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About This Publication

THE *Legal Ethics & Malpractice Reporter* (*LEMR*, for short) is a free, monthly publication covering current developments in ethics and malpractice law—generally from the perspective of the Kansas and Missouri *Rules of Professional Conduct.* Founded in 2020, this publication was envisioned by KU Law professor Dr. Mike Hoeflich, who serves as its editor in chief. In partnership with Professor Hoeflich, JHC's legal ethics and malpractice group is pleased to publish this monthly online periodical to help attorneys better understand the evolving landscape of legal ethics, professional responsibility, and malpractice.

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Introduction to a Special Edition on Legal Technology

DURING the years that the time behind the Legal Ethics & Malpractice Reporter has provided related continuing legal education programs, it has become quite apparent that one of the most popular subjects in our legal community is legal technology and its relationship to ethics and to law practice. Our CLEs on legal technology routinely have high participation and result in some of the most engaging questions and discourse. Thus, we here at LEMR have decided to devote this special issue to legal technology.

For this special edition, the lead article is written not only by Mike Hoeflich, but also by several co-authors. Katie Hasty and Russ Fischer are artificial intelligence experts and principals in the legal tech advisory firm of Prima Vista. Professor Steve Sheppard is Dean Emeritus and professor at St. Mary's Law School in San Antonio, Texas.

This special edition also includes lists of important and useful books and articles regarding technology and law. While they are not necessarily new, they are of sufficient importance to warrant a read by every lawyer with an interest in legal technology.

Five Phases of Technological Adoption[1]

Mike Hoeflich
Katie Hasty
Russ Fischer
Steve Sheppard

THERE are five phases to every technological adoption. We pay particular focus to the last two:

1. Introduction

2. Innovation

3. Adaptation

4. Diruption

5. Transformation

Each phase is dependent on the phase before it in order to succeed. That means no technology can become transformative without causing disruption — upheaval to "the usual order."

For a technology to be successfully adopted, it is necessary to understand the usual order, which is the ecosystem into which it is being introduced. The ecosystem is made up of rules, spoken and unspoken, as well all its potential users.

A population can show strong resistance to invention, be it beneficial to them or not. There are also individuals and companies eager to adopt the "newest and best" technologies, be it beneficial or not.

But the success of a new technology's adoption is dependent on those potential users — skeptics, critics, luddites, early adopters, and enthusiasts. The extent to which those who champion it are cognizant of the ecosystem into which it will be introduced. In other words, the ground must be adequately prepared for

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1   This section of this month's lead is drawn from a paper which Mike Hoeflich will present at the 0225 Legal AI Forum in London on July 11, 2025.

each of the phases, including disruption.

Over the past few months, enthusiasm for legal AI — especially the use of generative AI — has waned among potential end-users of the technology, especially lawyers and law firm CIOs. There are several reasons for the loss of enthusiasm, including the problem of hallucinations, so well-explained[2] by Shawn Curran — a problem which courts and lawyers are starting to recognize and beginning to fear.

There are many potential benefits in AI for law practice, as well as downsides. The trick is buy-in, and buy-in of the right kind. There must be understanding the history, ecosystems, and metarules into which the tech is being introduced.

Defining and Applying "Disruption" and "Transformation"

Especially in this current climate, words like "innovation," "ecosystems," and "disruption" have lost their luster. To better define them here, we refract our current moment through the lens of another technical revolution: the introduction of the typewriting machines in the late nineteenth century.

Around this time, most law offices (or "solicitors' offices" in England) had three main types of personnel: lawyers, scriveners, and clerks. Lawyers and clerks concentrated on the traditional tasks like research, composition of legal texts, and argumentation, of law practice. Scriveners oversaw document production and reproduction.

To be a scrivener was to be a member of a prestigious and respected profession. Without scriveners, a law practice could not succeed. Lawyers were content experts, not production experts. Scriveners took lawyers' crudely written drafts of documents and transformed them into readable, often elegant, texts for clients, courts, and others, including highly formal documents like wills through the specialized textual process of "engrossing."

Scriveners had a virtual monopoly on legal document production and reproduction, which was done all by hand. Before the introduction of the typewriter, the scriveners' office was its own ecosystem: the "office culture" was a bit like a

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2   "Hallucination is the last thing you need," by Shawn Curran https://support.jylo.ai/hc/en-gb/articles/4476732632351-Hallucination-is-the-last-thing-you-need

cloister (or ivory tower) characterized by abstract legal documents, formal written language, foul spoken language, repetitive labor, the all-male workforce's spittoons, and even its inky furnishings. "Indigestion seemed betokened in an occasional nervous testiness and grinning irritability, causing the teeth to audibly grind together over mistakes committed in copying; unnecessary maledictions, hissed, rather than spoken, in the heat of business; and especially by a continual discontent with the height of the table where he worked," wrote Herman Melville in "Bartleby, the Scrivener," describing one such inhabitant in his fiction.

In the 1870s and 1880s, the scriveners' monopoly was challenged. Though typewriting machines were invented and developed decades before, they started to become more common as they became more commercially available and affordable. Typewriting machines were also fast. Innovations like shift key functions made them more adaptable to an assortment of workplaces, including law offices.

The promise of speed and quality collided with scriveners, who were accustomed to manual penmanship; unmotivated to adopt a QWERTY keyboard layout among other things, the scribes refused to use typewriters. So, then Remington, a major manufacturer of the most economically viable machines, made a gamble: they marketed using typewriting machines as women's work. Women, hitherto virtually unknown in an office environment, were argued to be far more efficient in the use of typewriting machines than scriveners. The company established typewriting schools and held speed typing competitions.

So, in less than 10 years, women typists were replacing scriveners. For lawyers and clerks in a legal office, documents were produced faster and typists were more cost effective because the wages paid to women were lower than those paid to men. Offices and office ecosystems changed with a new workforce, occupied by women and men. As for the scrivener, the technological disruption meant their profession all but disappeared.

This is just one illustration of how disruptive technology has the potential to upend the status quo either in a specific field of endeavor or more generally. Characteristics of a disruptive technology include provoking substantial resistance to adoption, backlash over cost vs. benefits, or racing for the admiration of early adopters.

A transformative technology stabilizes, streamlines, and/or replaces existing

industries and workflows while leaving the status quo more or less intact. Disruptive impacts are mitigated by high buy-in costs, business and consumer caution, and consequently, slow adoption. Many innovations introduced over the past several millennia have been disruptive, but only a few have reached the transformative phase.

In her forward to the 2016 edition of Elting E. Morison's benchmark text "Men, Machines, and Modern Times," Rosalind Williams describes "the conflict between innovation and conservation," in which Morison's essays value "technical innovation for satisfying human needs and desires. He also values conservation of human social structures, which are routinely destroyed by technical innovations."

This tension defines the present moment with AI and the law office just as typewriters did. Transformation is uncomfortably dependent on disruption. Lawyers tend to be conservative in how they run their practices and risk adverse. AI clearly presents opportunities, and it also presents dangers. KRPC 1.1 Comment 8 makes it very clear that no lawyer may ignore AI and its potential in the law office. A lawyer is required:

> …to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject. (emphasis added)

What this means is that no matter how Luddite a lawyer may be inclined to be, she must learn about AI. (and other legal technologies) and must seriously evaluate new technologies and their role in her law practice, either herself or by employing others more expert, to do so.

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ETHICS & MALPRACTICE RESEARCH TIP
Selected ABA Rulings on Legal Tech

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Profiles of the Future

"Any sufficiently advanced technology is indistinguishable from magic."

> — Arthur C. Clarke, *Profiles of the Future: An Inquiry into the Limits of the Possible* 21 n.1 (1962).

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