

Lawfluencers: Legal Professionalism on TikTok and YouTube

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ABSTRACT

This Article investigates the rise of lawyer-influencers, or ‘lawfluencers,’ and what their arrival means for legal professionalism. In today’s attention economy, ‘influencers’ are now central players. An influencer shares their knowledge and lifestyle on social media to accumulate a ‘following.’ These influencers then monetize their followers’ loyalty for commercial gain and/or cultural capital. Our Article explains what lawfluencing is, focusing on TikTok and YouTube as the two most prominent video-based social media platforms. It identifies the drivers behind, and technological features shaping, the appearance of influencing in law. It also describes the types of videos lawyers are creating and what blends of professional (trusted expert) versus amateur (authentic and approachable personalities) they are striking. Our Article focuses on the implications of lawfluencing for ‘professionalism,’ that is, the identities, expertise, values, and arrangements that have typically characterized professional status. Lawfluencing might offer greater access to justice for the public, and, for lawyers, new modes for creativity and career progression. Still, this activity is occurring on the platforms of Big Tech. It is subject, then, to their commercial imperatives and digital cultures, as well as the audiences’ viewing preferences or what is known as the ‘algorithm.’ This Article outlines the ethical risks that influencing poses to clients and lawyers, and the possible challenges presented to the legitimacy of the legal profession and the legal system. In the process, we identify responsible lawfluencing practices.

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INTRODUCTION

A man, wearing a glittering green tuxedo and a purple and yellow floral tie, dances to the camera, lip-syncing a Taylor Swift song. Raising his hands to the camera to brandish chunky diamond rings, he twirls, steps back, and, with a flourish, waves goodbye to the viewer. At just twelve-seconds long, this video was posted by U.S. lawyer Kevin Kennedy on his TikTok page (@kennedylawfirm).¹ On the post are the hashtags: #kevsgotyoudiscovered #lawyer #dance #bejeweled #shimmer #glitter #taylorswift #fyp #foryou.² This video attracted 31,000 likes and 454 comments on TikTok, the social media platform that allows users to create and share fifteen-second to sixty-minute videos.³

1. Lawyer Kevin Kennedy (@kennedylawfirm), TikTok (Nov. 15, 2022), <https://www.tiktok.com/@kennedylawfirm/video/7166347282827185454> [<https://perma.cc/7XEN-RRTV>]. For the purposes of our Article, the use of the @ symbol is used to signal a TikTok Account.

2. *Id.* A hashtag is a word or phrase preceded by a # symbol used on social media to categorize messages to specific topics. #fyp is an acronym popularised by TikTok meaning ‘For You Page,’ referring to the frontpage of TikTok that is filled with recommended content and videos. Creators use this hashtag to try and get their video on the ‘For You Page’ for other users to increase views and visibility. See Chloe West, *TikTok hashtags: How to use the best hashtags for more views in 2024*, SPROUT SOCIAL (Jan. 17, 2024), <https://sproutsocial.com/insights/tiktok-hashtags/> [perma.cc/37UK-FVMQ]; FYP, HOOTSUITE, <https://blog.hootsuite.com/social-media-definitions/fyp/> [perma.cc/T2V8-C3MN] (last visited Aug. 23, 2024).

3. Although the upward limit of video uploads on TikTok is now 60 minutes, the platform’s algorithm still heavily prioritizes “bite-sized” entertainment. See *Camera tools*, TikTok, <https://support.tiktok.com/en/using-tiktok/creating-videos/camera-tools> [perma.cc/P5VL-RHWX] (last visited Aug. 23, 2024); Adam Birney, *What is the maximum length for a TikTok video in 2024?*, ANDROID AUTHORITY (Aug. 21, 2024), <https://www.androidauthority.com/how-long-are-tiktok-videos-3163309/> [perma.cc/2GWQ-23DW].

Kennedy is known⁴ for resembling the slick, fictional lawyer Saul Goodman, of the American crime drama *Better Call Saul*—a persona Kennedy has seemingly embraced as part of his self-presentation online.⁵ In the video just described, by singing a Taylor Swift song, Kennedy is referencing a then-recent event in which Ticketmaster’s website crashed due to overwhelming demand for Swift’s concert tickets.⁶ Fans vented their frustration on social media and joined lawsuits against the ticket sales company.⁷

Elsewhere across cyberspace, Leeja Miller, a legal content creator, begins a livestream (a video occurring in real time) on her YouTube channel, ‘Leeja Live.’⁸ In the livestream titled ‘Lawyer Reacts to Taylor Swift/Ticketmaster Drama,’ Miller provides her legal opinion on the case and responds directly to the live comments and questions rolling in from viewers.⁹ Miller does not give any verbal or written disclaimers in the video about whether what she is saying amounts to legal advice. The only disclaimer appears at the very bottom of the video description, which, to see, requires the viewer to click the button, ‘Show more.’¹⁰ Above the disclaimer are affiliate links (weblinks that earn a commission) to various products, including makeup, filming equipment, and hair products.¹¹ Miller’s video is one among many on YouTube in which lawyers shared their reactions to the event.¹²

4. Stephanie Harper, *Kevin Kennedy’s Law Firm TikTok Page Is Reminding People of ‘Better Call Saul’*, DISTRACTIFY (Aug. 19, 2022), <https://www.distractify.com/p/kennedy-law-firm-tiktok> [https://perma.cc/4YXK-M4W3]; *Kev Kennedy/Kennedy Law Firm*, KNOW YOUR MEME, <https://knowyourmeme.com/memes/people/kev-kennedy-kennedy-law-firm> [https://perma.cc/VAY6-5A3U] (last visited Feb. 19, 2024).

5. Saul Goodman is a fictional character from the television series *Breaking Bad* and its prequel spin-off, *Better Call Saul*. Saul’s character is known for his pluckish charm and moral ambiguity. See *Saul Goodman*, WIKIPEDIA, https://en.wikipedia.org/wiki/Saul_Goodman [https://perma.cc/LJR4-B7A5] (last visited Mar. 12, 2024).

6. Andrew Limbong, *Taylor Swift’s Fans Caused Ticketmaster to Crash and Lawmakers Are Demanding Answers*, NPR (Nov. 17, 2022), <https://www.npr.org/2022/11/17/1137501868/taylor-swifts-fans-caused-ticketmaster-to-crash-and-lawmakers-are-demanding-answ> [https://perma.cc/E6RC-8T9J].

7. Peter Cohan, *Swifties’ Suit Seeks \$2,500 Per Ticketmaster Antitrust Violation*, FORBES (Dec. 6, 2022), <https://www.forbes.com/sites/petercohan/2022/12/06/swifties-suit-seeks-2500-per-ticketmaster-antitrust-violation/> [https://perma.cc/7WEY-9AVG].

8. Leeja Miller (@LeejaLive), *Leeja Live*, YOUTUBE, <https://www.youtube.com/@leejalive> [https://perma.cc/HMF6-P7ET] (last visited Feb. 19, 2024).

9. Leeja Miller (@LeejaLive), *Lawyer Reacts to Taylor Swift/Ticketmaster Drama*, YOUTUBE (Nov. 17, 2022), <https://www.youtube.com/watch?v=oknIVf1Vw2U> [https://perma.cc/N9JH-EZTF].

10. *Id.* YouTube video descriptions are usually minimized, for attention-poor viewers, to simplify layout, and to hide any less-than-engaging elements. Viewers must click ‘Show more’ for the full video description. To see how to view a video description on desktop and mobile see Dan Currier (@DanCurrier), *How to View Description on YouTube*, YOUTUBE (Sep. 14, 2020), <https://www.youtube.com/watch?app=desktop&v=M9lmUNw32qw&t=0> [perma.cc/9CWE-6WE5].

11. See Miller, *supra* note 9.

12. Tyler Chou, *Lawyer REACTS to Ticketmaster and Taylor Swift Drama*, YOUTUBE (Nov. 21, 2022), <https://www.youtube.com/watch?v=CRGgZpJvqP0> [https://perma.cc/ZL63-U6AH]; LegalBytes, *Why the Taylor Swift Ticketmaster Case Won’t Go Far*, YOUTUBE (Dec. 8, 2022), <https://www.youtube.com/watch?v=hgYzEYMGuXo> [https://perma.cc/2RG7-HB27]; Top Music Attorney, *Lawyer Reacts to Taylor Swift Ticketmaster DRAMA*, YOUTUBE (Nov. 21, 2022), <https://www.youtube.com/watch?v=X8Qw1BvQsJI> [https://perma.cc/6EYR-FN9L].

These are depictions of ‘lawfluencers’ (or lawyer influencers)¹³—lawyers using their legal knowledge and identity (both personal and professional) for the production and sharing of video ‘content’ online. Influencers aim to build a ‘following’ or an engaged audience on social media or other online platforms.¹⁴ By doing so, they can then influence their viewers’ opinions, behaviours, and purchasing decisions in a way that effectively monetizes their social media presence for “commercial gain and/or cultural capital.”¹⁵ Today, across the internet, lawyers from practices of all sizes are sharing legal information, analysis and advice, and/or providing entertainment to global audiences, sometimes in the millions.¹⁶ As a result, they are constructing public personas and brands, carving out niches as sources of legal authority and entertainment, attracting new clients, and building communities—and, in many instances, making considerable amounts of money.¹⁷

This activity is new territory for the legal profession, which has long had an aversion to and prohibition on advertising of any kind.¹⁸ Traditionally, lawyers gained work through word-of-mouth referrals and, on a larger, institutional scale, through the symbols, self-regulatory authority, and monopoly protections supporting professional status.¹⁹ However, as the two opening examples illustrate, and as detailed in this article, much has changed in recent decades. Indeed, as we also show in this Article, there are now clear-cut regulatory, business, and technological affordances of this move to lawyers using and making money out of video-based social media platforms. Further, there are distinct social, economic, political, and technological forces shaping how this activity is then rolled out, as we detail later.

Our Article considers the nature, drivers, and meanings of this new type of endeavor in legal practice, focusing on the currently leading video-based social

13. Other related popular terminology, specific to certain platforms, include ‘LawTok’ or ‘LawTube.’ See #LawTok, TikTok, <https://www.tiktok.com/tag/lawtok> [perma.cc/2TTC-VGF9] (last visited Aug. 23, 2024); #LawTube, YouTube, <https://www.youtube.com/hashtag/lawtube> [perma.cc/HDN2-2WH3] (last visited Aug. 23, 2024).

14. See Susie Khamis, Lawrence Ang & Raymond Welling, *Self-Branding, ‘Micro-Celebrity’ and the Rise of Social Media Influencers*, 8 CELEBRITY STUD. 191, 191 (2017).

15. *Id.*; see also Alison Hearn & Stephanie Schoenhoff, *From Celebrity to Influencer: Tracing the Diffusion of Celebrity Value across the Data Stream*, in COMPANION TO CELEBRITY 194, 194 (2015).

16. See e.g., Mike Mandell (@LawByMike), *Is It Legal to Have Two Lawyers*, YOUTUBE, <https://www.youtube.com/shorts/eCoAd3Xg3KM> [perma.cc/9N6M-4L5F] (last visited Aug. 23, 2024).

17. For example, in 2022 Aiden Durham, an attorney/influencer, made \$44,109.54 from YouTube, around \$6,300 from brand partnerships, \$26,484.02 from affiliate income, and \$7,445.90 from her online course “Brandish.” In total, from all of the aforementioned sources, Durham made \$84,339.46 in 2022 as a lawfluencer. See Aiden Durham (@allupinyobiz), *How Much I Made in 2022 as a Lawyer & Youtuber*, YouTube (Mar. 22, 2023), <https://www.youtube.com/watch?v=tp3eDQoJuJQ> [perma.cc/2JEE-6ENJ].

18. James B. Reed, *Advertising and the Legal Profession*, 28 DICTA 101, 101 (1951).

19. Justine Rogers & Anthony Song, *Digital Marketing in The Legal Profession: What’s Going On and Does It Matter?*, 5 L., TECH. & HUMS. 134, 134–35 (2023); Lauren Moxley, Note, *Zooming Past the Monopoly: A Consumer Rights Approach to Reforming the Lawyer’s Monopoly and Improving Access to Justice*, 9 HARV. L. & POL’Y REV. 553 (2015).

media platforms: YouTube²⁰ and TikTok.²¹ Lawyers' use of social media has attracted scholarly attention.²² However, outside a few short, professional pieces,²³ comparatively little is known about lawfluencing and the particular workings of video platforms in the legal context. Part of the reason for this is that short-form, video-based social media and influencing are still relatively novel phenomena. Video social media is different from text-based or image-based social media because of its real-time, audio-visual format. By design, this technology is interactive—and highly appealing. U.S. lawfluencer Michael Mandell (@lawbymike), for instance, attracted 3.5 million followers on TikTok within seven weeks.²⁴ Moreover, as a form of 'knowledge influencing,' in which the influencer is sharing expertise outside just information about their lifestyles, lawfluencing is intriguing.²⁵ Initially, successful influencers strategically portrayed themselves as having a relatable identity as an amateur or non-expert.²⁶ But influencers today, especially knowledge influencers, must choose which balance between amateur (trusted peer, 'of the people') and professional (trusted expert with certain duties and values) best suits their 'brand' and audience.²⁷

Our article examines the nature of lawfluencing and its implications for 'professionalism,' or for the types of identities, expertise, relationships, values, and

20. YouTube is a leading video-sharing and social media platform. After being acquired by Google in 2006, it is currently the second most visited website in the world with over 2.527 billion active users. *YouTube Users, Stats, Data & Trends*, DATAREPORTAL, <https://datareportal.com/essential-youtube-stats> [https://perma.cc/6MSH-U47F] (last updated May 11, 2023).

21. TikTok is a rapidly growing short-form video sharing social media platform that was founded in September 2016 by the Chinese start-up ByteDance, originally under the name Douyin. In August 2018, the app launched internationally as TikTok. In September 2021, TikTok announced it had one billion global monthly active users. See Deborah D'Souza, *TikTok: What It Is, How It Works, and Why It's Popular*, INVESTOPEDIA, <https://www.investopedia.com/what-is-tiktok-4588933#:~:text=The%20app%20was%20launched%20in,%2C%20Tokyo%2C%20and%20other%20cities.> [perma.cc/8DP9-NVMQ] (last updated May. 23, 2024); *TikTok Users, Stats, Data & Trends*, DATAREPORTAL, <https://datareportal.com/essential-tiktok-stats> [https://perma.cc/9342-6RNB] (last updated May 11, 2023).

22. See e.g., Jan L. Jacobowitz, *Lawyers Beware: You Are What You Post - The Case for Integrating Cultural Competence, Legal Ethics, and Social Media*, 17 S.M.U. SCI. & TECH. L. REV. 541 (2014); Alyce Zawacki, *Social Media Use in the Legal Profession*, 43 ALT. L. J. 120 (2018); Katherine Taken Smith & L. Murphy Smith, *Social Media Usage by Law Firms: Correlation to Revenue, Reputation, and Practice Areas*, 40 SERVS. MKTG. Q. 66 (2019); Francine Ryan, *The Use and Practice of Social Media*, in DIGITAL LAWYERING (2021).

23. See Sharon D. Nelson & John W. Simek, *Common Ethical Pitfalls of Digital Marketing*, 31 GPSOLO 74 (2014); Dustin Sanchez, *Social Media and Online Marketing for Lawyers (Aka Video Domination)*, 35 GPSOLO 16 (2018); Allison C. Johs, *2021 Websites & Marketing*, AM. BAR ASS'N (Nov. 17, 2021), https://www.americanbar.org/groups/law_practice/resources/tech-report/archive/websites-marketing1/ [https://perma.cc/Y9QM-5DBQ].

24. *11 Lawyers Going Viral on TikTok Right Now*, ENCHANTINGLAWYER, <https://www.enchantinglawyer.com/10-lawyers-going-viral-on-tiktok-right-now/> [https://perma.cc/MG36-BRBJ] (last visited Aug. 23, 2024).

25. Jessica Maddox, *Micro-Celebrities of Information: Mapping Calibrated Expertise and Knowledge Influencers among Social Media Veterinarians*, 26 INFO., COMM'C'N & SOC'Y 2726, 2727 (2022).

26. Crystal Abidin, *#familygoals: Family Influencers, Calibrated Amateurism, and Justifying Young Digital Labor*, 3 SOC. MEDIA + SOC'Y 205, 201 (2017).

27. See Maddox, *supra* note 25, at 2727.

institutional arrangements that have typically marked our professional status.²⁸ Most recent studies looking at changes to professionalism have been centered on the workplace organization, showing how its degree of ‘hybridization’ with managerial methods and corporate forms are contorting professional practice, values, and authority into new, more or less distinct blends.²⁹ Other studies, closer to ours, have shown how new technologies and their merits and biases, most notably AI, are impacting the practice, ethics, and regulation of lawyers, though again the site for this is typically the legal work context (e.g., law firms, the courts).³⁰ Lawfluencing, by distinction, represents lawyers scoping out new contexts—video-based, social media platforms—within which to practice law, share their expertise, experiment with their professional identity, create a community and social capital, and, ideally, earn money. For some, it even means building a new career entirely. As we demonstrate in this Article, in the process of doing so, traditional professionalism, already alloyed by other changes and pressures, is interacting with the emergent norms and metrics of these vast platforms.³¹

Could we see the advent of legal video marketing, for example, as a welcome adaptation of the profession’s traditional public service and access to justice commitments? Could we also see lawfluencing as a way in which lawyers can themselves reclaim work autonomy, well-being, and satisfaction against workplace pressures and controls? Or is lawfluencing simply another way in which the law and the legal identity are becoming more commercialized, diluted, and non-exclusive—and in this instance, at the behest of the giant technology platforms? In what ways does lawfluencing pose significant and novel risks to the law’s basis for trust and legitimacy? In addressing these questions, this article contributes then to ongoing, wider discussions about the changing nature of the law and legal

28. Mirko Noordegraaf, *Hybrid Professionalism and beyond: (New) Forms of Public Professionalism in Changing Organizational and Societal Contexts*, 2 J. PROS. & ORG. 187, 1 (2015).

29. See *id.* at 7; James Faulconbridge & Daniel Muzio, *Organizational Professionalism in Globalizing Law Firms*, 22 WORK, EMP. & SOC’Y 7, 8–10 (2008); Royston Greenwood & Laura Empson, *The Professional Partnership: Relic or Exemplary Form of Governance?*, 24 ORG. STUD. 909 (2003); Laura Empson, Imogen Cleaver & Jeremy Allen, *Managing Partners and Management Professionals: Institutional Work Dyads in Professional Partnerships*, 50 J. MGMT. STUD. 808, 809 (2013).

30. See Katherine Medianik, *Artificially Intelligent Lawyers: Updating the Model Rules of Professional Conduct in Accordance with the New Technological Era*, 39 CARDOZO L. REV. 1497, 1504–06; Mark McKamey, *Legal Technology: Artificial Intelligence and the Future of Law Practice*, 22 APPEAL: REV. CURRENT L. & L. REFORM 45, 9–10 (2017); Agnieszka McPeak, *Disruptive Technology and the Ethical Lawyer The Role of Technology in Professional Advice Symposium*, 50 U. TOL. L. REV. 457, 461–64 (2019); Julie Sobowale, *How Artificial Intelligence is Transforming the Legal Profession*, A.B.A. J. (Apr. 12, 2016), https://www.abajournal.com/magazine/article/how_artificial_intelligence_is_transforming_the_legal_profession [<https://perma.cc/FUB8-63ZX>]; see also MICHAEL LEGG & FELICITY BELL, *ARTIFICIAL INTELLIGENCE AND THE LEGAL PROFESSION* (2020).

31. Agnieszka McPeak, *The Internet Made Me Do It: Reconciling Social Media and Professional Norms for Lawyers, Judges, and Law Professors*, 55 IDAHO L. REV. 205, 206 (2019).

practice³² in these new circumstances in which the digital cultures and business models of the technology platforms are commanding.

Our Article is structured as follows. Part I explains what lawfluencing, or legal video marketing, is within the wider context of influencing and digital marketing. It describes the types of videos lawyers are creating and sharing, the blends of professionalism versus amateurism they are deploying, and the levels of success they are having. It also pinpoints the main drivers behind its uptake in law. We also clarify some of the technological features of the video social media platforms that explain how they work and why they present certain opportunities and risks for lawyers and the public. Part II considers the implications of lawyers' use of social media video platforms on professional values and identity, relationships with the client and public, and the status of the legal profession and legal system more broadly. We then conclude by suggesting avenues for future research.

I. DEFINITIONS, FORMS, & DRIVERS

In this Part, we define lawfluencing, describe the sorts of content that lawyers are making, and elaborate on the forces that are both enabling these activities and heavily shaping what they look like.

A. WHAT IS 'LAWFLUENCING'?

Increasingly, influencing via video platforms is being pursued by individual lawyers in their professional roles for self-branding, self-promotion, creative purposes, and/or on behalf of their firms for the organization's branding and advertising.³³ Influencing is the activity of sharing lifestyles or knowledge on digital channels to accumulate a large 'following'³⁴ or network over which one has influence or persuasive power.³⁵ Influencing is a branch of digital marketing which consists of, broadly, the use of online technologies to acquire customers, build customer preferences, promote brands, retain customers, and increase sales.³⁶ But influencing also has elements of sociality, community, and performance that

32. For international examples on "continuity and change", see *LAWYERS IN 21ST-CENTURY SOCIETIES 1: NATIONAL REPORTS* (Richard L. Abel, Ole Hammerslev, Hilary Sommerland & Ulrike Schultz eds., 2020); *LAWYERS IN 21ST-CENTURY SOCIETIES 2: COMPARISONS AND THEORIES* (Richard L. Abel, Hilary Sommerlad, Ole Hammerslev & Ulrike Schultz eds., 2020).

33. For examples of law firms using TikTok, see Tiana Headley, *Big Law's TikTok Stars Embrace Industry's New Social Media Norms*, *BLOOMBERG LAW* (Jul. 12, 2021), <https://news.bloomberglaw.com/business-and-practice/big-laws-tiktok-stars-embrace-industrys-new-social-media-norms> [<https://perma.cc/3NPU-Y8ZX>].

34. Crystal Abidin, "Aren't These Just Young, Rich Women Doing Vain Things Online?": *Influencer Selfies as Subversive Frivolity*, 2 *SOC. MEDIA + SOC'Y* 1, 3 (2016).

35. Chen Lou & Shupeí Yuan, *Influencer Marketing: How Message Value and Credibility Affect Consumer Trust of Branded Content on Social Media*, 19 *J. INTERACTIVE ADVERT.* 58, 58 (2019); Sylvia Chan-Olmsted & Hye-hyun Julia Kim, *Influencer Marketing Dynamics: The Roles of Social Engagement, Trust, and Influence, in THE DYNAMICS OF INFLUENCER MARKETING* 101 (José M. Álvarez-Monzoncillo ed., 2022).

36. P. K. Kannan & Hongshuang "Alice" Li, *Digital Marketing: A Framework, Review and Research Agenda*, 34 *INT'L J. RSCH. MKTG.* 22, 23 (2017).

make it different from other forms of marketing.³⁷ Moreover, to be a successful influencer requires mastery over certain technological and self-presentation skills.³⁸

Before the advent of social media and the language of ‘influencing,’ influencers (who were then known as opinion leaders or media personalities) were a kind of elite—they were those with the access and skills to interpret mass media, command attention, and then pass on their understandings and opinions to the public.³⁹ Celebrities (mostly TV and film stars) were a branch of this group, selling products and services through their mystique and allure.⁴⁰ Today, the accessibility of social media means that, in theory, anyone can become an influencer.⁴¹ Current influencers are marked out from traditional opinion leaders and even celebrities because they also share details of their personal lives, making them more accessible, relatable, believable, and intimate to followers.⁴² However, social media also adds a third stakeholder group to the classic influencer-audience model: the platform.⁴³ The platform’s algorithms⁴⁴ adapt to audience preferences (in a process known as “personalization”),⁴⁵ which in turn shape, and usually ultimately dictate, the actions of influencers. As we detail shortly in Part I.C, this dynamic between influencer, audience, and platform has been deemed the “platformization” of cultural production,⁴⁶ in which “the processes of content creation align with the affordances of platforms” and their commercial models.⁴⁷

37. Samira Farivar & Fang Wang, *Effective Influencer Marketing: A Social Identity Perspective*, 67 J. RETAILING & CONSUMER SERVS. 1, 2–6 (2022).

38. Maddox, *supra* note 25, at 2728–29.

39. See ALAN CHARLESWORTH, *ABSOLUTE ESSENTIALS OF DIGITAL MARKETING* 42 (1st ed. 2020); ELIHU KATZ & PAUL F. LAZARSFELD, *PERSONAL INFLUENCE: THE PART PLAYED BY PEOPLE IN THE FLOW OF MASS COMMUNICATIONS* (1955).

40. See Debasis Pradhan, Israel Duraipandian & Dhruv Sethi, *Celebrity Endorsement: How Celebrity–Brand–User Personality Congruence Affects Brand Attitude and Purchase Intention*, 22 J. MKTG. COMMS. 456, 456–57 (2016); Finola Kerrigan, Douglas Brownlie, Paul Hewer & Claudia Daza-LeTouze, ‘Spinning’ Warhol: *Celebrity Brand Theoretics and the Logic of the Celebrity Brand*, 27 J. MKTG. MGMT. 1504, 1506 (2011).

41. See Kaja J. Fietkiewicz, Isabelle Dorsch, Katrin Scheibe, Franziska Zimmer & Wolfgang G. Stock, *Dreaming of Stardom and Money: Micro-Celebrities and Influencers on Live Streaming Services*, in *SOCIAL COMPUTING AND SOCIAL MEDIA: USER EXPERIENCE AND BEHAVIOR* 240, 240, 242 (2018).

42. See Chan-Olmsted & Kim, *supra* note 35, at 102; Abidin, *supra* note 34.

43. See Jonathon Hutchinson & Tim Dwyer, *How Instagram and YouTube Users Share News: Algorithms, Monetization and Visibility on Social Media*, in *THE DYNAMICS OF INFLUENCER MARKETING* 126, 123 (2022).

44. Informally, an algorithm is any well-defined computational procedure that takes some value, or set of values, as input and produces some value, or set of values, as output in a finite amount of time. An algorithm is thus a sequence of computational steps that transform the input into the output. THOMAS H. CORMEN, CHARLES E. LEISERSON, RONALD L. RIVEST & CLIFFORD STEIN, *INTRODUCTION TO ALGORITHMS* 5, 5 (4th ed. 2022).

45. See Urbano Reviglio & Claudio Agosti, *Thinking Outside the Black-Box: The Case for “Algorithmic Sovereignty” in Social Media*, 6 SOC. MEDIA + SOC’Y 1, 2 (2020).

46. D. B. Nieborg & T. Poell, *The Platformization of Cultural Production: Theorizing the Contingent Cultural Commodity*, 20 NEW MEDIA & SOC’Y 4276, 4276 (2018).

47. See Hutchinson & Dwyer, *supra* note 43, at 124.

Meanwhile, the term ‘micro-celebrity’ has emerged to describe the practices influencers employ on social media to successfully build their personal ‘brand’ and sometimes establish fame, but on a small scale or in a specific (“micro”) domain.⁴⁸ Micro-celebrities self-present as a “public persona to be consumed by others, use strategic intimacy to appeal to followers, and regard their audiences as fans.”⁴⁹ Branding is about creating symbols (ideas, qualities, images, etc.) for a commodity, “which ostensibly simplifies the consumer’s decision-making.”⁵⁰ By sharing their videos on popular apps such as TikTok or YouTube, influencers hope to construct and project themselves as a brand.⁵¹ They seek to entice the public as potential consumers, to engage with videos, and usually also to buy their products and/or services. Influencers primarily generate revenue through engagement (from platform ‘payouts’ once a certain number of viewing hours are met and after, from the number of views), advertisements embedded in videos,⁵² and affiliate links.⁵³

The performance of a microcelebrity was initially centered on lifestyle topics and within consumer industries such as travel, beauty, and fashion.⁵⁴ However, ‘knowledge influencers’ now engage in these practices to curate their image in certain ways.⁵⁵ Knowledge influencers share technical “information and expertise to lay audiences” often interwoven with “personal posts or humorous anecdotes” about professional life.⁵⁶ As signalled in the Introduction, these influencers build their brand on both elite, erudite knowledge (professionalism), and relatability (amateurism). Indeed, to capture this contrived aspect, digital media scholar Jessica Maddox has proposed the term “calibrated expertise” to “describe the performance strategy in which [professional] experts harness social media affordances, platform dynamics, and aspects of micro-celebrity to impart information.”⁵⁷

48. See Theresa M. Senft, *Microcelebrity and the Branded Self*, in *A COMPANION TO NEW MEDIA DYNAMICS* 346, 346 (John Hartley, Jean Burgess & Axel Bruns eds., 2013).

49. Maddox, *supra* note 25, at 2728; Alice E. Marwick, *You May Know Me from YouTube: (Micro-) Celebrity in Social Media*, in *A COMPANION TO CELEBRITY*, *supra* note 15, at 335.

50. Khamis et al., *supra* note 15, at 192.

51. See Hearn & Schoenhoff, *supra* note 15, at 242.

52. See Carsten Schwemmer & Sandra Ziewiecki, *Social Media Sellout: The Increasing Role of Product Promotion on YouTube*, 4 *SOC. MEDIA + SOC’Y* 1 (2018).

53. See Crystal Abidin, *Influencer Extravaganza: Commercial “Lifestyle” Microcelebrities in Singapore*, in *THE ROUTLEDGE COMPANION TO DIGITAL ETHNOGRAPHY* 158 (2016); BROOKE ERIN DUFFY, (NOT) GETTING PAID TO DO WHAT YOU LOVE: GENDER, SOCIAL MEDIA, AND ASPIRATIONAL WORK (2017); Mariah L. Wellman, Ryan Stoldt, Melissa Tully & Brian Ekdale, *Ethics of Authenticity: Social Media Influencers and the Production of Sponsored Content*, 35 *J. MEDIA ETHICS* 68, 69 (2020).

54. See Elmira Djafarova & Oxana Trofimenko, ‘Instafamous’ – Credibility and Self-Presentation of Micro-Celebrities on Social Media, 22 *INFO., COMM’N & SOC’Y* 1432 (2019); Neil M. Alperstein, *Micro-Celebrity and the Management of Self-Presentation on Digital Media*, in *CELEBRITY AND MEDIATED SOCIAL CONNECTIONS: FANS, FRIENDS AND FOLLOWERS IN THE DIGITAL AGE* 129 (2019).

55. See Maddox, *supra* note 25, at 2728.

56. *Id.* at 2726–2727; Arantxa Vizcaíno-Verdú & Crystal Abidin, *TeachTok: Teachers of TikTok, Micro-Celebrification, and Fun Learning Communities*, 123 *TEACHING & TCHR. EDUC.* 103978 (2023).

57. Maddox, *supra* note 25, at 2727.

These knowledge influencers now span fields including medicine,⁵⁸ dentistry,⁵⁹ finance,⁶⁰ and as we illuminate, law. Whatever they are selling (a product, professional service, or both), influencers are selling an identity that is “singularly charismatic and responsive to the needs and interests of target audiences.”⁶¹

To give some perspective to this discussion in the legal (and professional) context, traditionally, the legal profession’s ‘influence’ was over barriers to entry (gender, race, social background, qualifications, etc.), knowledge and expertise, and government audiences.⁶² Due to these means of influence, lawyers had effective monopolies on the courts, legal work, and the profession’s own rules and regulations.⁶³ At least in England and Wales, and the common law countries, status (or ‘influence’) was achieved through a combination of such controls, built on the profession’s historical attachment to elite institutions, including the Crown; certain prestigious schools; and, later, universities.⁶⁴ In this configuration, legal knowledge and the entire legal system—including its cultures, practices, and the identities of its members—were, for most, shrouded in mystique. This exclusivity had, and has (to the extent and in the form it still exists), functional roles, including in the maintenance of the law’s objectivity and predictability (and its appearance), and of the profession’s trustworthiness.⁶⁵ These means of influence also secured lawyers’ financial and status rewards, and in consideration, lawyers were required to commit to public-minded, ethical behaviour.⁶⁶

58. See Marah Fields, *Can #DoctorsofTikTok Be Held Accountable?*, CARDOZO ARTS & ENT. L.J. BLOG 6 (Mar. 8, 2022).

59. See Kathleen Nichols, *What Are the Ethical Considerations of Using Video Social Media Platforms Such as TikTok in Your Dental Practice?*, 153 J. AM. DENTAL ASS’N 1191 (2022).

60. See Nikita Aggarwal, D. Bondy Valdovinos Kaye & Christopher Odinet, *#Fintok and Financial Regulation*, 54 ARIZ. STATE L.J. 333 (2023); Tamra Manfredo, *How to Make \$1 Million in Thirty Seconds or Less: The Need for Regulations on Finfluencers*, 84 LA. L. REV. 790 (2024).

61. Khamis et al., *supra* note 15, at 191.

62. For a vivid history, see RICHARD L. ABEL, *THE LEGAL PROFESSION IN ENGLAND AND WALES* (1988); see also RICHARD L. ABEL, *ENGLISH LAWYERS BETWEEN MARKET AND STATE: THE POLITICS OF PROFESSIONALISM* (2003).

63. See ABEL, *THE LEGAL PROFESSION IN ENGLAND AND WALES*, *supra* note 62.

64. See *id.* For an account of barristers’ elite status and its connection to political and educational institutions, see Fernanda Pirie & Justine Rogers, *Pupillage: The Shaping of a Professional Elite*, in *THE ANTHROPOLOGY OF ELITES: POWER, CULTURE, AND THE COMPLEXITIES OF DISTINCTION* 139 (Jon Abbink & Tijo Salverda eds., 2013).

65. For the ‘sociological functionalist’ approach to understanding professional status, see generally A. M. CARR-SAUNDERS & P. A. WILSON, *THE PROFESSIONS* 497 (1933), *cited in* KEITH M. MACDONALD, *THE SOCIOLOGY OF THE PROFESSIONS* (1995); EMILE DURKHEIM, *PROFESSIONAL ETHICS AND CIVIC MORALS* (Cornelia Brookfield trans., Routledge 2003) (1957); TALCOTT PARSONS, *ESSAYS IN SOCIOLOGICAL THEORY*, ch. VIII (rev. ed. 1954); for its critique, see generally MAGALI SARFATTI LARSON, *THE RISE OF PROFESSIONALISM: MONOPOLIES OF COMPETENCE AND SHELTERED MARKETS* (rev. ed. 2013); *THE LEGAL PROFESSION IN ENGLAND AND WALES*, *supra* note 59.

66. For a detailed explanation of the ‘regulative bargain’, see Justine Rogers, Dimity Kingsford Smith & John Chelley, *The Large Professional Service Firm: A New Force in the Regulative Bargain*, 40 U.N.S.W. L.J. 218 (2017).

With an effective monopoly from the state, lawyers were prohibited from advertising or touting for work (a practice they ought not to have felt the need to engage in).⁶⁷ This prohibition and other related customs and rules of ‘etiquette’ were formalized into statutes and regulations.⁶⁸ The thinking was that an occupation in which its members did not need to compete with each other via advertising and marketing and were not allowed to present potentially confusing or deceptive images and claims to the public, would allow its members—lawyers—to truly turn their mind to their clients’ best interests and the collegial spirit, public commitment, and wider advancement of the profession.⁶⁹ Finally, and at the interpersonal level, lawyers historically had (and have) influence over their clients (especially more vulnerable, individual clients).⁷⁰ However, for most of the profession’s history, this relationship was not the critical level of the profession’s collective authority. In contrast, the key level of power in lawfluencing is between the individual lawyer and a group of anonymous people that the lawyer is trying to transform into a loyal community and possible consumers/clients of their legal services and other products. Further, in this instance, the lawyer’s activities are in turn shaped by that group’s needs and appetites as consumers of social media more broadly. While lawyers have always had to shift their work or service offerings to adapt to their clients’ projects, preferences, and to take advantage of business opportunities,⁷¹ this type of influence is very different from traditional professional influence and how the image (or brand) of the profession has been projected, accessed, and constructed.

67. Edward Shinnick, Fred Bruinsma & Christine Parker, *Aspects of Regulatory Reform in the Legal Profession: Australia, Ireland and the Netherlands*, 10 INT’L J. LEGAL PRO. 237, 238 (2003).

68. *Id.*; A. Keith Thompson, *The History of Legal Marketing in Australia and New Zealand*, in THE IMPACT OF LAW’S HISTORY: WHAT’S PAST IS PROLOGUE 83, 92 (Sarah McKibbin, Jeremy Patric & Marcus K. Harnes eds., 2022).

69. See ELIOT FREIDSON, PROFESSIONAL POWERS: A STUDY OF THE INSTITUTIONALIZATION OF FORMAL KNOWLEDGE (1986); Anthony Gray, *Advertising by Professions and the Competition and Consumer Act 2010 (Cth)*, 40 AUSTL. BUS. L. REV. 336, 336 (2012); Rogers et al., *supra* note 66.

70. The regulation of lawyers is designed to protect clients against certain risks given their generally, relatively, vulnerable position (given the informational asymmetry between the lawyer and their client). Further, the professional regulators recognize the reality of individual clients being more vulnerable than corporate clients and the risks entailed in the special rules for lawyers dealing with the former group, especially in relation to costs. See e.g., MODEL RULES OF PROF’L CONDUCT R. 1.3, 1.4, 1.5, 1.14, 2.1 (2023) [hereinafter MODEL RULES]. For studies of the lawyer-client relationship and its (contextual and fluid) power dynamics, see William Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447 (1992); Alex J. Hurder, *Negotiating the Lawyer-Client Relationship: A Search for Equality and Collaboration*, 44 BUFF. L. REV. 71 (1996); Fred C. Zacharias, *Coercing Clients: Can Lawyer Gatekeeper Rules Work*, 47 B.C. L. REV. 455 (2006); Rogers et al., *supra* note 66.

71. For example, see John Flood, *Megalawyering in the Global Order: The Cultural, Social and Economic Transformation of Global Legal Practice*, 3 INT’L J. LEGAL PROF. 169 (1996); John Flood, *Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions*, 14 IND. J. GLOBAL LEGAL STUD. 35 (2007).

B. WHAT ARE LAWFLUENCERS DOING? WHAT TYPES OF VIDEOS AND OTHER PRODUCTS ARE THEY MAKING?

The main types of videos that lawyers make to self-represent, promote, and market themselves are legal education ('law explainers'), news (and legal) commentary, and video blogs ('vlogs'). These types of videos (explainers, news videos, and vlogs) have not been created by lawyers; they already existed as genres on the platforms before the advent of lawfluencing, as products of digital and cultural trends where each brings its own styles and vernacular. In all these video formats, meanwhile, the lawfluencers may also be offering legal advice. To reiterate, lawyers are typically not making these types of videos as one-way advertising (in contrast to more traditional legal video marketing), but rather as a two-way interaction to build a loyal and engaged audience or community. This is relevant for two reasons. First, it indicates again that the videos and this influence are in many ways co-constructed, based on the viewers' desires—which are then shaped by wider trends in content and viewing habits. Second, once the lawyer's community is of a certain size, they can monetize the videos and earn money regardless of whether the viewers themselves ever pay for their legal services.⁷² As a final note, while these genres are all largely shaped by the platform and its culture and, therefore, all have elements of performed authenticity and faddishness, they represent the spectrum from professionalism on one end, to amateurism on the other, upon which, the influencer must decide where to position themselves.

Lawyer-creators post law explainers, the first type of video, to explain legal terminology, ideas, or processes in a (hopefully) clear, accessible way. For example, on YouTube, Shouse Law Group (a California firm) uploads one or two videos per week (usually two to five minutes long), with topics ranging from recovery in hit-and-run car cases, the use of California medical marijuana cards interstate, and the legal outcomes of underage drinking.⁷³ Meanwhile, U.S. husband and wife lawyers, Maclen and Ashleigh Stanley, provide 'bite-sized' explanations of legal jargon on TikTok (@the.law.says.what) and also longer educational videos via YouTube.⁷⁴ While initially, they started their TikTok in 2021 to promote their book about the law, they now have over one million followers.⁷⁵ Other lawyers specialize their lawfluencing by focusing on their specialized practice areas. For

72. See Vizcaíno-Verdú & Abidin, *supra* note 56; Liselot Hudders, Steffi De Jans & Marijke De Veirman, *The Commercialization of Social Media Stars: A Literature Review and Conceptual Framework on the Strategic Use of Social Media Influencers*, 40 INT'L J. ADVERT. 327, 336–38 (2021).

73. Larry Zimmerman, *Lawyer Content on YouTube Law Practice Management Tips and Tricks*, 87 J. KAN. B. ASS'N 16 (2018).

74. Maclen Stanley & Ashleigh Stanley (@the.Law.Says.What), TIKTOK, <https://www.tiktok.com/@the.law.says.what> [<https://perma.cc/7MCH-4EX9>] (last visited Feb. 13, 2024); Maclen Stanley & Ashleigh Stanley, YOUTUBE, <https://www.youtube.com/c/TheLawSaysWhat> [<https://perma.cc/889K-2XCB>] (last visited Feb. 13, 2024).

75. Kim Wright, *TikTok's 'Harvard Law Spouses' Explain Legal Jargon for the Masses*, HARVARD LAW SCHOOL, <https://hls.harvard.edu/today/tiktoks-harvard-law-spouses-explain-legal-jargon-for-the-masses/> (Mar. 2, 2022) [<https://perma.cc/ZM64-D59K>].

example, one U.S. lawyer, Limor Mojdehiazad (@lawyerlimor), has built an audience of nearly half a million on TikTok by creating videos on family and divorce law; with her biography describing her page as “Attorney Analysis & Commentary On Celeb Legal News.”⁷⁶

In addition to direct transmission teaching, another common approach to a law explainer is for the lawyer-creator to share a video clip of a real-life legal offense, poll the audience on who they think is liable, and then reveal the answer in a separate video with legal commentary.⁷⁷ This type of video is likely more engaging and interactive for audiences, but is also closer to giving legal advice than merely explaining the law in general terms.⁷⁸ One of the most successful lawfluencers, U.S. lawyer Erika Kullberg (@erikakullberg) uses this more specific approach to content creation.⁷⁹ Her signature videos offer viewers advice about how to read and execute the fine print of certain contracts (from American Airlines to Nike).⁸⁰ These typically involve Kullberg acting out all the roles in a scenario; for instance, Kullberg roleplaying as a consumer exercising their consumer rights against a store representative. She also directly asks her followers what legal questions they would like answered in subsequent videos.⁸¹ At the time of writing, Kullberg has amassed 9.2 million TikTok followers, and her videos have attracted a combined 66.9 million views.⁸² Indeed, she has over 19 million followers across all her platforms.⁸³ These are all ‘professional’ videos, but with different degrees of calibration to make them more accessible and appealing.

Meanwhile, it is now common for people to access their news via social media.⁸⁴ Lawfluencers have responded by producing news-driven video content,

76. Limor Mojdehiazad (@lawyerlimor), TIKTOK, <https://www.tiktok.com/@lawyerlimor> [<https://perma.cc/J6A7-ETQN>] (last visited Feb. 13, 2024). Since the time of writing, Limor has changed her TikTok biography to read ‘Legal News w/o Legal Jargon’ and covers more general news. However, she continues to host a podcast titled ‘Love & Order’, where she “provides weekly deep dives into the juicy world of celebrity legal news.” See Limor Mojdehiazad (@LawyerLimor), YOUTUBE, <https://www.youtube.com/@lawyerlimor/videos> [<https://perma.cc/DCM7-QWSR>] (last visited Aug. 27, 2024); *Love & Order*, APPLE PODCASTS, <https://podcasts.apple.com/us/podcast/love-order/id1622425366> [<https://perma.cc/9RQ3-ZX8Q>] (last visited Aug. 27, 2024).

77. See for example, @ugolord, the self-proclaimed ‘TikTok Attorney’. Ugo Lord (@ugolord), TIKTOK, <https://www.tiktok.com/@ugolord> [<https://perma.cc/5P6U-QW9N>] (last visited Aug. 27, 2024).

78. The concerns of which we address below in Part II.

79. See Erika Kullberg, (@erikakullberg), TIKTOK, <https://www.tiktok.com/@erikakullberg> [<https://perma.cc/DZ3E-9BNY>] (last visited Feb. 13, 2024).

80. See, e.g., Erika Kullberg (@erikakullberg), *What Nike Doesn’t Want You to Know about Getting a Free Pair of Shoes*, TIKTOK (Nov. 1, 2021), <https://www.tiktok.com/@erikakullberg/video/7025731456131468545> [<https://perma.cc/2A3W-G82V>]; Erika Kullberg (@erikakullberg), *What American Airlines Doesn’t Want You to Know about Delays*, TIKTOK (Jan. 4, 2022), <https://www.tiktok.com/@erikakullberg/video/7049231395427781889> [<https://perma.cc/HTL5-S8SU>] (last visited Feb. 13, 2024).

81. See for example the comment: “Credit card chain - let me know your credit card and I’ll do videos explaining benefits like this for the most popular ones” on the following video: Erika Kullberg (@erikakullberg), *Stolen AirPods? They Don’t Want You to Know this Hack*, TIKTOK (Nov. 10, 2021), <https://www.tiktok.com/@erikakullberg/video/7029045250610007297> [<https://perma.cc/22XU-NDWEJ>].

82. See Erika Kullberg, *supra* note 79.

83. *Id.*

84. Hutchinson & Dwyer, *supra* note 43.

commenting not only on legal trials but also on legal aspects of pop culture, social, and political topics. Cecilia Xie, an American lawyer and content creator, advises lawyers to “take advantage” of popular trials, “particularly involving celebrities . . . to give your own take on the proceedings and establish yourself as an authority.”⁸⁵ A striking illustration was *John C Depp, II v Amber Heard* (CL-2019-2911) (*‘Depp v Heard’*), in which actor Johnny Depp sued his ex-wife Amber Heard for fifty million dollars in defamation damages over a 2018 op-ed she wrote alleging he had abused her.⁸⁶ The trial was broadcast live from court each day, accelerating a “booming trend of amateur and professional legal analysts amassing huge social media audiences.”⁸⁷ Among the lawyers dissecting the case was Emily Baker, a former Deputy District Attorney for Los Angeles, whose YouTube page now has some 700,000 followers.⁸⁸ Baker livestreamed hours of analysis daily, including a five-hour livestream of the closing arguments, which alone attracted 2.3 million views.⁸⁹ A journalist described this phenomenon of livestream video as “a bit like Court TV, but with unvarnished analysis and a flood of quippy user comments coming in via Super Chat, a YouTube tipping feature that allows users to have their comments highlighted on the livestream” in exchange for a tip or payment.⁹⁰ Meanwhile, on TikTok, the Stanleys (the lawyer duo mentioned above) made a one-minute video explaining a distinct, pop cultural aspect of the *Depp* case: why Heard’s reference to British model, Kate Moss in her testimony was likely to backfire.⁹¹ This video attracted over thirteen million views.⁹² As another journalist observed, “The legal commentators say they’re having fun—and making a tidy profit.”⁹³ This monetization element raises novel issues for legal professionalism, which we consider in Part II.

85. Cecilia Xie, *How TikTok Can Revolutionize Your Legal Practice*, 94 N.Y. STATE BAR ASS’N J. 28, 28–30 (2022).

86. *Depp v. Heard*, No. CL-2019-2911 (Cir. Ct. Fairfax Cnty. filed Apr. 11, 2019).

87. Lindsay Dodgson & Charissa Cheong, *The Depp v. Heard Trial Has Propelled Legal Experts into TikTok Fame, Turning Them into the Internet’s Go-to Lawyers*, BUS. INSIDER (May 20, 2022), <https://www.insider.com/depp-v-heard-trial-lawyers-experts-tiktok-media-fame-2022-5> [<https://perma.cc/53PN-4H2V>].

88. Emily D. Baker (@TheEmilyDBaker), YOUTUBE, <https://www.youtube.com/channel/UCE-laOeM9gLfTcWF4HRBPpA> [<https://perma.cc/MU3K-SSXZ>] (last visited Feb. 13, 2024).

89. Emily D. Baker (@TheEmilyDBaker), *Lawyer Reacts LIVE | Closing Arguments | Johnny Depp v. Amber Heard Trial Day 24*, YOUTUBE (May 27, 2022), <https://www.youtube.com/watch?v=yU-JwmBYZes> [<https://perma.cc/9LQJ-XF9D>].

90. Geoff Weiss, *YouTube Channel LegalBytes Has Surged by Livestreaming the Depp vs. Heard Trial — and Earned \$5,000 in a Week*, BUS. INSIDER (Apr. 21, 2022), <https://www.businessinsider.com/law-youtuber-legalbytes-streaming-johnny-depp-amber-heard-trial-2022-4> [<https://perma.cc/CS6S-9XCT>].

91. Maclen Stanley & Ashleigh Stanley (@the.Law.Says.What), *Let’s Discuss Johnny Depp’s Lawyer’s Fist Pump*, TIKTOK (May 8, 2022), <https://www.tiktok.com/@the.law.says.what/video/7095506581919632686> [<https://perma.cc/X2JP-DAH9>].

92. *Id.*

93. Jessica Lucas, *YouTube Lawyers Are Getting Famous Covering the Johnny Depp–Amber Heard Trial*, INPUT (May 16, 2022), <https://www.inputmag.com/culture/johnny-depp-amber-heard-trial-youtube-lawyers-commentary> [<https://perma.cc/D9HQ-FSAN>].

Moreover, lawyers are also creating entertaining videos or online diaries, called vlogs. Social media ‘users’ typically come online for fun, to vent, to escape, to feel a sense of belonging, or simply to fill time.⁹⁴ The top lawyer-creators are catering to these needs. Joining other professionals engaging in similar activity, lawyers are providing ‘a day in the life of a lawyer’ or ‘behind the scenes’ videos of working in legal practice.⁹⁵ These videos offer, or have been described as offering, more realistic or ‘authentic’ pictures of the law than found in TV shows and movies.⁹⁶ American lawyer Devin James Stone, known for his YouTube channel LegalEagle, has a playlist of videos of himself titled “Real Lawyer Reacts!,” which he describes as a “real lawyer” reacting to “famous courtroom dramas like Law & Order, Suits, The Good Wife, A Few Good Men, and My Cousin Vinny.”⁹⁷ He then promises to help his viewers “[l]earn what is realistic and what is pure Hollywood [while breaking] down legal movies and TV shows.”⁹⁸

Other lawfluencers are creating entertaining videos purely for engagement purposes to increase their online presence and attract followers by, for example, filming themselves lip-syncing or dancing.⁹⁹ On the professional-amateur spectrum, these videos sit furthest towards the amateur (or trusted peer) end of the types described.

Finally, lawyers also use their videos and audiences to sell products. We have already mentioned how videos alone can generate income for lawfluencers.¹⁰⁰ Additionally, lawfluencers can use their platforms to sell their own or others’ products.¹⁰¹ In this case, lawfluencing aims for viewers to consume books or merchandise (‘merch’) in addition to, and sometimes more centrally, than legal

94. Áine Dunne, Margaret-Anne Lawlor & Jennifer Rowley, *Young People’s Use of Online Social Networking Sites - a Uses and Gratifications Perspective*, 4 J. RSCH. INTERACTIVE MKTG. 46 (2010); Anita Whiting & David Williams, *Why People Use Social Media: A Uses and Gratifications Approach*, 16 QUALITATIVE MKT. RSCH 362 (2013).

95. See e.g., Angel Nwachukwu & Samanta Simpson (@Sistersinlaw), *Day in the Life of a Lawyer | Full 24 Hours*, YOUTUBE (Mar. 27, 2023), <https://www.youtube.com/shorts/hHTySk4MgLc> [<https://perma.cc/X4EC-TQVW>]; Taly Goody (@TalyGoodyEsq), *Day in the Life of a Law Firm Owner & Personal Injury Lawyer*, YOUTUBE (Oct. 17, 2022), https://www.youtube.com/shorts/Ca7H41G_xOo [<https://perma.cc/FS54-FS59>].

96. For an example of how these videos may offer more realistic or ‘authentic’ pictures of the law, see Zimmerman, *supra* note 73 at 17 (discussing a law student’s video channel entitled ‘Live Laugh Law,’ in which the student shares about what her life looks like as a law student, including her “setbacks and worries.”).

97. Devin James Stone (@LegalEagle), *Real Lawyer Reacts!*, YOUTUBE, https://www.youtube.com/playlist?list=PLUvQ_mNbE83XwzqDWj6Sc9-UspQpxBy72 [<https://perma.cc/8WQU-G64A>] (last visited Mar. 7, 2024).

98. *Id.*

99. A search on TikTok for ‘lawyer dancing’ brings up various videos of lawyers and lawyers in firms dancing, for a total view count of 20.9 million views. *Find ‘lawyer dancing’ on TikTok | TikTok Search*, TIKTOK, <https://www.tiktok.com/search?q=lawyer%20dancing&t=1724789028015> [<https://perma.cc/K7VM-X4K2>] (last visited Aug. 27, 2024).

100. See e.g., Durham, *supra* note 17.

101. See e.g., Alyte Mazeika (@LegalBytesMedia), *Store*, <https://www.youtube.com/@LegalBytesMedia/store> [<https://perma.cc/Z2GY-JJRD>] (last visited Aug. 27, 2024).

services. For example, Legal Bytes, a YouTube channel run by U.S. lawyer Alyte Mazeika, contains a connected merchandise shop selling branded clothes, accessories, and drinkware.¹⁰² Once lawfluencers have built a loyal community, they can be more direct and explicit about their advertising (e.g., through featuring sponsored products in their videos or otherwise engaging in paid partnerships).¹⁰³ Rudy Giuliani often livestreams and posts on social media to a large following,¹⁰⁴ leveraging his political networks and reputation as former mayor of New York City and infamous attorney.¹⁰⁵ In his videos and posts, Giuliani directly advertises products, including gold coins, supplements, cigars, and protection from cyber-thieves.¹⁰⁶ It is common for lawfluencers to mix, match, and combine these different types of content. For example, in addition to explaining courtroom dramas, Devin James Stone explains news and sells his own product, “Legal Eagle Prep,” an online course designed for law students to “CRUSH law school.”¹⁰⁷

C. WHAT IS DRIVING THE ADVENT OF LAWFLUENCERS AND SHAPING THEIR ACTIVITIES?

As suggested in Part I.A, lawfluencing (and its associated advertising) deviates significantly from the profession’s aristocratic ethos that it was unbecoming to act like a tradesperson drumming up business—in other words, the belief that

102. *Id.*

103. See e.g., Erika Kullberg (@erikakullberg), *Small Business Owner Tips #AdobeCoCreate #AdobePartner @adobeexpress @We Met In Real Life*, TIKTOK (June 30, 2022), <https://www.tiktok.com/@erikakullberg/video/7115058860536253698> [https://perma.cc/AT53-DL62]; Erika Kullberg (@erikakullberg), *The Lifhack to Stay Informed* ☕ #morningbrewpartner #ad, TIKTOK (Aug. 24, 2022), <https://www.tiktok.com/@erikakullberg/video/7135505730571930881> [https://perma.cc/9TQX-ZTNY].

104. Rudy W. Giuliani (@RudyWGiuliani), YOUTUBE, https://www.youtube.com/channel/UC-9J07yyuXQTx_uZQchtwsg [https://perma.cc/K6UG-H5RX] (last visited Feb. 19, 2024); Rudy W. Giuliani (@RudyGiuliani), X, <https://twitter.com/RudyGiuliani> [https://perma.cc/2CZN-9MN3] (last visited Feb. 19, 2024).

105. Giuliani previously served as the United States Associate Attorney General from (1981–83); the United States Attorney for the Southern District of New York from (1983–89); the 107th Mayor of New York City (1994–2001), as well as Donald Trump’s lawyer, representing him in many lawsuits. His licence to practice law was suspended in New York State in June 2021, and in the District of Columbia in July 2021. See Jonathan Stempel, *Giuliani’s Law License Suspended over False Trump Election Claims*, REUTERS (Jun. 24, 2021), <https://www.reuters.com/world/us/rudolph-giuliani-is-suspended-law-practice-new-york-state-2021-06-24/> [https://perma.cc/H4TV-ANLU]; Katelyn Polantz, *Rudy Giuliani Suspended from Practicing Law in Washington, DC*, CNN (Jul. 7, 2021), <https://www.cnn.com/2021/07/07/politics/rudy-giuliani-suspended-law-washington/index.html> [https://perma.cc/XCD6-33K].

106. See documents and accompanying screenshots filed by Dominion Voting Systems in their \$1.6 billion suit against Giuliani for defamation alleging he used his social media posts to make damaging and false claims that the company engaged in election manipulation: *US Dominion, Inc., v. Giuliani*, No. 1:2021cv00213 (D.D. C. 2021); Kevin Breuninger, *Dominion Sues Rudy Giuliani in \$1.3 Billion Defamation Case, Doesn’t Rule out Suing Trump*, CNBC (Jan. 25, 2021), <https://www.cnbc.com/2021/01/25/dominion-files-defamation-lawsuit-against-rudy-giuliani-for-election-claims.html> [https://perma.cc/XL6R-D3J4].

107. See Devin James Stone (@LegalEagle), *Law Review News!*, YOUTUBE, https://www.youtube.com/playlist?list=PLUvQ_mNbE83XujugJUpeXqpW6jtNpjOV6 [https://perma.cc/4SBN-YSRD] (last visited Aug. 27, 2024). LEGALEAGLEPREP, <https://www.legaleagleprep.com> [https://perma.cc/7AGF-PR4A] (last visited Feb. 19, 2024).

“gentlemen did not spruik their wares”¹⁰⁸ and the traditional prohibitions on lawyers advertising generally.¹⁰⁹ If we treat a practitioner at this time as representing the profession, then this was a certain type of lawyer who was historically male; who dressed, spoke, and interacted in certain ways associated with the upper class; and who acquired clients via word-of-mouth referrals.¹¹⁰ Of course, several demographic, social, and regulatory changes to the profession, particularly dramatic throughout the second half of the twentieth century,¹¹¹ have meant that the profession could be branded, and indeed now brands itself, in complex, multi-faceted, and more and less distinctive and deliberate ways.¹¹² In this section, we identify some of the recent drivers of lawyers now presenting and marketing themselves and the law through lawfluencing or video-based social media.

First, a key enabler has been the broad marketization of the profession, in which many of the profession’s restrictive practices have been dismantled and replaced by new discourses, rules, and regulations supporting competition and consumerism.¹¹³ These moves have been driven largely by the government and large commercial law firms.¹¹⁴ For common law countries at least, there is no longer any express prohibition on advertising so long as it is not false, misleading or deceptive, or offensive or illegal.¹¹⁵

A second, critical driver is technology; the internet revolution has offered and created new ways to form communities, interact socially, spend time, and do business. Both software and hardware have advanced monumentally. Across all their devices, the typical internet user now spends seven hours per day on the

108. In other words, (male) members of the upper class or elite professions did not promote or advertise their items of sale. See Kathryn Millist-Spendlove, *Websites, Social Media and a Barrister’s Practice*, J. N.S. W BAR ASS’N 49 (2014).

109. See e.g., Rogers & Song, *supra* note 19, at 140–42.

110. Thompson, *supra* note 68, at 84–94.

111. See Daniel Muzio & Stephen Ackroyd, *On the Consequences of Defensive Professionalism: Recent Changes in the Legal Labour Process*, 32 J. L. & SOC’Y 615 (2005); Flood, *Megalawyering in the Global Order: The Cultural, Social and Economic Transformation of Global Legal Practice*, *supra* note 71; Flood, *Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions*, *supra* note 71; John Flood, *The Re-organization and Re-professionalization of Large Law Firms in the 21st Century: From Patriarchy to Democracy*, 36 J. LEGAL PROF. 415 (2012); Royston Greenwood, *Your Ethics: Redefining Professionalism? The Impact of Management Change*, in *MANAGING THE MODERN LAW FIRM: NEW CHALLENGES*, NEW PERSPECTIVES 186 (Laura Empson ed., 2007).

112. See Rogers & Song, *supra* note 19, at 140. For an example of this ‘brand’ complexity in the context of the barristers’ profession, see Justine Rogers, *Representing the Bar: how the barristers’ profession sells itself to prospective members*, 32 LEGAL STUD. 202 (2012); and in the context of the professional bodies: Justine Rogers & Deborah Hartstein, *You, us and them: The multiple projects of the New South Wales Law Society*, 45 MONASH U. L. REV. 716 (2019).

113. See Julian Webb, *Turf Wars and Market Control: Competition and Complexity in the Market for Legal Services*, 11 INT’L J. LEGAL PROF. 81 (2004).

114. Rogers et al., *supra* note 66.

115. See AUSTL. SOLICITORS’ CONDUCT RULES R. 36 (2015); MODEL RULES R. 7.1; Code of Conduct § 8.8 (SOLICITORS REGUL. AUTH. 2018).

internet, 35% of which is on social media.¹¹⁶ In turn, the way we consume information and make purchasing decisions has changed.¹¹⁷ Platforms allow anyone to “broadcast the self,” increasingly now in video format.¹¹⁸ For so-called content creators, the ubiquity of high-resolution cameras, cheaper mobile internet, and easy-to-use production tools have dramatically lowered barriers to entry for video content. Every minute, 500 hours of content is uploaded to YouTube (compared to forty-eight hours in 2013) and over 167 million videos are played on TikTok.¹¹⁹ Indeed, TikTok has been the most frequently downloaded app since 2018, in part because of the accessibility of short-form video content.¹²⁰ The COVID-19 pandemic, which normalized video conferencing and online interaction, accelerated these trends.¹²¹

Third, certain social and political changes have influenced marketing trends—including the current ‘authenticity’ fad—which in turn is shaping how law-fluencers are proceeding. Authenticity denotes being true to oneself and others and being faithful to one’s personality, values, and beliefs.¹²² To successfully perform online, influencers must be perceived by their followers as authentic.¹²³ Video is an effective medium for conveying—and constructing—an authentic identity because it can create a sense of transparency, intimacy, and trust.¹²⁴ By

116. Simon Kemp, *Digital 2022: Time Spent Using Connected Tech Continues to Rise*, DATAREPORTAL (Jan. 26, 2022), <https://datareportal.com/reports/digital-2022-time-spent-with-connected-tech> [https://perma.cc/3AB5-9XNG].

117. Lucia Malä, Harley Krohmer, Wayne D. Hoyer & Bettina Nyffenegger, *Emotional Brand Attachment and Brand Personality: The Relative Importance of the Actual and the Ideal Self*, J. MKTG. 35 (2011).

118. M. Laeeq Khan, *Social Media Engagement: What Motivates User Participation and Consumption on YouTube?*, 66 COMPUT. HUM. BEHAV. 236, 237 (2017); Jean E. Burgess & Joshua B. Green, *The Entrepreneurial Vlogger: Participatory Culture Beyond the Professional-Amateur Divide*, in THE YOUTUBE READER 89 (Pelle Snickars & Patrick Vonderau eds., 2009).

119. *Data Never Sleeps 10.0*, DOMO, <https://www.domo.com/data-never-sleeps> [https://perma.cc/74M3-RKBE] (last visited Mar. 6, 2024).

120. Given TikTok’s success, there have been various launches of similar short-form video applications—Instagram launched ‘Instagram Reels’ in August 2020, YouTube launched ‘Shorts’ in July 2021, and, as of this article’s publication, LinkedIn is in the process of fully rolling out a ‘Video’ tab. *Introducing Instagram Reels*, INSTAGRAM (Aug. 5, 2020), <https://about.instagram.com/blog/announcements/introducing-instagram-reels-announcement> [https://perma.cc/L5MV-CS8V]; Todd Spangler, *YouTube Shorts, Video Giant’s TikTok Copycat, Is Rolling Out in 100-Plus Countries*, VARIETY (Jul. 13, 2021), <https://variety.com/2021/digital/news/youtube-shorts-global-launch-1235018403/> [https://perma.cc/K5DL-DK8Z]; Lauren Irwin, *LinkedIn to roll out TikTok-style video option*, THE HILL (Mar. 30, 2024), <https://thehill.com/policy/technology/4565155-linked-in-tiktok-style-video-option/> [https://perma.cc/QN2W-GLBZ].

121. Janine Hacker, Jan vom Brocke, Joshua Handali, Markus Otto & Johannes Schneider, *Virtually in this Together – How Web-Conferencing Systems Enabled a New Virtual Togetherness during the COVID-19 Crisis*, 29 EUR. J. INFO. SYS. 563, 564 (2020); Banita Lal, Yogesh K. Dwivedi & Markus Haag, *Working from Home During Covid-19: Doing and Managing Technology-Enabled Social Interaction With Colleagues at a Distance*, 25 INFO. SYS. FRONTIERS 1333, 1335–36 (2023).

122. Sigurður Kristinsson, *Authenticity, Identity, and Fidelity to Self*, in HOMMAGE À WLODEK: PHILOSOPHICAL PAPERS DEDICATED TO WLODEK RABINOWICZ 1 (Toni Rønnow-Rasmussen, Björn Petersson, Jonas Josefsson & Dan Egonsson eds., 2007).

123. Hudders et al., *supra* note 72, at 356.

124. Chan-Olmsted & Kim, *supra* note 35, at 103.

the mid-2000s, a “small but growing number of lawyers [were] starting to use video as a way to grab—and hold on to—a potential client’s attention.”¹²⁵ Video marketing was endorsed by legal marketing professionals as “the perfect ice-breaker: adding a face-to-face element” that could help induce trust¹²⁶ and also allow smaller firms to compete on a more even playing field with larger firms (and their larger marketing budgets).¹²⁷ Today, the same principles are being applied on a much wider scale with lawfluencers. As American legal digital marketing agency, Good2BSocial notes:

Legal video marketing is more relevant than it has ever been. Nearly 90 percent of marketing professionals use video as a marketing tool. Video marketing dominates because it *gets results*. Individuals are likely to select a law practice based on the quality and messaging of their digital video presence.¹²⁸

Meanwhile, much of how any influencing is playing out hinges on the mechanics and business models of the platforms themselves. Video platforms allow creators to respond to their audience and interact with them in real-time, including by answering questions or fielding suggestions for what to produce next.¹²⁹ This so-called “co-creation of value”¹³⁰ is then reinforced through interactivity among the consumers or audience members themselves.¹³¹ In turn, both the meaning of value and the process of value creation are rapidly shifting away from product- and firm-centric views to personalized consumer experiences.¹³² Moreover, social media platforms have subscribe, comment, and share features¹³³ that can generate strong in-group, community membership effects. The dynamics of homophily—

125. Jill Schachner Chanen, *Selected Shorts: Video Marketing Gains Popularity Among Lawyers for Speed, Convenience*, 92 A.B.A. J. 19, 19 (2006).

126. Diana D'Itri, *Growing Your Practice with Online Video - 10 Tips for Getting in Front of Prospective Clients*, 35 LAW PRAC. 46, 46 (2009) (capitalization removed).

127. Adam L. Stock, *How Lawyers Are Using Video*, 37 LAW PRAC. 40 (2011).

128. Guy Alvarez, Kevin Vermeulen & Victoria Zimmon, *The Social Law Firm Index 2022*, GOOD2BSOCIAL (2022), https://3295561.fs1.hubspotusercontent-na1.net/hubfs/3295561/TheSocialLawFirmIndex_2022.pdf [<https://perma.cc/7JMN-HPKZ>] (last visited Aug. 27, 2024) (emphasis added).

129. Stephen L. Vargo, Melissa Archpru Akaka & Paul P. Maglio, *On Value and Value Co-Creation: A Service Systems and Service Logic Perspective*, 26 EUR. MGMT. J. 145, 151 (2008).

130. *Id.*; see also Roderick J. Brodie, Linda H. Hollebeek, Biljana Juric & Ana Ilic, *Customer Engagement: Conceptual Domain, Fundamental Propositions, and Implications for Research*, 14 J. SERV. RSCH. 252, 253 (2011).

131. Avi Goldfarb & Catherine Tucker, *Online Display Advertising: Targeting and Obtrusiveness*, 30 MKTG. SCI. 389 (2011).

132. As business professors Prahalad and Ramaswamy explain: “The interaction between the firm and the consumer is becoming the locus of value creation and value extraction. As value shifts to experiences, the market is becoming a forum for conversation and interactions between consumers, consumer communities, and firms. It is this dialogue, access, transparency, and understanding of risk-benefits that is central to the next practice in value creation.” C.K. Prahalad & Venkat Ramaswamy, *Co-Creation Experiences: The next Practice in Value Creation*, 18 J. INTERACTIVE MKTG. 5, 5 (2004).

133. See e.g., *Comment, subscribe, & connect with creators*, YOUTUBE, https://support.google.com/youtube/topic/9257418?hl=en&ref_topic=9257500&sjid=10679326697291566477-NA [<https://perma.cc/2ZT8-DZDS>] (last visited Aug. 27, 2024).

in which perceived similarity leads to attraction—can amplify any sense of authenticity felt by audiences when engaging with an influencer’s content wherever it lies on the professional-amateur continuum.¹³⁴

Further, in the pursuit of financial rewards and/or cultural capital, content creators are incentivized by the platforms to support the platform’s business goals: to produce content most likely to engage and keep viewers glued to the platform.¹³⁵ This applies to the topic overall; for example, the areas where the most content is being created on YouTube (Gaming, Makeup & Beauty, Reviews & Unboxing, ASMR, and Vlogging, etc.) are also those areas with the highest amounts of engagement.¹³⁶ As such, where an algorithm signals that a particular topic is trending, “online content producers will notice this platform and audience shift—likely through their analytics—and will integrate [the trending topic] into their content.”¹³⁷ To further maximize engagement, content creators (including law-fluencers) also use common digital marketing strategies,¹³⁸ such as ‘clickbait’ titles (sensationalist names for their videos);¹³⁹ ‘thumbnails’ (catchy promotional images); engaging, exaggerated captions; and/or metadata such as hashtags.¹⁴⁰

As a final driver, knowledge influencing in particular is an outcome of the neo-liberal movement, as scholars in the field have noted, in which lines have been blurred between work and play, as well as between expertise and entertainment.¹⁴¹ Several studies have shown how the logic of entrepreneurialism and aggressive profit-seeking have affected professionalism,¹⁴² and to some extent, influencing is simply a way for lawyers to achieve “additional revenue streams” including against rising costs of living and other financial pressures.¹⁴³ Where, however, these marketing tactics are taken to their extreme (such as in the case of Giuliani hawking sponsored products and directing his viewers to use an

134. Chan-Olmsted & Kim, *supra* note 35, at 112.

135. Luke Munn, *Angry by Design: Toxic Communication and Technical Architectures*, 7 HUM. & SOC. SCI. COMM’N 1, 3 (2020).

136. Hutchinson & Dwyer, *supra* note 43, at 127.

137. *Id.* at 126.

138. See Isabella Catelan Miragaia Dias & Lina Gomez-Vasquez, “I’ll Be Right There with You to Help You”: How TikTok Health/Fitness Creators Use PR Strategies to Engage With Followers, Conference Proceeding at the 25th International Public Relations Research Conference (March 3–5, 2022).

139. See Anna-Katharina Jung, Stefan Stieglitz, Tobias Kissmer, Milad Mirbabaie & Tobias Kroll, *Click Me...! The Influence of Clickbait on User Engagement in Social Media and the Role of Digital Nudging*, 17 PLOS ONE 1, 1 (2022).

140. Hutchinson & Dwyer, *supra* note 43, at 126.

141. Maddox, *supra* note 25, at 2730; Catherine Archer, *Social Media Influencers, Post-Feminism and Neoliberalism: How Mum Bloggers’ ‘Playbour’ is Reshaping Public Relations*, 8 PUB. RELS. INQUIRY 149 (2019).

142. Margaret Thornton, *Legal Professionalism in a Context of Uberisation*, 28 INT’L J. LEGAL PRO. 243, 243 (2021).

143. Maddox, *supra* note 25, at 2730.

eponymous promotion code¹⁴⁴), the potential to undermine the credibility of the profession is high.¹⁴⁵ We now turn to these concerns.

II. IMPLICATIONS FOR PROFESSIONALISM

In this Part, we contemplate some of the meanings of influencing via video-based, social media platforms for lawyers' professionalism. We look at three overlapping dimensions of professionalism that shape the trust and legitimacy of the profession and the legal system in this context: access to justice and other public interest values; the client relationship and fiduciary relationship; and the identity, status and welfare of lawyers, the profession, and the legal system.

A. ACCESS TO JUSTICE AND A LAWYER'S OTHER PUBLIC INTEREST VALUES

In some respects, lawyers' use of video on social media platforms represents a new expression of their rule of law values and public service duty to widen access to justice. Since the 1990s, this public interest commitment contains a consumerist twist in which the law or the provision of legal services must also be transparent and oriented toward the welfare of the public as consumers.¹⁴⁶ Lawfluencing could be regarded, for example, as reworking the rule of law principle of "open justice"—that the law both ought to be done and seen to be done.¹⁴⁷ Historically, this was achieved by having open and publicly accessible courtrooms.¹⁴⁸ In practice, however, most people (as citizens) have neither the inclination nor the opportunity to physically attend hearings,¹⁴⁹ and most of their understanding of how the law operates is filtered through traditional media.¹⁵⁰ In recent years, as the *Depp v. Heard* trial exemplifies, a trend has emerged in which members of the public "see the law" via livestreamed hearings online. Not surprisingly, celebrity cases are the most watched.¹⁵¹ For example, the six-week broadcast of *Depp v. Heard* on

144. By inputting a promotional code (e.g., 'Rudy'), Giuliani receives an affiliate fee (a commission paid for generating a sale or lead). See e.g., Rudy W. Giuliani (@RudyWGiuliani), *DOJ and FBI sold out our national security. No formal search?* | January 19 2023 | Ep 306, YOUTUBE, at 42:27–43:31 (Jan. 19, 2023), <https://www.youtube.com/watch?v=Ms4tOx8Sfqc> [https://perma.cc/5BBQ-6W52].

145. Moreover, a tendency to over-commercialize one's content can also backfire on the influencer themselves, contributing to a perception that they have 'sold out,' and "lost some of their perceived authenticity and relatability." Hudders et al., *supra* note 72, at 356.

146. Muzio & Ackroyd, *supra* note 111, at 615–18; Flood, *Megalawyering in the Global Order*, *supra* note 71, at 172–82.

147. *Scott v. Scott* [1913] AC 417 (HL) 473; JOSEPH JACONELLI, *OPEN JUSTICE: A CRITIQUE OF THE PUBLIC TRIAL*, 1–3 (1st ed. 2002).

148. JACONELLI, *supra* note 148, at 1–3.

149. Michael Legg, Anthony Song, Lyria Bennett Moses & Richard Buckland, *Open Justice during a Pandemic – The Role and Risks of Remote Hearings*, 33 PUB. L. REV. 143, 146 (2022).

150. Sharon Rodrick, *Achieving the Aims of Open Justice? The Relationship between the Courts, the Media and the Public*, 19 DEAKIN L. REV. 123, 158 (2014).

151. Dina Zubi, *Johnny Depp, Amber Heard and the Court of TikTok: How Creators Are Driving Viral Content about Complex Legal Cases*, CORQ (2022), <https://corq.studio/insights/johnny-depp-amber-heard-and-the-court-of-tiktok-how-creators-are-driving-viral-content-about-complex-legal-cases/> [https://perma.cc/YR6U-K6GF].

YouTube's Law&Crime Network Channel comprised 83.9 million hours of viewing time, with a peak of 3.5 million simultaneous viewers during the announcement of the verdict.¹⁵²

Nonetheless, as Susskind and Susskind have noted, while the internet is providing access to greater quantities of legal knowledge or "content" than ever before (in this case full legal trials), most of this information is indiscernible to the non-specialist.¹⁵³ This observation might help explain the colossal view counts of lawfluencer (explanatory, etc.) content. The number of views on lawfluencer content about the *Depp* trial, for example, is even more staggering than the trial itself. To illustrate, a fifty-six-second video from Arizonan lawyers, Mark and Alexis Breyer (@husbandandwifelawteam), analyzing the risk of jury bias as a result of Heard drinking a pink liquid from her water bottle in court, attracted 6.4 million views.¹⁵⁴ Meanwhile, Mike Mandell's YouTube explainer video about the *Depp v. Heard* trial has received over 10 million views.¹⁵⁵ By educating the public, lawfluencers are distilling masses of newly available legal information. They are redressing, then, the knowledge imbalance between lawyer and layperson—often called "information asymmetry"¹⁵⁶—a central priority of the consumer movement. In the context of the profession having historically performed poorly in ensuring public understanding of the law and legal processes, this could be seen as a welcome change.

Conversely, and to anticipate some of the latter discussion about the implications of lawfluencing for the institution,¹⁵⁷ what *is* being shared about the law's meaning and values is not within the full control of lawyers in any practical sense (let alone of the wider profession). We already illustrated how lawfluencers often let their viewers decide the direction of their content through app functions, primarily the comments. Also, as indicated, an even more significant influence on

152. Bohdan Zaveruha, *Johnny Depp and Amber Heard trial — how many viewers gathered on YouTube and how it was discussed on Twitch?*, STREAMCHARTS (June 2, 2022), <https://streamcharts.com/news/johnny-depp-vs-amber-heard-trial-viewership> [<https://perma.cc/22UB-N8UL>].

153. RICHARD E. SUSSKIND & DANIEL SUSSKIND, *THE FUTURE OF THE PROFESSIONS: HOW TECHNOLOGY WILL TRANSFORM THE WORK OF HUMAN EXPERTS* 150 (1st ed. 2015).

154. Mark Breyer & Alexis Breyer (@husbandandwifelawteam), TIKTOK (May 7, 2022), <https://www.tiktok.com/@husbandandwifelawteam/video/7095075061689830702> [<https://perma.cc/HPZ4-GVFB>]. As of the publication of this article, the Breyer's TikTok account has changed its username to @markandalexisbreyer. Mark Breyer & Alexis Breyer (@markandalexisbreyer), TIKTOK, <https://www.tiktok.com/@markandalexisbreyer> [<https://perma.cc/S2NA-JP8X>] (last visited Aug. 27, 2024).

155. Mike Mandell (@LawByMike), *Johnny Depp v. Amber Heard Trial Explained in 60 Seconds!*, YOUTUBE (May 3, 2022), https://www.youtube.com/watch?v=7c6jmkI6_U [<https://perma.cc/BU8A-VCXH>].

156. This term, widespread in the economics and management literatures denotes the situation in which one party in a transaction has more or better information than the other, typically more vulnerable, party. It is used in the professional ethics literatures too because professional regulation is supposed to help protect clients against some of the potentially hazardous effects of this imbalance, such as overcharging, not acting in the client's best interests, and lawyer-client conflicts. For a review of the term, see Donald D. Bergh, David J. Ketchen, Jr., Ilaria Orlandi, Pursey P. M. A. R. Heugens & Brian K. Boyd, *Information Asymmetry in Management Research: Past Accomplishments and Future Opportunities*, 45 J. MGMT. 122 (2019).

157. See *infra* Part II.C.

content is the platform, or the process of so-called platformization, in which the influencer tries to play the algorithms to maximize views, engagement, and profits.¹⁵⁸ Lawyers are not just commenting on the law from a ‘public service’ starting point, they are responding to our thirst for celebrity cases. Gwyneth Paltrow’s recent ski accident case, for example, was watched by over thirty million people.¹⁵⁹ In other words, this is calibrated—and celebrated—access to justice.

At the same time, video marketing on social media might be closing gaps by giving members of the public a greater selection of lawyers from which to choose, including low-cost options. Lawyers were once remote figures, hidden in offices and courtrooms, but lawfluencers may make lawyers easier to find and/or appear more approachable than before. In this way, lawfluencing seems to support the consumerist argument that we need to increase the range of opportunities for and means by which consumers can access legal services.¹⁶⁰ But, again, these issues are not easy to pin down; a critical access to justice issue is the client’s informed choice—which lawyer and at what cost. In this online context, on the one hand, consumers might find more low-fee options—while being concurrently under-equipped to assess risks that might attach to that low-cost work.¹⁶¹ Furthermore, if they choose an influencer (who is more likely to be found and/or may seem more trustworthy), consumers may be more likely to be overcharged or at least charged more than they would with another lawyer providing the same level of service. These are speculative points that require further study,¹⁶² but based on how influencers are usually able to command a “price premium” for their brand,¹⁶³ it is logical that lawyers too could charge higher fees than they could before having a lawfluencer profile.

Moreover, consumers may find it difficult to evaluate the qualifications and expertise of lawfluencers. Wily lawyers may take advantage of the deregulated nature of the internet to fake or inflate their expertise. As Maddox has pointed out, this has already occurred in the medical field.¹⁶⁴ Steven Ho (@steveioe), a former emergency room (ER) technician, became a microcelebrity on TikTok from his

158. Nieborg & Poell, *supra* note 46.

159. Matt Donnelly, *Gwyneth Paltrow Ski Trial Ratings: 30 Million People Watched Across Youtube, Social Platforms*, VARIETY (Mar. 31, 2023), <https://variety.com/2023/film/news/gwyneth-paltrow-ski-trial-ratings-30-million-1235570307/> [<https://perma.cc/ZEF8-SCSZ>].

160. Dana Remus & Frank Levy, *Can Robots Be Lawyers: Computers, Lawyers, and the Practice of Law 30th Anniversary Commemorative Issue*, 30 GEO. J. LEGAL ETHICS 501, 544 (2017).

161. Vicki Waye, Martie-Louise Verreynne & Jane Knowler, *Innovation in the Australian Legal Profession*, 25 INT’L J. LEGAL PRO. 213, 222 (2018); Felicity Bell & Justine Rogers, ‘Fit and Proper’ Coders? *How Might Legal Service Delivery by Non-Lawyers Be Regulated?*, 24 LEGAL ETHICS 111, 111–12 (2021).

162. For example, the question of whether there is any relationship or correlation between a lawfluencer’s number of followers and their fees warrants further study.

163. Price premium refers to the amount that consumers are willing to pay for the brand over that of another. Richard G. Netemeyer, Balaji Krishnan, Chris Pullig, Guangping Wang, Mehmet Yagci, Dwane Dean, Joe Ricks & Ferdinand Wirth, *Developing and Validating Measures of Facets of Customer-Based Brand Equity*, 57 J. BUS. RSCH. 209, 210 (2004).

164. Maddox, *supra* note 25, at 2745.

humorous videos and advice about ER care.¹⁶⁵ However, “investigative users” discovered Ho had only worked in an ER for a very short period and had no medical training, despite his videos implying he had substantial expertise.¹⁶⁶ Since the revelation, Ho’s biography now states:

“Jokes Not Advice

Not a Doctor. Retired ER Tech.”¹⁶⁷

But this disclaimer and clarification relied upon Ho being audited by users themselves, which is not assured. In a platformed context where personal reputation and branding are critical, there is a real risk of similar behaviour by self-serving lawyers, especially given the importance the profession places on status. Numerous cases of lawyers attempting to craft “perfect versions of themselves” online already exist.¹⁶⁸ In the case of *In re Svitlana E. Sangary*, the State Bar of California suspended a lawyer found to have engaged in deceptive advertising for sharing photoshopped images of herself with political figures and celebrities in an attempt to appear well-connected.¹⁶⁹ Meanwhile, in a 2014 Australian case¹⁷⁰ Australian law student Jacob Reichman was convicted for misrepresenting himself as a legal practitioner on social media.¹⁷¹ As Bromberg and Ekert point out, the case involving Reichman demonstrates that “the court is likely to take social media representations seriously, owing [to] its breadth of reach to members of the public the user does not know and who could potentially be misled.”¹⁷² Finally, despite being banned by regulators from both practicing law and providing financial services, former Australian barrister Dominique Grubisa continued to record and share ‘professional guru’ videos, with the disclaimer they offered “general advice and [were] for educational purposes only.”¹⁷³ Grubisa markets herself in terms compatible with access to justice values by selling

165. *Id.*

166. *Id.*

167. Steven Ho (@steveioe), TikTok, <https://www.tiktok.com/@steveioe> [<https://perma.cc/LVE9-VSXS>] (last visited Mar. 7, 2024).

168. Evan Shirley, *Lawyers, Social Networking, and How to Avoid Falling into Ethical Traps*, 14 HAW. B.J. 123, 127 (2011); Zawacki, *supra* note 22, at 122.

169. *In re Svitlana E. Sangary*, No. 13-O-13838-DFM (Cal. State Bar Ct. Sept. 11, 2014).

170. AAP, *Queensland Law Student Fined for Faking Credentials*, 9NEWS (Aug. 28, 2014), <https://www.9news.com.au/national/law-student-fined-for-faking-credentials/05202b17-b320-45ff-bfa0-f08c1bb125f2> [<https://perma.cc/EJ6X-ZB5S>].

171. *Id.*

172. Marilyn Bromberg & Andrew Ekert, *Caution: Tweet at Your Own Risk: Social Media and the Australian Legal Profession*, 6 J. CIV. LITIG. & PRAC. 183, 190 (2017).

173. Max Mason, *Grubisa Won't Stop until Somebody Makes Her*, AUSTL. FIN. REV. (Feb. 17, 2023), <https://www.afr.com/rear-window/grubisa-won-t-stop-until-somebody-makes-her-20230216-p5ckzr> [<https://perma.cc/4VHV-CBWP>].

herself as a Robin Hood figure,¹⁷⁴ who made it her “passion and focus to level the playing field for everybody when it came to accessing the law, not just the wealthy.”¹⁷⁵

Of course, the bigger question here, which also applies to unqualified or under-qualified influencers, is whether those who are regulated are “necessarily and inevitably better placed than others to provide competent and ethical legal services, and offer better protection,”¹⁷⁶ or whether there is unjustified protectionism at play. For many, technology might be “the only workable solution to the access to justice gap,”¹⁷⁷ though these writers typically refer to things like chatbots and automated document assembly. It remains a question whether justice through technology means legal services can be fully delivered via videos and chat on social media.

B. THE LAWYER-CLIENT RELATIONSHIP, FIDUCIARY OBLIGATIONS, AND CUSTOMISED CARE

In the process of public engagement, lawyers may be breaching ethical or legal rules against solicitation.¹⁷⁸ This may occur expressly (within videos or comments requesting viewers to enlist them for legal services) or impliedly (through embedded links to their websites).¹⁷⁹ As an example of the latter, Dominican lawyer Kathleen Martinez (@attorneymartinez) lists on her TikTok biography a link to book a legal consultation, among other links to her paralegal training program, social media, beauty product affiliates, and even the outfits she wears.¹⁸⁰

There is also the risk of inadvertent lawyer-client relationships when marketing posts are construed by viewers as legal advice or implied retainers.¹⁸¹ For example, New York lawyer Alex Peter (@lolooverruled) had to add a warning to his TikTok bio—“Not your lawyer”—after many of his followers referred to him as

174. See ‘Robin Hood’ Grubisa Rolls on with Rotten Real Estate Advice, INDEP. AUSTRAL. (Feb. 9, 2023), <https://independentaustralia.net/business/business-display/robin-hood-grubisa-rolls-on-with-rotten-real-estate-advice,17219> [<https://perma.cc/C85R-FENR>].

175. Dominique Grubisa, *Special Briefing*, DGINSTITUTE, <https://www.dginstitute.com.au/mwc2023/> [<https://perma.cc/6QL2-N9T6>] (last visited Mar. 7, 2024).

176. STEPHEN MAYSON, *REFORMING LEGAL SERVICES: REGULATION BEYOND THE ECHO CHAMBERS* 2 (2020); see BENJAMIN H. BARTON, *GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION* (2015).

177. Remus & Levy, *supra* note 161; see John McGinnis & Russell Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 *FORDHAM L. REV.* 3041 (2014).

178. See MODEL RULES R. 7.3; Code of Conduct § 8.9 (SOLICITORS REGUL. AUTH. 2018).

179. GINO DAL PONT, *LAWYERS’ PROFESSIONAL RESPONSIBILITY*, 89–90 (6th ed. 2017).

180. *Attorney Kathleen Martinez*, LINKTREE, <https://linktr.ee/attorneymartinez> [<https://perma.cc/G89N-QK93>] (last visited Mar. 7, 2024).

181. See Zawacki, *supra* note 22, at 124; Isabella M. Leavitt, *Attorney Advertising in the Age of Reddit: Drafting Ethical Responses to Prospective Clients in Online Non-Legal Forums*, 29 *GEO. J. LEGAL ETHICS* 1111, 1112 (2016).

“our Lawyer” or “their Lawyer” and even confessed crimes to him over TikTok direct message.¹⁸²

Such ethical risks are heightened on these high-interaction platforms. To illustrate how these direct communications occur, in one video by Miami lawyer Caesar Chukwama (@iamcaez) titled, “Can you get a DUI for sleeping in your car?” Chukwama provides general legal advice by telling viewers to turn their car off, leave the keys out of reach, and sit in the passenger seat.¹⁸³ Chukwama then responds to comments, including the following discussions:

User 1: How easily would that get thrown out in court tho [sic]?

Caesar Chukwama, Esq. (Creator): Legally wouldn’t get thrown out cause technically it’s still a DUI. But in trial in front of a jury, different story.

User 2: If I put my keys in a location outside the vehicle before sleeping in it, is that ok?

Caesar Chukwama, Esq. (Creator): Yes, provided you cant quickly get it and operate your vehicle. [sic]¹⁸⁴

Another example is from Californian lawfluencers (and firm partners), David Pourshalimi and Ben Perlmutter (@pandpfirm2.0):

User 1: How can I hire you bro? I’m facing dui charges in inland empire [sic]

User 2: Praying mines gets reduced or dismissed, cop gave the breathalyzer in 6 mins instead of waiting 15 mins [sic]

David P (Creator): If you can prove that, you could potentially get your breath results tossed out!¹⁸⁵

On the one hand, this type of communication seems like direct and customized advice, where such tailored advice is a hallmark of traditional professionalism.¹⁸⁶ However, while effectiveness in influencer engagement hinges on creating relationships with viewers,¹⁸⁷ this relationship is not protected in the same way a lawyer-client relationship is. Moreover, professional work has also been associated with other aspects of quality such as time and attention,¹⁸⁸ and yet lawfluencers,

182. Samantha Berlin, *Lawyer Goes Viral After Asking Viewers to Stop Telling Him About Crimes They’ve Committed*, NEWSWEEK (Dec. 22, 2021), <https://www.newsweek.com/lawyer-goes-viral-after-asking-viewers-stop-telling-him-about-crimes-theyve-committed-1662179> [<https://perma.cc/5ZTN-5GGU>].

183. Caesar Chukwama (@iamcaez), *Can You Get a DUI for Sleeping in Your Car?*, TIKTOK (Oct. 11, 2022), <https://www.tiktok.com/@iamcaez/video/7153310085526162731> [<https://perma.cc/38QR-M3A2>].

184. The described discussion can be found in the comment section of Chukwama’s aforementioned TikTok. *Id.*

185. David Pourshalimi & Ben Perlmutter (@Pandpfirm2.0), *DUI Charges DISMISSED for Reckless Driving Plea Client on DACA*, TIKTOK (Dec. 9, 2022), <https://www.tiktok.com/@pandpfirm2.0/video/7175320939125591338> [<https://perma.cc/CG9F-BQJE>].

186. Noordegraaf, *supra* note 28, at 187–88.

187. See Chan-Olmsted & Kim, *supra* note 35, at 100.

188. See Noordegraaf, *supra* note 28, at 188.

with thousands or even millions of followers, are unlikely to achieve these benchmarks. Because of the ease and (often) shortened format of video content today, this advice is very likely to be ‘off the cuff.’ As Hessick observes, albeit in the context of law professors’ use of Twitter, social media’s low barriers to communication encourage professionals to “make statements that they would never make in other contexts,” including statements outside their areas of expertise.¹⁸⁹

Having said this, as Noordegraaf points out, sometimes professionalism means speed and efficiency; high quality doesn’t have to mean bespoke.¹⁹⁰ Nonetheless, this is a new context that is different than, say, new forms of managerialism in professional workplace settings (where these blends have been seen and examined to date). On platforms, the nature of advice given, and whether it strikes the appropriate balance between efficiency and customization, is significantly influenced by algorithms. The TikTok algorithm, for example, favors creators who post frequently (particularly with frequently used hashtags),¹⁹¹ meaning at least once a day, with some marketers advising ideally five posts daily.¹⁹² Those who post regularly are highlighted by the algorithm, receiving more views, subscribers, and, ultimately, platform income. Consequently, by design and platform incentive, as lawfluencers opt for quantity over quality, advice is more likely to be rushed, poorly researched, or even inaccurate, especially for lawfluencers who, in an effort to capture the ‘flavour of the day’ (i.e. what is trending), opine “widely on things outside of [their] area of expertise”.¹⁹³

In these new contexts for lawyers, and as a practical point, disclaimers are essential. Such disclaimers should ensure viewers understand that any interactions are “not intended to create an attorney-client relationship;”¹⁹⁴ disclose if any subject matter is outside their expertise;¹⁹⁵ and clearly state that none of the content amounts to legal advice. While lawfluencers who are not qualified to practice can only provide legal information, the line between legal information and legal advice can easily be blurred by these mediums.¹⁹⁶

In addition, such interactions between lawyers and members of the public raise questions about the lawyer’s fiduciary duties, including the duty of confidentiality (which can apply even absent a retainer), as well as the client’s rights to privacy and informed consent. For example, Pourshalimi and Perlmutter (introduced

189. Carissa Byrne Hessick, *Towards a Series of Academic Norms for #LawProf Twitter*, 101 MARQ. L. REV. 903, 912 (2018).

190. See Noordegraaf, *supra* note 28, at 2.

191. See Daniel Klug, Yilou Qin, Morgan Evans & Geoff Kaufman, *Trick and Please. A Mixed-Method Study On User Assumptions About the TikTok Algorithm*, 13TH ACM WEB SCIENCE CONFERENCE 2021 84, 87–89 (2021).

192. See Talia Schwartz, *How Lawyers Can Use TikTok To Generate Leads*, GOOD2BSOCIAL (Aug. 10, 2020), <https://good2bsocial.com/how-lawyers-can-use-tiktok-to-generate-leads/> [https://perma.cc/76RF-SLZD].

193. See McPeak, *supra* note 31, at 230.

194. Xie, *supra* note 85, at 33.

195. See Hessick, *supra* note 190, at 919.

196. See Bell & Rogers, *supra* note 162, at 22; Remus & Levy, *supra* note 161, at 54.

above) are known for uploading post-trial ‘victory’ videos with their clients outside of the courthouse in which they outline the trial details, the strategies used, and the sentences received.¹⁹⁷ These videos serve as client testimonials in a newer, possibly more ‘authentic,’ benignly ‘amateurish’ form of referral compared to standard text reviews or word-of-mouth. However, the videos attach the clients’ faces to the crimes as a permanent record (including cases of alleged burglary and alleged violence on a minor, etc.), giving rise to privacy and confidentiality concerns.¹⁹⁸ The immediate filming of these videos after the trial also raises ethical questions around informed consent and power imbalances: at that moment, outside the courthouse, clients may be overwhelmed with relief, gratitude, and adrenaline, and/or feel put on the spot, dulling their decision-making.

Finally, distinguishing itself from earlier forms of social media, and as part of the authenticity/amateur trends, TikTok incentivises users to share “workplace content” as part of their authenticity narrative.¹⁹⁹ Dangers of ethical breaches may also arise, for example, in an office when periphery computer screens or documents in videos could allow viewers to zoom in on the content and see clients’ confidential information.²⁰⁰

C. LAWYERS’ AUTONOMY AND WELLBEING, THE LEGAL PROFESSION, AND THE ADMINISTRATION OF JUSTICE

One of the chief concerns about the decline or reworkings of professionalism in the face of increased commercialization has been its threat to the autonomy and well-being of practitioners.²⁰¹ On the one hand, lawfluencing is a new income

197. See e.g., David Pourshalimi (@pandpfirm2.0), *2nd Time DUI plus Car Accident*, TIKTOK (Apr. 11, 2022), <https://www.tiktok.com/@pandpfirm2.0/video/7085426200910335278> [https://perma.cc/Q9XL-3YC9]; Braden Bjella, ‘Bro Unleashing Supervillains’: Lawyer Touts He Got 2nd-Time DUI Offender off with No Jail Time, *Sparking Debate*, THE DAILY DOT (Apr. 13, 2020), <https://www.dailydot.com/irl/lawyer-2nd-time-dui-offender-no-jail-time/> [https://perma.cc/73BX-MFY9].

198. See David Pourshalimi (@betterdialdave), *No Conviction for Alleged Burglary*, TIKTOK (July 29, 2022), <https://www.tiktok.com/@betterdialdave/video/7125661969465478446> [https://perma.cc/JM26-2LAN]; David Pourshalimi (@betterdialdave), *Allegation: vIolence on a minor Result: DISMISSAL after little community service*, TIKTOK (July 29, 2022), <https://www.tiktok.com/@betterdialdave/video/7107078217542110510> [https://perma.cc/AL4F-B9AR].

199. Kimberly Henrickson & Christina Wabiszewski, *Time is ‘TikTok’-Ing — “Being Real” About Preemptively Addressing Employees’ Confidentiality and Privacy Breaches on Social Media*, JD SUPRA (Mar. 21, 2023), <https://www.jdsupra.com/legalnews/time-is-tiktok-ing-being-real-about-2386156/> [https://perma.cc/HS7N-S4RA].

200. See Kirsty Grant, *BeReal: Can My Post Get Me in Trouble at Work?*, BBC NEWS (July 9, 2022), <https://www.bbc.com/news/newsbeat-62795955> [https://perma.cc/8KRF-ZJST].

201. See Martin Seligman, Paul Verkuil, & Terry Kang, *Why Lawyers Are Unhappy*, 23 CARDOZO L. REV. 33 (2001); Jarrod F. Reich, *Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being*, 65 VILL. L. REV. 361, 388 (2020); Christine Parker, *The ‘Moral Panic’ over Psychological Wellbeing in the Legal Profession: A Personal or Political Ethical Response? Thematic: Contemporary Issues Facing the Australian Legal Profession*, 37 UNIV. NEW S. WALES L.J. 1103, 1133 (2014); Cheryl Ann Krause & Jane Chong, *Lawyer Wellbeing as a Crisis of the Profession*, 71 S.C. L. REV. 203, 204–05 (2019–2020); Colin James, *Lawyers’ Wellbeing and Professional Legal Education*, 42 L. TEACHER 85, 86 (2008).

stream, both directly by ‘monetizing’ the video itself and by attracting clients. Thus, we can see lawfluencing as another way in which the law is being commodified to become increasingly profit-seeking. On the other hand, this sort of activity might represent a new way in which lawyers can express themselves and enjoy their work, insofar as these platforms allow and ask for personal and professional identities to be melded together.²⁰²

At the same time, these issues are blurred, and their ethicality is less than straightforward. For example, digital marketers advise lawfluencers to “look inside their personalities” for what makes them unique, to sell as a point of distinction in a crowded market.²⁰³ This sort of advice—to marketize one’s personality—is about branding oneself and curating one’s authenticity and amateurishness or non-professionality for a performance. Lawfluencers might find fun in this display, including in having an overtly low-status alter ego; as an extreme version, consider Kennedy’s inhabiting of the unscrupulous Saul Goodman.²⁰⁴

The platforms also encourage “oversharing and disinhibition.”²⁰⁵ Again, this drive for authenticity could be a positive change for lawyers having to otherwise self-present in rigidly professional, deferential ways. For example, popular U.K. YouTuber Eve Cornwell produced candid, quirky videos about her traineeship at global firm Linklaters, including “I’m not smart enough to be a lawyer,”²⁰⁶ trying to break, she said, the profession’s “perfection narrative” by describing things such as the imposter syndrome she felt as a lawyer.²⁰⁷ Such videos may also positively impact the profession as a whole. Certainly, it may make firms seem more welcoming and inclusive for hopeful lawyers, and, indeed, firms have responded by making graduate recruitment videos on their YouTube channels.²⁰⁸ Some lawfluencers also make videos for prospective clients, for example, sharing videos of their office to allow a glimpse of the “space ahead of time and [give] a better sense of the environment than they would from a photo on a firm’s website.”²⁰⁹

202. See McPeak, *supra* note 31, at 226.

203. Nancy Myrland, *Social Media Trends: Where Is It Going? What Has Changed?*, ABA L. PRAC. MAG. (Mar. 1, 2022), https://www.americanbar.org/groups/law_practice/resources/law-practice-magazine/2022/social-media-trends-where-it-going-what-has-changed [https://perma.cc/7KMP-APNT].

204. See Harper, *supra* note 4.

205. McPeak, *supra* note 31, at 206.

206. Eve Cornwell, *I’m Not Smart Enough to Be a Lawyer*, YOUTUBE (Feb. 16, 2019), <https://www.youtube.com/watch?v=d4WxjXcEa94> [https://perma.cc/5U7J-ZBWK].

207. Akila Quinio, ‘Lawfluencers’ Open up the Magic Circle for New Recruits, FIN. TIMES (Nov. 25, 2021), <https://www.ft.com/content/94f50e66-7c6b-48d3-a277-4d4fa7f00662> [https://perma.cc/96J4-R37G].

208. See e.g., @BakerMcKenzieGlobal, *Baker McKenzie Graduate Programme - Niamh Doherty*, YOUTUBE (Sept. 28, 2023), <https://www.youtube.com/watch?v=zlkwSqWQfE4> [https://perma.cc/9PAZ-6ETM]; @CliffordChanceCareers, *Clifford Chance Careers*, YOUTUBE, <https://www.youtube.com/@CliffordChanceCareers/videos> [https://perma.cc/YXS2-CB46] (last visited Feb. 17, 2024); @LinklatersCareers, *Linklaters Careers*, YOUTUBE, <https://www.youtube.com/@LinklatersCareers/videos> [https://perma.cc/W9CH-QVKX] (last visited Feb. 17, 2024).

209. Laura Brown, *TikTok: The Newest Frontier of Legal Advertising*, MINN. LAW. (Dec. 2, 2021), <https://minnlawyer.com/2021/11/24/tiktok-the-newest-frontier-of-legal-advertising/> [https://perma.cc/A3AZ-GGGE].

But it is still a sort of work to self-monitor and self-promote in such a crafted way; it may not be a “true” expression, but rather another way in which our lives are commodified.²¹⁰

And equally, this lack of restraint (whether staged or not) can also expose individual lawyers to harm, such as negative comments from viewers and/or judgments from future employers and colleagues. Moreover, these platforms do pose at least some degree of threat to the profession and the administration of justice. The *Depp v. Heard* case revealed the dangers of an overpublicized case in which countless people, including lawyers, shared their opinions online. Some commentators felt that Depp and his lawyer were exploiting the publicity to gain public sympathy, including by appearing to flirt, share sweets and secret smiles,²¹¹ and otherwise engage in what we might see as potentially contrived “amateur” behaviour.²¹² We do not advocate holding onto the formal lawyer persona for irrational, snobbish, or classist reasons. Still, performing for social media may entice lawyers to forego their independence from their clients, and such practices (or their appearance) could, over time, diminish the lawyer’s paramount duty to the court and public trust. Additionally, other commentators felt the principle of an independent jury was compromised whereby the jury was more than possibly swayed by the significant social media commentary; the majority of which was coming from lawfluencers.²¹³ Further, lawfluencers are incentivized by the algorithm to be among the first to offer quick, polemic opinions (or “pithy generalizations and partisan fodder”²¹⁴) in a kind of a race to post. Sharing imprecise, false, or (intentionally) incendiary information can reflect poorly on the collective image of the profession and legal system.²¹⁵ Overall, these are all ways in which a legal identity is being presented as casual and relatable and the law palatable and opinion-based.²¹⁶

As a final point, in all this discussion about professionalism, technology, and the wider ‘post-truth’ landscape are significant background concerns.²¹⁷ This article has shown how people are increasingly using social media as a source of accurate and reliable information, including for professional expertise. TikTok’s ambition is to build the platform as a “video encyclopedia,”²¹⁸ and for younger

210. Maddox, *supra* note 25, at 2729.

211. Danielle Braff, *Trial by TikTok: How Social Media Hijacked the Depp v. Heard Defamation Trial*, 108 A.B.A. J. 34, 35 (2022).

212. See Abidin, *supra* note 34, at 7.

213. See Waiyee Yip, *Juror in the Depp v. Heard Trial Says the Jury Wasn’t Swayed by Social Media: ‘We Followed the Evidence’*, INSIDER (June 16, 2022), <https://www.insider.com/johnny-depp-amber-heard-trial-jury-influenced-social-media-juror-2022-6> [https://perma.cc/S84M-634U].

214. Hessick, *supra* note 190, at 913.

215. *Id.* at 916.

216. See Maddox, *supra* note 25, at 2727.

217. *Id.* at 2730.

218. Zongyi Zhang, *Infrastructuralization of Tik Tok: Transformation, Power Relationships, and Platformization of Video Entertainment in China*, 43 MEDIA, CULTURE & SOC’Y 219, 220–21 (2021).

people who make up the majority of users, it is already being used as a replacement for Google as their primary search engine.²¹⁹ Critics have, however, questioned the neutrality and objectivity of an encyclopaedic function built on “monetization.”²²⁰ One analysis by NewsGuard, a journalism tool for combating misinformation, found that nearly one-fifth of 540 videos on TikTok about the news contained false or misleading claims.²²¹ The danger is that this is occurring in a context in which consumers’ level of trust in influencers is at all-time highs, rivalling even the trust people put in their friends.²²² Unlike lay persons, lawyers are “professional[s] trained in the art of persuasion.”²²³ As the judges observed in *In re Giuliani*,²²⁴ the case suspending Giuliani’s license to practice: “as officers of the court, attorneys are ‘an intimate and trusted and essential part of the machinery of justice.’ In other words, they are perceived by the public to be in a position of knowledge, and therefore, ‘a crucial source of information and opinion.’”²²⁵

The hope is that knowledge influencers (including lawfluencers) can act as the trusted voices within the crowd, filtering out unreliable sources and information while continuing to adhere to their professional duties ethically.

CONCLUSION

Our Article represents a comprehensive first look at influencing in legal practice, specifically via video-based social media. As we detailed, lawfluencing is a significant change, not only because of its varicolored implications for lawyers’ professionalism and identity and the integrity of the legal system, but also because it is a change largely under the control of Big Tech. The professional regulators and the managers of legal workplaces face questions regarding their authority compared to that of the large technology companies. Our discussion pinpointed the role of the platforms’ ‘unseen’ technological infrastructure and

219. See Kalley Huang, *For Gen Z, TikTok Is the New Search Engine*, N.Y. TIMES (Sept. 16, 2022), <https://www.nytimes.com/2022/09/16/technology/gen-z-tiktok-search-engine.html> [<https://perma.cc/S84M-634U>].

220. See generally Zhang, *supra* note 219, at 226–29. As Zhang notes, while like any encyclopedia, TikTok can be searched, the search results are not static and are dictated by the platform’s algorithm based on criteria such as number of likes, comments, and shares. This stimulates producers to strategically make content in an effort to ‘game the system’, maximising their attention and thus their earnings.

221. Jack Brewster, Lorenzo Arvanitis, Valerie Pavilonis & Macrina Wang, *Beware the ‘New Google’: TikTok’s Search Engine Pumps Toxic Misinformation To Its Young Users*, NEWSGUARD: MISINFORMATION MONITOR (Sept. 14, 2022), <https://www.newsguardtech.com/misinformation-monitor/september-2022> [<https://perma.cc/92XT-XAH4>].

222. Kathleen Chaykowski, *Twitter Finds Growing Business Pairing Internet Stars with Big Brands*, FORBES (Dec. 17, 2015), <https://www.forbes.com/sites/kathleenchaykowski/2015/12/17/twitter-finds-growing-business-pairing-internet-stars-with-big-brands/?sh=27fd42767c8d> [<https://perma.cc/AZ9R-P8HV>].

223. *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

224. *In re Giuliani*, 146 N.Y.S.3d 266, 270 (N.Y. App. Div. 2021). The First Judicial Department, the Appellate Division of the Supreme Court of New York found numerous instances of false statements and misleading information related to the 2020 election and suspended Giuliani’s licence to practice and that he posed an “immediate threat” to the public interest. *Id.*

225. *Id.* (citing *Gentile v. State Bar of Nev.*, 501 U.S. 1030 (1991)).

business models in affecting what lawyer (and other) influencers are producing and how this is being shared, seen, and “consumed” (or engaged with).²²⁶

Some writers have concluded that these forces, manifesting as “monetization triggers” for the content creators, are always more powerful in guiding conduct than “regulatory levers.”²²⁷ These writers were discussing content creators generally and not licensed professionals with certain obligations and disciplinary oversight. Our article provides evidence of professionals flouting or ignoring their professional obligations, but probably more evidence of lawyers who are aware of their duties by providing, for instance, disclaimers and warnings around their activities, even if a little brief (e.g., “not your lawyer”²²⁸).

There are several avenues for further empirical research. A future study might try to quantify the number of lawyers engaged in influencing activity, and/or undertake in-depth qualitative research to glean and compare the motivations, perceptions, performance strategies, and experiences of lawfluencers from a wide range of personal backgrounds and practice areas. Of value would be to understand how they navigate their professional identities, commitments to their role as working lawyers, and the demands and cultural cues of the platforms. Another useful contribution would be a closer examination of the otherwise largely unnoticed infrastructure and business models of social media platforms and how they are shaping what is being made and shared online, particularly concerning professional knowledge and expertise. This could add to the discussion we have started about the growing appeal of lawfluencing, the authority of social media platforms, and what these platforms mean for assumed correspondences between professional expertise and the confidence in which that expertise can be held.

226. Hutchinson & Dwyer, *supra* note 43, at 139.

227. *Id.* at 139.

228. See Berlin, *supra* note 183 and accompanying text.