

'I'm Here Live. I'm Not a Cat.' We Can't Ignore Wave of Innovation Any Longer

by Tal J Lifshitz

By now we've all seen the viral video of the lawyer who couldn't navigate the cat filter during his Zoom hearing. He was actually on the "Today" show (apparently it wasn't his computer, hence the mix-up).

The video was funny and cute, and the judge was patient and kind, so there was no surprise that the clip spread as widely and as rapidly as it did. But there's another part of the story, that's less funny and cute. The part where we all realize that, if a pandemic and year-long quarantine have exposed anything about the legal profession, it's that there is a divide between those who are able to adapt to the new and developing technologies available to us, and those who are not.

We've now all seen lawyers (of all ages) struggle getting on to a Zoom—for a deposition, mediation, hearing, etc. We've also seen enough lawyers, politicians and celebrities suffer embarrassing

Zoom moments involving inadvertent hot microphones or live cameras to know that, if it happens to you, there's no one to blame but yourself.

Perhaps there could be more training opportunities to try to prevent these mishaps. But I suspect training is not the issue.

Because while Zoom may be the easy example, the low hanging fruit, it's only the beginning of the wave of technological innovations that are coming to redefine the practice of law in the coming years.

What happens when lawyers who are currently struggling with Zoom are soon required to handle a Zoom hearing, then a Teams meeting, then a WebEx, then a Google Meet, then attend a Clubhouse conference, then prepare for a client's deposition by making sure their LinkedIn,



Tal J. Lifshitz, with Kozyak Tropin & Throckmorton in Coral Gables. Photo: Courtesy/ALM

Facebook, Twitter, Instagram, TikTok and SnapChat were preserved and not otherwise problematic for the case.

What are law firms going to do in the next few years (maybe sooner) when a client wants to pay them in Bitcoin or some other cryptocurrency? A few firms are already set up to do this. That's great. What about the rest?

OpenAI is an artificial intelligence research lab that was founded in 2015 by Elon Musk

and others to promote and develop friendly AI to benefit humanity. (Musk has since resigned but remains a donor). One of their models, called GPT-3, uses deep learning to produce human-like text. In other words, it understands language. It can craft emails, design webpages, write code in a dozen computer languages, decipher human languages, and, maybe most relevant for legal purposes, translate “legalese” into plain English.

What will law firms do when a client doesn’t understand why they were billed multiple hours for analyzing a 100-page contract, when there’s a new AI technology that could have translated and summarized that complicated 100-page contract into plain English instantly, at a higher quality than the attorney, with no errors.

Or when a client questions why they were billed for hundreds of hours of attorney time to review millions of documents for litigation, when there’s an algorithm-driven Technology Assisted Review tool that could have slashed the review, saved the client hundreds of thousands of dollars, and actually done a better job reviewing the documents than a team of humans could have.

This is all happening more rapidly than many of us appreciate. And it’s not simply going to be

a matter of “adapt or die”—because adapting is going to become increasingly difficult.

E.O. Wilson, a sociobiologist from Harvard, has explained that the fundamental problem of humanity is that we have paleolithic (i.e., stone age) emotions, medieval (i.e., primitive) institutions, and accelerating God-like technology. And each thing has its own speed. Our ancient brains and evolutionary instincts aren’t changing. Our institutions—like government and law—update slowly because they were designed that way. And then we have technologies that advance every day and can become outdated in months, not decades.

A couple of weeks ago the federal judge overseeing the Facebook facial recognition lawsuit signaled that he was going to approve the \$650 million class settlement brought under the Illinois Biometric Privacy Act. The claims centered around Facebook’s face-mapping technology for its “Photo Tag Suggest” function, which started in 2011 without consent and without telling users how long their facial data would be stored.

Illinois was the first state to pass one of these biometric privacy laws. It was enacted in 2008. Twelve years later, a proposed law would make New

York only the fourth state to pass any kind of biometric privacy law—and only the second to allow consumers to sue companies for improperly handling this data.

The laws are not keeping up with the advances in biometrics, and many lawyers are not keeping up with the intersection of law and technology.

Zoom, cryptocurrency, AI, “deep learning,” and cutting-edge legal issues like biometric privacy: these are technologies and terms that the vast majority of us hadn’t heard about before COVID—let alone grasped in any kind of meaningful way.

But we can’t ignore this wave of innovation any longer. Figuring out the cat filter is a start, but it’s already not enough. The sooner attorneys and other professionals acknowledge the inevitable new normal of law, the better. Those who adapt will thrive. Failing to adapt is no longer an option.

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