



## CCBE GUIDE on Lawyers' use of online legal platforms



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# INTRODUCTION

Issues relating to online platforms are at the heart of the digital economy. Both the OECD and the [European Commission](#) have dealt with these market phenomena in detail and they are still high on their agenda. For example, the Commission recently published a [proposal](#) for a Regulation on promoting fairness and transparency for business users of online intermediation services.<sup>1</sup> The future development of these online platforms<sup>2</sup> can also have an important bearing on the way lawyers offer legal services and engage with (potential) clients.

The term 'online platform' is often defined as being an online service that enables multiple users to interact with each other, based on the economic category of a two-sided market (see [European Commission Staff Working Document: Online Platforms](#), Accompanying the document Communication on Online Platforms and the Digital Single Market, pp. 1-2). Even with these characteristics, this is a very wide area, and often the term is defined by referencing a very large set of well-known services that are accessible using the Internet. In this document, the term 'online platforms' will also be used in this broad sense.

Lawyers, like consumers, are an important component for online platforms are. The relationship between lawyers and their clients frequently now begins on the Internet. There are several advantages to using online platforms as they enable lawyers, for example, to connect with clients anytime and anywhere. The presence of lawyers on the Internet is not limited to the website of a law firm, lawyers are also present on third-party platforms which fall into the category of two-sided platforms. Therefore, there is a need to facilitate the use of online platforms by highlighting the risks and potential pitfalls for lawyers.

According to the European Commission, the provision of professional services through online platforms cannot be considered as unregulated, even though they are not specifically regulated in EU Member States either. Member States are also applying the same rules to these services as those rules which are applicable to traditional services. They can include rules from the codes of conduct adopted by certain professional associations, such as activities which are reserved and linked to the possession of a professional qualification. Certain activities have a specific character and they are subject to specific professional or deontological rules. Legal advice can be considered as an example here: where it is a reserved activity, no service provider is allowed to give legal advice unless he/she is a lawyer, irrespective of whether the advice is given face-to-face or through a collaborative platform (see [European Commission Staff Working Document: European agenda for the collaborative economy - supporting analysis, pp. 33-34](#)).

It has become apparent that deontological questions arise surrounding the presence of lawyers on third-party platforms that offer legal services, in a broad sense. Some of the challenges are related to how lawyers should act when using these platforms, and what the ethical and deontological rules should be followed are, including questions of advertising, as well as any fee sharing with the platform provider. Issues such as who the lawyer works for, who is the beneficiary of the legal service provided, must be considered here.

<sup>1</sup> The proposed Regulation needs to be adopted in accordance with [the ordinary legislative procedure](#). It should be noted that the content of the proposal might be subject to changes once the discussions will start within the European Parliament and the Council and later in trilogues.

<sup>2</sup> These platforms are also called multi-sided markets, third-party platforms.

The European Commission has also observed that some deontological rules may be undermined in the context of the collaborative economy when, for example, services are provided without a corresponding remuneration or the intermediary asks for a fee for its services. The Commission noted that this can prove problematic in the light of rules set out in deontological codes limiting the provision of services for free or prohibiting the sharing of professional fees (see [European Commission Staff Working Document: European agenda for the collaborative economy - supporting analysis, p. 34](#)).

**This paper is intended to create more awareness about the various challenges associated with lawyers' use of online platforms for legal services. The objective is to provide some practical and deontological recommendations which the CCBE's member Bars and Law Societies are invited to consider whether to include (so far as relevant to the circumstances of their respective jurisdictions) in guidance to their respective members.**

Besides highlighting some deontological considerations, this paper also explains the challenges that are of a more technical nature, including those related to maintaining security of client information, and those related to specific kinds of platforms, i.e. referral websites or platforms offering legal questions and answers to either the public or a specific group of lawyers.

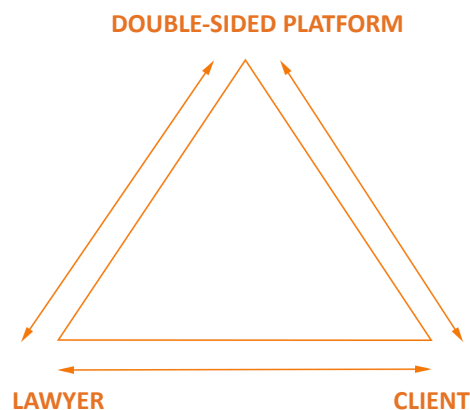
# UNDERSTANDING THE DOUBLE-SIDED PLATFORM MODEL

First, it is necessary to understand the characteristics of online platforms and the services they offer.

In the double-sided platform model, the platform provider acts as an intermediary between lawyers and clients: the former is connected to the platform to offer their services, and the latter to choose a service provider. When the relationship between the lawyer and the client is established, it can continue, in whole or in part, on the platform.

There are many variations of this model and the role of the intermediary changes according to the priorities it pursues. The platform provider can derive its income from the exploitation of a commercial relationship with the lawyer (e.g. the lawyer must pay a fee to be present on the platform). On the other hand, it can be that the consumer pays the operator to be put into contact with the lawyer. The operator can also accumulate remunerations. The functioning of the double-sided platform model involves several different relationships (the lawyer-platform provider relationship, the client-platform provider relationship and the lawyer-client relationship) and contracts.

The double-sided platform acts as a “marketplace” by allowing supply to meet demand. It can also provide tools and services that enable or facilitate the delivery of lawyers’ services. The existence of a business relationship between the lawyer and the platform provider implies therefore the possibility, in most cases, of a financial flow between each of the two parties to the benefit of the platform. The questions related to remuneration and fees, which can be raised regarding this relationship, will be discussed in Section 1.



The platform provider may also derive revenue from another contractual relationship, which is beyond the control of both the lawyer and the client, and which concerns the data produced or exchanged on the platform. This question is particularly sensitive and will be addressed in Section 2 of this paper.

# CLASSIFICATION OF ONLINE PLATFORMS

For the sake of clarity, in this paper online platforms are categorised as follows:

1. **Directories of lawyers:** these are websites on which contact details, certificates of specialisation or areas of expertise of lawyers are posted. The access by lawyers to these websites is generally open, in the sense that any lawyer can register, and the platform provider does not make any selection between lawyers. Mostly, lawyers do not pay anything to be mentioned by the platform. Sometimes, lawyers are even registered without having been asked for registration. The platform provider is not involved in any way in the choice of the lawyer by a (potential) client.
2. **Referral websites of lawyers:** when an intermediary is involved in the platform – e.g. when the platform itself selects the lawyers who appear on the website, defines the order of appearance on the website or the way they appear, recommends a lawyer, or directs a client to certain lawyers as a result of which a choice is not made freely – it is more than a directory, i.e. there is an intermediation and this platform usually receives a remuneration for this. These types of platforms also often include tools to rate / rank or review lawyers which are also factors that may influence the choice of a lawyer by a (potential) client.
3. **Websites providing legal services:** this category includes websites where directly or indirectly a legal service is rendered for which the platform provider can be paid both by the lawyer and the client. Examples of such websites include:
  - legal Q&A platforms where consumers can ask legal questions directly to lawyers;
  - chatbots which provide a conversation service using artificial intelligence; and
  - websites making use of automated processes, such as templates with document assembly/automation.



## 1. RULES OF PROFESSIONAL CONDUCT AFFECTED BY THE USE OF ONLINE PLATFORMS

### 1.1. Issues and main principles

To consider the specificities of the two-sided platform model, it is necessary to carefully identify the areas in which national Bars and Law Societies might need to intervene. First, the lawyer-client relationship is subject to specific professional rules, which are intended to protect clients, and are binding for lawyers. The objective of their adaptation to the field of information technologies is to ensure the same level of protection in the digital environment as in the traditional context. There is no particular reason why they should impose new constraints that would make legal professional practice more difficult in the digital environment.

Second, the lawyer-platform provider relationship is a commercial one. In this context, the Bars or Law Societies' room for manoeuvre is necessarily more limited than in the above-mentioned situation. Nevertheless, Bars or Law Societies may consider laying down rules whose essential purpose is to ensure that the principles protecting the lawyer-client relationship are not compromised or threatened by the relationship between the lawyer and the platform provider. The latter relationship must be organised in a way that does not compromise the professional rules that lawyers must respect vis-a-vis their clients.

Finally, the client-platform provider relationship is subject to the ordinary legislation, such as consumer law rules. As it involves persons outside the legal profession, this relationship is beyond the scope of the professional rules which are only applicable to lawyers.

The use of online platforms by lawyers may affect several professional rules of conduct. The most direct concerns of lawyers arising out of online platforms include:

- **Issues relating to a lawyer's independence, dignity, trust and integrity:** the use of third party online platforms presents a risk of interference by platform providers in the relationship between the client and the lawyer. For instance, when the platform provider proposes to monitor the quality of the service provided or to intervene in the settlement of any disputes between clients and lawyers. The platform provider may ask the client, for example, to specify detailed information regarding the nature of the dispute or the amount of the fees paid to the lawyer. Another example concerns the situation when the platform provider is owned by a party which might become indirectly involved in a case which the lawyer is handling through the platform.
- **Issues relating to professional secrecy/legal professional privilege:** the interference by the online platform in the lawyer-client relationship may infringe professional secrecy/ legal professional privilege. Lawyers' responsibility might need to be clarified concerning the reliability and the safety of the online platform through which clients' data are being processed. A particular concern in this respect is that online platform providers rarely provide information about their policy on the possible reuse of data at their disposal (including behavioural data on lawyers and their clients).<sup>3</sup>
- **Issues relating to verifying the client's identity and intentions/conflict of interest:** when engaging with online platforms, lawyers might not always be able to thoroughly check the identity and the intentions of the (potential) client, which may result in a lawyer acting contrary to the client's best interests and/ or give rise to conflicts of interests (and which is also needed e.g. in light of anti-money laundering obligations). Lawyers also have to check the identity of the company owning the online platform.
- **Issues relating to the principle of free choice of lawyer:** cases in which an online platform has a role in selecting a lawyer for a client, without transparent selection criteria, might affect the client's right to free choice of lawyer.

<sup>3</sup> Section 2.3. deals with the issue of profiling of data subjects and reuse of data by the platform provider more in detail.

- **Issues relating to advertising rules:** there are rules on misleading and/or comparative advertising which might be affected when using online platforms. This could happen when lawyers are benefiting from the publicity carried out by the platform and this publicity does not comply with rules specific to the legal profession, under consideration of the two lawyers' directives.<sup>4</sup> Also, referral websites could be compared with comparative advertising, a form of advertising that may be prohibited in some countries.
- **Issues relating to rules on fees:** lawyers' involvement in online platforms may breach professional rules on fees, in particular the prohibition of referral fees or fee sharing with non-lawyers, which however must in turn comply with EU and domestic competition rules.

**In view of these considerations and subject to the circumstances in respective jurisdictions, Bars and Law Societies are invited to draw their members' attention to the following main principles when using online platforms:**

1. As a general rule, lawyers should always comply with the applicable legislation and professional and ethical rules when using an online platform for the purpose of referencing or providing legal services. This always implies that the lawyer has established a direct contractual relationship. If respect of the core values cannot be guaranteed, lawyers cannot be involved (any longer) with the online platform in question.
2. Lawyers' use or participation in an online platform should never restrict their independence. In particular, lawyers cannot allow any interference by the platform provider in their relationship with clients.
3. Lawyers should always be able to deal directly with a client in a manner that respects professional secrecy/legal professional privilege and avoids breaching any of the rules of conflict of interest.
4. Lawyers should seek clarification on the reliability and the safety of online platform through which clients' data are being processed. Lawyers should especially avoid that platform providers process their and their clients' data, including behavioural data, without their knowledge and/or for unknown purposes.
5. Lawyers should verify the content of the information posted online concerning them through platform providers. This information must be clear and precise, indicating their original title, and must never mislead the public about their qualifications.
6. Information relating to lawyers on an online platform should comply with the advertising rules applicable to lawyers. In this respect, lawyers should avoid making any misleading or disparaging advertising, or, more generally, contrary to the applicable principles and values of the legal profession.
7. When lawyers engage in a relationship with clients through an online platform, they should apply the binding rules to any new relationship. Prior to the provision of a legal service, lawyers should inform the client of their name, contact details and the conditions of their intervention, including fees.
8. When using online legal platforms, lawyers should always respect the applicable rules, including competition law rules, rules on remuneration and the setting of fees.

<sup>4</sup> Council Directive of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (77/249/EEC); Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. Article 24 of the Services Directive (applicable to regulated professions) contains a general provision on commercial communication. It excludes a total ban but also allows Member States to restrict the content and modalities of such publicity because of applicable professional rules, such as the independence, dignity and integrity of the profession, as well as professional secrecy. It is recalled that such rules should be non-discriminatory and serving a public interest goal in a proportionate manner. It is specified in Article 4 of the Services Directive that those do not in themselves constitute commercial communications (within the meaning of Article 24): communications relating to the goods, services or image of the undertaking, organisation or person, compiled in an independent manner, particularly when provided for no financial consideration.

## 1.2. Specific remarks on fees paid by lawyers to platforms providers

To classify the fees paid by lawyers to platform providers, it is necessary to identify the services which can be offered by platform providers, mostly in return of remuneration. This makes it possible to verify if any deontological problems would be raised. By using online platforms, lawyers may be looking for: a position in the market place; technical services facilitating the delivery of their services; or establishing contacts with clients or any combination of the above. In that case, the question would be what exactly is being paid for.

For example, in the Netherlands, the local Bar Presidents have issued guidance on the involvement of lawyers in online platforms, so far as this involvement might be contrary to the rules on referral fees/fee sharing. Seven remuneration models have been identified as follows:<sup>5</sup>

- Free of charge
- Fixed fee
- Payment per click
- Payment for a non-exclusive referral
- Payment for an exclusive referral
- Payment per accepted case
- Payment/commission as a percentage of the fee

Only the first three situations are allowed in most CCBE countries where the online platform enables lawyers to get in contact with clients.

**a) A position in the market place:** A position on the market can be free or paid for. It is free when the economic model is not based on fees paid by lawyers, such as:

- When the economic interest of the platform provider is to attract a maximum number of lawyers, because the clients are paying for the information provided by the lawyers. For example, when the platform provider sells lawyers' contact information to clients, it does not make lawyers pay for their presence. It can even occur that some lawyers are enlisted without their knowledge or consent.
- When lawyers are considered as "products" and the free registration is compensated by using some collected data.
- In the "freemium" model where basic services are offered free of charge to attract users and to increase traffic to the platform.

A position may also be subject to a fee which may vary, as not all positions are equal. Thus, the lawyers who will be privileged (for example, by appearing first or on the first page) have to pay (more). For example, on the first page of Google, there are lawyers who have paid for their advertisements to be presented first, according to the keywords chosen by Internet users. Part of the remuneration paid to Google also depends on the number of clicks obtained. It is important that clients are fully informed about these conditions.

The Commission's new proposal on promoting fairness and transparency for business users of online intermediation services also includes transparency obligations regarding the ranking of business users in search results, as well as general obligations for online intermediation services to ensure that their terms and conditions for professional users are easily understandable and available.<sup>6</sup>

It is sometimes argued that the fee paid to the platform provider should be fixed and limited to a flat-rate contribution to the technical costs. However, generally, platform providers do not only aim to cover their technical costs, but also to make a profit. Moreover, it is impossible for lawyers to verify the amount of technical costs which corresponds to the individual sale on the platform, especially in the case of double-sided platforms.

<sup>5</sup> The Netherlands Bar: Country reports on online platforms providing legal services (CCBE questionnaire; this information is based on guidance given by the Local Bar Presidents)

<sup>6</sup> According to Article 5 of the proposed Regulation, providers of online intermediation services shall set out in their terms and conditions the main parameters determining ranking of business users in search results, and the reasons for the relative importance of these parameters. A description of the possibilities of remuneration and their effects on ranking is also required. These obligations would tackle the problem of the general lack of transparency in online platform practices especially concerning ranking and advertising.

Another question is whether the fee should be a flat fee. There are some situations where the fee may also depend on the turnover achieved. For example, in certain lawyers' networks, the use of the trademark or certain common services may give rise to a fee based on the turnover. In all circumstances, the applicable deontological rules must be respected.

**b) Technical services:** The economic logic seems to apply without any restriction to situations where platform providers are offering lawyers technical services to which they have subscribed. This logic implies that lawyers' actual consumption of the services is taken into account and the platform provider must be able to charge market prices for these services.

**c) Establishing contacts with potential clients:** The issue of fees seems to be the most problematic from a deontological perspective when the fee is paid in order to establish contacts with potential clients. This practice is often likened to fee sharing which is prohibited in most EU countries.<sup>7</sup>

When examining whether the practice is prohibited or not, attention must be paid to the rules on canvassing. Rules about advertising are relevant but rules on fee sharing/referral fees are certainly also relevant in this context. In accordance with the interpretation of the ECJ concerning Article 24 of the Services Directive, canvassing is advertising and does not constitute a prohibited practice.<sup>8</sup> Therefore, if a law firm wishes to obtain files including information about potential clients to prepare a canvassing operation, the acquisition of such files is not prohibited on the condition that the rules referred to above and the ones applicable to personal data are respected.

The situation is different if the platform provider is remunerated on the basis of each new relationship established through it. This would imply that the lawyer should confirm that such a relationship with a client has been established. As professional secrecy/ legal professional privilege most often prohibits lawyers from revealing that kind of information, a commitment to pay such a fee could, in a significant number of cases, be considered contrary to this principle, irrespective of how the fee is calculated. The payment of a fee, based on the turnover achieved, would lead lawyers to provide third parties with information which is covered by professional secrecy/legal professional privilege/confidentiality. Therefore, this kind of remuneration seems to be inconceivable.

## 2. GENERIC CHALLENGES ASSOCIATED WITH ONLINE LEGAL PLATFORMS

In addition to the deontological issues presented above, there are also other challenges related to lawyers' use of online platforms that are more technical in nature.

The CCBE has already issued guidance on improving the IT security of lawyers against unlawful surveillance (available [here](#)) and also on the use of cloud computing services by lawyers (available [here](#)). They both contain important advice that is also applicable to preserving the confidentiality of client information when using online platforms.

However, there are certain further problematic areas that are more characteristic of online platforms and some areas need to be emphasised in this context as well.

One such area is the risk of IT security in general and unlawful access by third parties based on the differences on what constitutes lawful interception and access in different jurisdictions. Another area is the inherent danger in platform providers analysing any client data stored using their services, and their reuse of such data (even if they fully and honestly intend to anonymise any such data at their disposal). A third area of concern is the lack of access to the data stored by the lawyers in case of any dispute with platform providers, and lastly, the possible inability to export practically all the important information contained in the platform when the lawyer decides to move to a third platform provider.

<sup>7</sup> This problematic issue is a global one, and not limited only to Europe. For example, in the United States, The New York State Bar Association's Committee on Professional Ethics issued last year [an opinion](#) holding that participating in Avvo Legal Services violates the state's rules of professional conduct, especially, the prohibition of referral fees and fee sharing with non-lawyers. (Avvo's response to that opinion is available: [here](#)).

<sup>8</sup> Judgment of the Court of Justice (Grand Chamber) of 5 April 2011, *Société fiduciaire nationale d'expertise comptable v Ministre du Budget, des Comptes publics et de la Fonction publique*, C-119/09.

## 2.1. Security assurance

When a lawyer starts using a platform, data being generated on the platform or data having been imported to the platform need further physical and logical separation, both from other users and from the service provider as well. In this non-technical use, effective separation is the result of all IT security controls put in place by the platform provider. There are so many aspects of what makes a sufficiently secure platform that it is impossible to list them, even regarding a specific platform service. There are also many dangers lurking, from malicious code or viruses in disk drivers, to theft of user identities and vulnerabilities of cross-site scripting. Neither a lawyer, nor an IT specialist employed by the lawyer can really ascertain how secure a given platform is (although the latter profession has a better opportunity in identifying some vulnerabilities).

Unfortunately, most of the time, platform providers only give us marketing information, not technical information on how secure their systems are or how they ensure security. Terms like “bank grade security” or simple promises of “your information is encrypted all the time” are meaningless in practice, and lawyers should never rely on such promises as supporting any claims of security, like IT professionals would also not consider these slogans as actual information on the level of security provided. Furthermore, most platform providers do not want to give prior approval to law firms to carry out independent penetration testing of their systems by specialists retained by the lawyers.

Nevertheless, even lawyers can look for and rely on certain standardised IT security certifications, such as ISO 27001, Cloud Security Alliance STAR program or EuroCloud. The European IT security agency, ENISA, has published a metaframework of such [certifications](#). The scope and actual meaning of such certifications varies widely. For example, a company can have an ISO 27001 certification in its specific IT system and could use this logo, while the cloud service to be used by the lawyer might not be certified at all. So, lawyers must make sure to check the scope of certification as well. Also, there can be considerable differences between self-certifications and third-party attestations (or third-party certifications). Many of the most comprehensive platform providers only use self-certification which is still useful if it makes more information public on how security is provided and enables comparing the services with other platforms.

Also, following news on data breaches and security vulnerabilities could be helpful. However, at this moment, there are no such information sources available which would be user-friendly. Theoretically, from 25 May 2018, all platform providers who provide services to European natural persons will be required to report high risk data breaches under General Data Protection Regulation (GDPR) to its customers.

**In terms of IT security, lawyers should select those platform providers that provide detailed, actual information on what kind of IT security they wish to attain and how they try to achieve it, with certifications to support these claims, if possible. Platform providers not providing any information on such security are not unsecured, but probably do not know enough of the other levels of IT security that their platform is building upon.**

## 2.2. Jurisdictional issues and governmental access

**Lawyers should be mindful of the jurisdiction where data is stored by a given platform provider. If possible, lawyers should avoid storing client data in jurisdictions outside the EU or with platform providers that are not able (or not willing) to give assurances about the jurisdiction where the data is stored.**

**Also, care should be taken that many platform providers today build their services on services of other platform providers** (e.g. a legal platform provider using AWS or Microsoft Azure etc.). That could mean that even if the platform provider is a company from the EU or a multinational company having a separate subsidiary in the EU, they may not store the data within the EU. Every jurisdiction has its own regime of governmental access: what might be lawful access in the country of the platform provider, will not necessarily be lawful in the country of operation of the lawyer, and such differences could jeopardise lawyers' clients' interests.

As mentioned in section 2.1., encryption is also used as a marketing term, the meaning of which can vary a lot, and for various reasons. Platform services advertised as encrypted could also include services where the provider can directly access all data unencrypted. For online legal platforms, it is not possible for the

customer to use end-to-end encryption in the same way it is possible to do so when using backup or storage level services (which are lower level online platforms, but not legal platforms). That means end-to-end encryption will not really help lawyers with this problem. Therefore, it is suggested that if possible at all, lawyers should use legal platform services which are provided from the same jurisdiction as the lawyer. Unfortunately, this very much narrows down the preferred scope of online legal platforms.

Another suggestion is that online legal platforms that are specifically provided to lawyers are better able to prepare for the specific requirements of governmental access to lawyers' files than those legal platforms that serve both lawyers and consumers (who are not entitled to the same level of protection as the files of lawyers).

### 2.3. Profiling of data subjects and reuse of data by the platform provider

**An often hidden risk for lawyers is related to the ability of the platform provider to reuse and analyse information at its disposal in a way that is not apparent for the user.**

In an increasing number of countries, lawyers working in litigation and criminal law, become stronger users of services where results of searches in several public databases, social networks and of other online platforms are linked. These new links help lawyers gather new information about the subjects being researched and might bring valuable insights.

Needless to say, this is a double-edged sword which does not only affect lawyers as subjects of such searches themselves (including success rates in court cases), but also clients.

First, clients who use legal platforms as consumers of the service can also be subject to such profiling by the legal platform providers, e.g. for advertising or marketing purposes, including forwarding the contact details of clients as prospects or referrals to lawyers. This is more a question of deontology than of a technical nature. But the same advert profiling could also be used to offer services to the lawyer who is using the legal platform, e.g. offering services of expert witnesses or private investigators. Such advertising in itself could be revealing about what a lawyer is working on and hence lead to a violation of confidentiality, necessitating "Chinese wall" types of obligations, etc.

Secondly, regarding platforms providing services to lawyers only, it is often impossible to anonymise data even if a platform claims that it will anonymise all stored data before using it for any purposes other than the service to the lawyer (e.g. reselling). Against all best endeavours, it might turn out that the anonymised dataset can later be reidentified, based on further information that is at the disposal of a third person who gained access to the originally anonymised dataset.

Another example concerns the situation when the platform provider is owned by a party which might become indirectly involved in a case which the lawyer is handling through the platform (e.g. a platform could be owned by an insurance company which could be or become the insurer of an opponent party). As a result, the platform provider could analyse (behavioural) data of lawyers and clients who use their platforms.

This is an inherent risk in the concept of personal data (see the term "indirectly identifiable" in [Opinion 4/2007](#) of Article 29 Data Protection Working Party on page 13-15, and Section 2.2.2. of [Opinion 5/2014](#) on anonymisation techniques, page 8-10). Safeguards assured by GDPR, including its Article 22, will not necessarily solve this problem because requiring prior consent is not plausible when data mining is used to find new patterns or new connections between existing datasets. Based on such reidentification, clients may be exposed to considerable dangers of all sorts, and it is possible that lawyers inadvertently increase such dangers.

As long as this risky reuse by the platforms is an unintentional act, it only affects certain types of legal platforms used by lawyers, e.g. case or evidence management platforms (where data might be reused for machine learning or for predictive justice).<sup>9</sup> Considering that current online legal platforms rarely provide any information at all about the possibility of the provider to reuse any information at their disposal, it would be comforting if their terms and conditions clearly exclude profiling (even if the target is the same lawyer) and reuse even after anonymisation.

<sup>9</sup> [Clio](#) can be mentioned as an example of a case management software. The data is generated by the lawyers themselves: by using the collected data, Clio reports provide lawyers, for instance, with information about the ratio between their working hours and the hours actually billed. In general, the use of data collected when lawyers are using cloud services could be a very important source of information for the benefit of lawyers, provided that the rules on professional secrecy and confidentiality are respected.

## 2.4. Access to data

**Any assessment of availability of legal platforms should involve whether the clients' data stored by the service provider remains accessible, also upon termination of the contract and in case of dispute between the lawyer and service provider.**

If there is a contractual dispute with the service provider, then the access to the lawyer's data might be denied or restricted. This situation implies a serious risk when the lawyer is under an inspection of a national and professional regulatory body because, due to the lack of access, the lawyer will not be able to comply with professional or regulatory requirements (i.e. have client data available for inspection). Such unavailability of data may be avoided if the contractual terms and conditions of the service provided are appropriately negotiated in order to ensure the continued availability, even in the event of a contractual dispute between the service provider and the lawyer. The parties may overcome such unavailability also by technical means.

Another risk related to the availability of confidential information is the possible lack of access to the full data stored on the platform after having to leave the platform for a different service. "Full data" here means not only the document stored, but also all metadata of the documents and of the transactions recorded by the website that can be seen as business information of the law firm (including client and case information). Quite often a lawyer wishes to use a certain platform thanks to the new and user-friendly functionalities it provides. However, these unique or convenient functionalities also mean that if a lawyer changes platform, the data structure that the previous platform stored about the practice, the cases, the client or the documents will not be the same in the new platform. It may be that the lawyer has to move out of the cloud (that is, has to insource all data). Regarding larger practices, this is most probably a question of costs of migration and individual developments. However, for smaller practices, this could lead to a loss of very important business information, because it could be prohibitively expensive for certain lawyers to try to replicate in-house all functions of a well-integrated online legal platform (and most probably there will be no identical «other» platform provider using the same data).

**So, before using online legal platforms e.g. for practice, case, document or evidence management, lawyers should test feasibility and costs of exporting all information to a third party or perform this in-house. That is, at the same time lawyers consider importing existing data into a platform, they should also consider how to export all information that they will have later, and whether they are ready to accept the costs of the latter as well.**

## 3. CHALLENGES RELATED TO SPECIFIC KINDS OF PLATFORMS

### 3.1. Directories of lawyers

Comparison websites now serve in the same market segment as legal directories, with the exception that there are legal directories without any kind of ranking, and historically, legal directories with rankings were called "legal directories", and not "lawyer comparison books".

While the history of comparison websites and legal directories are very different, it seems they will share a common future in the digital word. As the costs and methods of reaching customers completely change in digital platforms, legal directories and their segmentation will also change. New entrants already have experience in ways to attract certain groups of visitors have a natural advantage, and of course they try to invest in the legal directories market as well. However, ranking lawyers by a "magic formula" or by clients' feedback is not necessarily the most informative, at least for experienced customers of lawyers. Thus, a more in-depth and costly review of lawyers by independent third parties might have a future as well.

Many directories, mainly those used by many customers (retail clients, SMEs), may also provide referral services. Thus, the questions which can be raised in this context will be discussed in the next section.

Many Bars and Law Societies have themselves published legal directories of lawyers within their scope of competence. Also, the eJustice Portal of the European Commission contains such a directory covering many countries ([Find-A-Lawyer](#)). All such directories serve as a useful reference for everyone. These bodies

may also elect or be required to publish their directories online and to make such information available for reuse by commercial providers as well (cf. Directive 2003/98/EC of the European Parliament and Council of 17 November 2003 on the re-use of public sector information).

When using new types of legal directories, lawyers can get a clearer picture on which legal directory has the most visitors. This is due to the ranking of all websites in a certain country, it is now much easier (but not necessarily free of charge) to rank legal directories themselves, based on the number of visitors they have, and to filter such data based on the country of visitors to see how relevant they are for customers in specific countries (see <https://www.alexa.com/> and <https://www.similarweb.com/>).

### 3.2. Referral websites of lawyers

One of the most popular forms of online legal platforms are websites providing a connection between consumers looking for lawyers and lawyers looking for new work streams. These platforms usually do not stop at being an easy to use directory of lawyers, they often try to be more useful to consumers by providing as much information about lawyers as possible, or even by providing a platform for lawyers to answer specific questions and to receive payment of legal fees.

These websites can provide useful and relevant information to consumers or small businesses about lawyers and have the capabilities to bring a lot better search results – and therefore better visibility – about lawyers than what an average law firm or even a Bar can achieve. However simple they may seem from the consumer point of view, due to the lack of transparency, certain practices of comparison websites in general are frequently the subject of competition law and consumer law concerns, and these issues are very relevant to lawyer referral websites as well.

Think of the € 2.42 billion [fine of Google](#) for its abuse of its dominant market position in the general internet search by the European Commission, or the investigations into energy tariff comparison websites closed down by the Competition & Markets Authority of the UK. In France, following self-regulation in this field back in 2008, the Prime Minister issued a decree on this specific subject ([Décret n° 2016-505](#) (22 Avril 2016) relatif aux obligations d'information sur les sites comparateurs en ligne).

The European Commission has investigated this issue in a public consultation, and the full report on the results shows that this really is a problematic focus point. Three-quarters of consumers need clearer information on e.g. the display of sponsored search results, identifying the actual supplier of the service or product, with almost 90% of businesses also wishing to see a higher degree of transparency ([Full report on the results of the public consultation on the Regulatory environment for Platforms, Online Intermediaries and the Collaborative Economy](#)). The report also mentions the risks of manipulation of consumer opinion via fake reviews or misrepresented statistics, but respondents agreed that rating systems and trust mechanisms in general “are beneficial” to consumers.

**Therefore, what are the main challenges for lawyers with these websites, what should they check before they enlist?**

As pointed out in Section 1, the rules on advertising are specific to each Member State. There are also rules on misleading and comparative advertising. In this respect, referral websites can work as a form of comparative advertising, a form of advertising that may be prohibited in some Member States, such as in Italy.

**In case the participation in referral websites complies with the relevant deontological rules lawyers using these tools must be aware of the revenue model of the referral platform and how clearly, they communicate it to customers.**

**It is recommended to always insist on evidence of the following details:**

- Is it a pure advertisement-based website or based on the subscription payment of lawyers?
- If it is a mix of both, do premium subscribers get preferential treatment and is that apparent for consumers?
- If it contains rating functions as well, do they give lawyers sufficiently clear information about how they come up with the “magic number” that delivers a judgement on lawyers’ worth? Can the platform provider unilaterally change this calculation method without giving lawyers prior notice?



- If the rating is based on customer reviews, can the lawyer dispute a review (other than by writing a reply)? Do they expect or ensure that only those customers can review the lawyer with whom they have worked with, and not e.g. the lawyers' opponent in the lawsuit? Do they moderate reviews before posting?
- Furthermore, what kind of information will they publish about the lawyer, and which information can serve as a basis of search for potential clients?
- If the platform also includes referral services facilitating the provision of legal services, lawyers should also check such basic business terms as to how they will connect to clients they refer.
- If the client pays the platform provider, what kind of fees will lawyers receive, and does the platform deduct any of its fees (technical fees, platform usage fees or marketing fees) from the fees paid by the client for the lawyer' services (net payment) or are the payments by the client and the payment by the lawyer separate from one another?
- How will the clients inform the platform provider that the service has been performed and payment should be sent or released?
- Will platform providers intervene in any complaints or refund requests by clients?
- Is the information provided to consumers transparent and truthful? For example, is it clear to consumers how many service providers are registered on the platform, what the fee structure is, and what their rights and obligations are etc.?

Regardless of the latest trend of design elements, all professional referral websites should clearly answer (or demonstrate an answer) to these questions and before asking a lawyer to join. If they do not, they have either not thought of the relevant problems or do not want the lawyer to find out the answer. A lawyer might not want their name to be listed on such a platform.

### 3.3. Websites providing legal services

#### 3.3.1. Legal Q&A platforms

Websites where consumers can ask legal questions are popular services as long as convincing answers are also provided. The objective of building website traffic is usually pursued by firms outside the legal market, so they will be interested in bringing onboard a sufficient number of lawyers to post the replies. Even based on commercial reasonability alone, lawyers should investigate the revenue model of such a website before joining.

Some of these websites operate on advertisement revenues. In these ad-based platforms, contributing lawyers might have concerns with the quality of advertisements or other content intended to increase the traffic. Other, more established Q&A websites will request a monthly subscription fee from users to be able to post new questions.

The commercially most important question for lawyers is why they would contribute to help the platform provider. Maybe the lawyers will contribute so that the prospective clients will lead to better brand awareness or paid work. Maybe the top one percent of contributors will receive a premium.

More interestingly, in the best-known Q&A websites for IT questions (such as StackExchange), IT professionals can also become interested in giving answers based purely on receiving a raise in a virtual "standing", like reputation, or virtual bounties. Considering that some of these sites have lots of traffic, reputation like this is not virtual anymore. Even if there is no such thing as the users with the best reputation receiving an automatic raise or a new career opportunity, some already claim that these platforms are working on a "career-based model". This might also show a very interesting future for legal Q&A websites that target lawyers and not the general public. It might seem counterintuitive that lawyers share their hard-earned knowledge for free with other professionals. However, within very specific areas of law (e.g. real property transaction lawyers in Hungary) and in pages closed for a smaller community of lawyers, such contributions and common repository of knowledge may be sufficiently attractive for the long term as well.

### **3.3.2. Chatbots for lawyers**

Some platforms call themselves “robotlawyers” because they make available a conversational service usually called chatbots. Considering the very limited capabilities of such chatbots, and the vast distance any such “artificial intelligence” (AI) is from being able to function as a lawyer, this naming is neither flattering nor accurate.

However, that does not mean lawyers could not profit from using chatbots on their own. Theoretically, large platform providers having access to many website visitors could channel customers to lawyers, by using the chatbot to address the prospective client and perhaps also answer the most frequently asked questions and forward the customer to the lawyer if there is no pre-recorded answer.

Even better, lawyers could use such chatbot services on their websites. Of course, chatbots cannot substitute lawyers, but they could substitute assistants or paralegals in answering the most commonly asked questions, and in a more user-friendly way than a long list of “frequently asked questions”. It is not necessarily the best way to advertise services of all law firms, but it is still an interesting area, and it is surprisingly easy to implement for such purposes – even lawyers without any formal training in AI, cognitive or data sciences or mathematics can be successful (see e.g. [Google Assistant and Google Actions](#), [Pandorabots](#) or [QnaMaker](#)).

### **3.3.3. Providing templates to the public with some document automation**

Document assembly (or automation) solutions are not new for lawyers – the technique of entering relevant clauses and filling out placeholder provisions based on an interview and a decision tree or from a database has been with us for more than 40 years now. The technique has simplified, and the tools have diversified, and become more accessible. The three major areas of where templates are used are:

- a) for very specific processes with many documents to be created (usually done by professional IT developers), with a complete guide for users on all options (high volume document creation specific to internal working of an enterprise);
- b) within an enterprise or a law firm, where templates are expected to speed up creating a first draft from a larger base of templates, with further human review, and where special templates are generated by specialists with contractual knowledge (incorporating knowledge in contract templates by professional support staff or lawyers); or
- c) where offered as form filling exercises for the public in specific areas, such as wills, complaints, court submissions, articles of association, etc.

Online platforms are very popular for serving the last area of use. In general, these document assembly services offered for the public are not sophisticated but can be usually considered as additional services for customers. More importantly, lawyers should be aware that document assembly tools offered for legal professionals are more versatile, and that some of these tools enable them to offer document assembly services directly to clients. If lawyers would invest enough in learning how these templates can be generated, they will be able to deliver better user experiences to clients (e.g. more relevant templates in more specific areas of work). Insofar as lawyers may have a subsequent role in filing these documents, they should be aware of the responsibility to verify the quality of the content and the intentions of the clients.

In the latter service delivery model, the provider only helps the lawyer and is invisible vis-a-vis the client, and the lawyer pays all fees to the platform provider. There are no technical problems inherent in using these platforms that are worth mentioning other than the generic problems set out in Section 2.

Finally, it should be noted that there are differences in the approach as to whether such services are considered as legal services or not (in a specific jurisdiction or even at regional level), and regarding the limits of such activities being considered as restricted to lawyers.