PRACTICING IP LAW ETHICALLY IN THE CLOUD

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OVERVIEW

From the common but

-- sigh --

repeated problems

to…

what you've heard is coming…

but in fact was here long ago:

Artificial Intelligence.

THE ARTICLE COVERS LOTS OF STUFF, INCLUDING

- Responding to negative reviews or encouraging positive ones.

- Friending current and former clients, and judges.

- Advising clients about restricting access through privacy settings but not committing spoliation.

- Monitoring for judicial recusal: is judge friends with counsel, witness, others?

- Monitoring judges, jurors, and potential jurors.

READ AND WRITE COMPETENTLY

- Studies show that when reading on-screen, readers:
  - retain less information;
  - cannot make marginalia which reduces comprehension; and
  - are distracted by footnotes and hyperlinks.
- So, read paper – not screen.
- But… write filings for screen-reading judges:
  - use diagrams to "pre-write" marginalia for the judge;
  - avoid footnotes (and hyperlinks unless required); and
  - think about how need to scroll may affect comprehension.

E-MAIL CONFIDENTIALITY

- 1996: no need to encrypt (thanks to me!)
- 2017: ABA Opinion 477R adopts a "facts and circumstances" approach to whether "additional" safeguards are required:
  - Understand nature of threat;
  - Understand how client confidences are transmitted and stored;
  - Understand and use reasonable security measures;
  - Determine how to protect client communications;
  - Label emails "privileged and confidential" if so;
  - Do due diligence on vendors *(e.g.,* your e-mail provider).

ADDITIONAL PRACTICAL TIPS

- Advise clients to not share computers/devices with third parties (spouses, roommates, *etc.*)

- Ensure email provider has reasonable security.

- Warn clients about forwarding emails.

- Use passwords for attachments, or go ahead and encrypt?

Title search: Practicing IP Law Ethically in the Cloud

Also available as part of the eCourse
[2019 Advanced Patent Law (USPTO) eConference](#)

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