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A magazine for attorneys

FUTURE OF LAW

Are U.S. courts intent on continuing with their historically cautious approach to technology?

VIRTUAL IMPRESSION

Conversion rate optimization for attorneys. How are your visitors doing?

THE LIGHTS ARE ON *but* NOBODY'S HOME

MESSAGING

5 practical tools to boost your content creation

ARE SMART DEVICES READY FOR THE OFFICE?

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BLF
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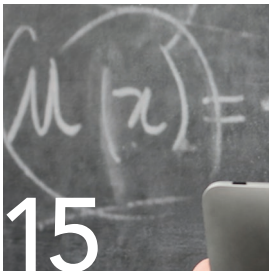

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VIRTUAL IMPRESSION

Conversion rate optimization

Conversion rate optimization is a practice in which your objective is to devise a good user experience and increase revenue. Your aim is to understand your customers and the specific strategies necessary to help them.

BLF BIGGER LAW FIRM
A magazine for attorneys

Bigger Law Firm™ was founded to introduce lawyers to new marketing and firm management ideas. Advancing technology is helping law firms cover more territory, expand with less overhead and advertise with smaller budgets. So many tools exist, but if attorneys are not aware of these resources, they cannot integrate them into their practice. The *Bigger Law Firm* magazine is written by experienced legal marketing professionals who work with lawyers every day. This publication is just one more way Custom Legal Marketing™ is helping attorneys Build a Bigger Law Firm™.

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SEO OBITER DICTA

Google Fred Update: Greed Gets Punished

Google Fred appears to be an iteration of Google Panda, with an added emphasis on advertisements.

Google makes changes to its search algorithm frequently, as many as six hundred times annually. Some have minimal impact that do not warrant any changes in a firm's SEO efforts, while others have such an effect that search marketers need to rethink their strategies. A March update dubbed Fred is the latter.

The first version of Google Panda was rolled out on February 23, 2011, with the goal of penalizing websites with low-value content deemed unhelpful for users. Fred seems to punish websites the same way, with the addition of several factors. Websites with the distinct priority of revenue generation were adversely affected. These websites experienced drops in traffic ranging from 50 to 90 percent on organic search results.

Google has confirmed that there was an algorithm update, but chose not to disclose what exactly the update was for. However, the company did mention that this update targets search engine optimization techniques that are already seen as unfavorable within the Google Webmaster Guidelines. These techniques include having low-quality content, ad-heavy websites or participating in affiliate programs without providing adequate information.

Low-Quality Content

One sure way to not perform well in search results is publishing low-quality content. Google considers low-quality content to be that which is written with the mindset of improving your ranking, rather than appealing to your readers.

Examples of low-quality content include pages that utilize keyword stuffing, where the page is unnecessarily filled with keywords targeting specific queries to the point that the content is nonsensical or unreadable; doorway pages, where the only purpose of that specific page is to rank high for search queries; and thin content, which is vague, short and unoriginal. Refurbished content from other sites is treated as particularly low-quality.

These are examples of black hat techniques that have been used for years. Google has become much better at detecting and punishing black hat SEO. At the end of the day, it is better to be safe than sorry; these frowned-upon methods will end up hurting you in the long run.

You should ask one question any time you create new content: Is this going to benefit the people who use my website?

Advertisement-Heavy

The biggest difference between Fred and other Google algorithm updates is its targeting of websites that contain a lot of advertisements. These websites exist solely for the sake of revenue generation; content is secondary. A study performed by Sistrix found that websites with multiple advertisements, such as banner ads above the fold, were affected. A lot of these ads come from Google's own AdSense campaigns. Websites with content wrapped around advertisements were also affected. That is when advertisements are seen within the content, for example an ad between paragraphs.

If you have ever been to a website that is cluttered with advertisements, you know such websites are spammy. However, simply removing one or two ads may make a website seem cleaner, giving users a better experience There is nothing wrong with monetizing content if it is original and informative. The problem arises when webmasters create sites that offer nothing innovative to users, while profiting from them.

Affiliate Programs

An affiliate program essentially makes you a third-party vendor; through an affiliate ad network, you list sales, offers or deals on your website for other businesses. There is nothing inherently wrong with being a part of an affiliate program. For example, The Points Guy's whole business model is reviewing and offering affiliate deals for travel. The difference between theirs and many other sites is that they offer original and educational information. Other websites may just have those deals on their pages with no additional material, hoping someone makes a purchase, and the website owner receives commission. The only goal of such sites is revenue generation.

If you have dealt with Google Panda or other low-quality penalization updates in the past, the same strategy can be implemented for Google Fred. Improve your content by writing original, highly researched articles. Remove unnecessary keywords; Google relies heavily on contextual cues within content. If your website does contain ads, try removing one or two. As always, stay calm, do not make unnecessary radical changes, follow Google's guidelines and think of users first.

- Dexter Tam

5 practical tools to boost your content creation

Not all content marketing tools are created equal. While some deliver what they promise, others are not worth the time and energy. Here is a review of five commonly used online tools and their effectiveness for generating ideas and improving content.

Law firms looking to stand out understand the necessity of creating unique, interesting content to attract potential clients. However, it can be challenging to keep up with the constant demands to produce engaging material. The key to thriving in the era of smart, digital marketing is finding ways to save time while boosting content quality.

Ensuring that a piece is easy to read or has an eye-catching headline can mean the difference between retaining your target audience and losing them. Fortunately, there is a plethora of online content marketing tools available to lawyers to help make the task easier. The tools can be used for various phases of the content creation process including idea generation, editing and curation.

HubSpot Blog Topic Generator

More than the actual writing, sometimes the hardest part of creating a blog post can be coming up with a topic. The HubSpot Blog Topic Generator provides a timesaving antidote to writer's block. It is a simple but effective tool that can help inspire lawyers who are running out of fresh content ideas for their blogs.

Enter three nouns from your niche into the HubSpot Blog Topic Generator. It will then produce a list of five potential blog topic ideas. If none of those seem appealing, click "Try Again" to view another batch of results.

One drawback to the tool is that it is only useful if you have several keywords in mind. Additionally, the topic ideas it generates will likely require some modifications as not all of them will be suitable or grammatically correct. HubSpot's website contains a disclaimer reminding users that their "algorithm isn't perfect." Although the Topic Generator is not foolproof, it encourages users to consider creative new angles for blog topics to cover.

CoSchedule Headline Analyzer

Headlines play a vital role in capturing an audience's attention and drawing people in to read your content. The CoSchedule Headline Analyzer can help lawyers determine how effective a particular headline will be in achieving its objectives.

The free online tool rates the headline's overall quality and examines its length, word choice and type. It also displays keywords with possible reader sentiment towards the headline. When combined, these elements work to capture a prospective client's attention. Balance is key. The headline of a blog post or article should be long enough to be precise, yet short enough to look good on search results.

While it will not edit or change the headline, the CoSchedule Headline Analyzer provides enough feedback to enable you to tweak it for a better outcome. Although the tool is useful, it should be combined with a measure of one's own judgment as to what will generate the most user engagement. There are other factors to consider when evaluating the effectiveness of a headline, such as target audience and the specific goals of a marketing strategy.

Hemingway App

Having great content means that it is clear and easy to read for the target audience. The Hemingway App is an editor for style. It improves the clarity and readability of a piece of writing, ensuring the message does not get lost amid wordy prose.

To check your content, simply paste it into the free online app. It will then highlight the text in different colors to mark areas for improvement such as complicated sentences, unnecessary adverbs, phrases with simpler alternatives and the use of passive voice. You can then shorten sentences and change your word choice, and the colors will disappear as the problems are fixed. The tool also provides an overall readability score — the lowest grade level a person would need to understand the writing.

While the Hemingway App is easy to use and acts like a digital copy editor by identifying problem sentences, it is not meant to catch grammar and spelling errors. Therefore, it cannot be considered a complete editing app and would likely have to be combined with another proofreading tool or grammar checker for more comprehensive editing.

No matter how engaging the content is, readers are likely to question the law firm's professional reputation if a blog or article is laden with spelling, grammar and punctuation mistakes.

Google Trends

Google Trends is a powerful tool that allows users to see what topic is trending at any given time and location in the world. For lawyers in particular, it offers valuable insights into the search patterns of prospective clients; therefore, the firm will gain understanding of what they should be writing about for their audience. Data about the most-searched practice areas and legal queries can provide direction to a law firm's overall content marketing strategy.

Through the Google Trends tool, lawyers can identify practice areas to focus on based on a topic's increasing spike in popularity. This allows law firms to target marketing efforts to particular geographic regions or interests, and better determine which queries to use for each phase of a prospect's search pattern. Additionally, Google Trends compiles a graph depicting the correlation between the keywords you plan to use in relation to their usage in Google search.

Feedly

Every day attorneys are inundated with information about everything from industry developments to new legal cases. It can be hard to keep track of relevant news among the daily deluge of email traffic and myriad social media channels.

Feedly is a handy tool that allows users to streamline their content consumption by subscribing to sites of interest. It aggregates content from Google News alerts, mainstream publications, blogs, podcasts, videos and other online sources into a single, uncluttered interface. Whenever a new piece is published, it will appear in your Feedly stream. The app works on various desktop web browsers as well as iOS and Android systems.

Feedly is a big time saver for many legal professionals since it collects and delivers information in a curated manner. Lawyers can keep up with trending topics, browse news sources tailored to their practice areas and seek ideas for blog posts. The tool also enables easy sharing of articles across social media.

HUBSPOT: inspiration for content ideas

hubspot.com/blog-topic-generator

COSCHEDULE: write effective headlines

coschedule.com/headline-analyzer

HEMINGWAY: write with style

hemingwayapp.com

GOOGLE TRENDS: find your focus

trends.google.com/trends

FEEDLY: get the news you need

feedly.com/i/welcome

- Dipal Parmar

Legal aid funding faces cuts

Veterans, people facing eviction or foreclosure, and domestic-violence survivors would lose access to legal aid services under the federal budget blueprint proposed by President Trump.

LSC | America's Partner for Equal Justice

LEGAL SERVICES CORPORATION

The LSC funds hundreds of legal aid organizations throughout the country, often providing between one-third and one-half of all the funding the local programs receive. In poorer states, up to 80 percent of legal aid funding comes from the LSC.

The president released an outline of his 2018 budget proposal on March 16. To pay for significant funding increases for the military, homeland security and veterans, Trump moved for deep cuts to nearly every other federal agency. The President's blueprint calls for the EPA to lose 31 percent of its $8.2 billion funding, and for the State Department's $50 billion budget to be cut by 29 percent.

The Legal Services Corporation, which funds legal aid for low-income Americans, would see its budget completely eliminated under President Trump's proposal. The organization's budget request for the fiscal year of 2017 was $502 million.

Funding access to justice

In 1974, the LSC was established as a public nonprofit corporation by Congress, which declared that its purpose was "to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel." The 11-member Board of Directors is appointed by the President, but by law it must be bipartisan, with no more than six members coming from the same political party.

The LSC is a grant-making organization, funding legal aid organizations for low-income Americans, with the goal of promoting equal access to justice.

In many ways, legal aid organizations do for civil law what public defenders do in the criminal justice system: provide legal representation to those who need it but cannot afford it. However, there is no Constitutional right to counsel in civil matters, so legal aid programs rely on a mix of federal, state and private funding.

Martha Bergmark, a former LSC president, said that the Legal Services Corporation is "the backbone of our nation's commitment to justice for all," even though most Americans are not aware of its existence. The agency's budget accounts for 0.01 percent of the $4.1 trillion federal budget, but provides crucial services to people in dire circumstances.

Effect of the proposed cuts

Politicians pushing budget cuts generally decry wasteful spending, but in the case of legal aid services, the need is actually far greater than what is provided, even at current funding levels. The LSC estimated that in 2017, 59.4 million Americans would be eligible for services at LSC grantee organizations. However, the agency's Justice Gap Reports from previous years found that legal aid groups funded by the LSC typically had to turn away about 50 percent of people seeking services, due to inadequate funding. According to researchers at Cardozo Law School, more than 80 percent of litigants do not have the assistance of an attorney in matters as important as foreclosures, evictions, debt collection cases and child custody cases. The LSC received reports from judges indicating that, for example, in New York City, 99 percent of tenants facing eviction were pro se; in Florida, 80 percent of divorce cases had at least one party unrepresented; and in Arizona, 90 percent of domestic violence and probate litigants do not have an attorney.

For low-income people who do receive legal aid, it can be a lifeline. Attorneys funded by the LSC file restraining orders for victims of domestic violence, help tenants fight eviction, assist veterans in obtaining public benefits, represent consumers victimized by scams, and provide many other services, ranging from educating citizens about their rights to direct representation.

Supporters pointed out that funding legal aid actually saves society money. When foreclosures are prevented, property values are maintained and costs associated with homelessness are reduced. When domestic violence victims are kept safe from abusers, the future costs of police, courts and hospitals are averted. On the other hand, people attempting to represent themselves in court often slow down the process, adding to the administrative cost of the justice system.

$502
MILLION
Legal Services Corporation FY2017 budget request

0.01
PERCENT
of the federal budget is represented by LSC funding

59.4
MILLION
Americans are eligible for services at LSC grantee organizations

80
PERCENT
of litigants do not have the assistance of an attorney

50
PERCENT
of people in need are turned away by the LSC due to lack of funding

Opposition

Some of Trump's proposed budget cuts are controversial even among Republicans in Congress. Sen. Mitch McConnell (R-KY), the majority leader, said that Congress would not agree to the State Department cuts, and Sen. Lindsey Graham (R-SC) called them "dead on arrival." However, the elimination of LSC funding is a real possibility.

The organized bar is moving to oppose the cuts. The American Bar Association issued a statement saying it was "outraged" by the proposal, and called for full funding to be restored. Several state and local bar associations also announced their opposition. A letter opposing the funding cut was signed by 185 leaders of corporate legal departments, and another statement in opposition was issued by the chairs and managing partners of more than 150 U.S. law firms.

The Legal Services Corp. has survived prior existential threats. In the 1980s, President Ronald Reagan attempted to disband the organization, viewing it as advancing a liberal agenda. After lobbying by the organized bar, Congress declined to abolish the LSC, but its funding was sharply reduced, forcing the layoffs of nearly 1,800 attorneys.

Alternatives

Some attorneys and their clients are considering less traditional funding methods as federal, state and local budgets become increasingly strained. Crowdfunding platforms developed for the legal industry provide one option.

Crowdfunding has the potential to increase access to the legal system for those in need of legal help and those wishing to support causes they find meaningful. Crowdfunding, for example, was central to the case *Aziz v. Trump*, one of the lawsuits challenging the president's first travel ban. The Legal Aid Justice Center, an organization representing low-income individuals in Virginia, raised over $36,000 through the crowdfunding platform CrowdJustice to assist with the case.

> "While to some, crowdfunding for legal cases may seem an unusual alternative to third-party financing, it is actually much simpler and more accessible and provides the meaningful advantage of humanizing the law.

CrowdJustice is a lawsuit crowdfunding platform that began operating in the United States at the beginning of 2017. The Aziz case was its first US-based legal campaign.

CrowdJustice CEO Julia Salasky has served as an attorney in several capacities, including as a lawyer with the United Nations and with a pro bono legal clinic. Salasky believes crowdfunding can play a meaningful role in filling the funding gap if organizations like the Legal Services Corporation see budget cuts.

"Cost is often the driving factor behind how and when litigation is brought forward, and can be a major barrier for people in accessing the legal system," said Salasky. "What we've seen with donation-based legal crowdfunding is that — unlike traditional third-party financing — it creates a funding solution that empowers the plaintiff, by giving them a funding stream from community support, and one that does not affect their relationship with counsel."

"While to some, crowdfunding for legal cases may seem an unusual alternative to third-party financing, it is actually much simpler and more accessible," Salasky continued, "and provides the meaningful advantage of humanizing the law."

In America, where low-to-middle income individuals already have difficulty finding assistance for civil legal needs, attorneys may become more willing to accept unusual solutions.

One of the ironies of President Trump's proposed budget cuts is that they would cause disproportionate harm to many rural, low-income residents of red states, who overwhelmingly supported his presidential campaign. Trump voters may be alarmed by the planned cuts, but most remain loyal. Nationwide, only 3 percent of Trump voters say they regret their vote. Nicholas Kristof of the New York Times traveled to Oklahoma to talk to Trump voters who benefited personally from programs whose funding would be eliminated by the President's budget. Though many were shocked by the cuts, none said they regretted their vote, and several said they would vote for him again.

- Brendan Conley

Photo: Lorie Shaull

courtroom tech

Netflix, Hulu . . . the 9th Circuit?

On February 7, the 9th Circuit Court of Appeals had its moment in the streaming media spotlight when it live-streamed audio of a contentious hearing on President Trump's controversial travel ban.

The tech-savvy, San Francisco-based court's YouTube stream alone had over 136,000 listeners at its peak. The stream was also accessible on Facebook and numerous news outlets' websites, as well as on broadcast television, at least in part. It is likely over 1 million people listened live to some or all of the hearing. In contrast, just 50 people tuned into the 9th Circuit's previous live stream.

Does this signal a turning point in the creeping trend of recording and digitizing our judicial proceedings? Or are U.S. courts intent on continuing with their historically cautious approach?

INERTIA

The general state of courtroom video recording and broadcasting in the United States might be aptly described as in its adolescence, if not its infancy. The 9th Circuit made headlines with its huge live audience for the travel ban hearing and has recorded or streamed video of oral arguments for years. In contrast, most federal courts either forbid cameras altogether or do not release their recordings to the public.

Federal rules dating as far back as the 1940s have long established a default position against allowing cameras in both criminal and civil federal cases. Inertia against changing these rules has proved significant.

A three-year pilot program in the early 1990s saw the 2nd and 9th Circuit Courts, as well as six district courts, welcome cameras into their courtrooms. A Judicial Conference rules committee then recommended that the Conference permanently authorize cameras in federal, civil trials and appeals. The Conference declined to do so, citing concerns over the possible intimidating effects of cameras on jurors and witnesses.

Shortly thereafter, however, in 1996, the Judicial Conference punted on video recordings of appeals, allowing each circuit court to make its own rules. The 2nd and 9th Circuits would quickly adopt generally permissive policies that same year, followed recently by the 3rd Circuit in January, 2017. The district courts, meanwhile, would have to wait another 15 years before they saw another camera.

A second pilot program from June 2011 to July 2015 allowed cameras during civil proceedings in 14 district courts. At its conclusion, official policy on federal trials would continue to ban cameras. Just three participating district courts, all within the 9th Circuit, still permit cameras under a narrow extension of the pilot program meant to gather data for continued study.

Some in Congress would settle the issue themselves and allow video recording and broadcasting of proceedings at district courts, but so far they have had little luck. The Sunshine in the Courtroom Act is an oft-introduced bill to permit cameras in federal trials which never seems to have legs.

PROS AND CONS

Whether live streaming or recorded, courtroom video made publicly available presents certain pros and cons. Video recordings disseminated online are inherently more accessible and educational to the public than transcriptions or even audio recordings. This is especially true of laymen, as opposed to those in the legal industry.

> One way to increase the number of cases each judge can handle is to embrace change and come up with creative solutions using technology.

Interestingly, most of the commonly argued disadvantages of courtroom cameras have to do with jurors and witnesses. This is reflected in the current state of federal rules, which permit appellate courts to make their own policy, but generally forbid cameras in trial courts.

Broadcasting a trial may make it harder to find unbiased jurors in the event of a retrial, for example. And sequestering juries may become more frequently necessary in order to keep jurors from viewing proceedings held outside their presence.

Practicing attorneys have mixed views on the issue.

Defense attorney Paul Saputo is concerned about the compromise between creating a more informed populace and the potential to turn a serious trial into a performance. Saputo notes, “Streaming court hearings could certainly help create a more informed nation, but the risk is found in the public platform that streaming creates. Courts would prefer that lawyers focus on answering their questions instead of focusing on the cameras.” Saputo continues, “When the courtroom becomes a stage for actors, the justice system could lose the credibility it needs to resolve important and complex issues.”

Jef Henninger, an attorney who also works with criminal defendants, believes both attorneys and the courts can benefit from having an audience. According to Henninger, “One of the benefits of making videos of proceedings available is that it will make the courts accountable… Unless you’ve gone through your own case, the general public has no idea what really goes on.” Henninger says that it can be difficult for attorneys to advocate for changes because the public is often skeptical of claims made by litigants.

VIDEOCONFERENCING

The 9th Circuit’s travel ban hearing was not just live-streamed. It was also conducted by telephone because it was held on an emergency basis. While no one would suggest holding hearings or trials by telephone on a regular basis, video conferencing, with multiple high-definition cameras and high-speed live streaming, is a serious matter. In the 9th Circuit Court today, parties to hearings and trials may request that the proceedings be held by video conference.

The primary advantage of videoconferencing is a potentially significant cost savings. A "virtual" hearing slashes costs related to facilities and staff. No courtroom or bailiff is necessary. New costs are incurred in the form of high-bandwidth internet access, computers, and audiovisual equipment, but those costs are shared by parties and counsel.

In addition to cost and time savings, Jef Henninger sees the potential for new technologies to help overburdened court systems. "In New Jersey, probably like other jurisdictions, there are not enough judges to handle all of these cases," says Henninger. "One way to increase the number of cases each judge can handle is to embrace change and come up with creative solutions using technology. If I can do several court appearances by phone or video conference in three different courts without leaving my office, I won't need to request an adjournment. That will lead to the cases getting resolved faster and lessen the workload for everyone."

Video conferencing, a technological convenience for attorneys and judges, may seem an easy sell when compared with broadcasting trials and the worrisome questions that entails. However, while its disadvantages are rather more subtle, they fall disproportionately on clients at trial.

When client and counsel are not at the same physical location, it can be difficult or impossible to confer confidentially. Additionally, criminal defendants might be expected to present better in person than they would from a correctional facility. This goes double for non-English-speaking defendants like those in immigration court.

SUPREME COURT

The arrival of cameras in the Supreme Court has long seemed a distant dream. In 1996, Justice David Souter said, "The day you see a camera come into our courtroom it's going to roll over my dead body." More recently, Justice Anthony Kennedy in 2008 cautioned Congress against putting cameras in the Supreme Court, calling it an "insidious dynamic" and saying he might suspect his colleagues of creating "sound bites."

However, the Supreme Court's hard line against cameras could be eroding. During his confirmation hearing, Neil Gorsuch at least refrained from shooting down the idea, saying he had an "open mind" on cameras in the court when asked by Sen. Amy Klobuchar. The newly confirmed Justice Gorsuch replaces a firm "no" on the idea held by the late Justice Antonin Scalia. Justice Scalia never bought into one of the most reliable arguments of proponents of putting cameras in the courtroom — that it educates the public. In fact, Scalia said it would "mis-educate" people because the vast majority would inevitably be exposed only to those same sound bites Justice Kennedy worried about.

THE FUTURE

While the idea of video-recorded and live-streamed court proceedings brings up difficult questions about how best to ensure justice, a decidedly lower-tech digitization of the courtroom is stirring its own controversy.

The inexorable replacement of human labor with technology is in the process of claiming its next victim: the court reporter. In many state courts, long challenged with stretching each budget dollar to its limit, human transcriptionists are giving way to digital audio recordings.

The cost savings are quite apparent. However, detractors are quick to point out several potential disadvantages. Overlapping voices can be more difficult to distinguish in a recording. Witnesses may speak too softly to be heard clearly. If the system stops working, that may not be immediately apparent, and records may therefore be lost. And a human court reporter can halt the proceedings if necessary to establish a clear record. A recording can not do that.

Proponents and vendors counter that multi-channel, high quality audio allows voices to be isolated and slowed down when necessary. Further, "courtroom monitors" — humans who supplement recording systems by writing down proper names or unusual terms — help fill in the gaps when necessary.

This energetic push-back against an implementation of even modest technology in the courtroom may not come directly to bear on camera policies, but it does serve to illustrate just how difficult real change can be in the U.S. justice system.

- Ryan Conley

1946
NO CAMERAS ALLOWED IN COURTS

1972
BROADCASTING PROHIBITED

1991
PILOT PROGRAM PUTS CAMERAS IN EIGHT COURTS

1996
CIRCUIT COURTS ALLOWED TO MAKE THEIR OWN RULES

2011
PILOT PROGRAM PUTS CAMERAS IN 14 COURTS

THE LIGHTS ARE ON BUT NOBODY'S HOME

ARE SMART DEVICES READY FOR THE OFFICE?

The office is empty. Everyone else left hours earlier. I'm sitting in an armchair opposite my desk holding an expense report for an ad campaign. It is basic addition, but the rows are running together. I look over at the Echo Dot on the desk just outside my office. I shout "Hey Alexa." She swirls her blue light of anticipation. I rattle off a half dozen numbers for her to calculate, but after three numbers she gives up. Disappointed, I notice my phone lying face up on my desk. "Hey Google." The screen glows. I give the same calculation. She replies with the answer.

With the last task of the day done, I grab my belongings and head for the door. As I'm about to leave, I notice the light on the copier is blinking. It will soon be out of ink. "Alexa. Order ink for copier." Using our order history, she needs no further details. The order is confirmed.

The drive from my office in San Francisco to my home on the other side of the Golden Gate Bridge is often congested, but scenic. On evenings like this, I appreciate the traffic. I watch the Golden Gate earn its name as the sun sets behind the Marin Headlands. "Ok Google, play Rolling Stones on Pandora," I say, looking down at my phone in the cup holder. The car's speakers come alive as I head north.

When I arrive, the living room lights are on. They have been on since I was within a mile of my neighborhood. As I walk in, I'm greeted by Maple, my 9-year-old dog. I ask her about her day, and she replies with a rapid swinging of her tail and an occasional squeak. Her feline sibling, Walter, is unmoved . . . we will catch up later.

The egg shaped Google Home sits perched on the bar between the living room and kitchen. My girlfriend isn't home yet, and I can't ask this ovular speaker why. For reasons unknown, Google Home will only tell me about events on my calendar, not shared events from other calendars. To find out when she will be home, I'll have to physically open the calendar app on my phone. With a sense of indignation, I tap my phone and see that my girlfriend is at a bookclub meeting for the next couple of hours.

As I'm standing in the kitchen opening a bottle of wine, Maple reminds me she is owed an evening walk. I look at the Google Home and say, "Ok Google, walk the dog." While it was presumptuous of me to ask, a part of me was hoping that a drone with a leash would arrive ready to walk the dog and pick up anything left behind. Instead she replied with, "Sorry, I'm not sure how to help with that, but I'm always learning." There is hope.

After Maple and I return, I pour a glass of wine, tell Google Home to play House of Cards on the TV and settle in. As Netflix loads, I tell Google to dim the living room lights by 20 percent. "Dimming three lights." I smile as I remember Google Home in her adolescence just a few weeks prior when she could not pronounce "dimming" but would say "dime-ing." Always learning.

As I watch the Underwoods carry out their pernicious agendas, the ceiling light blinks with a light purple pulse. My girlfriend just sent me a message. She's on her way home. When she arrives, she will be the first humanoid I have talked to for five hours.

On an evening like this, I'm satisfied with my decision to adopt these "smart" devices with the intent to review them in this and future articles on behalf of *Bigger Law Firm*. The pieces started arriving in mid-January.

First, a Google Home. Then, Phillips Hue lights. Then a few more lights. Then, exceeding the allowance from *BLF*, even more lights. It was not enough to command my living room and dinning room to turn blue, or red or any other color to match my mood. Why not the kitchen? The hallway? Bedrooms? Why not shower under the glow of a rainforest light theme?

But it didn't stop there. Chromecasts, a new sound system, even a smart TV arrived. For a brief time I had to install a water cooler outside my door for the package carriers to congregate around in the afternoons.

Certainly, it had to stop somewhere. But then came the apps. I started buying lighting landscapes, apps to sync the TV with the lights, apps to sync music with the lights. At one point I even considered connecting my grill to the system . . . in fact, I'm still considering.

With Google Home now controlling every virtual element I could see or hear, the Amazon Echo Dot arrived. Over the next few weeks, the Google Home and Echo Dot would take turns at the office and home.

Since *BLF* cut off my reimbursements sometime before the TV, I decided this had gone far enough. I could now determine whether either Google Home or Amazon's Alexa (through the Echo Dot) could function as a valuable office tool.

Meet If This Than That (IFTTT)
If This Than That (IFTTT) is a free platform that allows you to connect multiple services and devices. For example, Gmail has no reason to build a native connection to something like the Phillips Hue smart lights. However, IFTTT can bridge the two. Using IFTTT, a single light can behave differently depending on the person contacting you.

> If you have smart lights and the Hue Disco app, your house can go from an everyday home to a night club, allowing you to raise the roof while lowering property values.

For example, you can program a different lighting effect to occur when you receive a text from each of your children. At the office, a light blinks when our home alarm system is armed or disarmed by connecting its notifications to IFTTT.

This can extend to calendar notifications or even life tracking. The connection made through IFTTT between my phone's GPS coordinates and the smart lights can tell me how long I spend at work, at home or at the gym.

Picking home base
You can find several decent comparisons between Google Home and Amazon's Alexa, which powers the Echo, Echo Dot and Tap. Amazon's offerings cost between $50 and $180. Google Home will cost $130. Over the past months, I have tried to find professional applications for these devices while testing their abilities to automate my home.

Before you embark on your own project, pick a side to ensure all your smart accessories are compatible. For example, Amazon Prime does not work well with Chromecast, and Google Home will not connect to Amazon for purchases. And there will be accessories. To get the most out of your Google Home or Amazon Alexa device, you will need to buy things like smart lights; smart plugs; subscriptions to Pandora, Spotify or YouTube Red; smart thermostats and smart appliances.

Functional Group Use: Alexa wins
Unlike Google Home, Echo devices support multiple users. This is a valuable upside for the home and office. But practically speaking, these are still "personal" assistants. If you want multiple members to dump their calendars and to do lists into a single device, it is not going to work.

One thing that Alexa does better than Google Home is make it easy to spend more money . . . on Amazon.com of course. On the walls of our office there are QR codes that team members can scan when something is needed. This generates a purchase request, then someone with buying power places the order. Since introducing Alexa to the office, nobody has used the QR code. Everyone knows what can and can't be ordered, and team members have kept coffee mugs and soup bowls full without a manager being involved.

For this feature alone, the $50 Echo Dot is now a permanent fixture in the office.

Calendar: No winners
If you manage your life with one single calendar, you will find both options are adequate. But for the rest of us, this is a serious flaw. Like many professionals, I have a personal calendar and a work calendar. I share my personal calendar with my work calendar and vice versa to avoid overlap, but the last thing I want is for all of my personal events, actions, and authorization to be married to my work email. With Google Calendar, sharing events is easy. But view-only events from my work calendar or my girlfriend's personal calendar do not make it into these devices.

When I walk out to the living room in the morning and say, "Ok Google, tell me about my day," I get the weather, calendar events and a couple of brief audio headlines from NPR, Bloomberg and BBC America (you can customize your news sources). What I'm missing Monday through Friday is all of the activity that is scheduled for my work day. This would be valuable to have in my morning virtual briefing. For now, I have to view my events on my phone or wait until I login to a work account.

If you are thinking that a possible solution is buying two of the same device, that gets tricky. Both communicate with their respective apps on your phone. Through the app, you provide information like your address. Without multiuser support, one person dominates the settings.

Music: Everyone wins
If you want to control your music verbally, both are winners. If you have a private office, you will be pretty happy with either device. The sound quality of Google Home's speaker is actually quite impressive. Using Chromecast Audio, you can connect it to a more powerful sound system. The Echo Dot supports bluetooth. Its native sound quality is not as impressive but the higher end models like the full size Echo are better. Either are sufficient for office listening.

My favorite feature is the ability to group multiple devices. For home use, I purchased several Chromecast Audios and grouped them together. I can tell Google to play something just in the living room, just in a bedroom or on all

speakers installed throughout the house. You can do this with Chromecast Audio for about $35 each, which is thousands less than a house-wide Sonos system.

Television: Google Home wins
If you want to watch your favorite shows with voice command, Google Home paired with Chromecast Ultra yields the best results. The controls only made available on your phone, so if you are used to navigating a Roku or Apple TV menu by remote, this will take some getting used to.

Back at the office, the Chromecast Ultra is a great edition to your conference room TV. With it, you can share your phone, tablet or computer screen for presentations without any wires. Just connect to the same WiFi as the Chromecast Ultra and you're in. If you have a relatively new (within the last 2 years) WiFi system, you probably will not experience any lag times with your cursor or presentation slides.

Notifications: Everyone wins
If paired with smart lights and IFTTT, you can receive notifications for most things. Different light effects and colors can signal anything from an email or text from a specific person being tagged on Twitter or mentioned on Facebook. They can even be used as a reminder for upcoming events on your calendar.

At first, this may sound like notification overload. If you connect all forms of communication to your lights then yes, this will get out of control very quickly. You will also need to post warnings in your home or office for people prone to seizures. But using light notifications for a select few events can be helpful, especially at work.

As an example, you could be working on a case that requires your undivided attention. As part of this case, you may also need to correspond with your client or colleagues. If you have your email notifications popping up on your screen, that can be distracting. But, if you just route a few contact notifications to your lights, you can close your inbox and focus on your case. If someone relevant to what you are working on contacts, you will get a gentle blink or color change letting you know this email is worth your immediate attention.

Using the lights to filter notifications can cut down on distractions when you truly need to focus.

Will Smart Home Devices Work For Smart Offices?
At the beginning of this article, I told the story of a perfect evening where personal assistants made my work and home life a little easier. That was a good night. However, these devices can be incredibly frustrating. Sometimes conversations or movies trigger them unnecessarily. Sometimes, they tell you a light is unavailable while its shining down on you. Misunderstandings are regular, as is receiving "I can't help with that" feedback for simple requests that they have helped you with before. Both devices have a lot of growing up to do.

While the Echo Dot has proven to be a valuable office supply manager, I don't see either device becoming a workplace staple soon. But that does not mean you should not adopt one for your home.

There's No Place Like Home
It hasn't been that long since my home was not smart, but merely average. In fact, just under three months. Recently, while out of town, it became apparent how quickly I have converted. From the time I walked into the hotel room until the morning I checked out, I was barking orders at the lights and television. They were of course neither willing or able to oblige.

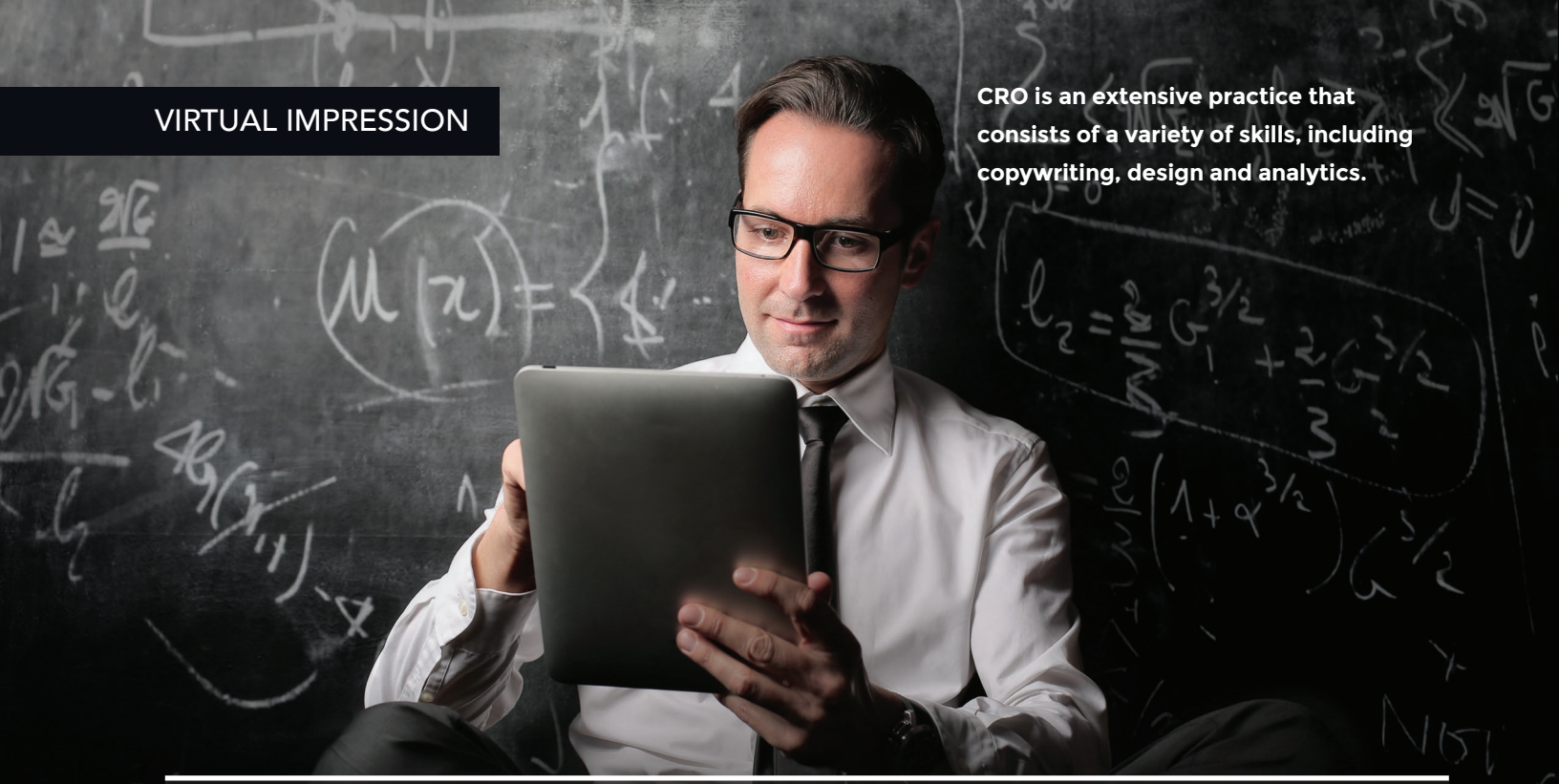
In spite of some frustrating moments, Alexa and Google Home are useful, especially once you learn how to communicate with them and to understand their limitations. In fact, Google Home has become a permanent fixture at home. We regularly play trivia. Ask it to flip a coin. While watching movies or listening to music, we will instinctually ask things that come to mind like "How many movies has Steve Buscemi been in?" or "When was Thriller released?" We will often ask for a recommendation on what wine to pair with dinner or when to leave to make it to an event. And when you are in the middle of cooking and need help with basic measurement conversions, she is just one "Hey Google" away.

Meanwhile, the accessories keep piling up. Maple and Walter will soon get fitted with smart pet feeders. The robotic vacuum will clean up after them. My grill will fire up on the drive home. Lights will turn on and lights will turn off.

Smart home devices and accessories are becoming as common as the toaster or microwave. But are they ready to join the workforce? For now, they are not quite smart enough for the office. But as Google Home would remind you, "I'm always learning."

- Jason Bland

> If you are looking for a productive working relationship, you already have a more powerful personal assistant in your pocket. Google Assistant and Siri are often more helpful. These smart devices and IFTTT routines will work with your Android or Apple device without the need for Google Home or Alexa.



CRO is an extensive practice that consists of a variety of skills, including copywriting, design and analytics.

A LAWYER'S GUIDE TO

Conversion Rate Optimization

Conversion rate optimization, or CRO, is a process by which you enhance your visitors' website experience to convert more leads. Your ability to compose persuasive copy has a significant effect on conversion rates. Layout also has such an impact.

In pursuit of best practices

There are no best practices guaranteed to achieve the desired results for your firm. However, you can perform tests of page variants and conduct an analysis of their results.

Instead of chasing modifications that have helped others, it may be more effective to look at the ways users interact with your site. For instance, it is often recommended to a color like green for a call to action, or CTA. Green is naturally related to the word, "go." However, this practice does not always produce the expected outcome. One study revealed that a change from green to red buttons caused a rise in conversion rates by 21 percent.

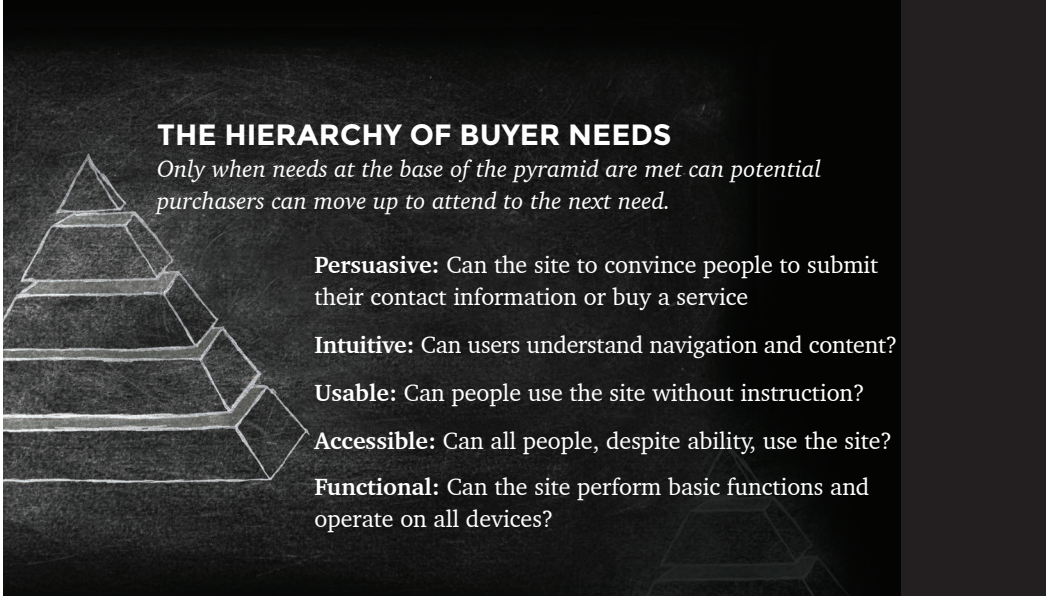
Conversion rate optimization is a practice in which your objective is to devise a good user experience and increase revenue. Your aim is to understand your customers and the specific strategies necessary to help them. In order to accomplish this goal, you will have to perform some independent research to learn what your users would actually like. You will also need to complete an audit to discover at which point users leave your website.

Not all best practices are ideal for everyone

Because it takes four weeks to run an average A/B test, it would be futile to attempt every potential idea. Many studies, for example, indicate that video is superior to fixed images or text in promoting conversions. On the basis of these studies, Brookdale Living, a community living service for seniors, performed tests on two versions of its home page, with and without video. According to best practices, you would expect the video page to outperform the other. However, the results revealed that the page with the static image was more compelling and increased revenue by over $100,000.

Another example that yielded a result that defied predictions is a landing page that drew attention to its free trial. The word "free" is connected to higher click-throughs and sign-ups, particularly when given as a trial. Yet, WedBuddy, a SaaS vehicle that assists couples with wedding websites, discovered that focusing on the "free" aspect of the service led to a decrease in conversions. People who signed up for the service were more difficult to convert into paying customers. To offset this response, WedBuddy modified its landing page copy to concentrate on value.

WedBuddy also reduced the number of testimonials and benefits, creating a page more concise and with less proof than the first variant. The effect of the change was a 139



percent rise in clicks and a 73 percent hike in free trial sign-ups. The lesson to be learned here is to refrain from duplicating best practices. Test them and use them only if they are helpful to you.

Minor changes, substantial rewards
While you may be motivated to find one change that can yield huge returns, be mindful that some studies can be deceptive, and may not provide all of the information. They may not reveal the length of time during which a test was performed, whether the traffic was the same for the duration of the testing period, or what, if any, other changes were implemented on the site.

If your objective is to double your conversion rate, concentrate on testing all aspects of your site that may hinder user experience and conversion. Take chances by redesigning pages, updating copy and improving images.

Attorneys can create more leads for their websites by split testing elements of their sites. By studying visitors' actions, you can identify and remove obstacles to conversion. To start, ask yourself whether or not your users' fundamental needs are met. Try to develop an understanding of your users' psychology and what is keeping them from purchasing your services. Using the "think aloud protocol" as part of a basic usability test may disclose several barriers to an optimal user experience.

The benefits of lengthy sales copy
A common misconception is that people no longer have the time or inclination to read copy. Common wisdom says this is because they have short attention spans or are very distracted. However, in actuality, people are reading more than ever before. In fact, a popular post by Neil Patel about online marketing is more than 30,000 words long, and yet, it has shares and backlinks that number in the hundreds. When Backlinko analyzed more than one million search results, it discovered that longer content usually outperforms shorter content because people attach more value to longer content.

When Moz tested a longer landing page, it saw a 52 percent rise in sales. Also, when Crazyegg used a homepage that was 20 times longer than its original page, its site conversion rate rose by 363 percent. Shorter landing pages are most effective when the lead is aware of what they are searching for, and your page offers the precise solution. Attorneys can benefit from a longer landing page by using that extra space to better educate potential clients about the services they provide.

The importance of page speed
The speed with which your website loads is vital to conversions. Attorneys whose websites load more quickly are likely to achieve an improved user experience, a greater number of conversions, increased engagement and better rankings. The optimal load time is less than one second.

Upon a review of data, Conversion XL determined that 57 percent of visitors will leave a page that takes at least three seconds to load and 47 percent expect a page to load in two seconds or less. The impact of load time on conversions was noted by Walmart when it made an investment in the speed and responsiveness of its website. The retail corporation experienced a 20 percent increase in conversions and a 98 percent rise in mobile orders.

Among the tools attorneys can use to analyze the speed of their websites are Pingdom, which tests the load time of the page, and finds obstacles; and Google PageSpeed insights, which scrutinizes the content of a web page, and then creates recommendations to expedite the load time of that page.

The advantages of singularity
While several landing pages contain multiple offers, the use of just one call to action may prove to be more effective. Fewer distractions and fewer choices lead to more conversions. For example, when Whirlpool moved from four different CTAs to just one, their campaign's click-through rate rose by 42 percent. And E-file's landing page for the search term "free online taxes" resulted in more conversions than Intuit's TurboTax landing page for the search term "file taxes for free." Intuit offers 15 different choices to click. E-file initially focuses on the search terms and then one objective: to start.

Attorneys can apply this strategy by identifying a principal website goal and not giving readers any options beyond that goal. Also, exercise caution when using social media buttons. Perform tests to determine whether conversions rise or decline with different numbers. These and other conversion rate optimization strategies can help you realize your objective of attracting more visitors and potentially converting them into clients.

- Roxanne Minott

SECURITY

Internet providers are CASHING IN on your browser history

Since the appointment of former Verizon lawyer Ajit Pai to chair the Federal Communications Commission (FCC), internet service providers (ISPs) have received a steady stream of good news from Washington. Last December, Pai indicated his desire to take a "weed whacker" to many FCC regulations. With full control off the government, Pai and congressional Republicans are starting to cut.

In October of last year, the FCC adopted a set of privacy rules that mandated stronger consumer protections. The order required broadband providers to obtain a positive opt-in from consumers before sharing sensitive information and allowed consumers to opt-out of letting ISPs use or share non-sensitive information.

The order also required broadband providers to clearly tell consumers what data they collect and how they use it and prohibited plans contingent on a consumer surrendering privacy rights. According to a statement by the FCC, the rules were intended to "empower consumers to decide how data are used and shared by broadband providers."

The new rules never went into effect. In late March, both the Senate and House of Representatives voted to repeal the portion of the rules that would have required ISPs to get permission from consumers before selling their personal data.

Republicans used the Congressional Review Act to repeal the rules, a little-known method used only once to overturn a regulation before 2017. The CRA allows Congress, through an expedited process, to review and invalidate newly enacted regulations. If a regulation is overturned, a new rule that is substantially similar cannot be issued unless Congress passes a law to that effect.

At the time of this writing, the 115th Congress has used this power 13 times to target Obama era regulations.

Telecom companies are some of the most generous spenders on the hill, contributing almost $88 million in the last year alone. The cable industry puts great effort into influencing legislation which would affect its bottom line. Usually that money is spread on both sides of the isle, but Republicans were particularly receptive to this bill.

Individual contributions ranged from $1,000 for Senator Roy Blunt (R-MO) up to an eye-opening $251,110 for Senator Todd Young (R-IN). Senator Jeff Flake (R-AZ), who introduced the legislation, received $27,955 from the telecom industry. According to data compiled by the National Institute on Money in State Politics, the cable industry spent $9,156,812 acquiring all 265 yay votes.

According to Flake, "What we need with the internet is uniform rules, and not to regulate part of the internet one way and another part of the internet another way, just based on who provides the data. It ought to be the data that provides the basis for regulation."

Sen. Flake's defense of the bill sounds like a fair assessment, claiming that since companies like Google and Amazon already collect user information and build profiles for advertising, others like Comcast and AT&T should be able to do the same.

In his dissent to adopting the privacy order last October, Pai stated, "Were it up to me, the FCC would have chosen a different path — one far less prescriptive and one consistent with two decades of privacy law and practice. The FCC should have restored the level playing field that once prevailed for all online actors using the FTC's framework."

Pai dismisses the argument that edge providers, like Netflix and Apple, only see a slice of the information consumers generate online. Like Senator Flake, Pai believes the FCC overreaches when it regulates one group of companies to a greater extent than others. Unfortunately, these arguments contain several notable flaws.

By using the Congressional Review act, Republicans stripped the FCC of it's power to regulate consumer privacy online. The FCC cannot regulate anything similar on its own without congressional involvement.

Dozens of email providers, web hosts and cloud storage platforms exist, with new ones emerging all the time. When consumers are online, they have a choice between many services and products, and which companies to which they give their personal information.

Getting online is a different story. ISPs have divided and conquered, avoiding competition except for a few select areas. The average customer has between one or two options for internet service. There is almost no choice when it comes to who is responsible for managing everything you do online.

What happens now?

President Trump frequently expresses outrage and alleges violations of his own privacy, but he did not hesitate to sign this bill into law. Congress and the Trump administration have made it clear: the right to privacy does not apply when you are online.

Privacy protections were enacted because data collection activities were already occurring, so ISPs that were already collecting and sharing the information will likely continue.

America's largest ISP, Comcast, says it does not participate in the selling of customer browsing information to third parties, unless the consumer has already opted in. Gerard Lewis, Comcast's Chief Privacy Officer, says "We did not do it before the FCC's rules were adopted, and we have no plans to do so."

AT&T was one of the targets of the privacy protections rule. In 2013, it introduced "standard" and "premium" fiber tiers. For $29 less, you could have several installation and hardware fees waived and be included in AT&T's targeted advertising platform. Several technologies were used to collect browsing information on users, such as global tracking cookies and deep packet inspection. The information would theoretically have personal identifiable information removed, but it will still contain confidential and revealing metadata such as a timestamp, location, IP address and what sites have been accessed. The plan was scrapped shortly before the FCC's October 2016 vote.

Just about every entity on the web collects some identifiable information on you, for reasons like analytics and advertising, or with malicious intent. Even the most innocuous information that has been stripped of personally identifiable information can still be analyzed for patterns. If a tablet is

visiting kid friendly sites before and after school hours, for example, it is an indication that user is a child.

All information transmitted through your internet connection is potentially at risk, including browsing history, demographic information, financial and medical records.

Netflix famously held a competition to improve their recommendation system by releasing a huge data set of anonymous movie ratings. Two researchers from the University of Texas at Austin were able to de-anonymize individual users by parsing the dataset against IMDB ratings.

Who picks up the slack?

The telecom industry does not see an obligation to ask for permission to sell confidential information. In fact, the industry believes asking for consumer opt-ins is wasteful and counterproductive to the public interest.

Just days after S.R.Res.34 was passed, Congresswoman Jacky Rosen (D-NV) introduced the Restoring American Privacy Act of 2017, which is effectively a repeal of the repeal. Rosen had a career in programming before joining Congress and believes "keeping privacy protections in place is essential for safeguarding vulnerable and sensitive data from hackers."

Since federal lawmakers voted to axe privacy protections, many states have decided to pick up the slack. Minnesota, Illinois and Maryland are just three states that are introducing strong privacy protection laws similar to the one the FCC had implemented.

Depending on how well the states write their rules, it is possible they can see success in implementing reasonable protections. But considering the lobbying strength of the telecom industry, those measures are sure to be met with lengthy legal battles.

Protect your online privacy now

Connecting to sites over HTTPS is the most common way to protect your information. Secure connections are becoming ubiquitous and can effectively hide what you are doing from your ISP.

However, even though service providers will not be able to see what you are sharing, they can still track the initial secure handshake to know which sites you visit and when.

The strongest tool for protecting your online activities is through the use of a virtual private network (VPN). A VPN creates a secure, encrypted tunnel between two computers and has been a tool used by businesses with remote employees for years. VPNs prevent snooping from your ISP, the government and neighbors with a WiFi password. Additionally, your gateway is likely used by other VPN customers, further anonymizing your activity.

Many providers offer VPN services, and unlike internet service providers, there are plenty to choose from.

With little progress being made to legislate consumer privacy, doing nothing can result in having your internet history sold or ending up in the wrong hands. Investing in a VPN ensures a reliable protection from legal and malicious actors alike.

- Justin Torres

VPN PROVIDERS SPEAK OUT ABOUT THEIR SECURITY PRACTICES

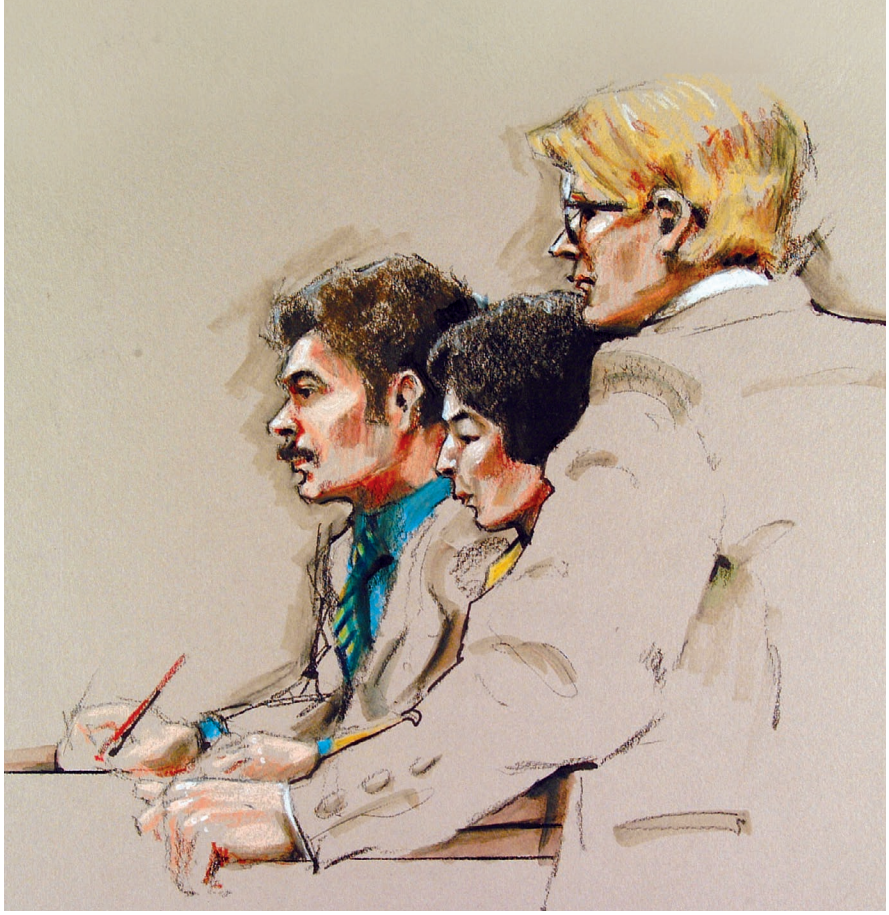
Torrent Freak has an annual VPN review in which several of the biggest providers comment about their security practices. The most important question is; what information do providers keep on you, like access logs and data retention policies. Here is how a few companies answered:

PRIVATE INTERNET ACCESS (privateinternetaccess.com)
"We do not store any logs relating to traffic, session, DNS or metadata. There are no logs for any person or entity to match an IP address and a timestamp to a user of our service. In other words, we do not log, period. Privacy is our policy."

NORDVPN (nordvpn.com)
"As stated in our terms of service, we do not monitor, record or store any VPN user logs. We do not store connection time stamps, used bandwidth, traffic logs, or IP addresses."

TORGUARD (torguard.com)
"No logs or time stamps are kept whatsoever. TorGuard does not store any traffic logs or user session data on our network. In addition to a strict no-logging policy we run a shared IP configuration across all servers. Because there are no logs kept and multiple users share a single IP address, it is not possible to match any user with an IP and timestamp."

Republican lawmakers have been trying, unsuccessfully, to pass tort reform laws in the United States for decades. House Republicans are now taking advantage of the attention focused on other issues to quietly advance several tort reform bills.



TORT REFORM ON TRIAL

Tort reform makes a comeback

A tort is an action or infringement that causes loss, harm and/or injury, leading to civil legal liability.

Tort reform refers to changing or altering the ground rules of tort-based lawsuits by bringing in a financial limit maximum for pain and suffering and/or punitive damages. Tort reform may also involve restricting these types of lawsuits under the auspices of a Statue of Repose or Statute of Limitations.

Tort reform makes it more challenging to file a lawsuit and to get a jury trial, and it places limits on awards injured plaintiffs may receive in a lawsuit. Opponents of tort reform claim that it harms the victim twice, once as a result of another's negligence and again when an award to cope with injuries is reduced, potentially affecting lifetime care. Tort reform seriously limits the chances Americans have to file lawsuits seeking compensation for injuries.

Tort reform is not new. It has been a popular issue for Republicans for many decades. Tort reform debate returns on a cyclical basis and fades away, only to reappear later. With the election of Donald Trump, tort reform has made another appearance in the House, with the Republicans introducing and passing a number of bills. The legislation attempts to introduce caps on medical malpractice awards and restrict those who wish to file a class action lawsuit.

Given what appears to be the political drive to reduce awards for injury victims seeking compensation for negligence, what are the reasons for the current re-emergence of tort reform? Large business groups and the U.S. Chamber of Commerce have suggested courts are entertaining fraudulent and frivolous lawsuits. Opponents to reform ask: If the lawsuits are frivolous or fraudulent, then how would they get to court in the first place?

Lawyers often hesitate to take cases without evidence and a sound basis for believing they have a chance to prevail.

Trial attorneys argue that medical malpractice lawsuits protect patients against negligent physicians. Some medical professionals insist they support tort reform in an effort to protect patients from paying the astronomical costs of malpractice insurance. It is an argument that continues, year-after-year on a state and national level.

What has passed in the House?
So far, two of four proposed pieces of legislation have passed, The Innocent Party Protection Act (IPPA) and The Fairness in Class Action Litigation Act (FALA). The IPPA shifts some claims from supposedly sympathetic state courts to federal courts and the FALA allows class-action lawsuits to move forward in federal court only if every plaintiff in the class suffered "an injury of the same type and scope."

Should the FALA become law, it could have a serious effect on a variety of complaints from environmental abuse to civil rights violations to personal injury lawsuits. Not all members of a class action lawsuit could possibly have been injured in precisely the same manner. More often than not, class action lawsuits encompass those who have been hurt by an action or product that has resulted in a variety of injuries and side effects.

A third bill, titled the Lawsuit Abuse Reduction Act (LARA), would mandate that federal judges sanction lawyers whose claims are later found to be frivolous. According to Lamar Smith (R-Texas) the bill would restore balance to a system skewed too far in favor of plaintiffs and their lawyers by filing junk lawsuits and therefore participating in legal extortion.

A fourth proposed act, the Protecting Access to Care Act (PACA), which has not yet been slated for a vote, would put a three-year statute of limitations in place for filing civil lawsuits in most cases where patients and/or their families believe medical negligence was the cause of an injury or death. It would also impose a $250,000 compensation cap for non-economic damages. This proposal would override legislation in states that have declared caps unconstitutional.

According to Joanne Doroshow, executive director of the Center for Justice & Democracy at New York Law School, the bills would act to absolve the healthcare industry and large companies from harm. The chaotic rush to pass such legislation is "unprecedented" says Doroshow.

According to Joanne Doroshow, executive director of the Center for Justice & Democracy at New York Law School, the four bills would act to absolve the healthcare industry and large companies from harm they may cause. The chaotic rush to pass such legislation is "unprecedented" says Doroshow.

Similar pieces of legislation have been introduced into the House, but none have passed until now. Republicans, with a majority in both houses of Congress and a Republican president, are in a hurry to pass legislation. Major legislation is being processed through the system without the usual checks and balances afforded by public debate and open analysis.

Supporters of tort reform cite fraudulent lawsuits that contribute to increasing medical care costs as a further reason for passing the legislation. These lawsuits, they claim, force doctors to order unnecessary medical tests. Supporters further argue that frivolous litigation denies awards to legitimate victims, bankrupts businesses and the high medical malpractice insurance rates force doctors to leave the practice of medicine or move to a state with lower insurance rates, passing costs on to the patients.

Arguments against tort reform
Opponents of tort reform argue that fairness should prevail when a plaintiff is injured or killed by negligence. It is not fair to the victims to bar them from receiving a level of compensation that is in line with their injuries. In some states, including Pennsylvania, Arkansas and Kentucky, tort reform is unconstitutional. When it comes to medical negligence lawsuits in states with a cap on non-economic damages, victims are hard-pressed to find a lawyer to take their case, arguably a further injustice.

Does tort reform reduce healthcare costs?
The current resurrection of tort reform is tied to healthcare reform and is regarded as a way to reduce healthcare costs. Tort reform has been proposed by both party leaders as a strategy to diminish healthcare costs. However, what if any cost savings associated with tort reform exist is debatable.

According to the Working Paper 15371 titled "The Impact of Tort Reform on Employer-Sponsored Health Insurance Premiums," by the National Bureau of Economic Research, tort reform can only have a significant impact on healthcare costs if those reforms affect the amount of healthcare services provided. In other words, tort reform must impact the medical practice as a whole and not just medical malpractice in order to achieve a possible reduction of healthcare costs.

The study focuses on four types of reform caps on non-economic damages, punitive damages, collateral source reform, and joint and several liability. Collateral source reform reduces a victim's award if they are in receipt of private or public insurance benefits. Joint and several liability reform acts to restrict a victim's capacity to sue defendants with deep pockets.

The overall findings indicate that caps only reduce premiums by approximately one to two percent. Rather than increasing the cost of medical care in the form of defensive medicine, tort reform reduces treatment overkill, as the drop in premiums is greater than the savings that may accrue from reduced direct liability costs. This finding may not be applicable in managed-care situations. Currently, tort reform is aimed at medical malpractice and not at medical practice as a whole, which may mean further study is needed.

Zeke Emanuel, MD, PhD, and a bioethicist, criticizes caps on damages as a method for reducing national healthcare spending. He sees too much risk in that patients injured by negligence may not receive full compensation. Part of the research used by Emanuel includes a 2009 Congressional Budget Office (CBO) estimate that capping damages would reduce national healthcare spending by only about 0.5 percent.

A February 7, 2013, opinion column in The Wall Street Journal, penned by health policy researchers, concluded that caps on non-economic damages are ineffective in significantly reducing defensive medicine.

Does tort reform, as advertised by politicians, help reduce high healthcare costs in the United States? Perhaps not in its current form. Instead, it appears that malpractice litigation's biggest effect on the system may stem from doctors engaging in defensive medicine. Tort reform may not affect the medical system as a whole substantially enough. Further debate and study is needed to determine whether this reform is effective.

The cyclical nature of tort reform

Over the last 30 years, roughly every 6 to 10 years, malpractice insurance premiums increase by as much as 100 percent. This in itself is not surprising as cycles in the insurance industry are well known and driven by the marketplace. In good or bad markets, the price of insurance fluctuates. In a good year, it is not uncommon to see an increase in medical malpractice premiums, which in no way is tied to physicians practicing defensive medicine.

Over time, the argument in support of tort reform has become mostly focused on caps for non-economic damages, and pain and suffering. Many feel these caps have kept malpractice premiums in check. However, insurance market driven medical malpractice premiums vary from state-to-state and may even vary by county. A doctor relocating from one state to another may find premiums dropping by up to 70 percent.

In Illinois, the Department of Insurance convened hearings to investigate the relationship between medical malpractice premiums and caps. The outcome of these hearings was that there is little to no connection between insurance premiums and malpractice lawsuits in Illinois.

A major study in the New England Journal of Medicine authored by five doctors and public health experts revealed tort reform measures in three states aimed at protecting E.R. doctors from lawsuits did not reduce the number of expensive tests and procedures ordered.

In good or bad markets, the price of insurance fluctuates. In a good market year, it is not uncommon to see an increase in medical malpractice premiums, which is not tied to physicians practicing defensive medicine or an increase in litigation.

Additionally, the theory that out of control juries award exceptionally large sums to plaintiffs is not borne out by the numbers. According to the Department of Justice, however, the median medical malpractice jury award is $400,000. In bench trials the median award is $631,000.

Can defensive medicine be halted or reduced by the introduction of tort reform? It appears the answer to those questions is: "Not likely." Furthermore, opponents of tort reform will continue to argue that capping damages for a grievously injured victim is a penalty applied to an innocent plaintiff who did not cause their own injury. Tort reform, to be effective, should serve to reform the system in a way that helps victims.

- Kerrie Spencer

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