Alternatively, digital tools, such as LegalZoom, Rocket Lawyer, and Legal Shield, provide interactive documents, subscription plans, and registered agent services that assist consumers in conducting legal tasks.³⁶ Digital tools provide customized instruments and documents used by consumers with a legal need.³⁷ However, digital tools assist in performance of

BRUCE L. HAY, THE ECONOMICS OF LAWYER REFERRALS, DISCUSSION PAPER NO. 203 (Harv. L. Sch. ed., 1996) (explaining the different qualities of lawyers and other conditions that result in referrals by consumers); REFERRAL ARRANGEMENTS RESEARCH, VANILLA RESEARCH (2010) (describing the different characteristics of law firms and lawyers that drive referrals to them); SUP. CT. OF OHIO, A CONSUMER'S PRACTICAL GUIDE TO MANAGING A RELATIONSHIP WITH A LAWYER (2023) (suggesting that lawyers promote themselves in the United States based on their background, qualifications, experiences, specializations, and other characteristics).

31. Larry Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 753 (2010).

32. Robertson, *supra* note 13, at 16.

33. *How Consumers Choose Lawyers Remains a Mystery*, LEXISNEXIS: LEGAL INSIGHTS (August 24, 2020), <https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/how-consumers-choose-lawyers-remains-a-mystery>.

34. Digital directories, such as Avvo, Nolo, and Lawyers.com, are passive mechanisms that allow consumers to search for lawyers based on a limited set of criteria.

35. *Understanding How Clients Find, Choose, and Ultimately Hire Attorneys*, LAW RANK (July 23, 2021), <https://lawrank.com/understanding-how-clients-find-choose-and-ultimately-hire-attorneys/>; *The Consumer's Journey When Searching for a Law Firm Online*, ILAWYERMARKETING, <https://www.ilawyermarketing.com/the-consumers-journey-when-searching-for-a-law-firm-online/> (last updated Feb. 20, 2023).

36. Caroline Shipman, Note, *Unauthorized Practice of Law Claims Against LegalZoom—Who Do These Lawsuits Protect, and is the Rule Outdated?*, 32 GEO. J.L. ETHICS 939, 941–42 (2019).

37. Emily McClure, Note, *LegalZoom and Online Legal Service Providers: Is the Development and Sale of Interactive Questionnaires that Generate Legal Documents the Unauthorized*

only routine tasks and lack legal skill.

Digital paradigms are proliferating and beginning to displace traditions of the legal services industry. The digital capabilities provided by digital directories, online searching, and other digital tools are limited but also verify consumer preference towards digital use cases and suggest other emerging digital technologies could provide benefits. One emerging digital technology is the digital platform.

C. Emergence of Digital Platforms for Legal Services

Digital technologies have begun to provide cutting-edge solutions to the law and to legal services, such as artificial intelligence and machine learning, blockchain, mobile payments, and smart contracts. Inspired by the success in other service industries, digital platforms have emerged for legal services, in part due to the benefits of their unique digital features of providing connectivity, ease of communication, on-demand responsiveness, and frictionless transactions.³⁸ Digital platforms for legal services have increased in adoption and use due to their just-in-time/just-enough nature that has made it easier to match consumers with lawyers.³⁹

Digital transformation through online marketplaces (that connect consumers and merchants) is sweeping every industry sector, and the legal services industry is no different.⁴⁰ Modern consumers are seeking instant access to a world of digital information, and many service providers now allow remote working and virtual team collaboration.⁴¹ The access and delivery of legal services is radically evolving through digital transformation and the complex interaction of legal ethics and professional responsibility. Digital platforms are a key example of a use case for digital applications that would fundamentally disrupt traditional legal practices and the role of legal professionals. To gauge the degree to which legal practitioners and academics are prepared to assist in maintaining a balanced view of legal ethics and professional responsibility in the digital era, a greater understanding of digital platforms and transactions of legal services is essential.⁴²

Digital platforms (also known as multi-sided platforms) are a revolution that has transformed businesses in many industries that were once one-sided to being multi-sided.⁴³ Users, such as consumers and merchants,

Practice of Law?, 105 KY. L.J. 563, 570–71 (2017).

38. Li, *supra* note 22, at 99–100. (suggesting that “just in time” refers to an on-demand nature that can provide legal services at a particular requested time and that “just enough nature” refers to the correct type of legal services requested by consumers).

39. Brescia, *supra* note 4, at 745.

40. See generally Shelly Kreiczler-Levy, *The Duties of Online Marketplaces*, 58 SAN DIEGO L. REV. 269 (2021) (emphasizing the legal challenges brought on by the use of online platforms in various industries).

41. Larry Bridgesmith & Adel Elmessiry, *The Digital Transformation of Law: Are We Prepared for Artificially Intelligent Legal Practice?*, 54 AKRON L. REV. 813, 813, 815 (2021).

42. Kreiczler-Levy, *supra* note 42 at 275, 277, 280–81, 283, 285–87, 292, 297.

43. See generally Lapo Filistrucchi, Damien Geradin & Eric van Damme, *Identifying*

value such platforms only when the other side is an active participant.⁴⁴ Such platforms act as intermediaries or matchmakers that derive value from interactions between merchants and consumers. Digital-platform business models need to get each side on board. While this presents a “chicken and egg problem,”⁴⁵ once achieved, the platform would reduce transaction costs and attain scale through indirect network effects.⁴⁶ The architecture and function of digital platforms allow for reduction of search costs, unlocking of new sources of value creation, scaling businesses more efficiently, and enabling network effects.⁴⁷

One challenge with analyzing these digital platforms entails defining the meaning of the term “digital platform.”⁴⁸ Courts and scholars have articulated different definitions of “digital platforms,”⁴⁹ and only recently has the U.S. Supreme Court tackled this issue in a landmark case.⁵⁰ Nonetheless, despite the classification challenge,⁵¹ digital platforms are considered to encompass certain common characteristics. First, digital platforms promote and enhance interactions between merchants and consumers.⁵² Second, digital platforms multiply the output of the interactions

Two-Sided Markets, Tilburg University: TILEC Discussion Paper DP 2012-008 (2012) (implying that a multi-sided market allows for intermediation between multiple parties in a commercial exchange, whereas a one-sided market lacks the ability to mediate transactions between merchants and consumers).

44. See generally Marc Rysman, *The Economics of Two-Sided Markets*, 23 J. OF ECON. PERSPECTIVES 125 (2009).

45. Bernard Caillaud & Bruno Jullien, *Chicken & Egg: Competition Among Intermediation Service Providers*, 34 RAND J. OF ECON. 309, 310 (2003).

46. Evans, *supra* note 19, at 196, 200.

47. PLATFORM REVOLUTION, *supra* note 6 at 7–8, 29–32.

48. *Id.* at 5, 13 (“A [digital] platform is a business based on enabling value-creating interactions between external producers and consumers. The platform provides an open, participative infrastructure for these interactions and sets governance conditions for them. The platform’s overarching purpose: to consummate matches among users and facilitate the exchange of goods, services, or social currency, thereby enabling value creation for all participants.”); MATCHMAKERS, *supra* note 6, at 2 (describing that a digital platform as a matchmaker operates such that “demand by each group of customers served by a matchmaker depends on the demand by other groups of customers it also serves”).

49. Various definitions of “digital platforms” abound and encompass applications as diverse as agriculture, communication and networking, consumer goods, education, energy and heavy industry, finance, health care, gaming, labor and professional services, local services, logistics and delivery, media, operating systems, retail, transportation, and travel. In general, digital platforms substantively promote interactions between multiple parties and produces changes in consumer demand through dependencies on other consumer demand. A digital platform is a digital business based on enabling value-creating facilitated interactions between external merchants and consumers through choice architecture that sets governance conditions, whereby demand by each group of consumers depends on the demands of other groups of consumers. Digital platform design is based on “choice architecture,” which refers to the different ways in which choices can be presented to consumers and the impact of that presentation on consumer decision-making.

50. *Ohio v. American Express Co.*, 585 U.S. 529, 534–35 (2018) (concerning the nature of competition in a market, specifically antitrust law, in relationship with two-sided markets, or digital platforms).

51. This is not a simple classification, however, because even classic commercial exchanges have a profit-making objective for the exchange itself. As a general matter, however, a digital platform serves to “connect producers and consumers more precisely, speedily, and easily than ever before” in a turbocharged business model to attain profitable terms. See PLATFORM REVOLUTION, *supra* note 6; MATCHMAKERS, *supra* note 6, at 2–3, 15.

52. Digital platforms have similar characteristics to commercial innovation that has brought

between merchants and consumers.⁵³ Third, digital platforms proactively shape or change the interactions between merchants and consumers.⁵⁴ In essence, digital platforms can promote matchmaking by overcoming market frictions, building communication and trust between merchants and consumers, and helping underserved communities.⁵⁵ One application is access and delivery of legal services, which I explore next.⁵⁶

II. IMPLICATIONS WITH PROFESSIONAL RESPONSIBILITY AND ETHICAL CODES

This Article has explored the concept of “Justice Tech,” in which digital technology enables a marketplace model and plays a role in the access to justice gap.⁵⁷ Digital platforms have an explicit matchmaking character that enables communication, interactions, and trust between producers and

together merchants and consumers throughout history—such as bazaars, crafts villages, food halls, flea markets, retail stores and malls, radio, television, telephones, and the Internet—in the sense that they enhance the exchange of goods and services. However, classic subjects of commercial exchange include one-way communication and exchange between one or more merchants and one or more consumers, whereas digital platforms promote interactions between one merchant to many consumers, many consumers with one merchant, and many merchants with many consumers, and also can be “on demand.” Digital platforms serve as an intermediary that gains from the interactions between merchants and consumers with the aim of maximizing financial returns from the merchant-consumer interactions.

53. Wide access distinguishes digital platforms from other commercial exchanges. Other technologically driven commercial exchanges, such as the telephone and the Internet, aim to widen accessibility beyond in-person interactions of bazaars and flea markets. For example, an Internet website that can sell a widget produced by a for-profit manufacturer would enhance access to a broader community of consumers interested in purchasing such widgets. By contrast and as an example, a digital platform enables interactions between widget makers (service providers) and widget purchasers, which may be done on the Internet or a phone app and would promote broad access of the widget community. Along similar lines, although digital platforms aim for wide accessibility between merchants and consumers, they are not necessarily incompatible with the Internet, but can utilize the Internet as a platform for the mechanism of widening of access. Indeed, some digital platforms arise on the Internet and motivate parties to develop interactions between merchants and consumers, and then transition to other platforms, such as apps.

54. Digital platforms explicitly seek behavioral change on the part of its participants, who may otherwise have a very low or static interaction, and as a result, utilize behavioral nudging, dynamic price controls, and ratings and reviews. For example, digital platforms can enable nudging to track goals, provide personal incentives, and build habits of consumers, and in so doing, enable a targeted and curated selection between a group of merchants and consumers. Digital platforms facilitate dynamic interactions between merchants and consumers, and transform consumer behavioral patterns on a massive scale, as is seen in the introduction of digital behavioral economics into business strategy. *See generally* Christoph Schneider, Markus Weinmann & Jan vom Brocke, *Digital Nudging: Guiding Online User Choices Through Interface Design*, 61 COMM’NS OF THE ACM 67 (2018) (introducing the concept of digital nudging for the use of user-interface design elements to guide behaviors in digital environments); Alessandro Acquisti, Idris Adjerid, Rebecca Balebako, Laura Brandimarte, Lorrie Faith Cranor, Saranga Komanduri, Pedro Giovanni Leon, Norman Sadeh, Florian Schaub, Manya Sleeper, Yang Wang & Shomir Wilson, *Nudges for Privacy and Security: Understanding and Assisting Users’ Choices Online*, 50 ACM COMPUTING SURVEYS 1 (2017) (describing the impact of cognitive and behavioral biases on decision-making in digital environments); Eun Kyoung Choe, Jaeyeon Jung, Bongshin Lee & Kristie Fisher, *Nudging People Away from Privacy-Invasive Mobile Apps Through Visual Framing*, in HUMAN-COMPUTER INTERACTION—INTERACT 74 (2013) (studying the effects of perceptions of digital apps to draw implications concerning nudging); Stemler, *supra* note 21, at 31.

55. MATCHMAKERS, *supra* note 6, at 71.

56. *See infra* Part II.

57. *See supra* Part I.C.

consumers.⁵⁸ As digital platforms generally serve to “connect producers and consumers more precisely, speedily, and easily than ever before”⁵⁹ in an on-demand business model, they change access, communication, and interaction dynamics between parties.⁶⁰ Legal and professional services are no different because digital technology mediates access, advice-giving and advice-seeking, and communication in ways that operate differently from traditional mechanisms.⁶¹ Amidst struggles to obtain legal services, consumers are increasingly turning to alternative digital resources for personalized assistance, thus increasing their ability to communicate and interact with lawyers for engagement and advice.⁶² As a result, digital platforms have become intermediaries that blur the line of what it means to provide legal expertise without professional status. While digital technology enables access to legal and personalized services, it operates separately from the traditional, professional legal relationship between consumer and lawyer. In this Part, I assess what legal, ethical, and professional responsibilities digital platforms as intermediaries should provide to consumers.

The growing issues of consumer-to-lawyer access and communication, potential consumer vulnerabilities, and the potential regulatory response raise tensions with how consumers and lawyers interact in an increasingly digital and on-demand world. This tension stems from increasing access and improving delivery of legal services and in so doing, transforming the power dynamics between consumers and lawyers and also raising new considerations for regulation of the legal profession. The balance between technological innovation to improve access and delivery of legal services and potential consumer harm presents a legal and regulatory policy choice for the legal profession and for society.⁶³

The inflexibility in legal ethics and professional responsibility codes stems from it being a relatively immature doctrinal area that could benefit from the sophistication of other sociotechnical areas.⁶⁴ Thereby, locating the flexibility in these codes is important to consider when trying to build greater flexibility into the law and regulation of digital platforms for legal

58. MATCHMAKERS, *supra* note 6.

59. PLATFORM REVOLUTION, *supra* note 6, at 5.

60. MATCHMAKERS, *supra* note 6, at 1–3.

61. See Benjamin P. Cooper, *Access to Justice Without Lawyers*, 47 AKRON L. REV. 207, 210, 212–13 (2014).

62. Raymond H. Brescia, Walter Alan McCarthy, Ashley M. McDonald, Kellan Burton Potts & Cassandra Rivaïs, *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice*, 78 ALB. L. REV. 553, 553, 600 (2015).

63. See generally Renee Knake Jefferson, *Lawyer Ethics for Innovation*, 35 NOTRE DAME J.L., ETHICS & PUB. POL’Y 1 (2021) (assessing the regulatory challenges that come with emerging technology in the legal industry).

64. See e.g., Carla L. Reyes & Jeff Ward, *Digging into Algorithms: Legal Ethics and Legal Access*, 21 NEV. L.J. 325 (2020) (arguing for the use of algorithms in the legal sector); Christoph Busch, Catalina Goanta, Katarzyna Kryla-Cudna, Monika Leszczynska & Vanessa Mak, *Should Data Drive Private Law?*, 2022 TECH. & REGULAT. 81 (2022) (suggesting that digital systems and data can shape the way in which norms are interpreted and should open the door for reforms to existing frameworks).

services. This Part examines legal ethics and professional responsibility implications with digital technology and argues for (a) limiting constraints with lawyer advertising, (b) building greater flexibility in the unauthorized practice of law, and (c) reassessing lawyer referrals.

A. Advertising

Digital platforms engage with consumers with some critical legal need by identifying, solving, or understanding their legal need or providing a solution to an already-identified problem. Such needs lead to consumers considering engaging with a lawyer. Unlike traditional and static avenues for legal advertising, digital platforms' dynamic abilities allow for personalized communications, interactivity with consumers, and tailored recommendations or useful guides to next steps. Conversely, traditional mechanisms of advertising by lawyers tend to mass-market without specificity to an individual consumer.

The content, design, interactivity, one-on-one communication, and personalization offered by digital platforms, even if minimal, are a different advertising model envisioned by and for the legal profession in the United States. Digital platforms can guide a consumer through their legal needs, communicate to the consumer about a lawyer's ability to meet their potential needs, and initiate reliance or trust in the lawyer to help navigate their legal problems. The purpose of a digital platform for legal services is to advertise, influence, or guide the consumers towards interaction or engagement with a lawyer. As such, the digital platform, while providing an access to justice solution, also offers sophisticated advertising that challenges professional responsibility and legal ethics rules for lawyers.⁶⁵

In evaluating digital platforms' ability to make advertising more interactive for lawyers, it is useful to explore the debate and tensions with legal-services advertising in general. Lawyer advertising is somewhat restricted by state boards and professional associations to protect consumers from false or deceptive advertising and marketing practices.⁶⁶ These debates have centered on balancing consumers' interests with lawyers' interests.

First, the legal services advertising debate has centered specifically on the balance between allowing information transfer to help facilitate an informed consumer choice and being overbearing on the consumer. Lawyers' advertisements can be overreaching and coercive. Lawyers possess specialized knowledge that consumers lack, thereby making it difficult for consumers to evaluate the situation, and thus putting lawyers in a more powerful position.⁶⁷ Although, without advertising, consumers would lack

65. Schmitz, *supra* note 10.

66. *Competition in Professional Services in the United States*, FED. TRADE COMM'N 2, <https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/iberto-professional-services.pdf>.

67. See generally Benito Arruñada, *Managing Competition in Professional Services and the Burden of Inertia*, in EUROPEAN COMPETITION LAW ANNUAL 2004: THE RELATIONSHIP BETWEEN

information to make a choice and could be limited to relying on lawyers' reputations.⁶⁸

Second, lawyer advertising can have competing, price-related impacts. Legal-services advertising can allow for more price competition among lawyers, thereby reducing prices for legal services and helping to address unmet legal needs.⁶⁹ However, lawyers who spend more on advertising tend to have higher overhead, resulting in costs that must be passed onto prospective clients.⁷⁰

Third, the lawyer advertising debate has assessed the balance between addressing just-in-time legal needs and improper solicitation. Much like the debate on information transfer and informed consumer choice, the coercive nature of legal advertising at the time of most critical and urgent legal needs creates a fine line. While lawyer advertising is helpful when it is efficient and can meet a pressing legal need, it can also be problematic when it results in exerting pressure without opportunity for reflection by the consumer.

This debate surrounding lawyer advertising in the United States has spanned from the 1970s to present day and includes concerns about improper solicitation and promotion of advertising to enable access to legal services. The ABA, state bars, and regulators have historically expressed concerns about in-person solicitation due to the ability to overwhelm potential clients.⁷¹ As a result, these entities have developed anti-solicitation rules to prevent personal injury plaintiffs' lawyers from "ambulance chasing,"⁷² such as restricting letters from lawyers to accident victims until thirty days after an accident.⁷³ Moreover, the U.S. Supreme Court in *Ohralik v. Ohio State Bar*⁷⁴ upheld restrictions on lawyer solicitation based on the rationale of overreaching.⁷⁵

By contrast, the Court has struck down advertising restrictions in

COMPETITION AND THE (LIBERAL) PROFESSIONS 51 (Claus-Dieter Ehlermann & Isabela Atanasiu eds., Hart Publishing, Oxford and Portland Oregon 2006) (explaining that professional services are characterized by information asymmetries).

68. Geoffrey C. Hazard, Jr., Russell G. Pearce & Jeffrey W. Stempel, *Why Lawyers Should Be Allowed to Advertise: A Market Analysis of Legal Services*, 58 N.Y.U. L. REV. 1084, 1088 (1983).

69. *Id.* at 1089.

70. *Id.* at 1088.

71. The tension with lawyer advertising is when it becomes egregious forms of solicitation, such as with improper contact of accident victims.

72. *See Hildebrand v. State Bar of Cal.*, 225 P.2d 508, 519–20 (Cal. 1950).

73. *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 625, 639 (1995) (wherein the majority focused on protecting the privacy rights of accident victims and the reputation of the Bar, and Justice Kennedy, in dissent, criticized the majority for reducing First Amendment protection for those most in need of information about legal services and stating "direct solicitation may serve vital purposes and promote the administration of justice . . ."); David L. Hudson, Jr., *Attorney Advertising in The Litigators and Modern-Day America: The Continued Importance of the Public's Need for Legal Information*, 48 MEM. L. REV. 959, 975 (2018) (summarizing the break from the practice of broad allowance of lawyer advertising).

74. *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978).

75. *Id.* at 464–65 (determining it was an ethical violation for a lawyer, trained in persuasion, to solicit unsophisticated, injured, or distressed prospective clients in-person).

other cases.⁷⁶ For instance, the majority in *Bates v. State Bar of Arizona*⁷⁷ upheld the right of lawyers to advertise to make legal services more accessible to the public and improve the administration of justice.⁷⁸ Bar associations adopted rules allowing some promotional activity by lawyers,⁷⁹ and the ABA adopted a less restrictive rule that allowed broad lawyer advertising except for false or misleading communication.⁸⁰ This debate has transitioned to new digital considerations—lawyer advertising via chat rooms, social media, text messages, and electronic media advertising—that have been noted by the Association of Professional Responsibility Lawyers’ (APRL) Regulation of Lawyer Advertising Committee.⁸¹

Digital platforms are the next consideration in the evolution of lawyer advertising in the United States. This history and a recent flurry of state-specific restrictions sits at the intersection of two broader phenomena. First, it validly illustrates that current lawyer-advertising restrictions are outdated. While lawyer advertising was traditionally limited to overreaching, in-person interaction, an array of new communication mechanisms has begun to shape the interactions and conduct between lawyers and prospective clients in interactive and innovative ways. Indeed, many of the most formidable obstacles to access to justice—including matching a lawyer with the legal need and comprehension of the legal need itself—can be eased by a digital platform.⁸² Second, lawyer advertising policies have underscored the status of digital technologies as the new engines of lawyer advertising. Digital-based lawyer advertising extends far beyond the traditional advertising context and allows a multitude of communication practices that comprehensively engage with potential clients and provide just-in-time benefits. A few innovative companies are setting

76. Hudson, *supra* note 73, at 973–75.

77. *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977).

78. *Id.* at 377–78; MYERS FREELANCE, *The Beginning of Legal Advertising – Bates v. State Bar of Arizona* (Oct. 20, 2015), <https://www.myersfreelance.com/the-beginning-of-legal-advertising-bates-v-state-bar-of-arizona/> (discussing that the U.S. Supreme Court decision in *Bates* ruled that a ban on lawyer advertising was an unconstitutional violation of free speech, and in so doing, opened-up the opportunities for law firms to advertise their services to the public and provide quality legal representation to those who need it the most).

79. Hazard, *supra* note 68, at 1094 (discussing the revised Model Code of Professional Responsibility on the Evaluation of Professional Standards).

80. MODEL RULES OF PRO. CONDUCT r. 7.1, 7.2 (AM. BAR. ASS’N 1983) (describing that a lawyer could advertise in the public media if they do not communicate false or misleading information).

81. See ASS’N OF PRO RESPONSIBILITY LAWYERS, 2015 REPORT OF THE REGULATION OF LAWYER ADVERTISING COMMITTEE 3, 20, 22 (suggesting that the current rules are based on ads in print, business cards, mailers, and other traditional forms of advertising, such that the rules in most jurisdictions are “outdated and unworkable in the current legal environment and fail to achieve their stated objectives.”); See ASS’N OF PRO RESPONSIBILITY LAWYERS, 2016 SUPPLEMENTAL REPORT OF THE REGULATION OF LAWYER ADVERTISING COMMITTEE (April 26, 2016) (suggesting that most of the current restrictions on solicitation in the lawyer advertising rules as well as the underlying public policy at play are based primarily upon lawyers approaching prospective clients in a face-to-face encounter without regard to today’s digital world of electronic communications).

82. James E. Cabral, Abhijeet Chavan, Thomas M. Clarke, John Greacen, Bonnie Rose Hough, Linda Rexer, Jane Ribadeneyra & Richard Zorza, *Using Technology to Enhance Access to Justice*, 26 HARV. J.L. & TECH. 241, 243–44, 256 (2012).

the stage for a new form of lawyer outreach beyond the traditional context that opens the door to some new forms of advertising.⁸³

B. *Unauthorized Practice of Law*

Digital technology reduces the barriers for the practice of law and turns the focus of legal capabilities away from lawyers. Examples include digital tools that help create legal documents, questionnaires that generate legal documents, do-it-yourself kits that assist in the preparing and filing of legal documents in routine legal cases, interactive tools that assist in conducting legal research, and tools that actually file legal documents with courts and administrative agencies.⁸⁴ However, LegalZoom, a digital platform with such capabilities, is facing a number of unauthorized practice of law challenges.⁸⁵ While the practice of law has been about what lawyers do, the advent and proliferation of these digital tools have created gray areas that raise questions concerning the unauthorized practice of law.

The development of the law and the legal system in the United States has required that lawyers be licensed to practice law, thus excluding other service providers from giving intelligent advice if referencing legal concerns.⁸⁶ Lawyers have governing authority over other lawyers and what can or cannot be considered the practice of law. Certain central characteristics of this reality have raised barriers to innovation. First, the definition of the “unauthorized practice of law” has been incoherent, vague, and conclusory. Second, there has been little accountability and significant gaps in enforcement of the unauthorized practice of law due to rulings by those favoring anticompetitive interests.⁸⁷ Third, there have not been many unauthorized practice of law cases due to the lack of focus on public interest, except for those involving digital tools, further centering the attention towards digital cases.⁸⁸ These characteristics have both raised gray areas and brought digital technologies to the forefront of the discussion. Thus, the unauthorized practice of law is ripe for attention and reevaluation with the emerging digital platforms for legal services.

This controversy stems from digital platforms’ capabilities and infrastructure that can provide personalized advice to consumers without lawyer input or with limited lawyer input. Similar to healthcare service digital tools that provide diagnoses or suggestions based on a user’s input of health conditions, digital platforms with legal assistance chat bots can

83. Examples of such innovative legal tech startup companies that are developing new ways of matching consumer needs with lawyers’ expertise include Atrium, AppearMe, LawChamp, Marble, Paladan, VikkAI, Xira. See Linna, *supra* note 18.

84. Deborah Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 *FORDHAM L. REV.* 2587, 2602 (2014).

85. McClure, *supra* note 37, at 573 (discussing several cases where unauthorized practice of law claims have been brought against online legal providers).

86. Rhode, *supra* note 84, at 2589.

87. Gillian K. Hadfield, *Legal Barriers to Innovation: The Growing Economic Cost of Professional Control Over Corporate Legal Markets*, 60 *STAN. L. REV.* 101 (2008); Rhode, *supra* note 84, at 2605.

88. Rhode, *supra* note 84, at 2605–06.

give legal recommendations or guidance with no or minimal input from a lawyer. Digital platforms for legal services can provide personalized advice and promote reliance by consumers in a way that can be problematic for legal ethics and professional responsibility when it appears as the practice of law.

Digital platforms becoming a substitute for legal advice and legal services creates a gray area within the unauthorized practice of law. As such platforms become more communicative, more personalized, more able to intelligently respond to consumer queries, and more prone to build trust and reliance with a consumer, the closer the appearance of unauthorized practice of law becomes. Digital platforms can deliver useful legal advice and assistance with legal services and as a result, change the realities of how consumers are seeking and engaging in legal representation.⁸⁹ Part III explores these developments with greater normative depth.⁹⁰

C. Lawyer Referrals

Digital platforms assist with interactions between lawyers and consumers, but also between lawyers and lawyers. One advantage to digital platforms is providing ease with referrals and fee splitting among lawyers. Cooperation between lawyers has long been part of U.S. law practice, which permits a division of fees to a certain extent, such as via a “finder’s fee” or a “forwarding fee.”⁹¹ Fee splitting among lawyers happens when one lawyer meets with a client and after some discussion, advises the client to engage the services of a second lawyer through a recommendation or referral.⁹² Legal ethics and professional responsibility concerns arise when the first lawyer enters into an agreement with the second lawyer to receive some portion of the fees collected by the second lawyer without much (or any) contact or representation.⁹³ The Model Rules of Professional Conduct and the ABA dictate that a lawyer who does not put in adequate effort in a referral fee arrangement to split fees should not receive compensation.⁹⁴ While such fee splitting arrangements that produce revenue for the referring lawyer (even if the agreed upon fee is not commensurate with the legal work or lack thereof performed) exist in the United States, there are

89. Joyce E. Cutler, *California Bar, LegalMatch Settle Lawsuit Over Legal Advice*, BLOOMBERG L. (August 22, 2022), <https://news.bloomberglaw.com/legal-ethics/california-state-bar-legalmatch-settle-case-over-legal-advice>.

90. See *infra* Part III.

91. V. COUNTRYMAN, T. FINMAN & T.J. SCHNEYER, *THE LAWYER IN MODERN SOCIETY* 206 n. 1 (2d ed. 1976); G. GREENWOOD & R.F. FREDERICKSON, *SPECIALIZATION IN THE MEDICAL AND LEGAL PROFESSIONS* 137 (1964); R. ARONSON, *ATTORNEY-CLIENT FEE ARRANGEMENTS: REGULATION AND REVIEW* 59 (Federal Judicial Center 1980); Thomas J. Hall & Joel C. Levy, *Intra-Attorney Fee Sharing Arrangements*, 11 VAL. U. L. REV. 1, 2 (1976).

92. MODEL RULES OF PRO. CONDUCT r. 5.4 (AM. BAR. ASS’N 1983).

93. See *Moran v. Harris*, 131 Cal. App. 3d 913, 921–22 (1982) (expressing a concern for referral fees when the lawyer has performed no work on the client’s behalf).

94. MODEL CODE OF PRO. RESP. DR 2-107 (AM. BAR ASS’N 1980); MODEL RULES OF PRO. CONDUCT r. 1.5(e) (AM. BAR. ASS’N 1983).

additional tensions when the lawyers in such arrangements work in different states that have differing case precedent and interpretative scope.⁹⁵

Digital platforms increase the propensity for such tensions with the ease, quickness, and potential anonymity of digital communication. For instance, lawyers on the same platform can more easily or discretely reach an agreement to split fees through shadow networks or referral fee transactions among lawyers. Digital platforms can mask how fees are split between lawyers or make fee splitting quicker or on greater scale, such that a client may not know the extent or the basis of sharing of fees. The public policy aim of promoting and respecting confidence in the legal profession suggests clients should consent and have knowledge of such arrangements.⁹⁶

State bars and courts have reached various conclusions about fee splitting arrangements, and digital platforms for legal services potentially magnify these gray areas. Some may raise concerns that digital platforms for legal services will cause lawyers to engage in fee splitting at a greater scale, such that some lawyers become brokers or focus on referrals without desire to perform legal services, whereas others will praise the increased market-driven potential.⁹⁷ The striking anonymity, ease, scale, and speed of fee-splitting arrangements on digital platforms for legal services sheds new light on legal ethics and professional responsibility considerations. Part III explores these developments through greater normative depth before turning to its prescriptive agenda of a co-regulation model.⁹⁸

III. NORMATIVE ASSESSMENT AND PRESCRIPTIONS FOR IMPROVING JUSTICE TECH

Having examined the advent and proliferation of digital platforms for legal services and their implications for advertising, unauthorized practice of law, and referral fees, important questions arise: What should be done? What is a suitable proposal and its underlying rationale? Accordingly, this Part engages in a normative evaluation of legal ethics and professional responsibility considerations with digital platforms for legal services. Indeed, much is at stake here, for the shape of technology innovation for access to justice—termed “Justice Tech”—can offer many benefits for consumers, society, and lawyers.

This Part argues that legal ethics and professional responsibility codes are inadequate for digital technology innovation (specifically in the

95. See Sheryl Zeligson, *The Referral Fee and the ABA Rules of Model Conduct: Should States Adopt Model Rule 1.5(e)?*, 15 FORDHAM URB. L.J. 801, 803 n.18 (1987) (discussing the various approaches states have taken regarding referral fees).

96. *Chambers v. Kay*, 56 P.3d 645, 655 (Cal. 2002).

97. Ji-In Lee Houck, *Is Your Referral-Fee Agreement Ethical and Enforceable?*, ADVOC. MAG. (March 2021), <https://www.advocatemagazine.com/article/2021-march/is-your-referral-fee-agreement-ethical-and-enforceable>.

98. See *infra* Part III.A., Part III.B., Part III.C.

form of digital platforms for legal services), leaving personal plight consumers without the full range of avenues to access justice and leaving lawyers without full utilization to serve client needs. In this regard, it is useful to strike the delicate normative balance between consumer protection and market-driven rationales.⁹⁹ This Part argues for broadening the interpretation and scope of legal ethics and professional responsibility codes while tempering excessive behaviors to enhance access to justice and drive Justice Tech innovation.

A. Expanding Lawyer Advertising on Digital Platforms

How should we regard the choices and advertising mechanisms of digital platforms? Rather than attempting to assess the merits and pitfalls of particular digital platform policies or practices, this Article attempts to justify digital, platform-based lawyer advertising and define its characteristics while serving Justice Tech aims.¹⁰⁰ The expansion of lawyer advertising is critical to enhancing Justice Tech, given the disproportionate power dynamics between consumers and lawyers in personal plight legal services. As explained above, however, state rules of professional conduct that restrict lawyer advertising can limit the advancement of digital platforms for legal services and access to justice.¹⁰¹

As such, the current framework for the regulation of lawyer advertising would benefit from greater breadth and granularity to drive the innovative potential of digital platforms. This Article proposes a framework for the ABA to modify lawyer advertising in Rule 7.2¹⁰² concerning communication about a lawyer's services:

- (1) expanding the interpretation of Rule 7.2 about communications concerning a lawyer's services by:
 - (a) incorporating a software as a service (SaaS) payment plan under Rule 7.2(b)(1) and 7.2(b)(2); and
 - (b) applying a broad interpretation of specialist certifications, based on the dynamics of digital platforms for legal services; and
- (2) expanding the interpretation of Rule 7.2 to include the definition of a lawyer being a specialist in the law through allowing consumer input

99. An aim is to examine legal ethics and professional responsibility, along with public interest theories of regulation to describe existing constraints with and potential expansion of digital platforms for legal services. An important consideration in building greater flexibility into the law and regulation of digital platforms is sociotechnical analysis that aims to locate where there can be flexibility among legal ethics and professional responsibility codes. See Shmuel I. Becher & Oren Bar-Gill, *Consumer Protection*, in *THE ECONOMIC APPROACH TO LAW* 2-3 (Uriel Procaccia ed., 2012).

100. On the one hand, we should be encouraged that digital platforms are becoming more mindful of their advertising policies and are taking steps to address matters of real concern to their users, state bars, and the ABA. On the other hand, there is ample room for skepticism about digital platforms and a perception that behavioral controls are prevalent and yet not enough being done to discourage their application.

101. See *supra* Part II.A.

102. MODEL RULES OF PRO. CONDUCT r. 7.2 (AM. BAR ASS'N 1983) (articulating the proper parameters of a referral arrangement and the limited ways a lawyer can call themselves a specialist in a particular area).

via ratings and reviews.

This proposal would maintain the current approach to regulating lawyer conduct and protecting the public. However, it would also vastly advance the legal profession's efforts to move into the future and support the Justice Tech movement.¹⁰³

First, this Article proposes expanding Rule 7.2 about communications concerning a lawyer's services by some meaningful interpretation but not excessive modification of Rules 7.2(b)(1) and 7.2(b)(2). Specifying whether SaaS-based payment plans would qualify as a permissible form of payment and as a qualified lawyer referral service would promote the expansion of different digital business models for lawyer advertising. Potential innovators would develop new forms of digital payments, referral agreements, and legal service plans, making it easier for lawyers to pay for advertising and receive payment for legal services. For example, this expansion in payment mechanisms for recommending a lawyer would help alleviate limited options for fee-based lawyer recommendations that are currently limited to a per advertisement basis. By increasing the scope of payment plans to include SaaS-based payment models while maintaining the reasonableness requirement of payment, the number of lawyers that would be able to advertise through digital channels would increase.¹⁰⁴

Second, an expansion of Rule 7.2 about communications concerning a lawyer's services should be coupled with broad interpretation of specialist certifications, such as those supported by consumer ratings and reviews. The existing explanation of specialists in Rule 7.2(c), which is clarified further in Comment 9, limits the lawyer's communication to the "lawyer's experience, specialized training or education," while permitting the "lawyer to communicate that the lawyer does or does not practice in particular areas of law."¹⁰⁵ Some might question whether broad interpretation of a lawyer's specialties would be difficult to monitor for ethical and professional responsibility violations and would dissuade consumers from utilizing digital paradigms that convey specialties (such as digital directories and digital legal marketplace platforms). At one end of the spectrum, too much latitude on lawyers' communications about their specialties would err towards prohibited false and misleading communications. At the other end of the spectrum, too much restriction on lawyers' communications about their specialties would prohibit mass communication and would restrict lawyers from promoting newly developed capabilities.

103. Anjanette H. Raymond & Scott J. Shackelford, *Technology, Ethics, and Access to Justice: Should an Algorithm Be Deciding Your Case?*, 35 Mich. J. Int'l L. 485, 486–87 (2014).

104. This is particularly probable given that many personal plight lawyers are far more likely than corporate client lawyers to utilize SaaS-based payment plans for advertising to consumers.

105. MODEL RULES OF PRO. CONDUCT r. 7.2(c) cmt. 9 (AM. BAR ASS'N 1983) ("A lawyer is generally permitted to state that the lawyer 'concentrates in' or is a 'specialist,' practices a 'specialty,' or 'specializes in' particular fields based on the lawyer's experience, specialized training or education, but such communications are subject to the 'false and misleading' standard applied in Rule 7.1 to communications concerning a lawyer's services.")

The toll of restriction and narrow interpretation would obviously be greater in specialties where barriers to entry are minimal and lawyers can more easily develop the capability. For lawyers who seek to communicate capabilities in areas with minimal barriers of entry, Rule 7.2(c) should give wider latitude. For instance, general civil litigation should be given wide latitude as a specialty that can be practiced by many litigation or nonlitigation lawyers. In specialties with greater barriers of entry, however, more substantial restriction would be possible with verification of a certifying body. Thus, for instance, patent prosecution (or the interaction between inventors, who are represented by patent lawyers and patent agents, and patent examiners) should be given narrow interpretation because only those with a verifiable registration can practice in front of the United States Patent & Trademark Office.

A ratings and review system, such as one enabled by a digital platform for legal services, would provide an additional evidence-based mechanism for supporting a lawyer's concentration or specialty.¹⁰⁶ If a digital platform for legal services is to meaningfully enable Justice Tech, it should go further than just providing lawyers with a means to communicate their specialties by also allowing consumers to verify such specialties via ratings and reviews that are based on their experiences with engaging the lawyer and attaining legal services.

B. Limiting Unauthorized Practice of Law on Digital Platforms

In addition to expanding lawyer advertising, this Article argues for a more expansive application of the practice of law (or for limiting the interpretation of unauthorized practice of law) in a digital environment. It advocates for a framework that promotes communication by matching consumers with appropriate lawyers.

Justice Tech would not consider digital platforms for legal services as practicing law, but instead as facilitating more appropriate connections that better enable the practice of law by a lawyer. Digital platforms for legal services should not be considered a digital tool, which in some cases have been considered as engaging in the unauthorized practice of law.¹⁰⁷ As commentators have argued, the use of new digital technologies to create new types of business models for legal services cannot and should not be considered as unauthorized practice of law when they help to increase

106. See generally Jens Dammann, *Electronic Word of Mouth and Consumer Protection: A Legal and Economic Analysis*, 94 S. CAL. L. REV. 423, 423, 425–27, 434–35 (2021) (explaining the need and impact of consumer reviews and the economics of consumer protection, while also describing potential biases, flaws, and fundamental challenges of consumer reviews); Eric Goldman, *The Regulation of Reputational Information*, in THE NEXT DIGITAL AGE: ESSAYS ON THE FUTURE OF THE INTERNET (Berin Szoka & Adam Marcus eds., 2010) (suggesting that well-functioning marketplaces depend on reputational information); Sofia Ranchordás, *Online Reputation and the Regulation of Information Asymmetries in the Platform Economy*, 5 CRITICAL ANALYSIS L. 127 (2018) (pointing out that ratings and reputational information is increasingly important to the platform economy).

107. Michael Risch & Mike Viney, *The Way Lawyers Worked*, 90 U. CIN. L. REV. 822 (2022); Shipman, *supra* note 36, at 955; McClure, *supra* note 37, at 584.

access to justice.¹⁰⁸ A conclusion that digital platforms for legal services constitutes the unauthorized practice of law would return the legal profession to only providing limited assistance in specific fields. Among other considerations, we should welcome facilitating consumer choice and addressing the urgency of unmet needs.¹⁰⁹

Notably, the ABA's Commission on the Future of Legal Services has stated that the legal profession must embrace technology to help bridge the justice gap.¹¹⁰ A narrower conception of the unauthorized practice of law should promote the efforts of disruptive innovators simulating market transformation in legal services while still being able to curtail unethical and unqualified lawyers. Take, for example, digital platforms for legal services that facilitate communication—such as providing newsfeeds from lawyers, law requests from consumers seeking legal services, or chats between lawyers and consumers—as mechanisms to initiate contact and interaction. From an unauthorized practice of law standpoint, such digital platforms are not performing legal services but are serving as agents that facilitate and intermediate interactions that lead to securing engagement of legal services.¹¹¹ All else being equal, intermediation is not the performance of a legal service or helping to perform the legal service.¹¹²

C. Accommodating Lawyer Referrals on Digital Platforms

In addition to expansive lawyer advertising and practice of law interpretations, this Article also suggests substantively expanding fee splitting via lawyer referrals. As noted, fee splitting through lawyer referrals are magnified through ease of communication among lawyers on digital platforms for legal services.¹¹³ In a variety of ways, lawyer referrals are necessary for identification of and access to appropriate representation for

108. Rhode, *supra* note 84, at 2588 (“[U]nauthorized-practice law needs to increase its focus on the public rather than the profession’s interest and that judicial decisions and enforcement practices need to adjust accordingly.”); Shipman, *supra* note 36, at 955 (arguing for updating unauthorized practice of law statutes to be friendlier to companies that provide new digital tools when they “help increase access to civil justice” and for “the current legal economy [for which] many people who have legal needs are unable to find appropriate legal services”); McClure, *supra* note 39, at 584 (suggesting that forbidding LegalZoom to operate in Kentucky would decrease legal access in an already underrepresented area).

109. Rhode, *supra* note 84, at 2608.

110. AM. BAR ASS’N COMM’N ON THE FUTURE OF LEGAL SERVS., REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 37 (2016); Katelyn N. Ringrose, *Law and Technology: Online Legal Services that Help Bridge the Access-to-Justice Gap*, 1 NOTRE DAME J. EMERGING TECH. 326, 327, 338 (quoting REPORT ON THE FUTURE OF LEGAL SERVICES, *supra* note 110, regarding innovations necessary to provide greater access to legal services).

111. Digital tools, which provide active document and associated services, are unlike digital platforms (for legal services), which are intermediaries.

112. Of course, much depends on the particular facts, as even some digital platforms for legal services may provide digital tools or rely on capabilities embodied in digital tools, in which case the balance may favor unauthorized practice of law. This would particularly be the case if the digital platforms for legal services would collaborate with or engage with a digital tool provider. In such cases, the unauthorized practice of law calculus would weigh in favor of restricting the digital tool’s application. More generally, society should consider the objective of the digital platforms for legal services and focus on facilitating consumer-lawyer interactions.

113. See *supra* Part II.C.

consumers who may lack access to justice.¹¹⁴ As noted, fee splitting between lawyers in different states can raise jurisdictional interpretative challenges.¹¹⁵ Digital platforms for legal services can increase the propensity of such fee splitting arrangements with the ease, quickness, and potential anonymity of digital communication (thereby further magnifying interpretative challenges among multiple jurisdictional use).¹¹⁶

Drawing on the inherent characteristics of digital platforms, this Article suggests that reforming fee splitting to expand reach and communication among lawyers is necessary for effective access to justice.¹¹⁷ This reform would give consumers a system of distributed lawyers to offer necessary legal services, even if the first point of contact was unsuccessful. The network effort effectuated through adding referring lawyers would reach broader points of accessing justice.¹¹⁸ Such expansive networks would likely provide potential outlets for consumers to find on-demand legal services—a much more difficult task before the advent of digital platforms for legal services.

D. Towards a Co-Regulation Model

This Article's suggested reforms address the impacts of digital platforms for legal services. In many ways, the existing legal ethics and professional responsibility codes are already sensitive to technological change and ripe for assessment.¹¹⁹ For example, recent technological advancements in artificial intelligence and machine learning, blockchain, mobile payments, smart contracts, and other digital technologies have suggested the need for expansive interpretation of legal ethics and professional responsibility codes. These technologies have already forced consideration of how long-ago developed laws should respond to technological change.¹²⁰ Consistent with technological disruption in legal services, the suggested proposal for lawyer advertising, unauthorized practice of law, and fee shifting via referrals presents a debate about the tradeoffs between regulation and market-driven approaches.¹²¹ However,

114. Heather M. Field, *Complicity by Referral*, 31 GEO. J. LEGAL ETHICS 77, 121 (2018).

115. Sam Skolnik, *ABA Sides Against Opening Law Firms Up to New Competition*, BLOOMBERG L. (Aug. 9, 2022), <https://news.bloomberglaw.com/daily-tax-report-international/abasides-against-opening-law-firms-up-to-new-competition?context=article-related> (suggesting some challenges with allowing the sharing of legal fees); Shari Klevens & Anna Clair, *New Entities on the Block: Lawyers Allowed to Enter Ownership Agreements with Nonlawyers in Some Jurisdictions*, LAW.COM (Dec. 5, 2022), <https://www.law.com/dailyreportonline/2022/12/05/new-entities-on-the-block-lawyers-allowed-to-enter-ownership-agreements-with-nonlawyers-in-some-jurisdictions/>.

116. Zeligson, *supra* note 95; Houck, *supra* note 97.

117. Garth, *supra* note 3; Daniel A. Hanley, *A Topology of Multisided Digital Platforms*, 19 Conn. Pub. Int. L.J. 271 (2020).

118. Jason Tashea, *The Justice System as a Digital Platform*, THE COMMONS (September 30, 2020), <https://wearecommons.us/the-justice-system-as-a-digital-platform/>.

119. See generally Andrew M. Perlman, *Towards the Law of Legal Services*, 37 CARDOZO L. REV. 49, 51 (2015) (discussing the changes to legal ethics regulations that have been and still need to be made because of technology).

120. Ronald L. Akers, *The Professional Association and the Legal Regulation of Practice*, 2 L. & SOC'Y REV. 463, 464 (1968).

121. See *supra* Part III.A, Part III.B, and Part III.C.

this response to proliferation of digital platforms for legal services would uniquely offer several benefits for access to justice.

As such, this Part argues for orienting the debate towards a balanced approach that considers both maintenance of legal ethics and professional responsibility in a digital environment and reduction of barriers that restrict lawyers' ability to communicate and assist consumers.¹²² A co-regulation approach by both government and private regulators (in the case of legal services, being state bars and the ABA) would consider the potential impact of digital platforms (or broadly digital technologies) while balancing government interests in consumer protection, access to justice, and private regulators' interests in maintaining standards for lawyers and expanding their ability to seek and represent consumers.¹²³

Although this Article's primary aim is to describe digital platforms' implications and normative assessments on legal ethics and professional responsibility codes, some related, introductory regulatory considerations are in order.¹²⁴ The industry insights presented here raise concerns about the regulation of digital platforms in general and more specifically, about digital platforms pertaining to the legal profession and legal services. Of course, the optimal regulation or lack thereof for digital platforms varies based on industry and is likely to depend on the particularities of application or sub-field.¹²⁵ That being said, while there is little research into the amount and kind of regulation of digital platforms, exploratory research on their regulation (or lack thereof) can influence their innovation, access to justice, and public policy regulating professional legal practice.¹²⁶

Although a comprehensive account of the degree of regulation of digital platforms for legal services (or even digital platforms in general) lies beyond the scope of this Article, a few options are in order and worthwhile for exploration.¹²⁷ The extent to which regulation is warranted depends

122. A variety of potential strategies may be possible. One potential strategy is a market-based approach, which entails allowing digital innovations to progress naturally to automatically promote economic growth. Such a market-driven approach presumes that digital platform companies are the most capable in foreseeing and evaluating risks to emerging digital platforms and would have a vested interest in addressing such risks to motivate the optimal development of innovation. Another approach would be a more interventionist approach, where through regulation, private entities would need to adopt specific rules and standards aimed at mitigating current or anticipated risks associated with the digital technology. While there are challenges to finding relevant and suitable legal frameworks in rapidly advancing digital technology applications, regulation aims to ensure safety and mitigate harm by overseeing activities and practices of digital platform companies which are incentivized through compliance.

123. THYME BURDON, *THE ROLE OF ONLINE MARKETPLACES IN ENHANCING CONSUMER PROTECTION, GOING DIGITAL 7* (OECD 2021), https://goingdigital.oecd.org/data/notes/No7_ToolkitNote_ConsumerProtection.pdf.

124. *See supra* Part II.A, Part II.B, Part II.C, Part III.A, Part III.B, Part III.C.

125. GLEN HEPBURN, *ALTERNATIVES TO TRADITIONAL REGULATION* 6, 35 (OECD 2007); LUIGI ZINGALES & FILIPPO MARIA LANCIERI, *STIGLER COMMITTEE ON DIGITAL PLATFORMS: POLICY BRIEF 7-9* (2019), <https://www.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler-center.pdf>.

126. Elettra Bietti, *A Genealogy of Digital Platform Regulation*, 7 *GEO. L. TECH. REV.* 1, 1, 3 (2023).

127. In the context of emerging digital technologies and the uncertainty with its advancement

largely on the normative aims and ideological commitments of digital platform regulation, which are contested and evolving, and also on the regulation of the legal profession, which has been assessed more throughout history. For instance, the Chicago school perspective, which has largely prioritized competition, competing prices, and consumer welfare, seems to favor the regulation of digital platforms by virtue of the perceived propensity to become monopolies.¹²⁸ As applied to legal services, if a digital platform gained market power when it prevented market entry and had behavioral biases, then the impetus for regulatory intervention would be warranted. Indeed, this emphasis on consumer welfare and potential for behavioral control of consumers may help explain general momentum towards regulation of digital nudging.¹²⁹ But other scholars have posited alternatives to traditional regulation, particularly as it applied to professions, which have typically had self-regulating professional associations that promulgate standards of practice or codes of ethics.¹³⁰ In such cases, professional codes of conduct were developed jointly with the industry, regulators, or other stakeholders in ways that combined an industry's technological expertise with regulators' commitment to user protection and legal compliance.¹³¹

While arguments for regulation of digital platforms center on the potential for monopolization by a single company, these arguments have less merit when digital platforms are applied to professional services. Notably, regulation of professional services is different from neoclassical abstractions of firms and markets, since production of professional services in the marketplace is influenced by professional associations.¹³² For example, empirical studies on advertising in legal services point out that reduction in regulation is beneficial to consumers and can provide search cost savings.¹³³ Yet there is an appropriate balance between protecting consumer welfare and preventing opportunism against consumers, along with considering a wide range of clients and interests in the market for legal services.¹³⁴ As such, the effect of regulation on competition in legal services is complicated.¹³⁵

and adoption, there are two imperatives that are typically explored. One extreme seeks to promote innovation with the aim of boosting economic growth. One other extreme seeks to temper the innovation while being mindful of potential risks to society by enacting regulation. Another alternative, which is the normative aim of this Article, is to balance the rapidly advancing technology without risking substantial or irreversible harm in society.

128. Zingales, *supra* note 125.

129. Stemler, *supra* note 21.

130. FEDERAL TRADE COMMISSION, *supra* note 66, at 1.

131. Akers, *supra* note 120.

132. Arruñada, *supra* note 67, at 5.

133. Renee Newman Knake, *The Legal Monopoly*, 93 WASH. L. REV. 1293, 1321–29 (2018); Laurel A. Rigertas, *The Legal Profession's Monopoly: Failing to Protect Consumers*, 82 FORDHAM L. REV. 2683, 2683–85 (2014); Alessandra Caron, *The Legal Profession Between Regulation and Competition* 31–33, 67 (2008) (LL.M. thesis, Erasmus University in Rotterdam).

134. Akers, *supra* note 120.

135. Alessandra Caron, *The Legal Profession Between Regulation and Competition* 40 (2008) (LL.M. thesis, Erasmus University in Rotterdam).

Even with the typical occupational licensing laws and self-regulating professional associations, there may need to be further regulation to avoid potential consumer harm and maintain quality of professional services.¹³⁶ In the context of digital platforms, what is the degree of regulation that should balance access and delivery of legal services, competition among legal service providers, and quality of services afforded to consumers? There has been little research on the amount and type of regulation of digital platforms.¹³⁷ But there should be exploratory research on the role of public policy regulating digital platforms for legal services.¹³⁸ One key inquiry is whether traditional regulation for digital platforms for legal services is the best course of action and, if not, what form of regulation may be appropriate.¹³⁹

Given the emerging landscape of digital platforms for legal services and the absence of any one dominant regulatory scheme for them, the tone and content of the regulation could either foster their development or hinder innovation. Countering the challenges and vulnerabilities of each government-driven regulation and legal, industry-driven self-regulation requires a co-regulation approach.¹⁴⁰ Designing a co-regulatory model should effectively complement the inherent attributes of the on-demand nature of digital platforms with the optimal level of protection of consumers' interests.¹⁴¹ Co-regulation, in which government and private regulators co-operate in joint institutions, sits between regulation and self-regulation and has been termed "regulated self-regulation."¹⁴² Whereas regulation can involve government setting an allowed level of activity and self-regulation can involve professional groups addressing industry-specific issues, co-regulation entails explicit government involvement in the regulatory framework.¹⁴³

This background suggests that policymakers should instead pursue co-regulatory approaches to digital platforms that explicitly consider the ability of professional groups to set guidelines for lawyers' actions and

136. FEDERAL TRADE COMMISSION, *supra* note 66, at 1.

137. Hans J. Kleinsteuber, *The Internet Between Regulation and Governance*, in SELF-REGULATION, CO-REGULATION, STATE REGULATION 61, 61–62 (Yaman Akdeniz ed., 2004).

138. Caron, *supra* note 135.

139. One consideration of an approach in between a market driven approach and a full government regulation approach is that there could be a risk of regulatory capture, where the industry possessing deeper technical expertise can influence the establishment of rules and standards that serve its own interests. Nonetheless, the alternative of regulation can be difficult in rapidly evolving fields where it is challenging to identify a relevant and suitable legal framework, especially when the impacts of the technology are not well understood.

140. Edward J. Balleisen & Marc Eisner, *The Promise and Pitfalls of Co-Regulation: How Government Can Draw on Private Governance for Public Purpose*, in NEW PERSPECTIVES ON REGULATION 127, 131–34 (David Moss & John Cisternino eds., 2009).

141. Bryant Cannon & Hanna Chung, *A Framework for Designing Co-Regulation Models Well-Adapted to Technology-Facilitated Sharing Economies*, 31 SANTA CLARA HIGH TECH. L.J. 23, 91–96 (2014).

142. Hans J. Kleinsteuber, *The Internet Between Regulation and Governance*, in THE MEDIA FREEDOM INTERNET COOKBOOK 61, 64 (Christian Möller & Arnaud Amouroux eds., 2004).

143. HEPBURN, *supra* note 125.

behaviors on digital platforms while considering how digital platforms may impact consumers. In particular, policymakers should modify regulation aimed at digital platforms in light of differential effects of the application or industry. Not all digital platforms need to be regulated due to concern with potential consumer harm, monopolization, or behavioral biases. For instance, the government can work alongside state bars and the ABA to address blind spots and properly identify when to intervene or refrain conduct when there is no other possible solution.¹⁴⁴ This could be achieved by excluding from digital platform regulation any digital platform for legal services (or professional services platform in general) and allowing those to be regulated by state bars and the ABA. For example, digital platform regulation that could intervene upon licensing requirements, such as has been done for taxi operators, should not apply to digital platforms for legal services, which could be regulated by state bars and the ABA for licensure-related matters for lawyers. By a similar logic, state bars and the ABA should work alongside the government to properly identify where lawyer conduct may be implicated by digital platforms akin to the earlier analysis herein with lawyer advertising and unauthorized practice of law.

Further examination of the promises and pitfalls of co-regulation is warranted, including with integration and institutional design with state bars and the ABA.¹⁴⁵ The principal aim is conceptual in how co-regulation can be pursued as digital platforms for legal services proliferate and as regulation begins to impact digital platforms in general. Such considerations would need further evaluation.

CONCLUSION

Regulation of the U.S. legal profession and digital platforms has been debated by scholars in depth. Both advocates and critics of these debates have recognized that digital technology disruptions create growing legal gray areas that present new issues concerning market-driven and consumer-protection-driven approaches. These debates will continue in our technologically-driven age and are being disturbed by the advent of digital platforms for legal services.

The adaption of legal ethics and professional responsibility codes has not followed the pace of technological innovation. This Article has studied the challenges and tensions with legal ethics and professional responsibility issues of advertising, unauthorized practice of law, and referral fees with the proliferation of digital platforms for legal services. It has analyzed the market-driven and consumer protection-driven tradeoffs that digital

144. For example, codes of conduct can be developed jointly with industry players, regulators, and other stakeholders. The participation of some regulators in the development of predominantly industry-driven governance practices can help to ensure that the objectives of protecting consumers are considered.

145. Balleisen, *supra* note 140, at 129.

platforms for legal services would generate while assessing how to minimize the friction between them. This Article shifts the focus not to the consequences of regulation and market-driven approaches, but rather to a co-regulation approach that can improve the quality of information for legal services search and interaction while leaving room for legal ethics and professional responsibility codes to improve with technological advancement. Hopefully the proposed co-regulation framework will prove helpful to lawmakers as digital platforms' usage proliferates into legal services. In essence, such a co-regulation proposal for digital platforms for legal services—or Justice Tech—can enable access to justice through digital means.