

**LEVERAGING TECHNOLOGY TO DELIVER LEGAL SERVICES**

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I. INTRODUCTION

Online technologies offer innovative ways to deliver legal services. By automating tasks traditionally performed by attorneys and by making legal products available on the Internet, these technologies make legal services more affordable and accessible.<sup>1</sup> For example,

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1. Professor Richard Susskind provides a framework explaining the evolution of legal services, from (1) *bespoke* (individual meetings with attorneys), to (2) *standardization* of

many vendors now offer downloadable bill-of-sale documents.<sup>2</sup> For reasons that will be discussed below, legal service technologies are likely to evolve into fully integrated, multi-sided platforms that automate simple tasks and interface with attorneys for more complex ones. Although these technologies threaten to disrupt traditional models for delivering legal services,<sup>3</sup> they should be embraced by consumers and legal professionals alike.

Part II of this Note discusses the evolution of online legal services. It explores the current landscape through case studies of three companies, investigating how they have employed different business models to benefit the underserved market of low- and moderate-income households. It then discusses several obstacles such companies face. Informed by this analysis, Part III projects the next phase of legal service technologies: multi-sided, quasi-open platforms. Part IV discusses the groups that are most affected by the rise of online legal services — consumers of legal services and legal professionals — and explains why both should embrace these technologies. Part V concludes.

## II. ONLINE LEGAL SERVICE TECHNOLOGIES: A CONTEMPORARY SURVEY

### A. *Origins*

Online legal service technologies began to appear in the mid-1990s, shortly after the advent of the World Wide Web. Originally, they were simplistic databases of legal information that provided viewers with text-based explanations of their legal rights.<sup>4</sup> While such sites offered useful information, users still needed to draft legal forms on their own or with the help of an attorney. Thus, low- and moderate-income households saw little benefit from these technologies in terms of the affordability of legal assistance.

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recurring legal tasks, to (3) internal *systematization* that enhances standardized services, to (4) *packaged* solutions made available to clients, to (5) *commoditization*, at which point the service is available from many vendors at competitive prices. Richard Susskind, *From Bespoke to Commodity*, LEGAL TECH. J., 2006, at 4, 4–7, available at <http://www.legaltechnologyjournal.co.uk/content/view/21/51/>.

2. For an example of downloadable bill of sale forms, see USLegal, Bill of Sale Forms, <http://www.uslegalforms.com/billofsale> (last visited Dec. 20, 2009).

3. According to Clayton Christensen, “[d]isruptive technologies bring to a market a very different value proposition than had been available previously . . . . Products based on disruptive technologies are typically cheaper, simpler, smaller, and, frequently, more convenient to use.” CLAYTON M. CHRISTENSEN, THE INNOVATOR’S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL xv (1997). Online legal service technologies meet this definition.

4. An example of an early player in this field was LawNetCom, Inc. It began operating such an online database in 1995, in conjunction with what would become USLegal. Telephone Interview with Frank Edens, Founder & CEO, USLegal (July 10, 2009).

The next phase in the evolution of online legal services took place near the turn of the new millennium. In 1999, U.S. Legal Forms began offering pre-prepared documents through its website.<sup>5</sup> Standardized legal documents became readily accessible to the public at relatively low costs. Uptake was considerable — for example, MyLawyer.com, Inc. experienced 100% revenue growth in 2003.<sup>6</sup> Myriad players entered the field.<sup>7</sup> This competition had two beneficial implications for consumers of legal services. First, prices of legal forms dropped.<sup>8</sup> Second, a broader range of forms became available.<sup>9</sup> As a result, it became possible for low- and moderate-income households to avoid costly attorney consultations for everything from bills of sale to landlord-tenant agreements to living wills.<sup>10</sup>

Online legal services have become increasingly sophisticated. Rather than offering standardized forms, many sites have begun to provide automated document assembly.<sup>11</sup> Users can now enter relevant information and generate documents better tailored to their specific needs;<sup>12</sup> for example, different customers might require different clauses in a will. Perhaps more importantly, some sites have addressed the fact that not all legal services can be automated and so have begun to integrate attorneys through referral networks.<sup>13</sup> The following in-depth investigation of the current landscape paves the way for a prediction of the next phase in the evolution of online legal service technologies.

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5. *Id.*; see USLegal, U.S. Legal Forms, <http://www.uslegalforms.com/> (last visited Dec. 20, 2009).

6. Richard S. Granat, On-Line Legal Services for Low and Moderate Income Clients: Private Market Solutions to Meeting Legal Needs 3 (June 19, 2003) (unpublished manuscript), available at [http://www.ilagnet.org/conference/general2003/papers/richard\\_granat.pdf](http://www.ilagnet.org/conference/general2003/papers/richard_granat.pdf).

7. See, e.g., ASAP Legal Forms, <http://www.asaplegalforms.com/> (last visited Dec. 20, 2009); 'Lectric Law Library, <http://www.lectlaw.com> (last visited Dec. 20, 2009); Legal & Business Forms, <http://legal-forms-kit.com/freelegalforms.html> (last visited Dec. 20, 2009); Legal Forms Bank.biz, <http://www.legalformsbank.biz> (last visited Dec. 20, 2009); LegalZoom, <http://www.legalzoom.com/> (last visited Dec. 20, 2009).

8. E-mail from Frank Edens, Founder & CEO, USLegal, to author (Oct. 13, 2009, 00:15 UTC) (on file with author).

9. E-mail from Frank Edens, Founder & CEO, USLegal, to author (Aug. 30, 2009, 11:21 UTC) (on file with author).

10. See sources cited *supra* note 7.

11. See, e.g., Rapidocs, <http://www.rapidocs.net/> (last visited Dec. 20, 2009).

12. See *infra* Part II.B.1.

13. See, e.g., USLegal, US Legal Attorney Directory, <http://lawyers.uslegal.com/> (last visited Dec. 20, 2009).

### B. Current Landscape

Three companies at the forefront of online legal services are LegalDocs.com, We The People (“WTP”), and USLegal.<sup>14</sup> Each has adopted a unique business model for reaching its customers and making legal services more affordable and accessible.

#### 1. Basic Business Models

LegalDocs.com provides basic document preparation services at low costs.<sup>15</sup> Alternatively, USLegal offers a comprehensive set of services to its customers with prices varying according to the complexity of the service: basic legal information is provided for free, basic forms and document assistance are provided at low costs, and more complex consultation and advising services are available at correspondingly greater costs.<sup>16</sup> WTP uses a hybrid system for document preparation — it operates not only an interactive website, but also a number of brick-and-mortar retail stores.<sup>17</sup> The website allows users to find the nearest retail location, schedule an appointment, and provide basic information about their legal needs in advance to facilitate the in-person visit.<sup>18</sup>

#### 2. Making Services Affordable

One of the most significant obstacles preventing individuals from seeking legal assistance is the potential for large and uncontrollable costs.<sup>19</sup> Each of these companies combines technological innovations with unique business models to make legal services more affordable. Broadly described, these strategies fall into two categories: the commoditization of legal services and the unbundling of legal services. The commoditization of legal services involves standardizing legal tasks which are easily replicable and packaging these tasks for quick, efficient, and low-cost delivery to consumers.<sup>20</sup> The unbundling of legal services entails breaking down a full-service legal package into

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14. These companies were chosen because they illustrate very different ways technology can be used to facilitate the delivery of legal services. An analysis of diverse empirical examples supplements contemporary technological strategy literature and economic theory, enabling a prediction of how legal service technologies should evolve.

15. See LegalDocs.com, About LegalDocs.com, <http://www.legaldocs.com/about.htm> (last visited Dec. 20, 2009).

16. See USLegal, Inc., About US Legal, Inc., <http://uslegal.com/about/> (last visited Dec. 20, 2009).

17. We The People, We The People: Locations, <http://www.wethepeopleusa.com/locations.asp> (last visited Dec. 20, 2009).

18. See *id.*

19. See Granat, *supra* note 6, at 2.

20. See Susskind, *supra* note 1, at 8.

discrete tasks; the client then is able to purchase only those services that he or she requires.<sup>21</sup>

LegalDocs.com has adopted a simple strategy for making legal services affordable. Of the three websites examined, LegalDocs.com comes the closest to achieving completely commoditized legal offerings. The website does not provide true legal representation or consultation but instead provides its customers with low-cost options for standardized legal forms. At LegalDocs.com, users are not able to consult with a paralegal, nor are they able to obtain a professional review of the documents they prepare. Instead, the website allows users to prepare legal documents in a simple and standardized format.<sup>22</sup>

To use LegalDocs.com's services, customers simply visit the website, select the desired document type, complete the related questionnaire, review the summary, and print or save the final completed document.<sup>23</sup> An impressive level of customization is achieved automatically. The website states that "[t]he documents are priced according to their complexity and the amount of work involved in producing the document and then creating the interactive Question/Result format."<sup>24</sup> Following the initial investment in developing the templates, LegalDocs.com's automated preparation system results in near-zero marginal costs for providing legal services to additional consumers.<sup>25</sup> This results in profits for the company and low-cost services for clients.<sup>26</sup>

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21. See Forrest S. Mosten, *Unbundle Your Practice*, GPSOLO, Oct.–Nov. 2001, at 22, 23 (“In the traditional full-service package, the lawyer is engaged to perform any and all of the tasks [necessary] to meet the demands of the particular case. In unbundling of legal service, the lawyer and client work together to allocate the division of tasks.”).

22. LegalDocs.com, Homepage, <http://www.LegalDocs.com> (last visited Dec. 20, 2009).

23. LegalDocs.com, Introduction, <http://www.LegalDocs.com/intro-s.htm> (last visited Dec. 20, 2009).

24. *Id.*

25. There may be costs associated with updating form documents to reflect changes in the law. However, these costs are likely insignificant, especially when compared to the cost of having an attorney repeat the task for each client.

26. Despite the low price point, pre-packaged legal products can be immensely profitable:

[P]ackaged on-line legal services can give rise to substantial income and profit; indeed, on some occasions, much greater profit than is possible when selling one's time on an hourly basis. The commercial opportunity is this: if a chargeable on-line legal service is developed and is of such value and use to clients that they are prepared to pay . . . for its use, and there are no competitor products, then once the initial investment in the system has been made, all later sales yield funds that are unrelated to the expenditure of time and effort by lawyers.

Susskind, *supra* note 1, at 8.

In fact, LegalDocs.com prepares some documents free of charge.<sup>27</sup> Representative prices for other offerings are \$5.95 for a Bill of Sale or an Automobile Bill of Sale,<sup>28</sup> \$9.95 for a Last Will and Testament,<sup>29</sup> and \$14.50 for an Employment Agreement.<sup>30</sup> As one might expect, LegalDocs.com offers the lowest prices of the three companies studied in this paper; for example, the cost of incorporating a business (exclusive of state filing fees) is \$129 with the aid of LegalDocs.com,<sup>31</sup> \$199 with USLegal,<sup>32</sup> and \$399 with WTP.<sup>33</sup>

USLegal adopts a different approach to controlling customer costs. The company describes its services as a pyramid of increasing complexity, with prices increasing accordingly.<sup>34</sup> As with LegalDocs.com, USLegal offers free legal information through an index of legal topics varying from primers on First Amendment law to the basics of evidence to state-by-state summaries of the law of paternity.<sup>35</sup> This offering is reminiscent of the early online legal service databases.<sup>36</sup> USLegal also provides state-specific forms for basic transactions and legal functions. A bill of sale is available for \$7.50<sup>37</sup> and pre-packaged wills cost \$20,<sup>38</sup> both slightly more expensive than at LegalDocs.com.<sup>39</sup> USLegal also offers a legal document preparation service.<sup>40</sup> Rather than complete a document online, customers submit information and request a specific form. Based upon the information submitted, lawyers create and review the form.<sup>41</sup> This service allows for both a degree of customization beyond automated document assembly and the integration of legal professionals into online legal ser-

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27. LegalDocs.com, Free Legal Forms, <http://www.legaldocs.com/misc-s.htm> (last visited Dec. 20, 2009).

28. LegalDocs.com, Sales Documents, <http://www.legaldocs.com/perso-s.htm> (last visited Dec. 20, 2009).

29. LegalDocs.com, Wills and Trusts, Estate Planning Documents, [http://www.legaldocs.com/ep\\_ind-s.htm](http://www.legaldocs.com/ep_ind-s.htm) (last visited Dec. 20, 2009).

30. LegalDocs.com, Employment Documents, <http://www.legaldocs.com/labor-s.htm> (last visited Dec. 20, 2009).

31. LegalDocs.com, Business Filing Services, [http://www.legaldocs.com/ldc\\_3.htm](http://www.legaldocs.com/ldc_3.htm) (last visited Dec. 20, 2009).

32. USLegal, Incorporation Questionnaire, <https://secure.uslegalforms.com/cgi-bin/survey/questionnaire?US-INC|formsuslegal> (last visited Dec. 20, 2009).

33. Although each franchise can set its own prices, \$399 is considered to be typical for incorporation services. We The People: Frequently Asked Questions, <http://www.wethepeopleusa.com/faq.asp> (last visited Dec. 20, 2009).

34. See USLegal, Consumers and Small Businesses, <http://www.uslegal.com/consumers-and-small-businesses/> (last visited Dec. 20, 2009).

35. See USLegal, Law Digest, <http://lawdigest.uslegal.com> (last visited Dec. 20, 2009).

36. See *supra* note 4 and accompanying text.

37. USLegal, Bill of Sale Forms, *supra* note 2.

38. USLegal, Last Will and Testament — Wills, <http://www.uslegalforms.com/wills> (last visited Dec. 20, 2009).

39. See *supra* notes 28–29 and accompanying text.

40. See USLegal, Legal Form Preparation Services, <http://formsprep.uslegalforms.com> (last visited Dec. 20, 2009).

41. *Id.*

vices. Although pricier than the simple legal forms, these documents remain relatively inexpensive when compared to the cost of hiring a lawyer to complete the process. For example, a tailored will costs \$59.95,<sup>42</sup> and customers can create a general durable power of attorney for \$30.<sup>43</sup>

Perhaps the most innovative service offered by USLegal is its attorney referral system. USLegal refers its customers to full-service lawyers; however, it allows these customers to control their interactions with the lawyers in a number of ways. At the lowest level of interaction, customers have the option of simply submitting a question to USLegal's network of lawyers for \$15.95.<sup>44</sup> Lawyers who respond to customers are paid through the website. Customers are therefore able to receive answers to specific questions directly from a lawyer inexpensively. In addition, USLegal provides "Legal Matter Interview Services," which comprise three distinct services. First, a paralegal or attorney working for USLegal conducts a phone interview with the customer to investigate the nature of the legal issue.<sup>45</sup> Second, a USLegal employee uses the interview and web-based forms to gather the documents and information that a lawyer will need.<sup>46</sup> Third, the employee provides background information to the customer on the nature of the legal issue and what services customer should expect from the lawyer.<sup>47</sup> The notion is that simpler and less expensive legal issues can be handled without the assistance of the lawyer. The lawyer's services will only be required for more complex and sophisticated issues. This is a distinct form of unbundling, whereby a given legal matter is broken into discrete tasks that are handled by different people at different stages: USLegal provides forms and basic information, the customer handles factual matters, and the lawyer is only employed for matters requiring particular expertise or advocacy. Simple or highly replicable tasks are handled by commoditized or highly systematized procedures; attorneys handle more complex tasks in a bespoke manner.

WTP markets itself as an affordable alternative to hiring a lawyer, offering its users savings of 50–70% of lawyers' fees.<sup>48</sup> It targets those who cannot afford to retain a lawyer and those who, though able

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42. USLegal, Last Will & Testament Service, <http://services.uslegal.com/last-will-testament> (last visited Dec. 20, 2009).

43. USLegal, Business Define your Power of Attorney, <http://services.uslegal.com/power-of-attorney/> (last visited Dec. 20, 2009).

44. USLegal, Ask a Lawyer, <https://secure.uslegalforms.com/cgi-bin/survey/questionnaire?US-ASK|uslf> (last visited Dec. 20, 2009).

45. USLegal, Legal Matter Interview Services, <http://www.uslegalforms.com/samples/US/US-LEGALPREP.pdf> (last visited Dec. 20, 2009).

46. *Id.*

47. *See id.*

48. *See* We The People, We The People: Main Page, <http://www.wethepeopleusa.com> (last visited Dec. 20, 2009).

to pay attorneys' fees, seek to minimize costs.<sup>49</sup> As opposed to LegalDocs.com and USLegal, WTP offers assisted "do-it-yourself" document preparation.<sup>50</sup> That is, WTP uses online technology to facilitate the delivery of legal services<sup>51</sup> but does not provide completely automated solutions; customers must instead visit a physical WTP store. While offering fairly low-cost document preparation, WTP is more expensive than its pure-play online competitors. The price differential no doubt stems from the overhead costs associated with maintaining brick-and-mortar retail locations. WTP has made the business calculation that the benefits of a physical presence and the opportunity for personal interaction — and hopefully greater customer satisfaction — outweigh the increased costs associated with physical storefronts. The comparison between WTP and a service such as LegalDocs.com is akin to that between two popular tax preparation services: H&R Block and TurboTax.<sup>52</sup> The purely online company, TurboTax, is less expensive but customers must be more self-reliant; the brick-and-mortar version, H&R Block, offers greater supervision and guidance to customers.

Although LegalDocs.com, USLegal, and WTP have taken different approaches to making legal services more affordable and accessible, each company has encountered obstacles along the way.

### C. Addressing the Obstacles

There are several challenges inherent in providing legal services through the Internet. Most prevalent are the difficulties in ensuring information security, accessing underserved markets, and avoiding liability for unauthorized practice of law. Because of their distinct business models, LegalDocs.com, USLegal, and WTP are affected differently by these hurdles. Each has adopted its own solutions.

#### 1. Privacy and Information Security

Privacy concerns exist for all companies that gather significant confidential information through the Internet. Like other online services, LegalDocs.com, USLegal, and WTP mitigate these problems both through technological means (such as data encryption) and

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49. *See id.*

50. *Id.* ("Do It Yourself . . . Not By Yourself!").

51. In addition to online appointment scheduling, WTP employs technology to allow for remote document assembly via its central processing system. *See* We The People, Franchises: Central Processing Centers, <http://www.wethepeople.bz/franchises.asp#process> (last visited Dec. 20, 2009).

52. Indeed, We The People's business model has been compared to H&R Block's. *See* Carrie Weimar, *DIY Stores Walk Fine Line Between Law Help, Outlaw*, ST. PETERSBURG TIMES, Mar. 19, 2007, at 1B, available at [http://www.sptimes.com/2007/03/19/Southpinellas/DIY\\_stores\\_walk\\_fine\\_.shtml](http://www.sptimes.com/2007/03/19/Southpinellas/DIY_stores_walk_fine_.shtml).



through privacy protection policies. With respect to the latter, these companies differ in the level of protection they provide.

WTP provides its users with two choices: customers can request that no information be shared with outside companies or that certain information not be shared.<sup>53</sup> However, according to the website, “[e]ven if you do tell us not to share, [we] may do so as required or permitted by law.”<sup>54</sup> Moreover, until recently, WTP explicitly reserved the right to provide certain information about its users to other Dollar Financial subsidiaries in order to cross-sell products.<sup>55</sup> Such information included names, addresses, transactions, and survey results.<sup>56</sup>

USLegal employs a stronger privacy policy: “Any and all information you provide will be kept strictly confidential and will not be sold, reused, rented, loaned, or otherwise disclosed.”<sup>57</sup> In addition, website logs are not personally identifiable — they are not linked to the individuals using the site.<sup>58</sup>

LegalDocs.com provides even more protection. Like USLegal, the company asserts that it keeps all of its users’ information (such as names and e-mail addresses) confidential and that it uses this information only for billing purposes.<sup>59</sup> LegalDocs.com states that it will not supply such information to third parties.<sup>60</sup> Furthermore, the company expressly limits retention of its users’ personal information:

[LegalDocs.com does] not save ANY of the information you provide which is necessary to create your legal document. Once you complete your legal document and log off this site, any information you provided regarding your legal document (such as the names of your children in a will, amount of rent payable in a lease, etc.) will be irretrievably LOST. Therefore, once you log off this site, we will not be able to recreate the document for you, NOR will any

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53. We The People, We The People Website Privacy Policy, <http://wethepeopleusa.com/privacy.asp> (last visited Dec. 20, 2009).

54. *Id.*

55. Internet Archive, We The People Website Privacy Policy (Aug. 2, 2008), <http://web.archive.org/web/20080802055510/http://www.wethepeopleusa.com/privacy.asp> (last visited Dec. 20, 2009).

56. *Id.*

57. USLegal, Privacy Policy, <http://www.uslegalforms.com/privacypolicy.htm> (last visited Dec. 20, 2009).

58. *Id.*

59. LegalDocs.com, Privacy Policy, <http://www.legaldocs.com/privacy.htm> (last visited Dec. 20, 2009).

60. *See id.*

person ever obtain any confidential information you provide from our records.<sup>61</sup>

Even the most robust privacy policy, however, is likely to fall short of the privacy offered by a traditional lawyer-client relationship. The attorney-client privilege prevents the compelled disclosure of confidential attorney-client communications as a legal rule, not as a practical convenience.<sup>62</sup> By contrast, communications made through these websites are almost certainly discoverable material. Privacy policies would not prevent a third party from compelling the online legal service company to disclose the user information it collects — the attorney-client privilege does not apply, as communications are not made to an attorney or made in relation to a retained attorney's services.<sup>63</sup> Regardless, the growth of the online legal services industry suggests that clients are willing to sacrifice some degree of privacy in order to reduce the costs of legal services.

## 2. Accessing Underserved Markets

Legal services technologies have struggled to reach their target audiences. To attract traditionally underserved markets, it is necessary to make customers more comfortable with legal services and to ensure that these services are easy to access and use.

All three companies make legal services more easily accessible to consumers. This increased accessibility has several benefits. The first, as discussed above, is that they make legal services more affordable and give customers greater control over costs through unbundling. The second is that these sites allow customers to overcome their fears of dealing with lawyers and the potential complexities of legal issues — mistrust of lawyers and the legal profession is commonly identified as a barrier that prevents individuals from seeking legal assistance.<sup>64</sup> The provision of legal services by these three sites pre-

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61. *Id.*

62. See 81 AM. JUR. 2D *Witnesses* § 361 (2009); 98 C.J.S. *Witnesses* § 316 (2009).

63. See, e.g., *In re Sealed Case.*, 737 F.2d 94, 98–99 (D.C. Cir. 1984) (“The privilege applies only if . . . the person to whom the communication was made [ ] is a member of the bar of a court or his subordinate . . .” (quoting *United States v. United Shoe Mach. Corp.*, 89 F. Supp. 357, 358–59 (D. Mass. 1950))). The privilege extends to non-attorneys only when they are working on behalf of an attorney whom the client has already consulted. See *United States v. Kovel*, 296 F.2d 918, 922 (2d Cir. 1961) (holding that information gathered by an accountant is protected if it is gathered under the supervision of an attorney, after the client has consulted with the attorney, but that information gathered for purposes of legal services is not protected if it is gathered pre-consultation).

64. See Paul D. Healey, *In Search of the Delicate Balance: Legal and Ethical Questions in Assisting the Pro Se Patron*, 90 LAW LIBR. J. 129, 132 (1998); Julie M. Bradlow, Note, *Procedural Due Process Rights of Pro Se Civil Litigants*, 55 U. CHI. L. REV. 659, 661–62 (1988); Eric J.R. Nichols, Note, *Preserving Pro Se Representation in an Age of Rule 11 Sanctions*, 67 TEX. L. REV. 351, 380 (1988).

sents an opportunity for customers to effectively “dip their toes” in the waters of legal services (before, the companies hope, wading in further). The progression of services from simple to complex allows customers to gain comfort with legal assistance at their own pace and to control the scope of both their legal issue and the legal assistance they receive.

LegalDocs.com also facilitates legal services by making them simple to use. Indeed, this is probably LegalDocs.com’s greatest innovation: it provides a streamlined, user-friendly interface and focuses on instantaneously supplying its users with completed documents. Customers simply select the document type, complete the related questionnaire, review the summary, and print or save the final completed document.<sup>65</sup>

WTP’s innovation is to provide a non-lawyer assistant to help prepare legal documents in a comfortable neighborhood setting. Although WTP personnel may not assist the customers in selecting the document to use — providing such advice could constitute the unauthorized practice of law — they may answer customers’ in-person questions about filling out the forms.<sup>66</sup> Moreover, WTP makes a “supervising attorney” available in each of the states in which it operates, from whom clients can request and receive a general overview of the relevant area of law.<sup>67</sup> The supervising attorney does not, however, advise the users on their specific situation.<sup>68</sup>

### 3. Unauthorized Practice of Law

The third major obstacle for online legal services is avoiding charges of unauthorized practice of law. Disciplinary rules and state laws governing the legal profession require that only licensed attorneys perform certain activities.<sup>69</sup> That is, while activities like the preparation of form documents can be performed by paralegals or even be automated in many states, other legal services cannot.

LegalDocs.com attempts to shield itself from this issue by repeatedly making clear to its users that the website does not provide legal advice,<sup>70</sup> that LegalDocs.com is not the user’s lawyer, and that in some situations using the site may not be appropriate and the user

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65. LegalDocs.com, Introduction, *supra* note 23.

66. William Hoffman, *Regulators Pinch Legal Franchise*, DALLAS BUS. J., Sept. 19, 2003, at 1, available at <http://www.bizjournals.com/dallas/stories/2003/09/22/story1.html>.

67. *See id.*

68. *See id.*

69. *See, e.g.*, MODEL RULES OF PROF’L CONDUCT R. 5.5 & cmt. (1983) (forbidding a lawyer from engaging in or assisting another in engaging in the unauthorized practice of law and explaining that the definition of “practice of law” varies across jurisdictions).

70. *See* LegalDocs.com, Introduction, *supra* note 23.

should instead consult an attorney.<sup>71</sup> Similarly, WTP's website contains numerous disclaimers and notices that it is not an attorney, does not provide legal advice, and limits its services to document preparation.<sup>72</sup> USLegal's disclaimer states, "USLegal provides Legal Information which is not legal advice. Legal information informs you of the law and your rights but does not advise you what course of action to take for your situation. Legal advice is what lawyers provide."<sup>73</sup>

Consistent with its approach of offering a pyramid of legal services, USLegal encourages customers with complex problems to consult with a lawyer and provides referrals through its website.<sup>74</sup> Thus, USLegal protects itself against charges of unauthorized practice of law by encouraging consultation with a lawyer when necessary or legally required. USLegal also ensures that access to a lawyer is provided easily and affordably via its website.

### III. LOOKING FORWARD

As online legal service technologies evolve, the players in this space must make three decisions. First, they must decide whether to offer brick-and-mortar locations. Second, they must choose whether to transition from vendors of legal products to truly integrated platforms. Finally, any company operating as a platform must determine how open it will be to outside developers. These decisions will be informed in part by the obstacles discussed above.

#### *A. Online Pure-Play vs. Hybrid Brick-and-Mortar*

Online legal service companies adhere to two different business models with regard to brick-and-mortar infrastructure. The first, adopted by USLegal and LegalDocs.com, is to operate solely through the web. WTP has taken an alternative approach — its website is complemented by physical locations.

On the surface it may seem that brick-and-mortar locations offer certain benefits. A potential drawback to the LegalDocs.com and USLegal model is that it is largely customer driven. In order to use these services, customers must be aware of their legal needs and take

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71. See LegalDocs.com, Disclaimer, <https://www.legaldocs.com/disclaimer.htm> (last visited Dec. 20, 2009); LegalDocs.com, Introduction, *supra* note 23.

72. See We The People, We The People: Legal Page, <http://www.wethepeopleusa.com/legal.asp> (last visited Dec. 20, 2009); We The People: Frequently Asked Questions, *supra* note 33.

73. USLegal, Disclaimer, License, and Liability Limitation, <http://www.uslegalforms.com/disclaimer.htm> (last visited Dec. 20, 2009).

74. *Id.* ("If you have a serious legal problem we suggest that you consult an attorney. U.S. Legal Forms, Inc. does not provide legal advice. The products offered by U. S. Legal Forms, Inc. (USLF) are not a substitute for the advice of an attorney.")

the initiative to address them. The success of the enterprise — and the likelihood of a successful legal outcome — depends in large part upon the wherewithal of the customer. By contrast, physical locations may help remind people that they have a legal issue and that redress or assistance is available.

In addition, some clients are likely to be apprehensive about relying on completely web-based document preparation where there is no person-to-person contact. They may be especially hesitant when confronted with high-stakes legal matters — ironically, the same situations in which legal services are most necessary. WTP has positioned itself in the middle ground between fully automated document preparation and consulting an actual lawyer. It achieves cost savings by providing mainly form-based services but also offers the comfort and expertise of paralegals in its offices, as well as supervising attorneys who are available to review documents or answer general legal questions.

The drawbacks of operating brick-and-mortar locations, however, outweigh these benefits. First, the benefits are less significant than they appear. At the time of publication, WTP only operated thirty-six retail locations in seven states.<sup>75</sup> These locations reach only a small portion of the market for legal services nationwide. In essence, these locations have the advertising capacity of billboards, reaching a far smaller audience than radio, television, or Internet marketing campaigns. Pure-play online legal service companies can employ any of these tactics to raise customer awareness. In addition, compared to LegalDocs.com or USLegal, WTP is less convenient. Users must go to a retail center and cannot complete the document preparation process entirely online. Younger generations have grown up in a world dominated by e-mail, instant messaging, and social networks; they likely will place less value on face-to-face services than their older counterparts.<sup>76</sup> The need for in-person services will further decline as broadband access improves.<sup>77</sup> Thus, operating retail locations offers few advantages, and these advantages are likely to shrink with the next generation of clients.

An even greater problem is cost control. WTP has adopted a franchise model,<sup>78</sup> which may help mitigate direct costs related to rental space, equipment, and employee salaries. The franchisee owner,

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75. See *We The People, We The People: Locations*, *supra* note 17.

76. See RICHARD SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES* 92–93 (2008).

77. As part of the \$7.2 billion broadband stimulus package, the National Telecommunications and Information Administration will receive \$4.7 billion, some of which will be used to award grants to build broadband infrastructure in un- or underserved areas. Marguerite Reardon, *Net Neutrality Gets a Boost from the Feds*, CNET NEWS, July 2, 2009, [http://news.cnet.com/8301-1035\\_3-10278484-94.html](http://news.cnet.com/8301-1035_3-10278484-94.html).

78. Dollar Fin. Corp., Quarterly Report (Form 10-Q), at 7 (Nov. 10, 2008).

rather than the parent company, bears the risk of loss. However, indirect costs abound. The franchise model vastly increases the risk of unauthorized practice. As non-attorney franchisees engage in face-to-face interaction with clients, their actions cannot be completely monitored by WTP. WTP has been — and currently is — subject to a number of unauthorized practice of law lawsuits. A 2004 complaint filed against WTP in Florida resulted in a fine of \$2,000 and a finding by the Florida Supreme Court that the store manager — who is not an attorney — gave legal advice.<sup>79</sup> In 2006, WTP entered into a \$90,000 settlement with Tennessee to end disputes alleging unauthorized practice of law and violations of consumer protection laws (some users alleged that their divorce petitions were denied due to errors caused by WTP).<sup>80</sup> More recently, WTP has faced complaints regarding the unauthorized practice of law from U.S. Bankruptcy Trustees.<sup>81</sup> Section 110 of the Bankruptcy Code establishes procedures by which non-attorneys may assist debtors in preparing bankruptcy petitions and sets limits on the services non-attorneys may provide.<sup>82</sup> The U.S. Trustees in various states have challenged WTP's business practices as violating unauthorized practice rules. For instance, one complaint alleged that WTP, through its franchisees, advised and counseled individuals with respect to the completion of forms required to file for personal bankruptcy.<sup>83</sup> As a result, WTP has entered into settlements with the Trustees of Colorado, Delaware, Kansas, Maryland, Oklahoma, and Texas.<sup>84</sup> As of August 2008, WTP was engaged in settlement negotiations with the U.S. Trustee for the District of Idaho, which alleged that the WTP franchises in the state had violated Section 110.<sup>85</sup> Dollar Financial (the parent of WTP) states that “[w]e believe that our legal document processing services business model does not constitute the practice of law” but admits that its “business model has been and continues to be challenged in various states and by various U.S. bankruptcy trustees.”<sup>86</sup>

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79. See Weimar, *supra* note 52, at 1B.

80. *Id.* Although not an unauthorized practice of law issue, the New York Attorney General had investigated WTP for more than three years regarding unfair business practices and deceptive advertising practices that have harmed New York consumers. WTP has tentatively agreed to pay a fine of \$300,000 and is presently negotiating the final terms of a settlement. Dollar Fin. Corp., Annual Report (Form 10-K), at 98–99 (Sept. 3, 2009).

81. See We The People, We The People: Legal Page, *supra* note 72.

82. 11 U.S.C. § 110 (2006).

83. Ohio State Bar Ass'n v. Martin, No. UPL 0601, 1 (Bd. On Unauthorized Practice of Law of Ohio Sup. Ct. Oct. 22, 2007), available at <http://www.supremecourt.ohio.gov/Boards/UPL/reports/DOC080324.pdf>.

84. See We The People, We The People: Legal Page, *supra* note 72.

85. See Dollar Fin. Corp., Annual Report (Form 10-K), at 99 (Sept. 3, 2009).

86. *Id.* at 21.

By contrast, USLegal — the pure-play counterpart that offers complex legal services — has not encountered such lawsuits.<sup>87</sup> This is likely because customers only interact with non-attorney employees over the phone. It is easier to monitor these employees, who have less autonomy than franchisees in distant locations. Furthermore, the impersonal nature of phone conversations may make it easier to mechanically advise clients to seek an attorney rather than inadvertently offering unauthorized legal advice.

It is therefore unsurprising that WTP operates fewer retail locations each year. The number of locations dropped from 175 in 2005 to 110 in 2007.<sup>88</sup> By September 2009, only 49 retail locations existed.<sup>89</sup> This contraction during both strong and weak economic times signals that the hybrid model is losing ground.

### *B. Vendor vs. Multi-Sided Platform*

The second decision online legal services face is whether to transition to multi-sided platforms (“MSPs”). MSPs “enable interactions between multiple groups of surrounding consumers and ‘complementors’ . . . . [They] are characterized by interactions and interdependence between their multiple sides.”<sup>90</sup> That is, rather than merely supplying products or services to end-users, MSPs open their doors to various constituencies and serve as a central point of contact between them.<sup>91</sup> For online legal service technologies, the first side of the MSP is consumers, who will continue to receive legal products and services. The second side of the MSP is attorneys. Some sites have already begun to unbundle legal tasks and interface with attorneys when automation is not possible.<sup>92</sup> True MSPs will provide centralized ad-

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87. According to founder and CEO Frank Edens, unauthorized practice of law has not been a significant issue for USLegal. Edens acknowledges that avoiding unauthorized practice has created significant indirect expenses. USLegal receives many calls from people seeking legal advice, which occupies employees’ time — those taking the calls are not attorneys and usually need to advise callers to seek the advice of a legal professional. Telephone Interview with Frank Edens, Founder & CEO, USLegal (July 10, 2009).

88. Dollar Fin. Corp., Annual Report (Form 10-K), at 14 (Sept. 3, 2009).

89. *Id.*

90. Kevin J. Boudreau & Andrei Hagiu, *Platform Rules: Multi-Sided Platforms as Regulators* 2 (Harvard Bus. Sch., Working Paper No. 09-061, 2008), available at <http://www.hbs.edu/research/pdf/09-061.pdf>.

91. *Id.* Facebook is a prominent example of a company that has transitioned to a multi-sided platform strategy. It now allows third-party developers to create applications for its users (the “developer” side of the platform). See Facebook, Developers, [http://developers.facebook.com/get\\_started.php](http://developers.facebook.com/get_started.php) (last visited Dec. 20, 2009). The company also provides ad serving capabilities for the benefit of third-party advertisers (the “advertiser” side of the platform). See Facebook, Advertising, <http://www.facebook.com/advertising/?src=awg101&v=ntl1> (last visited Dec. 20, 2009).

92. As discussed in the previous section, sites like USLegal have already begun to recognize the opportunity to unbundle legal tasks and interface with attorneys when necessary.

vertising and referral networks for these attorneys, helping them to reach consumers.<sup>93</sup> The third — and thus far least developed — side of the platform will be third-party developers of legal service technologies.

### 1. Economics of MSPs

MSPs are incredibly attractive because they benefit from indirect network effects and increasing returns to scale. Indirect network effects occur when an increase in the size of one user base makes the system more valuable to users in a different category.<sup>94</sup> In the case of legal service MSPs, as more attorneys join the referral network, the platform becomes more valuable to consumers because of the greater range of legal expertise and broader geographic coverage available. Similarly, when more developers join the system, consumers benefit from the new legal service technologies they introduce. As these effects draw in more consumers, the platform becomes more attractive to attorneys and software developers who benefit from their business. The implication is that the three user bases are self-perpetuating.

Returns to scale exist because the costs of providing a platform are front-loaded: there are high research and development costs, as well as upfront advertising costs to build the user base. Because the additional cost per user is negligible, there will be strong increasing returns to scale as the original fixed costs are distributed over a larger user base.

The result of self-perpetuating user bases and increasing returns to scale is that such markets tend to “tip,” resulting in a winner-takes-all scenario.<sup>95</sup> The first player to gain momentum experiences the greatest returns. In addition, each user group is most attracted to the platform with the largest user base. An important implication is that time is of the essence — the shift toward MSPs and the related consolidation of online legal service technologies is likely to occur rapidly. Facebook provides an illustrative example of this implication. In 18 months, the education market for social networking had essentially tipped, with as many as 85% of students at supported institutions using the service.<sup>96</sup>

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The company's strategic vision emphasizes this aspect of its business going forward. Telephone Interview with Frank Edens, Founder & CEO, USLegal (July 10, 2009).

93. *Id.*

94. See DAVID S. EVANS, ANDREI HAGIU & RICHARD SCHMALENSEE, INVISIBLE ENGINES: HOW SOFTWARE PLATFORMS DRIVE INNOVATION AND TRANSFORM INDUSTRIES 47 (2006); Michael L. Katz & Carl Shapiro, *Systems Competition and Network Effects*, 8 J. ECON. PERSP. 93, 99 (1994).

95. EVANS ET AL., *supra* note 94, at 62–63.

96. Boudreau & Hagiu, *supra* note 90, at 10.



## 2. Revitalizing the Online Legal Service Business Model

Online legal services began by simply auto-generating and selling a particular set of legal documents. Many companies continue to pursue this business model.<sup>97</sup> Because this model does not involve lawyers, the information gathered is not protected by the attorney-client privilege. However, because these companies offer limited legal services, only basic information is required, mitigating privacy concerns that are triggered by the lack of the attorney-client privilege. Similarly, the vendor-only model reduces the risk of unauthorized practice of law claims. Complex legal tasks — those most likely to violate this rule — are not available, and employees do not interact with clients.

Despite its advantages, the vendor-only model is unlikely to endure. First, concerns about information privacy and attorney-client privilege are less significant that they appear. Users of services like USLegal are fully informed that initial information-gathering conversations are not protected.<sup>98</sup> In addition, traditional screening networks provide a precedent for collecting information outside the attorney-client privilege. These services, which are certified by both state and national bar associations, use non-attorneys for initial discussions before referring clients to an appropriate attorney.<sup>99</sup>

Second, problems posed by the potential for unauthorized practice claims are likely to be mitigated by the aforementioned shift to pure-play online legal services, as these services will avoid face-to-face interactions with non-attorneys. In addition, the public sector may be establishing a more forgiving regulatory environment with regard to unauthorized practice of law. Both Arizona and California have enacted statutes that specifically allow document preparation by companies like WTP.<sup>100</sup> In 2008, WTP sponsored legislation in Illinois that would have a similar effect.<sup>101</sup>

Finally, and most importantly, the vendor approach is increasingly subject to commoditization. Commoditization occurs when

97. See, e.g., sources cited *supra* note 7.

98. Telephone Interview with Frank Edens, Founder & CEO, USLegal (July 10, 2009).

99. See, e.g., Attorneys Confidential Referral, Attorney Referral Atlanta, <http://www.attorneyreferralatlanta.com/> (last visited Dec. 20, 2009) (“Attorneys’ Confidential Referral was established in 1987 . . . . We have been certified by the American Bar Association to recommend qualified, pre-screened attorneys . . . .”); Legal Resolutions Center, Welcome to Lawyer Referral Service, <http://www.ocsmallclaims.com/LRS.aspx> (last visited Dec. 20, 2009) (“If you are in need of legal assistance, our State Bar-certified Lawyer Referral Service can match you with a competent and experienced attorney.”); Napa County Lawyer Referral, About Attorney Search Network, <http://www.napa-county-lawyer-referral.com/about.htm> (last visited Dec. 20, 2009) (“We are a Lawyer Referral and Information Service certified by the State Bar of California (Certification # 113) and the American Bar Association.”).

100. See Dollar Fin. Corp., Annual Report (Form 10-K), at 81 (Sept. 3, 2009).

101. See *id.* at 20.

many vendors offer an undifferentiated product.<sup>102</sup> Perfect competition drives prices down, and supernormal profits (anything above what is required to cover expenses and attract capital investments) are eliminated.<sup>103</sup> As noted by Professors Hal Varian and Carl Shapiro:

In a free market, once several companies have sunk the costs necessary to create an undifferentiated product, competitive forces will usually move the product's price toward its marginal cost — the cost of manufacturing an additional copy. And because the marginal cost of reproducing information tends to be very low, the price of an information product, if left to the marketplace, will tend to be low as well. What makes information products economically attractive — their low reproduction cost — also makes them economically dangerous.<sup>104</sup>

This trend has already begun in the market for automated legal documents. Traditionally, automated legal documents were the greatest revenue driver for USLegal,<sup>105</sup> but prices have declined as competition has increased.<sup>106</sup> For example, the price the company charges for a Bill of Sale dropped 50% in 2009, from \$15 in January to \$7.50 in November.<sup>107</sup> The marketplace is now crowded with online suppliers of legal forms.<sup>108</sup> Thus, even if these activities are currently profitable, they likely will become less so.<sup>109</sup>

The transition to MSPs promises to revitalize these business models. As the revenue stream from consumers falters, online platforms can look to profit from their other user bases. Most promising is the potential to monetize the attorney side of the platform. Attorneys are essentially using the platforms to advertise their services to consumers, and platforms can capitalize on this in at least two ways. One option would be to charge attorneys a monthly or annual membership

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102. See Susskind, *supra* note 1, at 7.

103. RICHARD G. LIPSEY & COLIN HARBURY, *FIRST PRINCIPLES OF ECONOMICS* 156–58 (2d ed. 1992).

104. Carl Shapiro & Hal R. Varian, *Versioning: The Smart Way to Sell Information*, *HARV. BUS. REV.*, Nov.–Dec. 1998, at 106.

105. Telephone Interview with Frank Edens, Founder & CEO, USLegal (July 10, 2009).

106. E-mail from Frank Edens, Founder & CEO, USLegal, to author (Oct. 13, 2009, 00:15 UTC) (on file with author).

107. USLegal, Bill of Sale Forms, *supra* note 2. The pricing has changed during the writing of this Note.

108. See *supra* note 7 and accompanying text.

109. There may be ways to profit from information technologies, such as value-based pricing and versioning, that may be relevant even to commoditized products. See CARL SHAPIRO & HAL VARIAN, *INFORMATION RULES: A STRATEGIC GUIDE TO THE NETWORK ECONOMY* 19–82 (1999).

fee to be part of the referral network.<sup>110</sup> A membership fee would likely discourage attorneys from joining, especially in the early stages when the benefits of the referral networks remain unproven. This would be especially problematic for multi-sided platforms that rely on indirect network effects.<sup>111</sup> A better approach would be to employ the “cost-per-action”<sup>112</sup> advertising model. Attorneys would join the referral service for free<sup>113</sup> and pay whenever platform users employed their services. Such a model is more likely to attract attorneys, since it guarantees that they will only pay when the platform helps them generate business.<sup>114</sup> As the platform develops a larger user base and establishes a track record of successful referrals, it will gain bargaining power. Eventually, it could shift to a “cost-per-click”<sup>115</sup> or “cost-per-impression”<sup>116</sup> advertising model akin to Google AdWords.<sup>117</sup> Under the former, attorneys would pay each time a user clicks through to their personal site, regardless of whether the user retains their ser-

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110. To comply with the ethical rules in a given jurisdiction, the referral service would have to be approved by that jurisdiction’s regulatory authority. *See, e.g.*, MODEL RULES OF PROF’L CONDUCT R. 7.2(b) (1983) (prohibiting lawyers from giving “anything of value to a person for recommending the lawyer’s services” unless the lawyer is a participant in “a not-for-profit or qualified lawyer referral service . . . approved by an appropriate regulatory authority”). The Bar Association’s Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act dictates:

[O]rganizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of prospective clients; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not refer prospective clients to lawyers who own, operate or are employed by the referral service.

*Id.* 7.2 cmt.

111. *See supra* note 94 and accompanying text.

112. For more information about the cost-per-action advertising model, see Marketing Terms, Cost Per Action (CPA), [http://www.marketingterms.com/dictionary/cost\\_per\\_action](http://www.marketingterms.com/dictionary/cost_per_action) (last visited Dec. 20, 2009).

113. LegalDocs.com has implemented a beta referral system that allows attorneys to join for free. *See* LegalDocs.com, Directory of Attorneys, Lawyers, and Law Firms, <http://www.legaldocs.com/legaldir/listingindex.aspx> (last visited Dec. 20, 2009).

114. This cost-per-action payment method also could violate ethical rules in various jurisdictions that prohibit payment in exchange for referrals, especially if the referral service was not approved as a qualified lawyer’s referral service. *See, e.g.*, MODEL RULE OF PROF’L CONDUCT R. 7.2 (1983).

115. For more information about the cost-per-click advertising model, see Marketing Terms, Cost Per Click (CPC), [http://www.marketingterms.com/dictionary/cost\\_per\\_click](http://www.marketingterms.com/dictionary/cost_per_click) (last visited Dec. 20, 2009).

116. For more information about the cost-per-impression advertising model, see Marketing Terms, CPM, [http://www.marketingterms.com/dictionary/cost\\_per\\_click](http://www.marketingterms.com/dictionary/cost_per_click) (last visited Dec. 20, 2009).

117. *See* Google, AdWords, <http://adwords.google.com/support/aw/bin/answer.py?hl=en&answer=6382> (last visited Dec. 20, 2009).

VICES; under the latter, attorneys would pay merely to have their ads displayed.

### C. Open vs. Closed Platforms

As online legal service companies evolve into MSPs, they will need to determine the appropriate degree of openness to third-party developers.<sup>118</sup> On one end of the spectrum, platforms could be closed; all legal service offerings could be developed in-house. Apple initially took such an approach with the iPhone.<sup>119</sup> The main advantage to a closed system is that it allows for extensive quality control. At the other end of the spectrum, platforms could be completely open, allowing any legal service software to be added to the system by third-party developers. The Apple II followed this model.<sup>120</sup> The key benefit of an open system is the innovation it fosters.<sup>121</sup>

Online legal service platforms will most likely adopt a middle ground. A degree of openness helps control the costs of innovation. As customer bases grow, and advances in technology allow for more sophisticated automation of legal tasks, the volume and complexity of transactions on legal service platforms likely will increase. Satisfying such increased demand will result in two types of costs: those associated with developing new products and services and those associated with updating existing products to reflect changes in the law. Directly employing engineers to keep all development in-house quickly becomes unattractive, if not impossible.<sup>122</sup> As a result, legal service platforms should capture the innovative capabilities of the market by allowing external developers to join the system.<sup>123</sup> For example, law practices could create (and maintain) applications for their areas of expertise that would interface directly with their attorneys. Similarly, developers with access to the underlying attorney referral network could create a reverse-auction application, allowing consumers to solicit bids on a piece of work and review user ratings for attorneys who reply.<sup>124</sup> Although such applications could be built internally as part of the platform's core functionality, harnessing the creativity of the

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118. For an insightful and entertaining discussion of open ("generative") and closed technologies, see JONATHAN L. ZITTRAIN, *THE FUTURE OF THE INTERNET AND HOW TO STOP IT* (2008), available at <http://futureoftheinternet.org/static/ZittrainTheFutureoftheInternet.pdf>.

119. *See id.* at 2–3.

120. *See id.* at 2.

121. *See* ANNABELLE GAWER & MICHAEL A. CUSUMANO, *PLATFORM LEADERSHIP: HOW INTEL, MICROSOFT, AND CISCO DRIVE INDUSTRY INNOVATION* 6 (2002).

122. *See id.*

123. *See id.*

124. A system that has attorneys bid for work is likely to encounter an adverse selection problem. That is, it would attract less-skilled lawyers, while those with better qualifications would not participate. A user-feedback mechanism accessible to clients could help mitigate this problem.

masses could result in unexpected breakthroughs.<sup>125</sup> Platforms could create incentives for developers either by allowing them to charge users for access to their products, as with paid programs for the iPhone, or by establishing revenue-sharing agreements for advertising sold alongside the applications they release.

Complete openness, however, is undesirable. Quality control is especially important for legal service platforms, as any missteps could subject them to liability for providing flawed legal assistance.<sup>126</sup> By acting as gatekeepers, platforms can ensure that products and services introduced by third parties meet certain standards, such as compliance with unauthorized-practice regulations. Thus, the best approach for online legal service platforms will be one of quasi-openness, similar to the relationship Apple has established with third-party developers of iPhone applications.<sup>127</sup>

#### IV. EMBRACING CHANGE

As online legal services evolve into pure-play online, multi-sided, quasi-open platforms, they will have an increasingly significant impact on each of the user groups involved. The biggest winners will be consumers, who will benefit from the growing availability of affordable legal services. Less intuitively, attorneys stand to benefit, even though these technologies disrupt traditional models for delivering legal services.

##### *A. Consumers: Serving a Latent Market*

Online technologies make legal services more affordable and accessible. Although anyone with Internet access will have equal access to these services, those who did not receive legal assistance under the traditional model — namely the latent market that could not afford costly face-to-face attorney services — stand to benefit most. This unaddressed market remains significant. According to the ABA Standing Committee on the Delivery of Legal Services, among moderate-income households, 39% used the legal system to attempt resolution of their legal problems, 23% attempted resolution without legal

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125. One such breakthrough was Dan Bricklin's creation of VisiCalc, the world's first spreadsheet application, for the Apple II. See ZITTRAIN, *supra* note 118, at 2.

126. E-mail from Frank Edens, Founder & CEO, USLegal, to author (Oct. 13, 2009, 00:15 UTC) (on file with author).

127. Jeremy Horowitz, *iPhone SDK: Apple to Approve, Distribute Apps, Limit Accs*, ILOUNGE.COM, Feb. 29, 2008, <http://www.ilounge.com/index.php/news/comments/iphone-ipod-sdk-apple-to-approve-distribute-apps-limit-add-ons> (noting that "Apple will act as a gatekeeper for applications, deciding which are and are not worthy of release, and publishing only approved applications to the iTunes Store").

help, and 26% took no action.<sup>128</sup> As a result, cases involving litigants representing themselves are crowding the court docket, and these litigants face difficulties due to their inexperience with the legal system and lack of professional assistance.<sup>129</sup>

The economic crisis magnifies this problem for two reasons. First, we are likely to experience a contraction in the supply of affordable legal services from legal aid groups. Revenues from Interest on Lawyers' Trust Accounts ("IOLTAs"),<sup>130</sup> an important source of funding for legal aid groups, declined significantly in late 2008.<sup>131</sup> These accounts provided \$212 million in 2007 alone, which represented the second greatest source of funding.<sup>132</sup> However, because IOLTA revenues are affected by the federal funds rate, they have been negatively impacted by the interest rate cuts designed to revitalize the economy.<sup>133</sup> For example, IOLTA payouts in Ohio fell from \$21 million in 2006 to an estimated \$10 million in 2008.<sup>134</sup> The resulting strain on legal aid budgets may lead to staffing reductions of up to 20% nationwide.<sup>135</sup> The lost revenue, strained budgets, and staff reductions will compound the difficulties legal aid organizations already face in

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128. William Hornsby, *Improving the Delivery of Affordable Legal Services Through the Internet*, AMERICAN BAR ASS'N, June 10, 2009, <http://www.abanet.org/legalservices/delivery/deltech.html>; see also Granat, *supra* note 6, at 2 (arguing that the primary reasons for avoiding attorney services include "1) fear of high and uncontrollable legal fees; 2) dislike of hourly rates; 3) fear of prolonging disputes; 4) the inconvenience; 5) the often emotionally draining experience of consulting an attorney; and 6) general mistrust of the legal profession").

129. See Ronald W. Staudt, *Leveraging Law Students and Technology to Meet the Legal Needs of Low-Income People 1* (2007) (unpublished white paper), available at <http://www.kentlaw.edu/cajt/WhitePaperLeveragingLawStudents&Technology.pdf>.

130. IOLTAs are interest-bearing accounts into which lawyers deposit funds held in trust for their clients. Interest earned is used to fund legal aid initiatives. See American Bar Association, *IOLTA Overview*, <http://www.abanet.org/legalservices/iolta/ioltback.html> (last visited Dec. 20, 2009).

131. See Erik Eckholm, *Interest Rate Drop Has Dire Results For Legal Aid*, N.Y. TIMES, Jan. 19, 2009, at A12, available at <http://www.nytimes.com/2009/01/19/us/19legal.html?hp=&pagewanted=all> (noting that "the [interest] payout [on IOLTA accounts] has fallen precipitously").

132. Marcia Coyle, *New FDIC Rules Averts IOLTA Trouble*, LAW.COM, Dec. 2, 2008, <http://www.law.com/jsp/article.jsp?id=1202426394353>.

133. See The Federal Reserve Board, *Open Market Operations*, <http://www.federalreserve.gov/fomc/fundsrate.htm> (last visited Dec. 20, 2009) ("The federal funds rate is the interest rate at which depository institutions lend balances at the Federal Reserve to other depository institutions overnight."). When the Federal Reserve cuts interest rates, nationwide lending rates are likewise affected. Thus, money invested in IOLTA accounts is loaned out at a lower rate, and earns a lower return. Lower returns result in reduced income streams available to fund legal aid services. See Eckholm, *supra* note 131, at A12; IOLTA, *Interest Rates*, [http://www.iolta.org/grants/item.Interest\\_Rates](http://www.iolta.org/grants/item.Interest_Rates) (last visited Dec. 20, 2009).

134. See Kevin Kemper, *Federal Funds Rate Fiasco for Legal Aid*, BUSINESS FIRST OF COLUMBUS, Nov. 25, 2008, <http://columbus.bizjournals.com/columbus/stories/2008/11/24/story5.html>.

135. Eckholm, *supra* note 131.

providing their target communities with all of the legal services needed.<sup>136</sup>

Second, difficult economic conditions have led to increased demand for affordable legal services. According to the New York Times, “soaring foreclosures and unemployment, a surge in disputed applications for food stamps and a possible rise in domestic violence have produced record requests for help . . . . Requests for [legal aid group] services have risen by 30 percent or more.”<sup>137</sup> Coupled with the aforementioned reduction in supply, this implies a shortage of affordable legal services from traditional sources. Unsurprisingly, as individuals increasingly handle legal matters on their own, they make basic mistakes that result in suboptimal outcomes.<sup>138</sup>

Fortunately, online legal service technologies directly mitigate many of the shortcomings of traditional legal services. They offer convenience, speed, and the promise of low fixed costs rather than uncertain hourly billing. By offering an alternative source of affordable legal services, technology can help fill the gap left by overburdened and shrinking legal aid groups. USLegal has already begun to see increased activity by low- and moderate-income users.<sup>139</sup>

As these technologies gain traction, it is important to acknowledge the risks inherent in de-professionalizing legal services. The aforementioned lawsuits against WTP suggest that some consumers have received poor advice.<sup>140</sup> However, such suits may be evidence that unauthorized practice of law regulations, coupled with state consumer protection laws, can provide the necessary market check by drawing a line between those services that can be automated by online legal service companies and those that cannot. Careful establishment and enforcement of these standards are crucial to ensure that consumer benefits are maximized and risks are minimized.<sup>141</sup>

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136. See Staudt, *supra* note 129.

137. Eckholm, *supra* note 131.

138. See Margery A. Gibbs, More Americans Serve as Their Own Lawyers — With Some Risks, *VIRGINIAN-PILOT*, Nov. 25, 2008, at A5.

139. Telephone Interview with Frank Edens, Founder & CEO, USLegal (July 10, 2009).

140. See *supra* notes 79–85 and accompanying text.

141. Determining the boundary for what constitutes unauthorized practice of law is likely to be controversial, as it effectively determines whether licensed attorneys have a monopoly over a given market. Balanced input is therefore necessary. For example, when the ABA attempted to establish a national standard in 2002, the legal services community was virtually unrepresented, and an arguably overbroad definition of “unauthorized practice” emerged. See Granat, *supra* note 6, at 7–8. Fortunately, this sweeping definition was never adopted. *Id.*

*B. Legal Professionals: Opportunities to Participate*

Large law firms that handle complex corporate matters will not be seriously affected by the technologies discussed in this paper.<sup>142</sup> Rather, it is the solo practitioners and small partnerships — those who have traditionally served the low- and moderate-income market — that are at greatest risk. As more services become automated, cannibalization of traditional attorney work is inevitable. It is important to note, however, that these technologies can be simultaneously disruptive and beneficial for attorneys.<sup>143</sup> They need not render attorneys obsolete, as there are opportunities for legal services professionals to participate in this evolving market.

First, as discussed above, these technologies are helping to serve a latent market. They make legal services available to people who would otherwise handle matters themselves. To the extent that online legal service platforms bring such consumers into the legal system, they expand the market rather than shift it away from attorneys.

Second, the attorney-facing side of online legal service platforms empowers attorneys by providing services that help establish and grow a practice. For example, USLegal hopes to become a destination website for both attorneys and their clients by creating a centralized advertising network.<sup>144</sup> Rather than relying on their own websites and costly AdWords, attorneys will be able to target their advertising to those seeking specific services. They can then step in whenever technology cannot fully meet a person's needs and thereby benefit from the expanded market discussed above.

Finally, the automation of repetitive tasks can be viewed as beneficial for attorneys; it allows them to focus on more challenging, complex, and stimulating problems. Embracing new technologies is therefore preferable to relying on barriers — such as unauthorized practice of law regulations — for legal professionals to remain relevant.

## V. CONCLUSION

The continued expansion of online legal service technologies is inevitable. A significant latent market of underserved low- and moderate-income households is fueling demand for affordable legal services. Simultaneously, business models can and should evolve to

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142. It is worth noting that other developments are likely to impact the larger firms, as corporate clients find ways to bring legal tasks in-house using sophisticated software. This, however, is beyond the scope of this investigation. For an in-depth analysis, see generally SUSSKIND, *supra* note 76.

143. Telephone Interview with Frank Edens, Founder & CEO, USLegal (July 10, 2009).

144. *Id.*



remain profitable, providing an incentive to develop new technologies. Even legal professionals, who generally may be opposed to the commoditization of legal services,<sup>145</sup> are likely to yield and instead choose to integrate with multi-sided platforms.

The trend toward multi-sided platforms is already underway. USLegal recently initiated its “Build USLegal” program, which is designed to bring third parties under the USLegal umbrella.<sup>146</sup> The company will screen entrants to ensure quality control.<sup>147</sup> In addition, both USLegal and LegalDocs.com have implemented attorney referral services that lawyers can join free of charge.<sup>148</sup>

The next step will be for these companies to integrate further with both the attorneys in their referral networks and third-party developers. The onus is still on the customer to decide when it is necessary to seek out an attorney. Ideally, the platforms should recognize when a customer’s request exceeds its automated capabilities and seamlessly refer the customer to an attorney who matches the customer’s subject-matter and geographic needs. Such targeted advertising would justify monetization of the attorney side of the platform.<sup>149</sup> The advertising revenue stream would, in turn, create incentives for more third-party applications. Platforms could facilitate the process by hosting developer conferences and releasing software development kits. If such integration is achieved, online legal services will quickly transform into the type of online pure-play, multi-sided, quasi-open platforms envisioned in this note.

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145. See SUSSKIND, *supra* note 76, at 34.

146. See USLegal, Help Build USLegal, <http://www.uslegal.com/builduslegal> (last visited Dec. 20, 2009).

147. E-mail from Frank Edens, Founder & CEO, USLegal, to author (Oct. 13, 2009, 00:15 UTC) (on file with author).

148. USLegal, US Legal Attorney Directory, *supra* note 13; LegalDocs.com, Directory of Attorneys, Lawyers, and Law Firms, *supra* note 113.

149. At the time of publication, the online legal service companies surveyed in this Note allow attorneys to join their referral networks for free. See *supra* note 148 and accompanying text. LegalDocs.com “request[s] that [attorneys] provide a return link to LegalDocs.com from [their] website[s].” LegalDocs.com, Directory of Attorneys, Lawyers, and Law Firms, *supra* note 113. This falls far short of a viable revenue stream, especially in comparison to a “cost-per-action” or “cost-per-click” advertising model. See *supra* notes 112–17 and accompanying text.