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Editors' Foreword

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SYMPOSIUM

Hack to the Future: How Technology Is Disrupting the Legal Profession

EDITORS' FOREWORD

The *University of Miami Law Review* has hosted a Symposium every year since 2006. On February 8 and 9, 2018, the *University of Miami Law Review* held its twelfth Symposium, entitled *Hack to the Future: How Technology Is Disrupting the Legal Profession*. Prominent scholars and practitioners gathered to explore the implications of developing technologies on the practice of law. The Symposium was organized into four unique panels, each dedicated to academic and practical discussions on a variety of issues. Specifically, the 2018 Symposium focused on the following issues: (1) analyzing emerging technologies and their effects on the practice of law, (2) using technology to increase access to justice, (3) ensuring data privacy and cyber security in the legal field, and (4) implementing advanced technology in the corporate legal world. Each panel contained three panelists and one moderator, which elicited thoughtful discussions between the panelists and the audience.

Panel I: Emerging Technologies: Artificial Intelligence

This panel examined the applications and implications of emerging technologies—such as artificial intelligence, Blockchain, and smart contracts—in the legal field and practice. This panel emphasized how important it is that legal practitioners understand the advent of new technologies, how such technologies can improve and potentially threaten legal practice, and how technology may impose increased responsibilities upon lawyers.

Erika Pagano, alumna of the *University of Miami Law Review* and the current Director of Academics and Advancement in the Law Without Walls program at the University of Miami School of Law,

served as the Moderator of this panel. Panelists included two founders of companies focused on development of artificial intelligence technologies for legal companies and a legal scholar who focuses his research on technology: Michael Mills of Neota Logic; Andrew M.J. Arruda of ROSS Intelligence; and Professor Michael Froomkin, Laurie Silvers and Mitchell Rubenstein Distinguished Professor of Law at the University of Miami School of Law.

Panel II: Legal Technology and Access to Justice

This panel explored and evaluated how technology in the legal field can be designed to allow for more efficient delivery of legal services to a wider range of people. The discussion focused on evaluating what access to justice actually means and analyzing how technology can eliminate what is known as the "justice gap."

The Moderator of this panel was Caroline Bettinger-López, who is the current Director of the University of Miami School of Law Human Rights Clinic and the former White House Advisor on Violence Against Women, where she served as a senior advisor to former Vice President Joe Biden. Panelists included individuals from diverse backgrounds who provided unique perspectives on the role technology can play in increasing access to justice: Elisa D'Amico, the co-founder of the Cyber Civil Rights Legal Project; Elizabeth Rieser-Murphy, attorney at the Immigration Youth Project at Legal Aid Society; and Vanessa Butnick Davis, Vice President of Research and Product Development at LegalZoom.

Panel III: Big Data: Data Privacy and Cyber Security

This panel discussed the benefits and perils of big data collection in the legal field, as well as the implications of big data collection on the privacy rights of everyday citizens. The panel also posited that advanced analytical algorithms will continue to allow lawyers to more accurately predict the outcomes of disputes, analyze trends in case law, and more quickly conduct research and prepare for litigation. As this is a growing trend, this panel attempted to propose the proper balance between innovation, client privacy, and the ethical responsibilities of practitioners.

Daniel B. Ravicher, current Director of the Larry Hoffman|Greenberg Traurig Startup Practicum, served as the Moderator

of this panel. Panelists included the following scholars and innovators: David James Knight, Software Developer and Legal Technology Consultant at CodeCounsel, LLC; John Flood, Professor of Law and Society at the Griffith University School; and William McGeveran, Professor of Law at the University of Minnesota School of Law.

Panel IV: LegalTech and the Corporate World

The final panel of the Symposium brought together several in-house attorneys from different companies. The panel closed the Symposium by providing insight into how technology is changing the legal environment and practice of law from the perspective of those actually seeking legal service—clients.

Jason P. Kairalla, Shareholder at Carlton Fields, acted as the Moderator of this panel. Panelists included the following in-house attorneys: Julie Siefkas-Marin, Director and Senior Associate Counsel at Royal Caribbean Cruises Ltd.; Joshua Lenon, Lawyer in Residence at Clio; and Ernesto Luciano, Associate General Counsel and Vice President at Kaplan Higher Education, LLC.

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Since the 2018 Symposium, technology has continued to impact the legal field in a variety of ways, especially in the actual practice of law. While advanced technology poses an increased risk of violating unauthorized practice of law standards, it also presents companies and consumers with more efficient, effective, and accessible forms of legal assistance. For example, TIKD, a popular startup based in the Miami area, helps drivers challenge traffic tickets with little to no work required of the driver.[1] Once a driver gets a ticket that they want to challenge, they only need to visit TIKD's website or download its mobile application, upload a photo of the ticket, enter the amount of the fine, and pay TIKD a set fee.[2] TIKD then hires an attorney to challenge the ticket on behalf of the driver.[3] TIKD pays all attorneys' fees and court costs and guarantees that if the

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[1] TIKD, https://tikd.com/ (last visited Jan. 24, 2019).

[2] *How TIKD Works*, TIKD, https://tikd.com/about-us (last visited Jan. 22, 2019).

[3] *Id.*

challenge fails or the driver still has points added to their license, TIKD will refund the fee.[4] Notably, TIKD includes the following disclaimer on its website: "TIKD IS NOT A LAW FIRM AND DOES NOT PROVIDE LEGAL SERVICES."[5]

In 2017, TIKD sued The Florida Bar and The Ticket Clinic, a veteran Florida law firm specializing in handling traffic tickets,[6] alleging violations of antitrust law.[7] Specifically, TIKD claimed that The Florida Bar and The Ticket Clinic conspired to put TIKD out of business.[8] TIKD claimed that The Florida Bar first began investigating TIKD at the end of 2016 for the unauthorized practice of law and that, almost ten months later, the investigation was still ongoing "with no end in sight."[9] TIKD also alleged that, in 2017, The Ticket Clinic filed complaints with The Florida Bar, stating that TIKD was engaging in the unauthorized practice of law.[10] According to TIKD, The Ticket Clinic threatened attorneys who represented TIKD's customers with disbarment and filed multiple business ethics complaints against such attorneys.[11] TIKD further stated that The Florida Bar and The Ticket Clinic's actions drastically hurt TIKD's business and cost them over three million dollars.[12]

The U.S. District Court for the Southern District of Florida ultimately dismissed the case with prejudice,[13] finding that The Florida Bar is immune from prosecution as a state actor.[14] Meanwhile, however, The Florida Bar voted to file a petition against TIKD with the Florida Supreme Court based on allegations that TIKD is practicing

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[4] *Id.*

[5] TIKD, *supra* note 1.

[6] TICKET CLINIC, https://www.theticketclinic.com/ (last visited Jan. 22, 2019).

[7] First Amended Complaint at 15, TIKD Servs. LLC v. The Fla. Bar, No. 1:17-cv-24103-MGC (S.D. Fla. Dec. 4, 2018).

[8] *Id.* at 16–25.

[9] *Id.* at 4, 16.

[10] *Id.* at 16.

[11] *Id.* at 16–20.

[12] *Id.* at 25.

[13] TIKD Servs. LLC v. The Fla. Bar, 1:17-cv-24103-MGC (S.D. Fla. Dec. 4, 2018).

[14] Transcript of a Motion to Dismiss Hearing at 43, *TIKD Servs. LLC*, 1:17-cv-24103-MGC. TIKD had stipulated to dismissing The Ticket Clinic as defendants at an earlier stage of the case. Joint Stipulation for Dismissal of Ticket Clinic Defendants with Prejudice, *TIKD Servs. LLC*, 1:17-cv-24103-MGC.

law without a license.[15] Now, the Florida Supreme Court must decide whether TIKD's business model violates state law.

This case has interesting implications for the future of the legal industry at large, as well as the legal technology industry specifically.[16] For example, the Department of Justice ("DOJ") noted in its Statement of Interest filed in the district court case that the rise of mobile devices and applications can be disruptive to "entrenched" business models.[17] However, the DOJ also stated that "almost invariably, the winners from the process of innovation and competition are *consumers*."[18] Moreover, the DOJ made the somewhat surprising argument that state bar associations are *not* absolutely immune from antitrust lawsuits.[19] If this argument gained traction and support, it would change the legal industry significantly by making state bar associations susceptible to antitrust suits and forcing state bar associations to defend their prohibitions on sharing profits with nonlawyers.

The TIKD cases demonstrate the United States's continued reluctance to embrace technological change in the legal profession. Other countries, however, are embracing change faster than the United States. For example, the United Kingdom and Australia have allowed non-lawyers to share profits with lawyers, and thus, take

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[15] The Fla. Bar v. TIKD Servs. LLC, No. SC18-149 (Fla. filed Jan. 23, 2018); *see* Chabeli Herrera, *Can You Fight Traffic Tickets from an App? The Florida Supreme Court Will Decide*, MIAMI HERALD (Dec. 13, 2017, 12:28 PM), https://www.miamiherald.com/news/business/article189530384.html.

[16] *See* Jonathan Broder, *Florida Supreme Court Could Make Florida a "LegalTech" Hub*, ABOVE L. (Aug. 30, 2018, 9:28 AM), https://abovethelaw.com/legal-innovation-center/2018/08/30/florida-supreme-court-could-make-florida-a-legaltech-hub/?rf=1.

[17] Statement of Interest on Behalf of the United States of America at 2, *TIKD Servs. LLC*, 1:17-cv-24103-MGC.

[18] *Id.* at 3.

[19] *Id.* at 5. Specifically, the DOJ argued that, in 2015, the U.S. Supreme Court held that any state agency that regulates a profession and is controlled by active market participants must meet additional criteria before receiving immunity. *Id.* (discussing N.C. State Bd. of Dental Exam'rs v. FTC, 135 S. Ct. 1101 (2015)). In other words, the DOJ argued that The Florida Bar is not entitled to absolute immunity as a state actor because it is controlled by lawyers—all members of the Florida Bar. *See id.* at 12. However, the district court declined to adopt this argument, stating that *Dental Examiners* was inapplicable to the case at hand, and that the Eleventh Circuit had ruled on The Florida Bar's immunity as recently as 2017. Transcript of a Motion to Dismiss Hearing at 43*, supra* note 14.

part in the delivery of legal services,[20] which is what is essentially at issue in both TIKD cases. Furthermore, legal technology companies have found more support in the United Kingdom: not only has the government provided monetary support for research and development of legal technology,[21] but companies have also found more firms in the United Kingdom willing to adopt technology than in the United States.[22]

With other countries loosening their unauthorized practice of law statutes and the DOJ arguing that state bars are not absolutely immune from antitrust lawsuits, it is likely that the legal profession in the United States will change drastically, sooner rather than later. In fact, Washington and Utah have already authorized paralegals to provide some limited legal services.[23] TIKD has now appealed the dismissal of its antitrust case to the Eleventh Circuit Court of Appeals, so it remains to be seen how fast the legal profession will change.[24]

Furthermore, advancing technology carries serious implications for digital privacy and personal security, including various concerns under the Fourth Amendment of the U.S. Constitution. Because technology has become ubiquitous, there is an infinite amount of information available on any one person. This has created many problems, but two main problems arise in the criminal context: (1) law enforcement using personal data information to solve crimes; and (2) criminals stealing personal information.

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[20] Mark A. Cohen, *Innovation Is Law's New Game, but Wicked Problems Remain*, FORBES (May 21, 2018, 6:05 AM), https://www.forbes.com/sites/markcohen1/2018/05/21/innovation-is-laws-new-game-but-wicked-problems-remain/#40cf16413890.

[21] Thomas Alan, *Government Backs 'Under-funded' Legal AI and Data Technology with £20M Contestable R&D Fund*, LEGAL BUS. (May 22, 2018, 4:18 PM), https://www.legalbusiness.co.uk/blogs/government-backs-under-funded-legal-ai-and-data-technology-with-20m-contestable-rd-fund/.

[22] Roy Strom, *A Trans-Atlantic Acquisition Shows Divide in US, UK Legal Tech Adoption*, AM. LAW. (Aug. 1, 2018, 2:41 PM), https://www.law.com/americanlawyer/2018/08/01/a-transatlantic-acquisition-shows-divide-in-us-uk-legal-tech-adoption/.

[23] Broder, *supra* note 16.

[24] Notice of Appeal to the United States Court of Appeals for the Eleventh Circuit, TIKD Servs. LLC v. The Fla. Bar, 1:17-cv-24103-MGC (S.D. Fla. filed Dec. 28, 2018).

People increasingly connect to the world through cell phones. Currently, more than ninety-five percent (95%) of the population owns a cell phone.[25] Cell phones are like mini-computers, containing everything from banking and medical information to photos and contact information.[26] The pervasive nature of cell phones has made them a highly valued device for modern-day society.

With the increase of cell phone ownership, law enforcement agencies began using cell phones to solve crimes—sometimes through cell site location information ("CSLI"). CSLI is automatically generated by service providers every time a cell phone is on and connects to a cell tower or cell site—regardless of whether the user voluntarily shares their location.[27] Therefore, because most people keep their phones on their person throughout the day,[28] service providers can reconstruct and store a person's continuous movements.

Despite this increasing threat to privacy, the law—specifically, the Stored Communications Act ("SCA")—allowed law enforcement officials to obtain this information without a warrant, circumventing Fourth Amendment protections.[29] The SCA permitted disclosure of such historical CSLI if the government showed "specific and articulable facts showing there are reasonable grounds to believe" the records are "relevant and material"[30]—a "showing [that] falls well short of the probable cause required for a warrant."[31]

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[25] *Mobile Fact Sheet*, PEW RES. CTR. (Feb. 5, 2018), http://www.pewinternet.org/fact-sheet/mobile/.

[26] Riley v. California, 134 S. Ct. 2473, 2489–90 (2014).

[27] Paul Cividanes, Note, *Cellphones and the Fourth Amendment: Why Cellphone Users Have a Reasonable Expectation of Privacy in Their Location Information*, 25 J.L. & POL'Y 317, 322–23 (2016).

[28] *See Riley*, 134 S. Ct. at 2490 ("[N]early three-quarters of smart phone users report being within five feet of their phones most of the time, with 12% admitting that they even use their phones in the shower."); AMANDA LENHART, PEW RESEARCH CTR., CELL PHONES AND AMERICAN ADULTS 2 (2010), http://www.pewinternet.org/2010/09/02/cell-phones-and-american-adults/ (follow "Complete Report PDF" under "Report Materials") ("Cell phones are such a vital part of American's lives that many users will not be parted from their device, even as they sleep: 65% of adults with cell phones say they have ever slept with their cell phone on or right next to their bed.").

[29] *See* 18 U.S.C. § 2703(d) (2012).

[30] *Id.*

[31] Carpenter v. United States, 138 S. Ct. 2206, 2221 (2018).

As technology continues to advance, CSLI will become increasingly more precise, which will further encroach upon an individual's privacy and security. In *Carpenter v. United States*, for example, the U.S. government obtained 127 days—or over four months—of Timothy Carpenter's CSLI records without a warrant, which "provided an all-encompassing record of [his] whereabouts" that consequently placed him near a string of robberies.[32] Carpenter moved to suppress his CSLI records on the grounds that they were obtained in violation of the Fourth Amendment.[33] The district court denied the motion, and he was sentenced to more than 100 years in prison.[34] The Sixth Circuit Court of Appeals affirmed this decision and the Supreme Court granted certiorari.[35]

In a highly anticipated decision, the Supreme Court affirmed that cell phones are necessary for modern life[36] and increased digital privacy protections.[37] Specifically, the Court found "an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI."[38] Thus, "the Government will generally need a warrant to access CSLI" due to "the deeply revealing nature of CSLI, its depth, breadth, and comprehensive reach, and the inescapable and automatic nature of its collection."[39] Although the ruling is narrow, *Carpenter* is viewed as a win for digital privacy rights.[40]

Carpenter's impact, however, is unclear.[41] Since the Supreme Court's ruling, courts have held that *Carpenter* does not apply retroactively due to the good faith exception to the exclusionary rule.[42]

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[32] *Id.* at 2212, 2217.

[33] *Id.* at 2212.

[34] *Id.* at 2212–13.

[35] *Id.* at 2213.

[36] *Id.* at 2220 (citing Riley v. California, 134 S. Ct. 2473, 2484 (2014)).

[37] Louise Matsakis, *The Supreme Court Just Greatly Strengthened Digital Privacy*, WIRED (June 22, 2018, 12:26 PM), https://www.wired.com/story/carpenter-v-united-states-supreme-court-digital-privacy/.

[38] *Carpenter*, 138 S. Ct. at 2217.

[39] *Id.* at 2222–23.

[40] Matsakis, *supra* note 37.

[41] *Id.*; Nathaniel Sobel, *Four Months Later, How Are Courts Interpreting Carpenter?*, LAWFARE (Oct. 18, 2018, 8:57 AM), https://www.lawfareblog.com/four-months-later-how-are-courts-interpreting-carpenter.

[42] *See, e.g.*, United States v. Goldstein, No. 15-4094, 2019 WL 273103, at *3–4 (3d Cir. Jan. 22, 2019); United States v. Chambers, No. 16-163-CR, 2018

Other courts have declined to extend *Carpenter* to other technologies, such as those that are not as revealing[43] and are older than CSLI.[44]

Cell phones and CSLI are not the only digital privacy rights that have come into question recently. Several major data breaches in 2018 ultimately exposed the personal information of millions around the world.[45] Facebook, for example, revealed that a recent hack left around 30 million users affected, 14 million of which had their highly sensitive personal data exposed.[46] Other major companies, like Google[47] and Marriott,[48] were also victims of data breaches that left over 500 million customers vulnerable. Since these major data breaches, Congress has begun working on federal privacy legislation to address these major breaches and take steps to protect individuals' personal data.[49] Hopefully, legislation will pass before another major data breach affecting millions of people occurs.

WL 4523607, at *3 (2d Cir. Sept. 21, 2018); United States v. Curtis, 901 F.3d 846, 849 (7th Cir. 2018); United States v. Joyner, 899 F.3d 1199, 1204–05 (11th Cir. 2018); United States v. Chavez, 894 F.3d 593, 608 (4th Cir. 2018).

[43] *See, e.g.*, United States v. Contreras, 905 F.3d 853, 857 (5th Cir. 2018) ("[IP addresses] had no bearing on any person's day-to-day movement.").

[44] Sobel, *supra* note 41; *see, e.g.*, United States v. Kay, No. 17-CR-16, 2018 WL 3995902, at *3 (E.D. Wis. Aug. 21, 2018) ("Unlike the new technology addressed in *Carpenter*, the surveillance here used ordinary video cameras that have been around for decades." (internal citations omitted)).

[45] Paige Leskin, *The 21 Scariest Data Breaches of 2018*, BUS. INSIDER (Dec. 30, 2018, 10:42 AM), https://www.businessinsider.com/data-hacks-breaches-biggest-of-2018-2018-12.

[46] Rob Price, *Hackers Stole Millions of Facebook Users' Highly Sensitive Data — and the FBI Has Asked It Not to Say Who Might Be Behind It*, BUS. INSIDER (Oct. 12, 2018, 12:44 PM), https://www.businessinsider.com/facebook-30-million-users-affected-hack-fbi-asked-not-to-reveal-source-2018-10.

[47] Nick Bastone, *Google+ Will Shut Down 4 Months Early After Google Discovered a 2nd Bug Affecting User Data for More Than 52 Million*, BUS. INSIDER (Dec. 10, 2018, 1:38 PM), https://www.businessinsider.com/google-plus-early-shut-down-second-data-breach-2018-12.

[48] Paige Leskin, *Here's How to Check If You Were One of the 500 Million Customers Affected by the Marriott Hack*, BUS. INSIDER (Nov. 20, 2018, 12:39 PM), https://www.businessinsider.com/marriott-starwood-hotel-hack-data-breach-how-to-check-if-you-were-affected-2018-11.

[49] Jacqueline Thomsen & Olivia Beavers, *Marriott Breach Spurs New Privacy Law Push*, HILL (Dec. 5, 2018, 6:00 AM), https://thehill.com/policy/cybersecurity/419753-marriott-breach-spurs-new-privacy-law-push.

As discussed at the 2018 Symposium and exemplified in continuing developments, "[t]echnology change is often a double-edged sword—it enables and enriches our lives, but also allows for new means of exploitation and control."[50] Technology can do amazing things: increase access to justice, improve customer satisfaction and service quality, and allow the practice of law to finally enter the twenty-first century. However, technology can also do widespread damage: eliminate jobs in the legal profession, release private and confidential information, and allow the government to constantly surveil individuals. Although these issues may seem unique and unrelated, they all represent the same ongoing mystery—what does the future of the law look like when technology evolves at faster rates than the legal profession and the judiciary have been willing to move?

The *University of Miami Law Review* is honored to publish the superb articles, student-written pieces, and presentations dedicated to the important issues discussed at the 2018 Symposium. We are grateful to all of the participants in the 2018 Symposium, especially to our own Miami Law professors and *University of Miami Law Review* alumni. We are forever grateful for your support and guidance. This Symposium Issue would not be possible without the hard work of our dedicated and skilled Editorial Board and our Programs Director, Farah Barquero. Thank you all for everything you do.

Elizabeth Montano	Keelin Bielski	Maya Frucht
Editor-in-Chief	Executive Editor	Executive Editor

[50] Zachary Ross, Note, *Bridging the Cellular Divide: A Search for Consensus Regarding Law Enforcement Access to Historical Cell Data*, 35 CARDOZO L. REV. 1185, 1186 (2014).