



UNSW Law & Justice Research Series

Lawfluencers: Legal Professionalism on TikTok and YouTube

Anthony Song and Justine Rogers

[2023] *UNSWLRS* 7
Forthcoming in (2024) 37 *Georgetown
Journal of Legal Ethics*

UNSW Law & Justice
UNSW Sydney NSW 2052 Australia

E: LAW-Research@unsw.edu.au

W: <http://www.law.unsw.edu.au/research/faculty-publications>

AustLII: <http://www.austlii.edu.au/au/journals/UNSWLRS/>

SSRN: <http://www.ssrn.com/link/UNSW-LEG.html>

Lawfluencers: Legal Professionalism on TikTok and YouTube

ANTHONY SONG*

JUSTINE ROGERS†

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 knowledge and ‘lifestyle’ on social media to accumulate a ‘following’ whose loyalty they ‘monetise’ for commercial gain and/or cultural capital. They do so through performance strategies, usually by curating an ‘amateur’ (charismatic and relatable) identity. Lawfluencers are part of a rising crop of – underexamined – ‘knowledge influencers’; professionals who are sharing their expertise and daily lives with global audiences. To be successful, lawfluencers must choose which balance between professional (trusted expert with certain duties and values) and amateur (authentic and approachable personalities) best suits their ‘brand’ and audience. This public engagement and exposure is unprecedented for a profession that has historically opposed advertising and maintained a certain mystique. 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 with what blends of professional versus amateur. Our article focuses on the implications of ‘lawfluencing’ for ‘professionalism’ or for the identities, expertise, values, and arrangements that have typically marked out professional status. Lawfluencing might be offering greater access to justice for the public, and new outlets for creativity and career progression for lawyers, but this activity is occurring on the platforms of Big Tech, subject to their commercial imperatives and the sovereignty of the algorithm. This article outlines the ethics risks influencing poses to clients and lawyers, and the possible challenges to the legitimacy of the legal profession and the legal system. In the process, we identify responsible lawfluencing practices necessary for the sustainable development of the legal profession in the digital era.

* Research Fellow, Centre for the Future of the Legal Profession, Faculty of Law & Justice, UNSW, Sydney.

† Associate Professor, Faculty of Law & Justice, UNSW, Sydney.

This article will be published in Volume XXXVII of the Georgetown Journal of Legal Ethics. This version and the data contained within is current as of 1 May 2023 and may change upon final publication.

TABLE OF CONTENTS

I	Introduction	3
II	Definitions, Forms & Drivers	6
	A What is ‘lawfluencing’?	6
	B What are Lawfluencers doing? What types of videos and other products are they making?	9
	C What is driving the advent of Lawfluencers and shaping their activities?	12
III	Implications For Professionalism	15
	A Access to Justice and a Lawyer’s Other Public Interest Values	15
	B The Lawyer-Client Relationship, Fiduciary Obligations, and Customised Care	19
	C Lawyers’ Autonomy and Wellbeing, the Legal Profession, and the Administration of Justice	21
IV	Conclusion	24

I 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 show off chunky diamond rings, he twirls, steps back, then waves goodbye to the viewer. At 12-seconds long, this video was posted by U.S. lawyer Kevin Kennedy, on his TikTok page (@kennedylawfirm). On the post are the hashtags: #kevgotycovered #lawyer #dance #bejeweled #shimmer #glitter #taylorswift #fyp #foryou.¹ This video attracted 30,900 ‘likes’ and 461 comments on TikTok, the social media platform that allows users to create and share short-form (15 second to 10 minute) videos.²

Kennedy is known³ for resembling the slick, fictional lawyer, Saul Goodman, of American crime drama, *Better Call Saul*—a persona Kennedy has embraced as part of his self-presentation online.⁴ 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. Fans vented their frustration on social media, and joined lawsuits against the ticket sales company.⁵

Elsewhere across cyberspace, Leeja Miller, a legal content creator, begins a livestream (video occurring in real time) on her YouTube channel, ‘Leeja Live’. 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.⁶ 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’. Above the disclaimer are affiliate links (weblinks that earn a commission) to various products, including makeup, filming equipment, and hair products. Miller’s video is one among many on YouTube in which lawyers shared their reactions to the event.⁷

¹ A hashtag is a word or phrase preceded by a # symbol used on social media to categorise 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 other users For You Page to increase views and visibility.

² As at time of writing on 20 April 2023.

³ Stephanie Harper, *Kevin Kennedy’s Law Firm TikTok Page Is Reminding People of ‘Better Call Saul’*, DISTRACTIFY, <https://www.distractify.com/p/kennedy-law-firm-tiktok> (last visited Sep. 25, 2022); *Kev Kennedy / Kennedy Law Firm*, KNOW YOUR MEME, <https://knowyourmeme.com/memes/people/kev-kennedy-kennedy-law-firm> (last visited May 1, 2023).

⁴ 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 charisma, flamboyant personality, sarcastic wit and morally ambiguous nature.

⁵ Peter Cohan, *Swifties’ Suit Seeks \$2,500 Per Ticketmaster Antitrust Violation*, FORBES (06/12/22), <https://www.forbes.com/sites/petercohan/2022/12/06/swifties-suit-seeks-2500-per-ticketmaster-antitrust-violation/>.

⁶ Leeja Live, *Lawyer Reacts to Taylor Swift/Ticketmaster Drama*, YOUTUBE, <https://www.youtube.com/watch?v=oknIVf1Vw2U> (last visited Dec. 9, 2022).

⁷ The Hollywood Attorney, *Lawyer REACTS to Ticketmaster and Taylor Swift Drama*, YOUTUBE, <https://www.youtube.com/watch?v=CRGgzpJvqP0> (last visited Dec. 9, 2022); LegalBytes, *Why the Taylor Swift Ticketmaster Case Won’t Go Far*, YOUTUBE, <https://www.youtube.com/watch?v=hgYzEYMGuXo> (last visited Dec. 9, 2022); Top Music Attorney, *Lawyer Reacts to Taylor Swift Ticketmaster DRAMA*, YOUTUBE, <https://www.youtube.com/watch?v=X8QwIBvQsJI> (last visited Dec. 12, 2022).

These are depictions of ‘lawfluencers’ (or lawyer influencers)⁸ – lawyers using their legal knowledge and identity (both personal and professional) for the production and sharing of video ‘content’ online. An influencer’s aim is to accumulate a ‘following’ to then ‘influence’ its behaviour, primarily as potential consumers; and to otherwise ‘monetise’ their social media presence for ‘commercial gain and/or cultural capital’.⁹ Today, lawyers across practices of all sizes are sharing legal information, analysis and advice, and/or providing entertainment to global audiences, sometimes in the millions. As a result, they are constructing public personas and brands, carving out so-called ‘niches’ as sources of legal authority and entertainment, attracting new clients and building communities —and, in many instances, making considerable amounts of money.

This activity is new territory for the law, which has long had an aversion to and prohibition on advertising of any kind.¹⁰ 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. However, as the two opening examples illustrate and as detailed in this article, much has changed in recent decades; and 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. There are also distinct social, economic, political, and again, technological forces shaping how this activity is then rolling out.

Our article considers the meanings of this new type of endeavour in legal practice, focusing on the currently leading, video-based social media platforms: YouTube¹¹ and TikTok.¹² Lawyers’ use of social media has attracted scholarly attention.¹³ However, outside a few short, professional pieces,¹⁴ comparatively little is known about ‘lawfluencing’ and the particular workings of video platforms in the legal context. Video social media is different from text-

⁸ Other related popular terminology, specific to certain platforms, include LawTok or LawTube.

⁹ Susie Khamis et al., *Self-Branding, ‘Micro-Celebrity’ and the Rise of Social Media Influencers*, 8 CELEBRITY STUDIES 191, 191 (Routledge Mar. 2017); Alison Hearn & Stephanie Schoenhoff, *From Celebrity to Influencer: Tracing the Diffusion of Celebrity Value across the Data Stream*, in A COMPANION TO CELEBRITY 194 (John Wiley & Sons, Ltd 2015).

¹⁰ James B. Reed, *Advertising and the Legal Profession*, 28 DICTA 101 (1951).

¹¹ 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 2.514 billion active users. *YouTube Statistics and Trends*, DATAREPORTAL, <https://datareportal.com/essential-youtube-stats> (last visited Apr. 21, 2023).

¹² TikTok is rapidly growing short-form video sharing social media that was founded in September 2016 by 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 1 billion global monthly active users: *TikTok Statistics and Trends*, DATAREPORTAL, <https://datareportal.com/essential-tiktok-stats> (last visited Apr. 21, 2023).

¹³ Jan L. Jacobowitz, *Lawyers Beware: You Are What You Post - The Case for Integrating Cultural Competence, Legal Ethics, and Social Media*, 17 SMU SCI. & TECH. L. REV. 541 (2014); Alyce Zawacki, *Social Media Use in the Legal Profession*, 43 ALTERNATIVE L.J. No. 2, 120 (2018); Katherine Taken Smith & L. Murphy Smith, *Social Media Usage by Law Firms: Correlation to Revenue, Reputation, and Practice Areas*, 40 SERVICES MARKETING QUARTERLY 66 (Routledge Feb. 2019); Francine Ryan, *The Use and Practice of Social Media*, in DIGITAL LAWYERING (Routledge 2021).

¹⁴ 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 Shields Johs, *ABA TechReport 2021 Websites & Marketing*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/law_practice/publications/techreport/2021/webmarketing/ (last visited Jul. 1, 2022).

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.¹⁵ Moreover, as a form of ‘knowledge influencing’ in which the influencer is sharing expertise more than lifestyle to build a brand, lawfluencing is intriguing.¹⁶ Traditionally, successful influencers strategically portrayed themselves as having a relatable identity as amateur or non-expert.¹⁷ 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.¹⁸

Our article examines the nature of lawfluencing and its implications for ‘professionalism’ or for the types of identities, expertise, relationships, values, and institutional arrangements that have typically marked out professional status.¹⁹ 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 it as a way in which lawyers can themselves reclaim work autonomy, wellbeing, and satisfaction against workplace pressures and controls? Or is lawfluencing simply another way in which the law and the legal identity are becoming more commercialised, 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 practice²⁰ 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 II explains what lawfluencing or legal video marketing is within the wider contexts of ‘influencing’ and digital marketing. It describes the types of videos lawyers are creating and sharing, and with what blends of professional versus amateur and what levels of success. It also pinpoints the main drivers behind its uptake in law. In the process, Part II also clarifies 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 III considers the implications of lawyers’ use of social media video platforms: on professional values and identity, relationships to the client and public, and the status of the legal profession and legal system more broadly. Part V concludes and suggests avenues for future research.

¹⁵ Jacob Sapochnick, *11 Lawyers Going Viral on TikTok Right Now*, ENCHANTING LAWYER (Mar. 23, 2020), <https://www.enchantinglawyer.com/10-lawyers-going-viral-on-tiktok-right-now/>.

¹⁶ Jessica Maddox, *Micro-Celebrities of Information: Mapping Calibrated Expertise and Knowledge Influencers among Social Media Veterinarians*, 0 INFORMATION, COMMUNICATION & SOCIETY 1 (Routledge Aug. 2022).

¹⁷ Crystal Abidin, *#familygoals: Family Influencers, Calibrated Amateurism, and Justifying Young Digital Labor*, 3 SOCIAL MEDIA + SOCIETY 2056305117707191, 201 (SAGE Publications Ltd Jan. 2017).

¹⁸ Maddox, *supra* note 18, at 7.

¹⁹ Mirko Noordegraaf, *Hybrid Professionalism and beyond: (New) Forms of Public Professionalism in Changing Organizational and Societal Contexts*, 2 JOURNAL OF PROFESSIONS AND ORGANIZATION 187 (Jan. 2015).

²⁰ For international examples on ‘continuity and change’, see *LAWYERS IN 21ST-CENTURY SOCIETIES VOL. 1: NATIONAL REPORTS* (Richard L. Abel et al. eds., Bloomsbury Publishing 2020); *LAWYERS IN 21ST-CENTURY SOCIETIES VOL. 2: COMPARISONS AND THEORIES* (Richard L. Abel et al. eds., Bloomsbury Publishing 2020).

II DEFINITIONS, FORMS & DRIVERS

In this Part, we define lawfluencing, describe the sorts of ‘content’ lawyers are marking, and the forces that are both enabling these activities as well as 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 organisation’s branding and advertising.²¹ Influencing is the activity of sharing lifestyles or knowledge on digital channels to accumulate a large ‘following’²² or network over which one has influence or persuasive power.²³ Influencing is a branch of digital marketing, which is, broadly, the use of online technologies to acquire customers, build customer preferences, promote brands, retain customers and increase sales.²⁴ But influencing also has elements of sociality, community, and performance that makes it different to other forms of marketing. Moreover, to be a successful influencer requires mastery over certain technological and self-presentation skills.²⁵

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’ – those with the access and skills to interpret mass media, command attention, and then pass on their understandings and opinions to the public.²⁶ Celebrities (mostly TV and film stars) were a branch of this group, selling products and services through their mystique and allure. Today, the accessibility of social media means that, in theory, anyone can become an influencer.²⁷ Current influencers are marked out from traditional opinion leaders and even celebrities, because they also share details of their daily, personal lives, making them ‘more accessible, relatable, believable, and intimate to followers’.²⁸ However, social media also adds a third stakeholder group to the classic influencer-audience model: the platform.²⁹ The platform’s

²¹ For examples of law firms using TikTok see Tiana Headley, *Big Law’s TikTok Stars Embrace Industry’s New Social Media Norms*, (Jul. 12, 2021), <https://news.bloomberglaw.com/business-and-practice/big-laws-tiktok-stars-embrace-industrys-new-social-media-norms>.

²² Crystal Abidin, “Aren’t These Just Young, Rich Women Doing Vain Things Online?”: *Influencer Selfies as Subversive Frivolity*, 2 SOCIAL MEDIA + SOCIETY 2056305116641342 (SAGE Publications Ltd Jan. 2016).

²³ Chen Lou & Shupei Yuan, *Influencer Marketing: How Message Value and Credibility Affect Consumer Trust of Branded Content on Social Media*, 19 JOURNAL OF INTERACTIVE ADVERTISING 58 (Routledge Feb. 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 (Routledge 2022).

²⁴ P. K. Kannan & Hongshuang “Alice” Li, *Digital Marketing: A Framework, Review and Research Agenda*, 34 INTERNATIONAL JOURNAL OF RESEARCH IN MARKETING 22, 23 (Jan. 2017).

²⁵ Maddox, *supra* note 18, at 3–4.

²⁶ ALAN CHARLESWORTH, ABSOLUTE ESSENTIALS OF DIGITAL MARKETING 42 (Routledge 1st ed. 2020); ELIHU KATZ & PAUL F. LAZARSFELD, PERSONAL INFLUENCE: THE PART PLAYED BY PEOPLE IN THE FLOW OF MASS COMMUNICATIONS (Free Press 1955).

²⁷ Kaja J. Fietkiewicz et al., *Dreaming of Stardom and Money: Micro-Celebrities and Influencers on Live Streaming Services*, Social Computing and Social Media. User Experience and Behavior 240 (Gabriele Meiselwitz ed., Springer International Publishing 2018).

²⁸ Chan-Olmsted & Kim, *supra* note 25, at 102; Abidin, *supra* note 24.

²⁹ 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 (Routledge 2022).

algorithms³⁰ adapt to audience preferences (in a process known as ‘personalization’),³¹ which in turn shape, and usually ultimately dictate, the actions of influencers. As we detail shortly in Part II.C, this dynamic between influencer, audience, and platform has been deemed the ‘platformization’ of cultural production,³² in which ‘the processes of content creation align with the affordances of platforms’ and their commercial models.³³

Meanwhile, the term ‘micro-celebrity’ has emerged to describe the practices influencers use on social media to successfully build their personal ‘brand’ and sometimes establish fame, but on a small scale, or in a specific (‘micro’) domain.³⁴ 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’.³⁵ Branding is about creating symbols (ideas, qualities, images etc.) for a commodity, ‘which ostensibly simplifies the consumer’s decision-making’.³⁶ By sharing their videos on popular apps such as TikTok or YouTube, influencers hope to construct and project themselves as a brand.³⁷ 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 from then dependent on views), advertisements embedded in videos,³⁸ and affiliate links.³⁹

The performance of microcelebrity was initially centred on lifestyle topics and within consumer industries such as travel, beauty, and fashion. However, ‘knowledge influencers’ now engage in these practices to curate their image in certain ways.⁴⁰ Knowledge influencers share technical ‘information and expertise to lay audiences’ often interwoven with ‘personal posts or humorous anecdotes’ about professional life.⁴¹ As signalled in the Introduction, these influencers build their brand, then, on both elite, erudite knowledge (‘professionalism’) and

³⁰ 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 ET AL., *INTRODUCTION TO ALGORITHMS 5* (The MIT Press 4th ed. 2022).

³¹ Urbano Reviglio & Claudio Agosti, *Thinking Outside the Black-Box: The Case for “Algorithmic Sovereignty” in Social Media*, 6 *SOCIAL MEDIA + SOCIETY* 2056305120915613, 2 (SAGE Publications Ltd Jan. 2020).

³² D. B. Nieborg & T. Poell, *The Platformization of Cultural Production: Theorizing the Contingent Cultural Commodity*, 20 *NEW MEDIA & SOCIETY* (Nov. 2018).

³³ Hutchinson & Dwyer, *supra* note 31, at 124.

³⁴ Theresa M. Senft, *Microcelebrity and the Branded Self*, A COMPANION TO NEW MEDIA DYNAMICS 346 (Wiley Online Library 2013).

³⁵ Maddox, *supra* note 18, at 2; Alice E. Marwick, *You May Know Me from YouTube: (Micro-)Celebrity in Social Media*, in A COMPANION TO CELEBRITY 333, 335 (John Wiley & Sons, Ltd 2015).

³⁶ Khamis et al., *supra* note 11, at 192.

³⁷ Hearn & Schoenhoff, *supra* note 11, at 242.

³⁸ Carsten Schwemmer & Sandra Ziewiecki, *Social Media Sellout: The Increasing Role of Product Promotion on YouTube*, 4 *SOCIAL MEDIA + SOCIETY* 2056305118786720 (SAGE Publications Ltd Jan. 2018).

³⁹ Crystal Abidin, *Influencer Extravaganza: Commercial “Lifestyle” Microcelebrities in Singapore*, in THE ROUTLEDGE COMPANION TO DIGITAL ETHNOGRAPHY 158 (Routledge 2016); BROOKE ERIN DUFFY, (NOT) GETTING PAID TO DO WHAT YOU LOVE: GENDER, SOCIAL MEDIA, AND ASPIRATIONAL WORK (Yale University Press 2017); Mariah L. Wellman et al., *Ethics of Authenticity: Social Media Influencers and the Production of Sponsored Content*, 35 *JOURNAL OF MEDIA ETHICS* 68, 69 (Routledge Feb. 2020).

⁴⁰ Maddox, *supra* note 18, at 4.

⁴¹ *Id.* at 2; Arantxa Vizcaino-Verdú & Crystal Abidin, *TeachTok: Teachers of TikTok, Micro-Celebrification, and Fun Learning Communities*, 123 *TEACHING AND TEACHER EDUCATION* 103978 (Jan. 2023).

relatability ('amateurism'). Indeed, to capture this contrived aspect, 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'.⁴² These knowledge influencers now span the fields of medicine,⁴³ dentistry,⁴⁴ finance,⁴⁵ and as we illuminate, law. Whatever they are selling (a product or professional service or both, for example), influencers are selling an identity that is 'singularly charismatic and responsive to the needs and interests of target audiences'.⁴⁶

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 which granted it an effective monopolies on the courts, legal work, and the profession's own rules and regulation.⁴⁷ 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. 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 forms it still exists) functional roles, including in the maintenance of the law's objectivity and predictability (and their appearance), and of the profession's trustworthiness. These means of influence also secured lawyers' financial and status rewards; and in consideration, lawyers were required to commit to public-minded, ethical behaviour.

With an effective monopoly from the state, lawyers were prohibited from advertising or touting for work (a practice they ought not have felt the need to engage in). This prohibition, and other, related customs and rules of 'etiquette' were formalised into statutes and regulation.⁴⁸ To engage in advertising or marketing would mean that lawyers could not turn to their fiduciary obligations, and lawyers in competition with each other would undermine the collegial spirit and altruism of the profession.⁴⁹ Finally, and at the interpersonal level, lawyers historically had (and have) influence over their clients (especially more vulnerable, individual clients). However, for most of the profession's history, this relationship was not the critical level of the

⁴² Maddox, *supra* note 18, at 2.

⁴³ Marah Fields, *Can #DoctorsofTikTok Be Held Accountable?*, CARDOZO ARTS & ENTERTAINMENT LAW JOURNAL BLOG 6 (Mar. 2022).

⁴⁴ Kathleen Nichols, *What Are the Ethical Considerations of Using Video Social Media Platforms Such as TikTok in Your Dental Practice?*, 153 THE JOURNAL OF THE AMERICAN DENTAL ASSOCIATION 1191 (Elsevier Jan. 2022).

⁴⁵ Nikita Aggarwal et al., *#Fintok and Financial Regulation*, No. 4216952 (Dec. 2022); Tamra Manfreda, *How to Make \$1 Million in Thirty Seconds or Less: The Need for Regulations on Finfluencers*, 84 LOUISIANA LAW REVIEW, FORTHCOMING (2022).

⁴⁶ Khamis et al., *supra* note 11, at 191.

⁴⁷ For a vivid history, see RICHARD L. ABEL, THE LEGAL PROFESSION IN ENGLAND AND WALES (Blackwell 1988); RICHARD L. ABEL, ENGLISH LAWYERS BETWEEN MARKET AND STATE: THE POLITICS OF PROFESSIONALISM (Oxford University Press 2003).

⁴⁸ 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 et al. eds., Springer International Publishing 2022).

⁴⁹ Anthony Gray, *Advertising by Professions and the Competition and Consumer Act 2010 (Cth)*, 40 AUSTRALIAN BUSINESS LAW REVIEW 336, 336 (Thomson Reuters Nov. 2012); Justine Rogers et al., *The Large Professional Service Firm: A New Force in the Regulative Bargain Thematic: Contemporary Professionalism and Regulation*, 40 U.N.S.W.L.J. 218 (2017).

profession's collective authority. In contrast, the key level of power in lawfluencing is between the individual lawyer and a group of anonymous people which the lawyer is trying to transform into a loyal community, and possible consumers/clients of their legal services and other products; but in this instance, where 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/service offerings to adapt to their clients' projects and take advantage of business opportunities, for example,⁵⁰ this type of influence is very different to traditional professional influence and how the image (or brand) of the profession has been projected, accessed, and constructed.

B What are Lawfluencers doing? What types of videos and other products are they making?

The main types of videos that lawyers are making to self-represent, promote, and market themselves are legal education ('law explainers'); news (and legal) commentary, and video blogs ('vlogs'). Each of these are genres that have been created by the platforms and related cultural trends, bringing their own styles and vernaculars. In all of these, the lawfluencers may also be offering legal advice. To reiterate, lawyers are typically not making these types of videos as one-way advertising (which legal video marketing might intend to), but rather as a two-way interaction to build a loyal and 'engaged' audience or 'community'. This is relevant for two reasons here, first to indicate again that the videos and this influence are in many ways co-constructed, based on the viewers' desires (that are then shaped by wider trends in content and viewing habits). Second, once the lawyer's community is of a certain size, they can monetise the videos and thus earn money regardless of whether the viewers themselves ever pay for their legal services.⁵¹ 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 illustrate the spectrum from professionalism on one end, to amateurism on the other, upon which the influencer must decide to position (and reposition) themselves.

Law explainers, as the first type, are videos that explain legal terminology, ideas, or processes in a clear, accessible way. For example, on YouTube, Shouse Law Group (a Californian 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; use of California medical marijuana cards interstate; and the legal outcomes of underage drinking.⁵² 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. Having originally started their TikTok in 2021 to promote their book about the law, they now have over 1 million

⁵⁰ For example, see John Flood, *Megalawyering in the Global Order: The Cultural, Social and Economic Transformation of Global Legal Practice*, 3 INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION 169 (Routledge Jan. 1996); John Flood, *Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions*, 14 IND. J. GLOBAL LEGAL STUD. 35 (2007).

⁵¹ Abidin, *supra* note 41; Liselot Hudders et al., *The Commercialization of Social Media Stars: A Literature Review and Conceptual Framework on the Strategic Use of Social Media Influencers*, 40 INTERNATIONAL JOURNAL OF ADVERTISING 327, 336–38 (Routledge Mar. 2021).

⁵² Larry Zimmerman, *Lawyer Content on YouTube Law Practice Management Tips and Tricks*, 87 J. KAN. B. ASS'N 16 (2018).

followers.⁵³ While the Stanleys’ topics are generalist, other lawyers ‘specialise’ their lawfluencing by focusing on their practice areas. For example, U.S. lawyer, Limor Mojdehiazad (@lawyerlimor) has built an audience of some half a million by creating videos on family and divorce law, with her biography describing herself as ‘Attorney Analysis&Commentary On Celeb Legal News’ [sic].⁵⁴

In addition to direct, transmission teaching, another common approach to a law explainer is for the creator-lawyer to share a video clip of a real-life legal offence, poll the audience on who they think is liable, and then reveal the answer in a separate video with legal commentary.⁵⁵ 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 (the concerns about which we address in Part III). One of the most successful lawfluencers, U.S. lawyer, Erika Kullberg (@erikakullberg), uses this more specific approach to content creation.⁵⁶ Her signature videos offer viewers advice about how to read and execute the fine print of certain contracts (from American Airlines to Nike). These typically involve Kullberg acting out all the roles in a scenario, for instance, 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. At time of writing, Kullberg has amassed 9.2 million TikTok followers and her videos have attracted a combined 66.9 million views (she has over 19 million followers across all her platforms).⁵⁷ 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.⁵⁸ Lawfluencers have responded by producing news-driven video content, commenting not only on legal trials but also on legal aspects of pop cultural, social, and political topics. American lawyer and content creator, Cecilia Xie, 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’.⁵⁹ A striking illustration was *John C Depp, II v Amber Laura Heard* (CL-2019-2911) (*‘Depp v Heard’*), in which actor, Johnny Depp sued his ex-wife, Amber Heard for US\$50 million in defamation damages over a 2018 op-ed she wrote alleging he had abused her. The trial was broadcast live from court each day, accelerating a ‘booming trend of amateur and professional legal analysts amassing huge social media audiences’.⁶⁰ Amongst the lawyers dissecting the case was Emily Baker, former Deputy District Attorney for Los Angeles, whose YouTube page now has some 700,000 followers.⁶¹ Baker livestreamed hours of analysis daily,

⁵³ 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/> (last visited Nov. 26, 2022).

⁵⁴ *Lawyerlimor*, TIKTOK, <https://www.tiktok.com/@lawyerlimor?lang=en> (last visited Apr. 22, 2023).

⁵⁵ See for example, @ugolord, the self-proclaimed ‘TikTok Attorney’.

⁵⁶ *Erikakullberg*, TIKTOK, <https://www.tiktok.com/@erikakullberg?lang=en> (last visited Apr. 22, 2023).

⁵⁷ *Id.*

⁵⁸ Hutchinson & Dwyer, *supra* note 31.

⁵⁹ Cecilia Xie, *How TikTok Can Revolutionize Your Legal Practice*, 94 NEW YORK STATE BAR ASSOCIATION JOURNAL 28, 28–30 (Mar. 2022).

⁶⁰ 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*, INSIDER, <https://www.insider.com/depp-v-heard-trial-lawyers-experts-tiktok-media-fame-2022-5> (last visited Sep. 20, 2022).

⁶¹ *Emily D. Baker*, YOUTUBE, <https://www.youtube.com/channel/UCe-laOeM9gLfTcWF4HRBppA> (last visited Apr. 23, 2023).

including a five-hour livestream of the closing arguments, which alone attracted 2.3 million views.⁶² 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]’.⁶³ Meanwhile on TikTok, the Stanleys (the lawyer duo mentioned above) made, for example, 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) which attracted over 13 million views. As another journalist observed, ‘[t]he legal commentators say they’re having fun — and making a tidy profit’.⁶⁴ This monetisation element raises novel issues for legal professionalism, which we consider in Part III.

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.⁶⁵ 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. These videos offer, or have been described as offering, more realistic or ‘authentic’ pictures of the law than found in TV shows and movies.⁶⁶ 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. Learn what is realistic and what is pure Hollywood as he breaks down legal movies and TV shows.’⁶⁷

Other lawfluencers are creating entertaining videos purely for engagement purposes (to increase online presence and attract followers), for example filming themselves lip-syncing or dancing.⁶⁸ On the professional-amateur spectrum, these videos sit furthest towards the amateur (or trusted peer) end of the types described.

⁶² Emily D. Baker, *Lawyer Reacts LIVE | Closing Arguments | Johnny Depp v. Amber Heard Trial Day 24*, <https://www.youtube.com/watch?v=yU-JwmBYZes> (last visited Apr. 22, 2023).

⁶³ Geoff Weiss, *YouTube Channel LegalBytes Has Surged by Livestreaming the Depp vs. Heard Trial — and Earned \$5,000 in a Week*, BUSINESS INSIDER, <https://www.businessinsider.com/law-youtuber-legalbytes-streaming-johnny-depp-amber-heard-trial-2022-4> (last visited Oct. 17, 2022).

⁶⁴ Jessica Lucas, *YouTube Lawyers Are Getting Famous Covering the Depp–Heard Trial*, INPUT, <https://www.inputmag.com/culture/johnny-depp-amber-heard-trial-youtube-lawyers-commentary> (last visited Oct. 17, 2022).

⁶⁵ Á. Dunne et al., *Young People’s Use of Online Social Networking Sites - a Uses and Gratifications Perspective*, 4 JOURNAL OF RESEARCH IN INTERACTIVE MARKETING 46 (2010); A. Whiting & D. Williams, *Why People Use Social Media: A Uses and Gratifications Approach*, 16 QUALITATIVE MARKET RESEARCH: AN INTERNATIONAL JOURNAL 362 (2013).

⁶⁶ Zimmerman, *supra* note 54.

⁶⁷ LegalEagle, *Real Lawyer Reacts!*, YOUTUBE, https://www.youtube.com/playlist?list=PLUvQ_mNbE83XwzqDWj6Sc9-UspQpxBy72 (last visited Apr. 23, 2023).

⁶⁸ 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.

Finally, lawyers are also using their videos and audience they create to sell products. We have already mentioned how videos alone can generate income for lawfluencers; selling their own or others' products is another option. In other words, lawfluencing is not just about leading viewers to 'consume' their legal services, but also to buy, for example books or merchandise ('merch'). For example, Legal Bytes, a YouTube channel by U.S. lawyer Alyte Mazeika has a merchandise shop selling branded clothes, accessories, and drinkware.⁶⁹ Once lawfluencers have built a community, these videos can instead of being embedded within videos, also be more one-way, or more explicitly advertisements (e.g., on sponsored products or paid partnerships).⁷⁰ Rudy Giuliani, perhaps best known for being Donald Trump's lawyer, often livestreamed or posted on social media while acting in significant political roles.⁷¹ In these, Giuliani directly advertised products including 'gold coins, supplements, cigars, and protection from "cyberthieves."' ⁷²

It is common for lawfluencers to mix, match and combine these different types of content. For example, LegalEagle, in addition to explaining courtroom dramas, also explains news, and sells his own product, called Legal Eagle Prep, an online course designed for law students to 'CRUSH law school[sic]'.⁷³

C What is driving the advent of Lawfluencers and shaping their activities?

As suggested in Part II.A, lawfluencing (and its associated advertising) deviates significantly from the profession's aristocratic ethos that 'gentlemen did not spruik their wares',⁷⁴ and the traditional prohibitions on lawyers advertising generally. If we treat a practitioner at this time as representing the profession – and therefore as part of its brand – then this was a certain type of lawyer (for a long time, male) who dressed, spoke, and interacted in certain ways associated with the upper class, and who acquired clients via word-of-mouth referrals.⁷⁵ Of course, several demographic, social, and regulatory changes to the profession, particularly dramatic over the course of the second half of the twentieth century, have meant that the profession now brands itself and can be branded in complex, multi-faceted, and more and less distinct and deliberate ways. 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 marketisation of the profession, in which many of the profession's restrictive practices have been dismantled, replaced by new discourses, rules and

⁶⁹ *Legal Bytes*, <https://legal-bytes.creator-spring.com/> (last visited Apr. 22, 2023).

⁷⁰ See for example: erikakullberg, *Small Business Owner Tips #AdobeCoCreate #AdobePartner @adobeexpress @We Met In Real Life*, TIKTOK, <https://www.tiktok.com/@erikakullberg/video/7115058860536253698?lang=en> (last visited Apr. 28, 2023); erikakullberg, *The Lifehack to Stay Informed 🧐 #morningbrewpartner #ad*, TIKTOK, <https://www.tiktok.com/@erikakullberg/video/7135505730571930881?lang=en> (last visited Apr. 28, 2023).

⁷¹ Giuliani previously served as the United States Associate Attorney General from (1981-1983); the United States Attorney for the Southern District of New York from (1983-1989) and the 107th Mayor of New York City (1994-2001).

⁷² See documents and accompanying screenshots filed by Dominion Voting Systems in their \$1.6bn suit against Giuliani for defamation alleging he used his social media posts to make damaging, false claims the company had engaged in election manipulation: *US Dominion, Inc., Dominion Voting Systems, Inc., and Dominion Voting Systems Corporation v. Rudolph W. Giuliani*, No. 1:2021cv00213 (D.D.C. 2021).

⁷³ *LegalEaglePrep*, <https://www.legaleagleprep.com> (last visited Apr. 24, 2023).

⁷⁴ Kathryn Millist-Spendlove, *Websites, Social Media and a Barrister's Practice*, (Summer 2013-14) THE JOURNAL OF THE NSW BAR ASSOCIATION 49.

⁷⁵ Thompson, *supra* note 50, at 84–94.

regulations supporting competition and consumerism.⁷⁶ These moves have been driven largely by government and large commercial law firms.⁷⁷ 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, offensive or illegal.⁷⁸

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 internet, 35% of which is on social media.⁷⁹ In turn, the way we ‘consume’ information and make purchasing decisions has changed.⁸⁰ Platforms allow anyone to ‘broadcast the self’, increasingly now in video format.⁸¹ 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 48 hours in 2013) and over 167 million videos are played on TikTok.⁸² Indeed, TikTok has been the most frequently downloaded app since 2018 in part because of the accessibility of short-form video content.⁸³ The COVID-19 pandemic, which normalised video conferencing and online interaction, accelerated these trends.

Third, certain social and political changes have influenced marketing trends – including the current ‘authenticity’ fad – which in turn is shaping how lawfluencers are proceeding. Authenticity denotes being true to oneself and others, and faithful to one’s personality, values and beliefs.⁸⁴ To successfully perform online, influencers must be perceived by their followers as authentic.⁸⁵ Video is an effective medium in conveying (and constructing) an authentic identity, because it can create a sense of transparency, intimacy and trust.⁸⁶ By 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.’⁸⁷ Video marketing was endorsed by legal marketing professionals as ‘the perfect icebreaker: adding a face-to-face element’ that could help induce

⁷⁶ Julian Webb, *Turf Wars and Market Control: Competition and Complexity in the Market for Legal Services*, 11 INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION 81, 2 (Mar. 2004).

⁷⁷ Withheld for review.

⁷⁸ See AUSTL. SOLICITORS’ CONDUCT RULES (2015) r 36; MODEL RULES OF PROF’L CONDUCT r. 7.1 (AM. BAR. ASS’N 2018); Code of Conduct § 8.8 (SOLICITORS REG AUTH 2018).

⁷⁹ Simon Kemp, *Digital 2022: Time Spent Using Connected Tech Continues to Rise*, DATAREPORTAL – GLOBAL DIGITAL INSIGHTS, <https://datareportal.com/reports/digital-2022-time-spent-with-connected-tech> (last visited Dec. 7, 2022).

⁸⁰ Lucia Malär et al., *Emotional Brand Attachment and Brand Personality: The Relative Importance of the Actual and the Ideal Self*, 75 JOURNAL OF MARKETING 35 (SAGE Publications Inc Jan. 2011).

⁸¹ M. Laeeq Khan, *Social Media Engagement: What Motivates User Participation and Consumption on YouTube?*, 66 COMPUTERS IN HUMAN BEHAVIOR 236, 237 (Jan. 2017); J. Burgess & J. Green, *The Entrepreneurial Vlogger: Participatory Culture Beyond the Professional-Amateur Divide*, THE YOUTUBE READER 89 (2009).

⁸² *Data Never Sleeps 10.0*, DOMO, <https://www.domo.com/data-never-sleeps> (last visited Apr. 24, 2023).

⁸³ Given its success, there has been the launch of ‘copycat’ short-form video applications - Instagram launched ‘Instagram reels’ in August 2020, LinkedIn Stories in October 2020 and YouTube Shorts in July 2021.

⁸⁴ Sigurður Kristinsson, *Authenticity, Identity, and Fidelity to Self*, HOMMAGE À WLODEK. PHILOSOPHICAL PAPERS DEDICATED TO WLODEK RABINOWICZ 1 (2007).

⁸⁵ Hudders et al., *supra* note 53, at 356.

⁸⁶ Chan-Olmsted & Kim, *supra* note 25, at 103.

⁸⁷ Chanen, *Ideas from the Front*, 92 A.B.A. J. 19, 19 (2006).

trust⁸⁸ and also a way for smaller firms to compete on a more even playing field than larger firms' (and their larger marketing budgets).⁸⁹ 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.⁹⁰

Meanwhile, much of how any influencing is playing out hinges on the mechanics and business models of the platforms themselves. Video platforms in particular allow creators to respond to their audience and interact with them in real-time, for example answering questions or fielding suggestions for what to produce next. This so-called 'co-creation of value'⁹¹ is then reinforced through interactivity amongst the consumers or audience members themselves.⁹² Increasingly then, 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.⁹³ Moreover, social media platforms have subscribe, comment, and share features which can generate strong 'in-group', community membership effects. The dynamics of homophily—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.⁹⁴

Moreover, in the pursuit of financial rewards and/or cultural capital, content creators are incentivised by the platforms to support the platform's business goals: to produce content most likely to engage and keep viewers glued to the platform.⁹⁵ This applies to the topic overall – for example the areas where the most content is being created on YouTube (Gaming, Make-up & Beauty, Reviews & Unboxing, ASMR, and Vlogging etc.) are also those areas with the highest amounts of engagement.⁹⁶ As such, where an algorithm signals that a particular topic is trending, 'online content producers will notice this platform and audience shift – likely

⁸⁸ Diana D'Itri, *Growing Your Practice with Online Video - 10 Tips for Getting in Front of Prospective Clients*, 35 LAW PRAC. 46 (2009).

⁸⁹ Adam L. Stock, *How Lawyers Are Using Video*, 37 LAW PRAC. 40 (2011).

⁹⁰ Guy Alvarez et al., *The Social Law Firm Index 2022* (2022).

⁹¹ Stephen L. Vargo et al., *On Value and Value Co-Creation: A Service Systems and Service Logic Perspective*, 26 EUROPEAN MANAGEMENT JOURNAL 145 (Jan. 2008); Roderick J. Brodie et al., *Customer Engagement: Conceptual Domain, Fundamental Propositions, and Implications for Research*, 14 JOURNAL OF SERVICE RESEARCH 252, 253 (SAGE Publications Inc Jan. 2011).

⁹² Avi Goldfarb & Catherine Tucker, *Online Display Advertising: Targeting and Obtrusiveness*, 30 MARKETING SCIENCE 389 (INFORMS May 2011).

⁹³ 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 JOURNAL OF INTERACTIVE MARKETING 5, 5 (SAGE Publications Jan. 2004).

⁹⁴ Chan-Olmsted & Kim, *supra* note 25, at 112.

⁹⁵ Luke Munn, *Angry by Design: Toxic Communication and Technical Architectures*, 7 HUMANIT SOC SCI COMMUN No. 1, 1, 8 (Palgrave Jul. 2020).

⁹⁶ Hutchinson & Dwyer, *supra* note 31, at 127.

through their analytics’ and adapt their content to match.⁹⁷ To further maximise engagement, content creators (including lawfluencers) also use common digital marketing strategies,⁹⁸ such as ‘clickbait’ titles (sensationalist names for their videos),⁹⁹ catchy promotional images (‘thumbnails’), engaging, exaggerated captions, and/or metadata such as hashtags.¹⁰⁰

As a final driver, knowledge influencing in particular is an outcome of the neoliberal 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.¹⁰¹ Several studies have shown how the logic of entrepreneurialism and aggressive profit-seeking have affected professionalism,¹⁰² 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.¹⁰³ 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 eponymous promotion code)¹⁰⁴ the potential to undermine the credibility of the profession is high.¹⁰⁵ We now turn to these concerns.

III 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

⁹⁷ *Id.* at 126.

⁹⁸ 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, 25th International Public Relations Research Conference 37 (2022).

⁹⁹ Anna-Katharina Jung et al., *Click Me...! The Influence of Clickbait on User Engagement in Social Media and the Role of Digital Nudging*, 17 PLOS ONE e0266743 (Public Library of Science Jun. 2022).

¹⁰⁰ Hutchinson & Dwyer, *supra* note 31, at 126; Christina Newberry, *How the TikTok Algorithm Works in 2022 (and How to Work With It)*, SOCIAL MEDIA MARKETING & MANAGEMENT DASHBOARD (Dec. 2, 2022), <https://blog.hootsuite.com/tiktok-algorithm/>.

¹⁰¹ Maddox, *supra* note 18, at 5; Catherine Archer, *Social Media Influencers, Post-Feminism and Neoliberalism: How Mum Bloggers’ ‘Playbour’ is Reshaping Public Relations*, 8 PUBLIC RELATIONS INQUIRY 149 (SAGE Publications Jan. 2019).

¹⁰² Margaret Thornton, *Legal Professionalism in a Context of Uberisation*, 28 INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION No. 0, 1 (Routledge Mar. 2021).

¹⁰³ Maddox, *supra* note 18, at 5.

¹⁰⁴ By inputting a promotional code (e.g., ‘Rudy’), Giuliani receives an affiliate fee (a commission paid for generating a sale or lead).

¹⁰⁵ Moreover, a tendency to over-commercialise 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 reliability. Hudders et al., *supra* note 53, at 356.

of ‘legal services’ must also be transparent and oriented towards the welfare of the public as consumers. 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.¹⁰⁶ Historically, this was achieved by having open, publicly accessible courtrooms. In practice, most citizens have neither the inclination nor opportunity to physically attend hearings¹⁰⁷ and most of their understanding of how the law operates is filtered through traditional media.¹⁰⁸ 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. For example, the six weeks broadcast of *Depp v Heard* on 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.¹⁰⁹

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.¹¹⁰ 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, are even more staggering than the trial itself. To illustrate, a 56 second video from Arizonan lawyers, Mark and Alexis Breyer (@husbandandwifelawteam), analysing 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.¹¹¹ Meanwhile, Mandell’s (@Law By Mike) YouTube explainer video, ‘Trial Explained in 60 Seconds!’ has received over 10 million views. 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 ‘informational asymmetry’—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,¹¹² 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 have already illustrated how lawfluencers often let their viewers decide the direction of their content through functions on the apps, primarily the comments. Also, as indicated, an even greater influence on the content is the platform, or the process of so-called platformization, in which the influencer tries to play the algorithms to maximise views,

¹⁰⁶ *Scott v Scott* [1913] AC 417; JOSEPH JACONELLI, OPEN JUSTICE: A CRITIQUE OF THE PUBLIC TRIAL 1–3 (Oxford University Press 1st edition ed. May 2002)..

¹⁰⁷ Michael Legg et al., *Open Justice during a Pandemic – The Role and Risks of Remote Hearings*, 33 PUBLIC LAW REVIEW 143, 146 (2022).

¹⁰⁸ Sharon Rodrick, *Achieving the Aims of Open Justice - The Relationship between the Courts, the Media and the Public*, 19 DEAKIN L. REV. No. 1, 123, 158 (2014).

¹⁰⁹ Bohdan Zaveruha, *Depp vs. Heard - How Many Viewers Watched the Trial*, <https://streamscharts.com/news/johnny-depp-vs-amber-heard-trial-viewership> (last visited Mar. 29, 2023).

¹¹⁰ RICHARD E. SUSSKIND & DANIEL SUSSKIND, THE FUTURE OF THE PROFESSIONS: HOW TECHNOLOGY WILL TRANSFORM THE WORK OF HUMAN EXPERTS 150 (Oxford University Press 1st ed ed. 2015).

¹¹¹ husbandandwifelawteam, *What Amber is Drinking!!*, TIKTOK, <https://www.tiktok.com/@husbandandwifelawteam/video/7095075061689830702?q=husbandandwifelawteam%20depp%20heard&t=1682300426601> (last visited Apr. 24, 2023).

¹¹² See Part III.C.

engagement, and profits.¹¹³ Lawyers aren't 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 30 million people.¹¹⁴ 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. Once remote figures, hidden in offices and courtrooms—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.¹¹⁵ But again, these issues are not easy to pin down: a critical access to justice issue is the client's informed choice, about which lawyer and at what cost. In this online context, on the one hand, consumers might find more low-fee options – while being concurrently underequipped to assess risks that might attach to that low-cost work.¹¹⁶ 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,¹¹⁷ but based on how influencers are usually able to command a 'price premium' for their brand,¹¹⁸ 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. This has already occurred in the medical field as Maddox has pointed out.¹¹⁹ Steven Ho (@steveioe), a former emergency room (ER) technician, became a microcelebrity on TikTok from his humorous videos and advice about ER care. 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.¹²⁰ Since the revelation, Ho's biography now states:

Jokes Not Advice

Not a Doctor. Retired ER Tech 😊¹²¹

¹¹³ Nieborg & Poell, *supra* note 34.

¹¹⁴ Matt Donnelly, *Gwyneth Paltrow Ski Trial Ratings: 30 Million People Saw Livestream - Variety*, VARIETY, <https://variety.com/2023/film/news/gwyneth-paltrow-ski-trial-ratings-30-million-1235570307/> (last visited Apr. 28, 2023).

¹¹⁵ 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).

¹¹⁶ Vicki Wayne et al., *Innovation in the Australian Legal Profession*, 25 INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION 213, 222 (Routledge Apr. 2018); Felicity Bell & Justine Rogers, *'Fit and Proper' Coders? How Might Legal Service Delivery by Non-Lawyers Be Regulated?*, 24 LEGAL ETHICS 111 (Routledge Mar. 2021).

¹¹⁷ For example, whether there is any relationship or correlation between a lawfluencer's number of followers and their fees.

¹¹⁸ Price premium refers to the amount that consumers are willing to pay for the brand over that of another Richard G. Netemeyer et al., *Developing and Validating Measures of Facets of Customer-Based Brand Equity*, 57 JOURNAL OF BUSINESS RESEARCH 209, 210 (Jan. 2004).

¹¹⁹ Maddox, *supra* note 18, at 20.

¹²⁰ *Id.*

¹²¹ *Steveioe*, TIKTOK, <https://www.tiktok.com/@steveioe?lang=en> (last visited Apr. 24, 2023).

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 subterfuge by self-serving lawyers; especially given the importance the profession places on status. Numerous cases of lawyers attempting to craft ‘perfect versions of themselves’¹²² online already exist. In *re Svitlana E. Sangary*,¹²³ 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 to try and appear well-connected. Meanwhile, in *Legal Services Commission v Reichman* (‘*Reichman*’),¹²⁴ Australian law student, Jacob Reichman, was convicted for misrepresenting himself as a legal practitioner on social media, allegedly trying to impress family and friends.¹²⁵ As Bromberg and Ekert point out, *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’.¹²⁶ Finally, despite being banned by regulators from both practising law and providing financial services, former Australian barrister, Dominique Grubisa continued to record and share ‘professional guru’ videos, with the disclaimer these offered ‘general advice and [were] for educational purposes only’.¹²⁷ Grubisa markets herself in terms compatible with access to justice values; selling herself as a Robin Hood figure,¹²⁸ who made it her ‘passion and focus to level the playing field for everybody when it came to accessing to the law, not just the wealthy’.¹²⁹

Of course, the bigger question here that also applies to unqualified or underqualified 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’¹³⁰ or whether there is unjustified protectionism at play. For many, technology might be ‘the only workable solution to the access to justice gap’¹³¹ – though, these writers typically refer to things like chatbots and automated document assembly. It remains questionable whether justice

¹²² Evan Shirley, *Lawyers, Social Networking, and How to Avoid Falling into Ethical Traps*, 14 HAWAII BAR JOURNAL 123, 127 (2011); Zawacki, *supra* note 15, at 122.

¹²³ *re Svitlana E. Sangary No 13-O-13838-DFM* (Cal. State Bar Ct. Sept. 11, 2014).

¹²⁴ *Legal Services Commission v Reichman* (Transcript of Proceedings, August 2014).

¹²⁵ AAP, *Queensland Law Student Fined for Faking Credentials*, 9NEWS, <https://www.9news.com.au/national/law-student-fined-for-faking-credentials/05202b17-b320-45ff-bfa0-f08c1bb125f2> (last visited Apr. 24, 2023).

¹²⁶ Marilyn Bromberg & Andrew Ekert, *Caution: Tweet at Your Own Risk: Social Media and the Australian Legal Profession*, 6 JOURNAL OF CIVIL LITIGATION AND PRACTICE 183, 190 (2017).

¹²⁷ Max Mason, *Grubisa Won’t Stop until Somebody Makes Her*, AUSTRALIAN FINANCIAL REVIEW, <https://www.afr.com/rear-window/grubisa-won-t-stop-until-somebody-makes-her-20230216-p5ckzr> (last visited Apr. 24, 2023).

¹²⁸ Independent Australia, ‘Robin Hood’ Grubisa Rolls on with Rotten Real Estate Advice, INDEPENDENT AUSTRALIA, <https://independentaustralia.net/business/business-display/robin-hood-grubisa-rolls-on-with-rotten-real-estate-advice,17219> (last visited Apr. 24, 2023).

¹²⁹ Dominique Grubisa, *Special Briefing*, DGINSTITUTE, <https://www.dginstitute.com.au/mwc2023/> (last visited Apr. 24, 2023).

¹³⁰ Stephen Mayson, *Independent Review of Legal Services Regulation: The Focus of Legal Services Regulation* 182 (Mar. 2020).

Remus & Levy, *supra* note 117, at 544; John McGinnis & Russell Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 FORDHAM LAW REVIEW 3041 (Jan. 2014); BENJAMIN H. BARTON, GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION (Oxford University Press Sep. 2015).¹³¹

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.¹³² This may occur expressly (within videos or comments requesting viewers to enlist them for legal services) or impliedly (through embedded links to their websites).¹³³ For instance, Dominican lawyer, Kathleen Martinez (@attorneymartinez) lists on her TikTok biography a link to book a legal consultation and to her paralegal training program, in addition to her website, other social media, an affiliate link to beauty products she uses, and even the outfits she wears.¹³⁴

There is also the risk of inadvertent lawyer-client relationships when marketing posts are construed by viewers as legal advice to or implied retainers.¹³⁵ For example, New York lawyer Alex Peter (@loloverruled) had to add a warning to his TikTok bio – ‘Not your lawyer’ – after many of his followers referred to him as ‘our Lawyer’ or ‘their Lawyer’ and even confessed crimes to him over TikTok direct message.¹³⁶

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?’,¹³⁷ 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. Chukwama then responds to comments including:

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]

¹³² MODEL RULES OF PROF'L CONDUCT r. 7.3 (AM. BAR. ASS'N 2018); Code of Conduct § 8.9 (SOLICITORS REG AUTH 2018).

¹³³ GINO DAL PONT, LAWYERS' PROFESSIONAL RESPONSIBILITY 89–90 (Thomson Reuters 6th ed. 2017).

¹³⁴ *Attorney Kathleen Martinez*, LINKTREE, <https://linktr.ee/attorneymartinez> (last visited Apr. 25, 2023).

¹³⁵ Zawacki, *supra* note 15, at 124; Isabella M. Leavitt, *Attorney Advertising in the Age of Reddit: Drafting Ethical Responses to Prospective Clients in Online Non-Legal Forums Current Developments 2015-2016*, 29 GEO. J. LEGAL ETHICS 1111, 1112 (2016).

¹³⁶ Samantha Berlin, *Lawyer Asks Viewers to Stop Telling Him About Crimes They've Committed*, NEWSWEEK, <https://www.newsweek.com/lawyer-goes-viral-after-asking-viewers-stop-telling-him-about-crimes-theyve-committed-1662179> (last visited Apr. 25, 2023).

¹³⁷ Caesar Chukwama, *Can You Get a DUI for Sleeping in Your Car?*, TIKTOK, <https://www.tiktok.com/@iamcaez/video/7153310085526162731> (last visited Apr. 25, 2023).

Another example is from Californian lawfluencers (and firm partners), David Pourshalimi and Ben Perlmutter (@pandpfirm2.0):¹³⁸

User 1: How can I hire you bro? I'm facing dui charges in inland empire

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

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

On the one hand, this type of communication seems like direct and customised advice, and where such tailored advice is a hallmark of traditional professionalism.¹³⁹ However, while effectiveness in influencer engagement hinges on creating relationships with viewers,¹⁴⁰ 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,¹⁴¹ and yet lawfluencers, 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 they would never make in other contexts, including statements outside their areas of expertise.¹⁴²

Having said this, as Noordegraaf points out, sometimes 'professionalism' means speed and efficiency; high quality doesn't have to mean bespoke.¹⁴³ 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 customisation is significantly influenced by algorithms. The TikTok algorithm, for example, favours creators who post frequently (particularly with frequently used hashtags),¹⁴⁴ at least once a day, with some marketers advising ideally five posts daily.¹⁴⁵ 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.¹⁴⁶

¹³⁸ *DUI Charges DISMISSED for Reckless Driving Plea Client on DACA*, TIKTOK, <https://www.tiktok.com/@pandpfirm2.0/video/7175320939125591338> (last visited Apr. 25, 2023).

¹³⁹ Noordegraaf, *supra* note 21, at 187–88.

¹⁴⁰ Chan-Olmsted & Kim, *supra* note 25, at 100.

¹⁴¹ Noordegraaf, *supra* note 21, at 188.

¹⁴² Carissa Byrne Hessick, *Towards a Series of Academic Norms for #LawProf Twitter Symposium: Conference on the Ethics of Legal Scholarship*, 101 MARQ. L. REV. 903, 912 (2018).

¹⁴³ Noordegraaf, *supra* note 21, at 188.

¹⁴⁴ Daniel Klug et al., *Trick and Please. A Mixed-Method Study On User Assumptions About the TikTok Algorithm*, 13th ACM Web Science Conference 2021 84, 8789 (Association for Computing Machinery Jun. 2021).

¹⁴⁵ Talia Schwartz, *How Lawyers Can Use TikTok To Generate Leads*, GOOD2BSOCIAL, <https://good2bsocial.com/how-lawyers-can-use-tiktok-to-generate-leads/> (last visited Nov. 26, 2022); Sapochnick, *supra* note 17.

¹⁴⁶ 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, 230 (2019).

In these new contexts for lawyers, and as a practical point, disclaimers are essential. These include: ensuring viewers understand any interactions are ‘not intended to create an attorney-client relationship’;¹⁴⁷ disclosing if any subject matter is outside their expertise,¹⁴⁸ and clearly stating that none of the content amounts to ‘legal advice’. Meanwhile, lawfluencers who are not qualified to practise can only provide ‘legal information’, however the line between that and legal advice can easily be blurred by these mediums.¹⁴⁹

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 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. 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. The immediate filming of these videos after the trial also raise 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, marking themselves out from earlier forms of social media, and as part of the authenticity/amateur trends, TikTok and BeReal ‘have come to incentivise users to share workplace content’ as part of their authenticity narrative.¹⁵⁰ Dangers of ethical breaches may also arise for example, in the office, when periphery computer screens or documents in videos could allow viewers to zoom in on the content and see clients’ confidential information.¹⁵¹

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 commercialisation has been its threat to the autonomy and wellbeing of practitioners.¹⁵² On one hand, lawfluencing is a new income stream, both directly by ‘monetising’ the video itself, and also by attracting clients. Thus, we can see lawfluencing as another way in which the law is being commodified and more profit-seeking. On the other

¹⁴⁷ Xie, *supra* note 61.

¹⁴⁸ Hessick, *supra* note 144, at 919.

¹⁴⁹ Bell & Rogers, *supra* note 118, at 22; Remus & Levy, *supra* note 117, at 542.

¹⁵⁰ Kimberly Henrickson & Christina Wabiszewski, *Time is ‘TikTok’-Ing — “Being Real” About Preemptively Addressing Employees’ Confidentiality and Privacy Breaches on Social Media*, JD SUPRA, <https://www.jdsupra.com/legalnews/time-is-tiktok-ing-being-real-about-2386156/> (last visited Apr. 25, 2023).

¹⁵¹ Kristy Grant, *BeReal: Can My Post Get Me in Trouble at Work?*, BBC NEWS (Jul. 9, 2022), <https://www.bbc.com/news/newsbeat-62795955>.

¹⁵² Martin E. P. Seligman et al., *Why Lawyers Are Unhappy*, 23 CARDOZO L. REV. 33 (2001–2002); 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 (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 U.N.S.W.L.J. 1103 (2014); Cheryl Ann Krause & Jane Chong, *Lawyer Wellbeing as a Crisis of the Profession*, 71 S. C. L. REV. 203 (2019–2020); Colin James, *Lawyers’ Wellbeing and Professional Legal Education*, 42 THE LAW TEACHER 85 (Routledge Jan. 2008).

hand, this sort of activity might represent a new way in which lawyers can express themselves and enjoy their work, where these platforms allow and ask for personal and professional identities to be melded together.¹⁵³

At the same time, these issues are blurred and their ethicality, 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.¹⁵⁴ This sort of advice—to marketise one’s personality—is about branding oneself and curating one’s authenticity and amateurishness or non-professionalism for a performance. Lawfluencers might find fun in this display, including in having an overtly low-status alter ego; as an extreme version, Kennedy’s inhabiting of the unscrupulous Saul Goodman. But it is still a sort of work, to self-monitor and self-promote in such a crafted way; it may not be ‘true’ expression but another way in which our lives are commodified.¹⁵⁵

The platforms also encourage ‘oversharing and disinhibition’.¹⁵⁶ 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”,¹⁵⁷ trying to break, she said, the profession’s ‘perfection narrative’ by describing, for example, the imposter syndrome she felt as a lawyer.¹⁵⁸ 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 firms have responded by making graduate recruitment videos on their YouTube channels. 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’.¹⁵⁹

But 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 Herd* case revealed the dangers of an overpublicized case in which countless people, including lawyers, shared their opinion 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 smiles¹⁶⁰ or what we might see as potentially contrived ‘amateur’ behaviour.¹⁶¹ On the one hand, we don’t advocate

¹⁵³ McPeak, *supra* note 148, at 226.

¹⁵⁴ Nancy Myrland, *Social Media Trends: Where Is It Going? What Has Changed?*, ABA LAW PRACTICE MAGAZINE (01/03/22).

¹⁵⁵ Maddox, *supra* note 18.

¹⁵⁶ McPeak, *supra* note 148, at 206.

¹⁵⁷ Eve Cornwell, *I’m Not Smart Enough to Be a Lawyer*, YOUTUBE, <https://www.youtube.com/watch?v=d4WxjXcEa94> (last visited Apr. 28, 2023).

¹⁵⁸ Akila Quinio, *‘Lawfluencers’ Open up the Magic Circle for New Recruits*, FINANCIAL TIMES (Nov. 25, 2021).

¹⁵⁹ Laura Brown, *TikTok: The Newest Frontier of Legal Advertising*, MINNESOTA LAWYER (Dec. 2, 2021) (BridgeTower Media Holding Company, LLC), <https://minnlawyer.com/2021/11/24/tiktok-the-newest-frontier-of-legal-advertising/>.

¹⁶⁰ Danielle Braff, *How Social Media Hijacked the Depp v. Heard Defamation Trial*, 108 ABA JOURNAL 34 (Oct.–Nov. 2022).

¹⁶¹ Abidin, *supra* note 19.

holding onto the formal lawyer persona for irrational, snobbish or classist reasons, but performing to social media may entice lawyers to forego their independence from their client and such practices (or their appearance) could, overtime, diminish the lawyer's paramount duty to the court, and public trust. Additionally, other commentators felt the principle of an independent jury was compromised¹⁶² – where the jury was more than possibly swayed by the significant social media commentary; the majority of which was coming from lawfluencers. Further, lawfluencers are incentivized by the algorithm to be among the first to offer quick, polemic opinions (or 'pithy generalizations and partisan fodder'¹⁶³) 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.¹⁶⁴ Overall, these are all ways in which a legal identity is being presented as casual and relatable; and the law, palatable and opinion-based.¹⁶⁵

As a final point, in all of this discussion about professionalism, the technology and the wider 'post-truth' landscape are significant background concerns.¹⁶⁶ This article has shown how people are increasingly using social media as a source of accurate and reliable information, including with regards to professional expertise. TikTok's ambition is to build the platform as a 'video encyclopedia'¹⁶⁷ and for younger people (which make up the majority of users) it is already being used as a replacement to Google as their primary search engine.¹⁶⁸ Critics have, however, questioned the neutrality and objectivity of an encyclopaedic function built on 'monetisation'.¹⁶⁹ 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.¹⁷⁰ The danger is that this is occurring in a context in which consumers' level of trust influencers is at all-time highs, rivalling that of even people's own friends.¹⁷¹ Unlike lay persons, a lawyer is 'a professional trained in the art of persuasion.'¹⁷² As the judges observed in *re Giuliani*, the case suspending Giuliani's licence to practice:¹⁷³

¹⁶² Waiyee Yip, *Juror in the Depp v. Heard Trial Says the Jury Wasn't Swayed by Social Media: 'We Followed the Evidence'*, INSIDER, <https://www.insider.com/johnny-depp-amber-heard-trial-jury-influenced-social-media-juror-2022-6> (last visited Apr. 25, 2023).

¹⁶³ Hessick, *supra* note 144, at 913.

¹⁶⁴ *Id.* at 916.

¹⁶⁵ Maddox, *supra* note 18, at 2.

¹⁶⁶ *Id.* at 5.

¹⁶⁷ Zongyi Zhang, *Infrastructuralization of Tik Tok: Transformation, Power Relationships, and Platformization of Video Entertainment in China*, 43 MEDIA, CULTURE & SOCIETY 219, 221 (SAGE Publications Ltd Jan. 2021).

¹⁶⁸ Kalley Huang, *For Gen Z, TikTok Is the New Search Engine*, THE NEW YORK TIMES (Sep. 16, 2022), <https://www.nytimes.com/2022/09/16/technology/gen-z-tiktok-search-engine.html>.

¹⁶⁹ Zhang, *supra* note 169, at 226–29.

¹⁷⁰ *Misinformation Monitor: September 2022*, NEWSGUARD, <https://www.newsguardtech.com/misinformation-monitor/september-2022>.

¹⁷¹ Marty Swant, *Twitter Says Users Now Trust Influencers Nearly as Much as Their Friends*, <https://www.adweek.com/performance-marketing/twitter-says-users-now-trust-influencers-nearly-much-their-friends-171367/> (last visited Apr. 25, 2023).

¹⁷² *Ohralik v Ohio State Bar Assn.*, 436 US 447, 465 [1978].

¹⁷³ *Attorney Grievance Comm. for the First Judicial Dep't v. Giuliani (In re Giuliani)*, 146 N.Y.S.3d 266, 197 A.D.3d 1 (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.

As officers of the court, attorneys are “an intimate and trusted and essential part of the machinery of justice”¹⁷⁴ 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”.¹⁷⁵

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

IV CONCLUSION

The law’s traditional belief systems and practices of professionalism have been drastically challenged and altered over some time now, affecting the status and legitimacy of the legal profession and legal system in different ways. This article looked at a particular change phenomenon, the advent of ‘lawfluencing’. This is a significant change, not only because of its varicoloured implications for professionalism but because it is change situated within (video-based) social media platforms, largely under the control of Big Tech. Most of our recent studies of professional change have been centred in the workplace organisation, showing how its arrangements and priorities, and degree of ‘hybridisation’ with managerial methods and corporate forms, are contorting professional practice, values and authority into new, more or less distinct blends.¹⁷⁶ 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).¹⁷⁷ 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, even build a new career entirely. As our article demonstrated, 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.¹⁷⁸

¹⁷⁴ *Gentile v State Bar of Nevada*, 501 US 1072 [1991].

¹⁷⁵ *Gentile v State Bar of Nevada*, 501 US 1056 [1991].

¹⁷⁶ Noordegraaf, *supra* note 21; James Faulconbridge & Daniel Muzio, *Organizational Professionalism in Globalizing Law Firms*, 22 WORK, EMPLOYMENT AND SOCIETY 7 (SAGE Publications Ltd Jan. 2008); Royston Greenwood & Laura Empson, *The Professional Partnership: Relic or Exemplary Form of Governance?*, 24 ORGANIZATION STUDIES 909 (SAGE Publications Ltd Jan. 2003); Laura Empson et al., *Managing Partners and Management Professionals: Institutional Work Dyads in Professional Partnerships*, 50 JOURNAL OF MANAGEMENT STUDIES 808 (2013).

¹⁷⁷ Katherine Medianik, *Artificially Intelligent Lawyers: Updating the Model Rules of Professional Conduct in Accordance with the New Technological Era*, CARDOZO LAW REVIEW, <https://cardozolawreview.com/artificially-intelligent-lawyers-updating-the-model-rules-of-professional-conduct-in-accordance-with-the-new-technological-era/> (last visited Apr. 28, 2023); Mark McKamey, *Legal Technology: Artificial Intelligence and the Future of Law Practice*, 22 APPEAL: REVIEW OF CURRENT LAW AND LAW REFORM 45 (Mar. 2017); Agnieszka McPeak, *Disruptive Technology and the Ethical Lawyer The Role of Technology in Professional Advice Symposium*, 50 U. TOL. L. REV. 457 (2018–2019); Julie Sobowale, *How Artificial Intelligence is Transforming the Legal Profession*, ABA JOURNAL, https://www.abajournal.com/magazine/article/how_artificial_intelligence_is_transforming_the_legal_profession (last visited Apr. 28, 2023); MICHAEL LEGG & FELICITY BELL, *ARTIFICIAL INTELLIGENCE AND THE LEGAL PROFESSION* (Hart Publishing 1st edition ed. Nov. 2020).

¹⁷⁸ McPeak, *supra* note 148, at 206.

This article provided a comprehensive account of what lawfluencing is, relating it to core concepts from the growing studies of influencer marketing. Applying these concepts, it charted and illustrated the types of videos or ‘content’ lawfluencers are making, the techniques they are using to attract followers, and the main drivers behind its emergence and how it is playing out. Our analysis of its implications for professionalism highlighted several points of tension and complication. To highlight a few, we noted the possibility for influencing to be part of the answer to the crisis of access to justice. On the other hand, lawfluencing also raises serious concerns around a potential client’s informed choice, in relation to the lawyer’s qualifications and experience, the reasonableness of their fees, and the protections in place should something go wrong. All these elements can be falsified, exaggerated or the very least obscure in this context. In addition, providing legal advice via interactive social media raises risks of inadvertent retainers, and members of the public acting on low quality, off-the-cuff comments as if it were considered legal advice. We also signalled out potential threats to the lawyer’s fiduciary duties, including the duty of confidentiality, and the client’s right to privacy. These are all areas where the norms and systems of accountability are not clear-cut. Our analysis also revealed other possible implications of influencing for the legal system and certain rule of law principles, with concerns raised about the lawyer’s duty to the court and independence from their clients, the independence of the judiciary, and the court’s oversight on lawyers in their professional capacities.

Turning to the lawyer themselves, we used concepts from media theory to highlight the ways in which lawfluencing is a thought-provoking (and potentially persuasive) expression of legal identity and expertise. The lawfluencer legal identity is more casual and relatable than the traditional archetype, being aligned with online and pop cultural tropes or an ‘amateurish’ identity. This might offer a promising, fun escape for lawyers otherwise potentially narrowed in by the disciplinary demands of professional self-concepts. However, as we showed, performing online is not straightforward self-expression – it is a strategic and reproduced performance as well, responding to the style and metrics of the platform, the audience’s needs, requests, and behaviour, and those influencers who are achieving success. The platform and the marketing advice around it ask lawyers to tap into and then commodify their ‘unique’ personalities, their ‘authentic’ ‘lives, leisure and play’,¹⁷⁹ which is a form of work.

From the perspective of the profession as a collective, and recognising that some of this is about the profession’s own strategies for survival and status, lawyers operating across these platforms are projecting less coherent, less distinct ‘brand’ or self-image. This may or may not matter but what does matter is the possibility that in the wider, so-called ‘post-truth’ landscape, professional trust can (and to some extent must) be secured and symbolised not solely (or even necessarily) through the achievement of formal legal qualification and experience, but by the technological skills and cultural nous around the desired blend of expert-amateur to make effective and profitable use of video-based social media platforms. As mentioned above, lawfluencers (as knowledge influencers) could be the trusted voices among otherwise a rowdy and inaccessible online world; but they may otherwise or simultaneously exacerbate institutional distrust,¹⁸⁰ with knock-on effects on the motivations of those lawyers who are under the regulatory fold.

¹⁷⁹ Maddox, *supra* note 18, at 19.

¹⁸⁰ *Id.* at 22.

Finally, and as a challenge for the institution and individual level, our discussion pinpointed the role of the platform's 'unseen' technological infrastructure and business models in affecting what lawyers (and other influencers) are producing and how this is being shared, seen and 'consumed' (or engaged with).¹⁸¹ 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'.¹⁸² 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, if a little brief (e.g., 'not your lawyer'). The professional regulators face questions regarding their authority compared to that of Big Tech.

While we have set out a comprehensive first look at influencing in legal practice, specifically via video-based social media, there are several avenues for further, empirical research. A future study might try to quantify the numbers 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 the social media platforms and how they are shaping what is being made and shared online, particularly with respect to 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 they mean for assumed correspondences between professional expertise and the confidence in which that expertise can be held.

¹⁸¹ Hutchinson & Dwyer, *supra* note 31, at 139.

¹⁸² *Id.* at 135.