DIGITAL MEDIA LAW
PROJECT

April 2014

The Legal Needs of Emerging Online Media: The Online Media Legal Network After 500 Referrals

By Jeffrey P. Hermes,
Director, Digital Media Law Project

Andrew F. Sellars
Assistant Director, Digital Media Law Project

http://www.dmlp.org/omln500
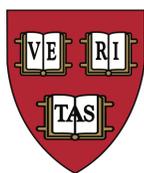
Berkman
The Berkman Center for Internet & Society
at Harvard University

ABOUT THE DIGITAL MEDIA LAW PROJECT

The Digital Media Law Project (DMLP) provides legal information, resources, and scholarship for independent, online media. The DMLP began as the "Citizen Media Law Project" in 2007, focusing its work on providing resources to citizen journalists. The project changed its name in 2012 to reflect the broader range of independent digital media ventures that it has grown to serve, including professional journalists and content creators operating outside of the traditional publishing industry.

The Digital Media Law Project is a project of the Berkman Center for Internet & Society at Harvard University.

ABOUT THE BERKMAN CENTER FOR INTERNET & SOCIETY

The Berkman Center for Internet & Society is a research center founded at Harvard Law School in 1997. Now a University-wide Center, it serves as the locus for a network of Harvard and other faculty, students, fellows, lawyers, entrepreneurs, and others working to identify and engage with the challenges and opportunities presented by the Internet. The Center is devoted to research and teaching on issues at the intersection of emerging technologies, law, public policy, industry, and education, and to the development of dynamic approaches and rigorous scholarship that can affect and support the public interest.

ACKNOWLEDGEMENTS

EXECUTIVE SUMMARY

Since December 2009, the Digital Media Law Project (DMLP) at Harvard University's Berkman Center for Internet & Society has operated the Online Media Legal Network (OMLN), a free attorney referral service for independent, online journalists and journalism organizations. The OMLN has served as a fundamental part of the legal support structure for online journalism, assisting more than 260 clients with over 500 separate legal matters.

As a result of that experience, the DMLP has been in a unique position to observe the nature of these new journalism ventures and their legal needs. This report collects these observations, including the following:

- Those who have sought help from the OMLN overwhelmingly create their own original content, rather than aggregate the content of others. Many also provide support services to other journalists, platforms for users to talk to one another, or tools to access primary source information.

- While some clients report on niche issues, many more are focused on reporting news of general interest, either to the public at large or local audiences. Non-profit clients show a greater focus on reporting on social issues such as health and education than for-profit or individual clients.

- OMLN clients show significant evidence of forward planning. They are more often proactive than reactive to legal issues, frequently seeking assistance with intellectual property, content liability, and corporate questions before crises occur.

- Individual clients not employed by an organization, and those clients who reported on businesses or to consumer audiences, sought help defending against legal threats more often than other clients. This indicates a particular need for greater litigation assistance among these categories.

- The advice sought by OMLN clients with regard to intellectual property matters shows a near-perfect balance between protecting their own content and using the content of others.

While the client survey revealed some areas of concern, it was also consistent with the growth of a vibrant online news ecosystem comprised of journalists who, more often than not, address broad informational needs and are thinking ahead about the viability of their ventures.

INTRODUCTION

In December 2009, the Digital Media Law Project (DMLP) launched a new legal referral service for independent journalists and online publishers, the Online Media Legal Network (OMLN). The launch of the OMLN was driven by a growing need for attorney assistance among online media ventures, and built upon the DMLP's existing legal resources, including its legal guide, database of legal threats, and special research papers.[1]

Independent, online journalism ventures, unlike established media organizations, frequently lack the legal support necessary to protect themselves and to thrive in an uncertain legal environment. Without legal assistance, government obstruction can close an avenue of reporting, a mistake made during corporate formation could plague a new journalism entity, and one lawsuit can shut down an otherwise promising journalism site. These failures are a loss not only to those directly involved, but to the communities who depend upon their information and to the defense of free speech more generally. On a larger level, an inadequate defense to legal threats based on journalism can erode First Amendment doctrine and its application online, negatively impacting all speakers and publishers.

In response to these challenges, the DMLP embarked on a mission to redefine pro bono service for media attorneys, encouraging lawyers throughout the United States to consider not only individual need but also the information needs of the public in deciding to donate their time and effort. Four years later, the OMLN has served more than 260 clients, and has placed over 500 client matters through the referral process. In celebration of that milestone, the DMLP is taking this opportunity to look back at the clients it has served and examine their legal challenges, in order to better understand the legal needs and issues of this cross-section of the online reporting world. The following report reviews the operation of the OMLN, examines the types of clients who have sought assistance through the OMLN and their legal needs, and contextualizes these observations in the ongoing discussion of the evolution of journalism and media lawyering in the Internet age.

> "*The Online Media Legal Network has been there for us from the very beginning—helping us find pro-bono counsel to legally vet our stories and connecting us with attorneys to produce our syndication contracts, our website policies and most recently our application for 501(c)(3) status. Simply put, OMLN has played a crucial role in the growth of the New England Center for Investigative Reporting.*"
>
> - Joe Bergantino, New England Center for Investigative Reporting

I. THE OPERATION OF THE OMLN

The OMLN serves as a triage system and clearinghouse for online media clients seeking legal assistance. The network is built to respond to a range of legal issues that a media venture might encounter during its launch and operation, including contract and license drafting, corporate formation, intellectual property rights, newsgathering law, litigation defense, and general legal risk management.

Because the DMLP focuses its referrals to individuals and entities engaging in online journalism specifically, not every person who applies for a referral through the OMLN is accepted.[2] Applicants that do not meet OMLN criteria are referred to other legal assistance organizations, including state bar associations, other topical legal referral networks, and, if their inquiry is more general, hypothetical, or otherwise inchoate, legal resources that provide generalized information about an area of law (including the DMLP's own legal guide).

> "*The strength of the OMLN is in the network's design and management, as well as its quality membership. Members can take on well vetted, focused matters that suit their expertise when they have availability. This creates an elegant sharing of pro bono legal services bandwidth. New Media Rights is a non-profit whose mission is to provide direct pro bono legal services in the niche area of Internet law, and some of our best and longest lasting clients have come through the network.*"
>
> — Art Neill, New Media Rights

For qualifying applicants, a member of the DMLP staff schedules an intake call with the applicant to assess and triage the applicant's needs. This conversation helps to identify and prioritize the discrete legal matters with which the applicant needs assistance, taking into account the applicant's own sense of legal issues with as well as the DMLP's experience with identification of legal risks.

The DMLP then assesses the applicant's level of financial need. Depending on need, clients are referred either on a pro bono (i.e., no fee), reduced fee, or full fee basis. The DMLP has established financial guidelines for individual, non-profit, and for-profit clients, and evaluates clients based upon a confidential financial questionnaire.

Clients are referred to attorneys on a matter-by-matter basis. This helps the DMLP match the particular skillsets of attorneys with needs of clients, and increases the speed of referral. The DMLP coordinates referrals through the use of a password-protected section of the OMLN website and a bi-weekly email newsletter to the attorneys in the network. Anonymous descriptions of matters and clients disclose the general nature of the client's legal needs, the client's geographic location, and the client's level of financial need. The OMLN system is designed so that attorneys receive a tailored list of matters in their geographic area and area of subject matter expertise, in order to assist them in finding appropriate matters. DMLP staff members also frequently contact and discuss matters with attorneys directly.

Attorneys request review of matters either through the website or by contacting DMLP staff directly. Upon a request from an attorney, the DMLP staff will review the request to ensure it is a good fit for the client's needs, and will then provide the attorney with the client's contact information. After a conflict-of-interest check the attorney will contact the client and schedule a meeting or call to discuss whether to work together. The decision to work together is left entirely to the client and attorney; neither party is penalized if they decide not to take a particular referral. If the match works for both attorney and client, the DMLP formally assigns the matter to the attorney and leave the two to work together.

> "*While all attorneys have an ethical obligation do their part to increase access to justice through pro bono representation, countless lawyers simply turn a blind eye to those in need of legal assistance. However, there are many, many others who would willingly do pro bono work if presented with the right opportunity. And since its creation, OMLN has connected numerous Steptoe attorneys with just those opportunities. The cases referred by OMLN are worthwhile and challenging, in a combination that works really well for us.*"
>
> \- Barbara Kagan,
> Steptoe & Johnson LLP

Because the DMLP cannot guarantee a client's referral with an attorney in the network, all applicants are encouraged to explore other possible avenues of legal representation. When a client finds representation outside of the OMLN or no longer needs assistance with the matter at issue (often because an issue is resolved without legal intervention or a threatening party backs down), the DMLP marks their matters as inactive.

The OMLN operates as a non-profit organization under Harvard University and receives its operational funding from foundation grants and voluntary donations from law firms and individual attorneys. The DMLP does not charge fees for its referral services, either to the clients who apply for assistance or to the attorneys who accept referrals. Attorneys are also under no obligation to take any particular number of clients through the network.

II. SCOPE OF CLIENT AND MATTER DATA

For purposes this report, the DMLP has conducted a detailed survey of its internal data on the clients and matters placed through the OMLN around the time when the DMLP referred its 500th matter in Fall 2013. The available data relates to 260 clients and 586 discrete matters.

Each of the 260 clients reviewed in this survey were identified by the following characteristics:

- **Type** – The survey categorized clients by the general nature of their operations, including: content creators; journalism support services; services facilitating public access to information; social media platforms; and content aggregators.

- **Topics** – If the client creates content or hosts a forum for others to post content, the survey identified any topical focus(es) in the client's content (e.g., arts, economy, crime, local news, government affairs, etc.).

- **Audience** – If the client hosts or creates content, the survey identified the intended audience(s) for that content (e.g., a specific industry, the general public, a particular regional area, etc.).

- **Services** – If the client provides support services for journalism organizations, the survey identified the nature of the services provided (e.g., financial support, syndication and distribution, production, trainings, etc.).

- **Organizational Status** – The survey identified whether the client is an individual or an organization, as well as particular characteristics such as whether an individual was a freelancer, or whether an organization was for-profit versus non-profit.

- **Number of Matters** – The survey tracked the number of individual matters that were opened for the client.

For each of the first four characteristics (Type, Topics, Audience, and Services), a given client may fall into multiple categories depending on the nature of their operations. The specific coding categories for Type, Topics, Audience, Services, and Organizational Status are included in *Appendix A* to this report.

Each of the 586 matters surveyed were identified by the following characteristics:

- **Urgency** – We have noted whether the matter requires attorney assistance on an urgent basis (i.e., matters requiring a response by an attorney within a month), as opposed to an anticipatory or active-but-not-urgent basis.

- **Type of Issues –** We have categorized each matter based upon the specific substantive issues that it raises.

- **Assistance Required –** We have identified the level of attorney assistance required for each matter (e.g., general consultation, drafting of documents, representation in court, etc.).

Individual matters may raise multiple different issues and require multiple levels of assistance, but each matter was categorized with a single level of urgency. The specific coding categories are included in *Appendix B* to this report.

III. THE NATURE OF OMLN CLIENTS

The following sections provide a detailed breakdown of OMLN clients and their matters. Because there are two levels of selection bias at work (applicants self-select as to whether to apply for a referral, and the DMLP selects from that pool of applicants as to who will receive assistance), these results may not be representative of the broader range of independent journalism ventures or predictive of the legal issues they will face. Nevertheless, the data does allow for some general observations about the clusters of legal issues and journalistic activity presented by OMLN clients, which can serve as additional data and context in the ongoing effort to define the actions and needs of independent online media.

A. What Types of Clients Have Been Served Through the OMLN?

The general nature of the work done by the 260 clients in this survey were as follows:

Type of Organization	Number of Clients	Notes
Content Creator – The client engages in the creation of original content for publication (whether on their own platform or through other platforms)	206	
Journalism Support Service – The client provides services to other content creators to support their operations	35	8 of these clients were also content creators.
Social Media Platform – The client provides access to an online platform for peer-to-peer communication.	33	About half (16) of these clients were also content creators.
Access to Information – The client collects primary source documents or information from third parties (especially but not limited to government agencies), or facilitates requests by others for such documents or information.	17	5 of these clients were also content creators.
Content Aggregator – The client collects third-party content in order to facilitate user access to relevant information. The client may post the third-party content itself, curate links to that content, or both.	14	Nearly all (10) of these clients were also content creators.

As shown here, the majority of OMLN clients (79%) are engaged in the creation of content, while a smaller number of clients provide support, social platforms, newsgathering assistance, or content aggregation. Even amongst those groups, however, clients often generated content while engaged in functions other than content creation.

While the DMLP accepts content aggregators for OMLN assistance, they make up a small portion of the OMLN client base. This presents as an

interesting counterexample to early conceptions of the nature of online news organizations. Skeptics of the online news ecosystem have posited that the overwhelming majority of online entrants are merely aggregating the content of others – or, more pejoratively, act as content "parasites" or "leeches."[3] Leaving aside this normative assessment of news aggregation,[4] this survey suggests a different composition of the online media. As amongst OMLN clients, aggregators are in the minority, and a large share of those aggregators (10 out of 14) also engaged in independent content creation.

The corporate composition of the online news ecology is another common point of discussion. The corporate statuses of the 260 OMLN clients tracked in this study are as follows:

Corporate Form	Number of Clients
Independent Individual	94
Non-Profit Organization	72
Freelancer (individual working under contract with a media outlet)	49
Social Media User / Website Commenter	11
Unincorporated Organization	6
Cooperative Organization	1
Unspecified	17

While individual clients lead this list, organizational clients (that is, non-profit, for-profit, cooperative, and unincorporated organizations) when combined slightly outnumber individual clients, 49% to 44%.[5] Further analysis of the legal needs of individuals versus organizations is discussed in Section IV.B below.

The large number of non-profit applicants is most likely attributable to significant work conducted by the DMLP in the non-profit journalism space, which has attracted greater interest in the OMLN from non-profits.[6] Having a large number of both non-profit and for-profit applicants has allowed the DMLP to examine the differences between the two in terms of topical news coverage, which is explored further in the following section.

"*The Digital Media Law Project & Online Media Legal Network has been invaluable to the 90+ non-profit membership of the Investigative News Network. Not only has the organization helped multiple INN members secure skilled representation, but the expertise of Director Jeff Hermes and his team, have demonstrably helped our organizations navigate the very rocky waters that non-profit news organizations face at the IRS.*"

-Kevin Davis, Investigative News Network

B. What Topics Do OMLN Clients Cover?

Of the 260 clients surveyed, 237 were identified as giving substantive coverage to particular news topics (with many clients covering multiple topics). The distribution of topical coverage of OMLN clients is as follows:

Topic	Number of Clients	Notes
Local / Regional News	87	Over a third (32) also covered government affairs; several also covered health (7), education (7), social justice (6), and business (5).
Governmental Affairs	58	More than half (32) also covered local news; several also covered business (10), health (6), and social justice (7).
Business / Industry	39	About a quarter (10) also covered government; about an eighth (5) also covered local news.
Health	28	Several clients also covered local news (7), government (6), and education (5).
Arts	23	
Unrestricted / General (clients writing without a specific topic or focus)	19	
International News	19	
Social Justice	19	Nearly half also covered government (7) and local news (6).
Environmental	13	
Education	10	More than half (7) also covered local news; exactly half (5) also covered health.
Sports and Hobbies	8	
Economy	6	
Crime	6	
History	6	

Other, more niche, topics include religious news (4 clients), travel (3), natural disasters (2), parenting (1), and charitable giving (1). The concentration of coverage around generalized news, local news, and government affairs is noteworthy, and is discussed further in Section III.C below.

An interesting difference in coverage is revealed when comparing the coverage of non-profit clients (57 clients) with that of for-profit clients (43 clients) across five topics:

Precent of Non-Profit Applicants Covering Topic (n=57)	Topic	Percent of For-Profit Applicants Covering Topic (n=43)
9%	Education	2%
12%	Environmental	2%
19%	Health	9%
12%	International	7%
12%	Social Justice	7%

This difference also exists between non-profit organizations and independent individuals; the latter tended to closely overlap the coverage of for-profit clients. With respect to the intended audience for their work, 44% of non-profit clients directed their work to the general public, compared to 38% of independent individuals and 23% of for-profit organizations.

These differences might, in part, reflect the shaping of non-profit operations by United States tax law. Standards for the granting of tax exemptions under section 501(c)(3) of the Internal Revenue Code tend to push applicants towards social and educational issues directed toward a broader audience.[7]

But whether motivated by substantive interest or external regulation, this diversity of topical coverage serves as a small-but-hopeful response to a longstanding concern about commercial news media. Journalists, lawyers, academics, and media theorists have often expressed concern over the ability of a for-profit media to completely or effectively inform the citizenry, due to market constraints and monetary interests.[8] Prior to the Internet era, this led some to argue for an increased role for state intervention in the news, which, of course, presents many other free speech issues.[9] But the lean toward social interest topics demonstrated by non-profit OMLN clients may signal a remedy coming instead from the growing diversity of types of firms operating in the journalism space.[10]

"*Traditional journalism is being whipsawed by twin hurricanes - the near-death of print media and overall media consolidation, on the one hand, and the flourishing possibilities of Internet-based content distribution on the other. Consolidation has led to blander and less in depth coverage, at a time when American politics have become increasingly divisive. More journalistic voices need to be heard, voices that are innovative, localized, focused and diverse. The Internet facilitates hearing those voices, but hurdles remain. OMLN is helping those voices to emerge by addressing part of their pain points - their legal needs. As a long-time media lawyer and, more importantly, as a citizen, I consider OMLN's work to be critical to the democratic process. OMLN clients have been intelligent, fascinating and grateful - what more could a lawyer ask for? In all honesty, my work for OMLN clients makes me get out of bed in the morning.*"

- Neil Jacobs, N.I. Jacobs & Associates

C. Who are the Audiences for OMLN Clients' Reporting?

The 260 clients surveyed serve the following audiences:

Type of Audience	Number of Clients
General Public – The client intends its work to be accessible to anyone	84
Specific Geographic Communities – The client intends its content for those in a particular geographic area.	84
Topical Community of Interest – The client intends its content for a group that shares a common interest other than geographic proximity, often (but not necessarily) related to a particular shared hobby or activity.	42
Specific Industries – The client intends its content for those working in a specific industry or field.	19
Consumer / Purchasing Information – The client intends its content for those engaged in the evaluation or purchasing of goods or services.	13
Classroom Materials – The client intends its content for curricular use, regardless of educational level.	6

Some clients serve more than one audience, and thus appear multiple times in this data, but the only notable area of crossover between audiences was in clients covering both a specific community of interest and a specific geographic community (6 clients covering both).

The fact that OMLN clients substantially target general audiences – and, as noted in part III.B above, demonstrated a concentration in more general news topics – is an interesting phenomenon given the literature around online media. Scholars have identified one major hallmark of the "networked fourth estate" as the strong presence of many topical or interest-based entities that cluster together, providing a greater aggregate picture than what institutional media can provide alone.[11] The OMLN client data suggests this is indeed happening – many OMLN clients cover topics for niche audiences – but it may not be the dominant form of online journalism. Substantially more clients covered general or geographically-oriented news for general or geographically-oriented audiences, much like a traditional newspaper.[12]

For OMLN clients that serve as journalism support organizations (35 clients in total, with several serving multiple roles), the following support roles were identified:

Role	Number of Clients	Notes
Software Support / Coding – The client provides support to journalism organizations in the form of software or custom coding services; this may include software tools that facilitate other services listed, in which case the client is also marked as providing those services.	14	Exactly half (7) also provide production / editing support; slightly less than half (5) also provided organization / presentation tools.
Production / Editing – The client provides assistance with the development of journalists' content.	11	More than half also provide support with organization / presentation tools (7) and software / coding (7).
Organization / Presentation Tools – The client provides tools (usually software-based) that journalists can use to organize or present their work.	9	Nearly all also provide production / editing tools (7); more than half provide software support / coding (5).
Financial Support / Planning – The client advises journalism projects on financial matters, or facilitates access to investments, grants, or donations.	8	
Training – The client provides journalists with training or informational resources directed toward improving their professional skills.	7	
Content Hosting – The client provides a platform on which journalists can store or publish their content.	6	
Syndication / Distribution – The client facilitates the distribution of a journalist's work to third parties for publication.	5	More than half also provide production / editing support (3).
Business Development / Incubation – The client provides assistance with aspects of forming and launching a new journalism project; this may include financial advice, in which case the client is also marked as offering financial support services.	3	Two of these three also provided production / editing support, and two of these three also provided financial support.
Legal Assistance – The client provides journalists with legal resources or advice.	1	

The existence and range of these support organizations is a positive indicator for online media more generally, reflecting a healthy online journalism ecosystem. Clients offering journalism support services showed substantial diversity with respect to the nature of services provided, often

providing services in multiple sectors. The concentration of digital support services, through software and coding support, organization and presentation tools, and creation of content platforms also reflects the growing number of technologists moving into journalism support roles over recent years.[13]

IV. UNDERSTANDING THE LEGAL NEEDS OF OMLN CLIENTS

As noted above, the DMLP works with each OMLN client to identify their legal needs and connect them with legal assistance on a matter-by-matter basis. Reviewing the nature of matters and their urgency also helps to clarify the overarching legal needs of this cross-section of the media ecosystem.

There were 586 OMLN matters for which information about substantive matter type, urgency, and placement information were available at the time of the 500th referral. Because some earlier OMLN matters were not tracked with this information, this data set includes 481 matters (82%) for which an attorney was found or in the process of being found, and 105 matters (18%) that had been designated as inactive before placement (often due to the client finding counsel through other means or the legal issue resolving without the assistance of an attorney).

While some OMLN clients requested assistance for just one matter, slightly more than half of the OMLN clients sought help for multiple matters. The 586 OMLN matters were distributed over 260 clients as follows:[14]

Distribution of Matters per Client

■ Distribution of Matters per Client

0	1	2	3	4	5	6	7	8	9	10
2	116	54	39	20	18	6	3	1	0	1
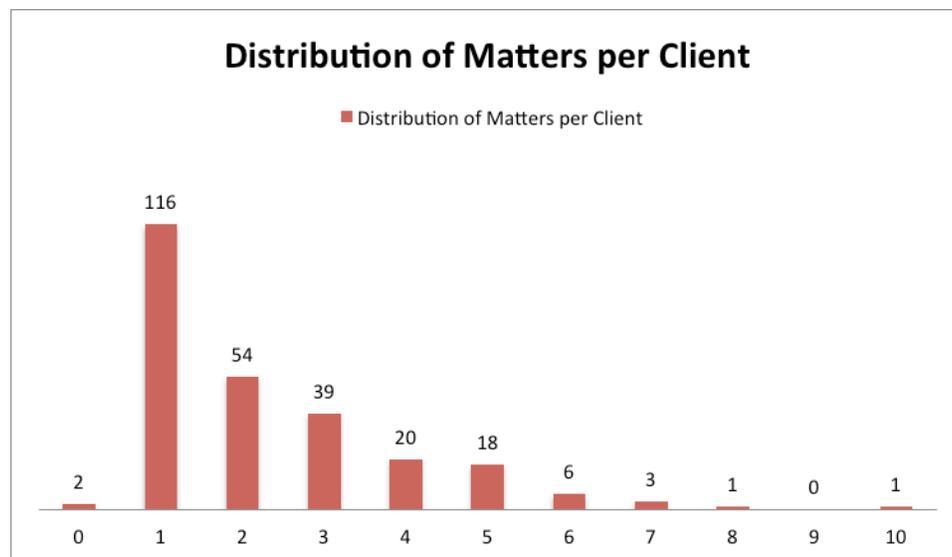
Clients with high numbers of matters were typically those that the DMLP helped in the past, and who returned for assistance with new issues.

12

A. What Types of Issues do OMLN Clients Frequently Face?

The 586 matters tracked in this study covered the following substantive areas (note that some individual matters were tagged in more than one category):

Matter Type	Number of Matters
Contracts	**203 Total**
Contract Drafting and Negotiation	126
Website Terms of Use and Privacy Policies	80
Corporate Law Issues	**142 Total**
Corporate Formation	67
Corporate Transition; Mergers & Acquisitions	56
Tax Exemption	39
Corporate Maintenance	9
Financial Consultations	4
Employment Law	1
Intellectual Property	**111 Total**
Advice on Use of Third Party IP	41
IP Protection	38
IP Registration	34
Litigation	**68 Total**
Defense Against Defamation Claims	40
Defense Against General Tort Claims (intentional infliction of emotional distress, tortious interference, etc.)	10
Defense Against Trademark Claims	10
Defense Against Copyright Claims	8
Protection of Client Anonymity	5
Defense Against Privacy Tort Claims (intrusion, public disclosure of private facts, etc.)	4
Government Retaliation / Disclosure of Government Information	3
Subpoena Quashing / Source Protection	3
Criminal Legal Threats	1
Litigation Preparation	1
Amicus Brief Assistance	1

Matter Type	Number of Matters
Risk Management	**56 Total**
Pre-Publication Review	46
General Risk Management Consultation	6
Evaluation of Insurance	5
Newsgathering	**41 Total**
Newsgathering Consultation	34
Consultation on Protection of Client's Sources	5
Acquisition of Media Credentials	2

The urgency of these matters was as follows:

Matter Urgency	Number of Matters
Non-Urgent Referral	515
Urgent Referral	71

The data shows an interesting concentration of matters around nuts-and-bolts lawyering (matters including contract drafting, corporate formation, development of website terms of use, corporate transition, etc.). Scholarly literature and news coverage of online media tends to focus on deeper policy questions raised by application of media law and intellectual property doctrines to new environments – for example, how the First Amendment applies to bloggers, how copyright's fair use should account for new forms of publication, and how to understand content liability in social media settings. While all of these are important considerations, and the OMLN has numerous matters that raise these very questions, the dominant needs for OMLN clients are more like those of any other enterprise, online or offline.

> "*OMLN allows its media people around the U.S. to tap into a stratum of legal knowledge and experience that may be otherwise unavailable or inaccessible. Having served as an OMLN attorney resource for four years or so, I have been able to help with problems that may have seemed daunting to my clients, but yet were relatively straightforward IP or administrative issues.*"
>
> -Alfred Frawley, Eaton Peabody, P.A.

This, paired with the concentration on fairly traditional news reporting noted in Section III.B, demonstrates that there remains much that has not changed in the nature and needs of journalism as it flourishes online. Rather, what has changed is journalists' monetary ability to obtain counsel for the sorts of issues that these ventures have always faced. Failure to respond to these issues may still have profound effects on the substantive protections of media law, which, in turn, presents risks for all who seek to exercise their rights.[15]

B. Specific Areas of Interest

Legal Planning versus Reaction to Legal Threats

As noted above, comparatively few matters were listed for urgent referral (71 matters, or 12% of the total matters). The overwhelming majority of those that were (56 matters) came as the result of specific legal threats, whereas the vast majority of non-urgent matters were the result of clients taking active measures to assess their legal needs or rights before an issue arose.

"When Humanosphere went independent in 2013, we were faced with many challenges, including on the legal front. Assistance from the Online Media Legal Network was critical to our successful transition. The OMLN online guide for journalists seeking 501(c)(3) status with the IRS was the first tool we took advantage of, helping us craft our application in a way that got us non-profit approval in just six months. We also needed help with establishing terms of use, privacy, trademarking and considering libel exposure. The OMLN put us in contact with two attorneys, one in Seattle and one in Boston, to assist us with these issues. With their help, we were able to move forward on many of these needs. In short, OMLN is a great resource for entrepreneurial journalists forced to wear many hats."

-Tom Paulson, Humanosphere

When the OMLN was launched, the DMLP expected a majority of its work would involve urgent responses to legal threats. The DMLP was surprised to see how few matters required urgent referral, and how many matters were instead from clients proactively considering their legal needs. This lean towards planning and proactivity on legal issues is also reflected in data the DMLP gathered on the nature of the assistance needed by OMLN clients. Of the 586 matters tracked, 248 matters (42%) required a simple consultation from an attorney, 222 matters (38%) required attorneys to draft documents, and 58 (10%) required both consultation and drafting. Only 25 matters (<5%) required representation of an attorney in negotiations with another party, and 44 matters (<8%) required representation of an attorney in court, arbitration, or mediation. (14 matters required representation before a government agency, and 11 matters required an attorney to assist a second attorney in representation.)

The large number of non-urgent matters suggests that OMLN clients, on the aggregate, are taking measures to protect or assess their legal rights more often than reacting to unanticipated legal threats. From the standpoint of media lawyering this is an optimistic indicator, because such forethought tends to put a client in a better position to defend itself.

This proactivity also creates a possibility for other types of resources to complement direct legal representation and ease the workload of media attorneys, many of whom are currently assisting these clients pro bono. Workshops, resource banks, legal guides, and other general resources can aide with workload by preparing clients before they speak with an attorney. The DMLP is currently experimenting with this model of assistance with a new suite of information for journalists planning to form tax-exempt non-

profit organizations for their reporting.[16] Under this model, clients will be put in a position to think through many of the business and corporate issues involved in this process on their own before speaking with an attorney to finalize their plans.

Individuals and Litigation Matters

Scholarship and commentary around online journalism have emphasized the growing role of the individual, who, due to the affordances of modern technology, can grow into a role as both newsgatherer and publisher.[17] This is reflected in the OMLN client data as well; 44% of OMLN clients were individuals (94 as independent individuals, 11 as freelancers for organizations, and 10 as social media users), and 203 out of the 586 matters listed by the OMLN were for individual clients.

Given the important value of individual actors in the news ecosystem,[18] the DMLP notes with some concern that individual OMLN clients have a received a notably higher proportion of legal threats, urgent matters, and matters requiring representation in court than their organizational counterparts. Over a quarter (26%) of matters for individual clients required a response to a legal threat, compared with 3% of matters for organizational clients. Matters for individual clients were also listed as urgent matters more often (25%, compared to 5% of matters for organizational clients), and more likely to require an attorney to represent the client in court, arbitration, or mediation (17%, compared to 2% of matters for organizational clients).[19]

Handling urgent matters, responding to legal threats, and dealing with court or mediation proceedings can present a tremendous resource strain for any entity, especially an individual. This is particularly true when responding to defamation claims, the most common legal threat faced by OMLN clients. 40 of the 68 litigation-related required an attorney to respond (either in or out of court) to a threat of a defamation lawsuit based on the client's reporting. Defamation lawsuits in the United States can result in jury awards of hundreds of thousands, or even

> "*In 2013, I was served with a groundless defamation lawsuit, based solely on my role as a co-moderator of a LiveJournal community. Once I brought this to the attention of Andy Sellars at the Online Media Legal Network, he quickly referred me to an excellent local lawyer, Dan Booth of Booth Sweet LLP in Cambridge, MA.*
>
> *Dan Booth immediately understood the issues at stake, and in just six weeks was able to persuade the plaintiff that his case lacked any legal merit. After just six weeks, the plaintiff voluntarily dismissed his own case against me with prejudice.*"
>
> -Ron Newman

millions, of dollars.[20] Even if a media defendant defeats such a threat, defending against a meritless case (especially in a state without a robust anti-SLAPP statute) can by quite costly; one survey of defamation defendants found they pay up to 90% of all the legal fees and expenses generated in an average defamation case.[21] This places a pressure point on

16

individual clients, which can present a serious problem for their own defense – and for the defense of media law more generally – if they are unable or unwilling to come up with the resources to respond to these threats.[22] The OMLN serves as a bridge for that gap,[23] but this trend, if substantiated elsewhere, will require a broader solution.

Reporting on Businesses or to Consumer Audiences

Another high concentration of litigation matters surrounded clients whose reporting covered a particular business or industry, as well as those who wrote for a consumer audience. As amongst all matters for which the OMLN identified a client's topical focus (508 matters), 15% came from clients with a topical focus on a business or industry. As amongst matters requiring a response to a legal threat (65 matters), the percentage attributable to clients with this topical focus rose to 34%. The proportion rose to 39% when looking at matters requiring an attorney to represent a client in court, arbitration, or mediation (44 total matters).

Similar disproportionate numbers are found when looking instead at the audience of OMLN clients. Only 5% of matters for which there is audience data (508 total matters) came from clients writing for a consumer audience (defined as those engaged in evaluation or purchasing of goods or services), but clients writing for consumers generated 17% of all matters requiring a defense against legal threat, 17% of all urgent matters, and 20% of all matters requiring an attorney to represent the client in court, arbitration, or mediation.

The legal threats posed against business writers, unsurprisingly, tend to be from the subjects of their coverage. There is substantial risk to consumers and the public more generally if businesses are allowed to use legal threats to squelch critical coverage of their operations, products, and services. Online criticism of businesses and products, especially in the aggregate, serves a very powerful role in informing the public.[24] Use of litigation to selectively filter out negative criticism hurts the public as much as it does the speaker.

Intellectual Property Matters

The OMLN client data for intellectual property matters reflects the curious and complicated history of journalism and intellectual property (and in particular, copyright).[25] Over a hundred intellectual property matters have been listed through OMLN, and the matters are broken down almost perfectly between matters involving registration of intellectual property (34 matters), matters involving protection strategies and enforcement of intellectual property rights against others (38 matters), and matters involving advice on use of third-party intellectual property (41 matters). This simple breakdown effectively encapsulates the complicated relationship that journalism has with copyright: Media at once rely on their own copyright interests as one means of economic sustainability and rely on exceptions to (or licensing of) the copyright interests of others in order to go about their

work.[26] Both Congress and the Department of Commerce have recently begun efforts to reexamine copyright law and map out the "next great Copyright Act," and one expects to see proposals for strengthening intellectual property as a salve for the media industry's woes.[27] This data serves as a useful reminder that the key to such a solution will be balance between these evenly-split desires to protect one's own content while using that of others.

OMLN clients were also notably proactive in seeking legal help for use of third-party content. For the 41 matters involving use of third parties' intellectual property, 32 have involved attorney consultation, 9 have involved the drafting of documents, 1 has involved representing the client in negotiations with another party outside of court, and 4 have involved appearances in court. As noted above, this proactivity opens a window for informative legal resources beyond representation by attorneys to satisfy some of this demand.

> "When I was facing a trademark and copyright lawsuit, I needed a lawyer based in the state where the suit was filed. I sought out help from many sources, but the Online Media Legal Network was the only group able to lend a hand. With their help I was able to find an excellent attorney who successfully defended me and the case was dropped. Without the OMLN's help, I don't know how I would have found a lawyer to represent me in a state where I did not reside."
>
> -Kim Urban

In the area of legal threats, the slightly more significant role played by claims related to trademark (10 matters) over claims related to copyright (8 matters) underscores an ongoing issue that the DMLP has been following in the area of trademark law. Trademark law, by orienting itself around uses of names and logos of companies, runs the risk of entering into play whenever a party uses the name or image of another company (like journalists do almost every time they report on a company).[28] Most jurisdictions have yet to develop an effective way to quickly handle these nominative uses, and instead rely on the general "likelihood of confusion test," a fact-based inquiry that can usually only be resolved after civil discovery.[29] As a result, there has been a disturbing rise in use of trademark law to suppress critical speech that is otherwise protected through other content liability doctrines.[30] While not an overwhelming trend in the OMLN client data, its presence nevertheless gives cause for concern.

V. CONCLUSION

The Online Media Legal Network was founded on the idea that legal services provided *pro bono publico* – for the good of the public – should take into account not only the financial need of a client, but the social good generated by the client's activities. OMLN member attorneys have embraced that concept wholeheartedly, and through their efforts on behalf of hundreds of clients have made a quantifiable difference in the public information sphere online. Rather than being locked into preconceived

notions of grand legal issues affecting the Internet, OMLN member attorneys have rolled up their sleeves and engaged with a wide range of issues, from the most mundane tasks to heady questions of constitutional law. As the future of news and publishing unfolds, the DMLP believes that we will see a more vibrant, useful, and meaningful information environment as a result of their efforts.

ENDNOTES

[1] For more on the DMLP's projects, see *Core Initiatives*, Digital Media Law Project, http://www.dmlp.org/about/initiatives (last updated March 7, 2013).

[2] OMLN clients are evaluated for acceptance on a variety of grounds, including: their organizational viability; adherence to journalistic standards of truth, fairness, and transparency; independence from traditional media or corporate ownership; and organizations that serve the public interest, including those that fill important information needs or foster a sense of community. These criteria are flexible and non-exclusive.

[3] *See, e.g.*, David Simon, *Testimony at the Future of Journalism Hearing*, Real Clear Pol. (May 9, 2009), http://www.realclearpolitics.com/articles/2009/05/09/david_simon_testimony_at_the_future_of_journalism_hearing_96415.html ("The internet is a marvelous tool and clearly it is the informational delivery system of our future, but thus far it does not deliver much first-generation reporting. Instead, it leeches that reporting from mainstream news publications, whereupon aggregating websites and bloggers contribute little more than repetition, commentary and froth."); Robert Levine, Free Ride: How Digital Parasites are Destroying the Culture Business, and How the Culture Business can Fight Back 126-30 (2011).

[4] As the DMLP has previously noted, news aggregators can indeed serve a constructive role in the news ecosystem, especially when acting as complements to, rather than substitutes for, the original content. *See* Kimberly Isbell, Citizen Media Law Project, The Rise of the News Aggregator: Legal Implications and Best Practices (2010), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1670339.

[5] For a small number of clients (17 clients, 7%), the organizational nature of the client was not specified. This sometimes occurred when the DMLP received an application from an individual working for an organization, and it was not clear whether the individual or the organization should be the nominal client. In such cases, the DMLP let the assigned attorney work with the applicant to make the final determination as to the identity of the client.

[6] For example, the DMLP published a guide in 2012 on the decision-making process of the IRS around publishing entities applying for tax-exempt status. *See* Jeffrey P. Hermes, Digital Media Law Project, Guide to the Internal Revenue Service Decision-Marking Process under Section 501(c)(3) for Journalism and Publishing Non-Profit Organizations (2012), *available at* http://www.dmlp.org/sites/dmlp.org/files/Guide%20to%20IRS%20Decision-Making%20Process.pdf. The DMLP has also created a set of resources for non-profit journalists on its website, including an overview video, application checklist, and sample successful 501(c)(3) applications. *See Tax Exempt Journalism and the IRS*, Digital Media Law Project, http://www.dmlp.org/irs (last updated March 17, 2014).

[7] For more, see the discussion of IRS content scrutiny in the DMLP's guide to IRS decision-making, at *Is the Content of the Publication Educational?*, Digital Media Law Project, http://www.dmlp.org/irs/content (last updated April 2, 2012).

[8] *See, e.g.*, YOCHAI BENKLER, THE WEALTH OF NETWORKS: HOW SOCIAL PRODUCTION TRANSFORMS MARKETS AND FREEDOM 204-08 (2006) [hereinafter BENKLER, WEALTH OF NETWORKS]; OWEN FISS, THE IRONY OF FREE SPEECH 52 (1996). This concern has been underscored following the economic collapse of the for-profit news industry. *See* RonNell Andersen-Jones, *Litigation, Legislation, and Democracy in a Post-Newspaper America*, 68 WASH. & LEE L. REV. 557, 558-60 (2011); PERSEPHONE MIEL & ROBERT FARIS, NEWS AND INFORMATION AS DIGITAL MEDIA COMES OF AGE 39 (2008), *available at* http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/ Overview_MR.pdf; STEVEN WALDMAN, FCC, THE INFORMATION NEEDS OF COMMUNITIES 266-71 (2011), *available at* http://transition.fcc.gov/osp/inc-report/ The_Information_Needs_of_Communities.pdf.

[9] *See, e.g.*, FISS, *supra* note 8, at 52-58; Jerome A. Barron, *Access to the Press – A New First Amendment Right*, 80 HARV. L. REV. 1641 (1967).

[10] Others have expressed similar optimism. *See, e.g.*, Yochai Benkler, *Giving the Networked Public Sphere Time to Develop*, *in* WILL THE LAST REPORTER PLEASE TURN OUT THE LIGHTS: THE COLLAPSE OF JOURNALISM AND WHAT CAN BE DONE TO FIX IT 225, 226 (Robert McChesney & Victor Pickard, eds. 2011) [hereinafter WILL THE LAST REPORTER PLEASE TURN OUT THE LIGHTS] ("[E]merging models appear to be producing a more diverse set of news-gathering and reporting models, with greater robustness to the major maladies that afflicted both commercially supported and state-supported media in the twentieth century."); Adam Cohen, *The Media That Needs Citizens: The First Amendment and the Fifth Estate*, 85 S. CAL. L. REV. 1, 5 (2011) ("The Fifth Estate's contribution . . . goes beyond providing foot soldiers. Citizen journalists, nonprofit news sites, and other Fifth Estate actors often report the news from different perspectives, and these journalistic differences can advance the values underlying the Constitution's free press guarantee."). This optimism, however, is usually limited to the capabilities of this new form of dissemination, instead of its current state. *See, e.g.*, MIEL & FARIS, *supra* note 8, at 1 (noting that "[w]eb-native media entities are not addressing all of the crucial reporting gaps left by traditional media").

[11] Many titles have addressed this concept and greater ideas of collective wisdom. *See, e.g.*, BENKLER, WEALTH OF NETWORKS, *supra* note 8, at 212-72 (extensively analyzing the networked public sphere, its composition, and its critiques); CASS R. SUNSTEIN, INFOTOPIA 182-86 (2006) (reviewing the positive attributes of the blogosphere, before an extended critique of its shortcomings).

[12] In one respect, this is already anticipated in the literature. Scholars have observed that the contraction of legacy media has left "news deserts," but the advent of "hyperlocal news" organizations – with general topical coverage but an intense geographic focus – can help fill that gap. *See* MIEL & FARIS, *supra* note 8, at 24-25; WALDMAN, *supra* note 8, at 121.

[13] *See, e.g.*, KNIGHT-MOZILLA OPEN NEWS, http://opennews.org/ (last visited April 7, 2014). The need for increased media support in the online realm was identified in an earlier Berkman Center report, *see* MIEL & FARIS, *supra* note 8, at 41, and the greater effects of digital players in the news space was recently examined by the Pew Research Center. PEW RESEARCH CENTER, STATE OF THE NEWS MEDIA: OVERVIEW (2014), *available at* http://www.journalism.org/files/2014/03/Overview.pdf.

[14] The two clients with zero matters applied for referrals with the network, were accepted, but then withdrew before any matters were listed for referral.

[15] *See generally* Andersen-Jones, *supra* note 8 (laying out how the media has traditionally played a role as legislators and enforcers of media rights, and how their collapse can threaten further defense).

[16] Those resources are at Digital Media Law Project, *Tax Exempt Journalism and the IRS*, http://www.dmlp.org/irs (last updated March 17, 2014).

[17] *See, e.g.*, DAN GILLMOR, WE THE MEDIA 16-18 (2d ed. 2006); Cohen, *supra* note 10, at 5.

[18] In addition to the reasons noted above, the potential for greater civic participation by individuals engaged in reporting remedies a longstanding perceived defect in the public sphere in the era of mass media, which had relegated the general public to a passive consumer role. *See generally* JÜRGEN HABERMAS, THE STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE (Thomas Burger trans., MIT Press 1991) (1962); Eric Alterman, *Out of Print*, *in* WILL THE LAST REPORTER PLEASE TURN OUT THE LIGHTS 3, 8-10 (recapping the debates between Walter Lippmann and John Dewey on the public role in journalism); BENKLER, WEALTH OF NETWORKS, *supra* note 8, at 179-80. While the OMLN client data does not reveal how many individuals here were former institutional journalists versus new entrants into the reporting ecosystem, anecdotal experience suggests that many of these clients are new entrants to the public discourse. This serves as yet another reason to ensure that individuals are given the legal breathing space necessary to participate.

[19] The selection bias of OMLN clients may also suggest that this is a worse problem than the data here reflects. The OMLN intake criteria tend to prefer clients that are engaged in ongoing, viable journalistic ventures, and thus may not be capturing one-off participants engaged in what Dan Gillmor has called sporadic "acts of journalism." *See, e.g.*, Fiona Morgan, *Dan Gillmor Says the Future of Journalism Depends on Active Citizens*, INDY WEEK (April 9, 2009), http://www.indyweek.com/indyweek/dan-gillmor-says-the-future-of-journalism-depends-on-active-citizens/Content?oid=1215350.

[20] The average trial award to plaintiffs in defamation cases against media defendants from 1980-2013 is $2.84 million, with a median of $302,000. MEDIA LAW RES. CTR., MLRC 2014 REPORT ON TRIALS AND DAMAGES 6 (2014).

[21] Anthony Ciolli, *Chilling Effects: The Communications Decency Act and the Online Marketplace of Ideas*, 63 U. MIAMI L. REV. 137, 189-90 (2008).

[22] Andersen-Jones, *supra* note 8, at 617-21.

[23] As Prof. Andersen-Jones graciously mentions in her review of this current climate. *See id.* at 628-29.

[24] *See generally* Nicholas Bramble, *Safe Harbors and National Information Infrastructure*, 64 HASTINGS L.J. 325, 339 (2013) (noting the proliferation of social consumer review factors and other information resources with the Internet and its liability allocation regime).

[25] For more on news media's uneasy relationship with copyright, see BENKLER, WEALTH OF NETWORKS, *supra* note 8, at 40; Robert Brauneis, *The Transformation of Originality in the Progressive-Era Debate over Copyright in News*, 27 CARDOZO ARTS & ENT. L.J. 321 (2009); Robert Denicola, *News on the Internet*, 23 FORDHAM INTELL. PROP., MEDIA, & ENT. L.J. 68 (2012).

[26] For more, see Patricia Aufderheide et al., Copyright, Free Speech, and the Public's Right to Know 2-7 (2012), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2119933.

[27] *See* Dep't of Commerce Internet Policy Task Force, Copyright Policy, Creativity, and Innovation in the Digital Economy (2013), *available at* http://www.uspto.gov/news/publications/copyrightgreenpaper.pdf (a "green paper" for copyright policy reform); Maria Pallante, *The Next Great Copyright Act*, 36 Colum. J. of Law & Arts 315 (2013).

[28] For more on the underlying substantive law, *see Trademark*, Digital Media Law Project, http://www.dmlp.org/legal-guide/trademark (last updated Oct. 18, 2010); *Using the Trademarks of Others*, Digital Media Law Project, http://www.dmlp.org/legal-guide/using-trademarks-others (last updated April 30, 2008).

[29] *See* William McGeveran, *Rethinking Trademark Fair Use*, 94 Iowa L. Rev. 49 (2008).

[30] *See* Kenneth Port, *Trademark Extortion: The End of Trademark Law*, 65 Wash. & Lee L. Rev. 585 (2008). The Digital Media Law Project has been monitoring and responding to this issue as an amicus curiae in cases where plaintiffs seek to apply trademark law to suppress critical speech. *See DMLP Amicus Efforts*, Digital Media Law Project, http://www.dmlp.org/dmlp-amicus-efforts (last updated Nov. 20, 2013) (noting filings in several trademark cases).

APPENDIX A – CLIENT CODING

Type

Each client may fall into more than one category:

- **Content Creator:** The client engages in the creation of original content for publication (whether on their own online platform or through other platforms).

- **Journalism Support Service:** The client provides services to other content creators to support their operations.

- **Access to Information:** The client collects primary source documents or information from third parties (especially but not limited to government agencies), or facilitates requests by others for such documents or information.

- **Social Media Platform:** The client provides access to an online platform for peer-to-peer communication.

- **Content Aggregator:** The client collects third-party content in order to facilitate user access to relevant information. The client may post the third-party content itself, curate links to that content, or both.

Topics

Each client may fall into more than one category; data is collected for all clients except those who are solely journalism support services:

- Unrestricted/General (includes clients without a specific topical focus; e.g., a news website covering a wide array of topics of general interest)
- Government
- Local/Regional
- Environment
- Economy
- Arts
- International
- Health

- Business/Industry
- Sports/Hobbies
- Crime
- Social Justice
- Education
- Travel
- Religion
- History
- Charitable Giving
- Disasters
- Parenting

Audience

Each client may fall into more than one category; data is collected for all clients except those who are solely journalism support services:

- **General Public:** The client intends its work to be accessible to anyone.

- **Classroom Materials:** The client intends its content for students or teachers in a school or another educational context; this category is not dependent on the age or educational level of the student audience.

- **Specific Geographic Communities:** The client intends its content for those in a particular geographic area, usually (but not necessarily) at the municipal or county level.

- **Specific Industry:** The client intends its content for those working in a specific industry or field.

- **Other Communities of Interest:** The client intends its content for a group that shares a common interest other than geographic proximity, often (but not necessarily) related to a particular shared hobby or activity.

- **Consumers:** The client intends its content for those engaged in the evaluation or purchasing of goods or services.

Services Provided

Each client may fall into more than one category; data is collected for any client offering journalism support services.

- **Financial Support/Planning:** The client advises journalism projects on financial matters, or facilitates access to investments, grants, or donations.

- **Content Hosting:** The client provides a platform on which journalists can store or publish their content.

- **Syndication/Distribution:** The client facilitates the distribution of a journalist's work to third parties for publication.

- **Production/Editing:** The client provides assistance with the development of journalists' content.

- **Organization/Presentation Tools:** The client provides tools (usually software-based) that journalists can use to organize or present their work.

- **Business Development/Incubation:** The client provides assistance with aspects of forming and launching a new journalism project; this may include financial advice, in which case the client is also marked as offering financial support services.

- **Software Support/Coding:** The client provides support to journalism organizations in the form of software or custom coding services; this may

include software tools that facilitate other services listed, in which case the client should also be marked as providing those services.

- **Legal Assistance:** The client provides journalists with legal resources or advice.

- **Training:** The client provides journalists with training or informational resources directed toward improving their professional skills.

Organizational Status

Each client falls into only one category:

- **Social Media User/Commenter:** The client is an individual whose legal needs relate solely to their use of social media or online commenting tools.

- **Independent Individual:** The client is an individual engaging with online media on their own, without a contract or employment relationship with an organization; this category excludes individuals falling into the "social media user/commenter" category.

- **Freelancer:** The client is an individual working for a media organization or journalism venture as an independent contractor.

- **Non-Profit Organization:** The client is organized as a non-profit organization under state law; it is not necessary that a client has been designated as tax-exempt to fall into this category.

- **For-Profit Organization:** The client is a formally constituted for-profit organization of any type (e.g., LLC, corporation) other than a cooperative organization or a simple partnership.

- **Cooperative Organization:** The client is structured as a consumer-owned or worker-owned cooperative organization under state law.

- **Unincorporated Organization/Partnership:** The client is a group of individuals conducting business together, whether as partners, joint venturers, or another arrangement with mutual obligations between the participants.

APPENDIX B – MATTER CODING

Urgency

Each matter falls into a single category:

- **Urgent**: The matter involves a pending legal issue with a pending deadline or other need for immediate assistance. These are often matters relating to lawsuits or subpoenas, but can also involve situations where there is an active infringement of the client's rights.

- **Non-Urgent**: The matter involves assistance with preventative measures to manage risk, preparatory work for issues that are   expected to arise, or a pending legal issue without a specific perceived deadline. Website policy development, drafting of form contracts, business formation, strategic planning, and the evaluation of potential   insurance policies are typically non-urgent matters.

Nature of Matter

Each matter may fall into multiple categories:

Corporate

- *Corporate Formation:* The matter involves the formation of a new organization, either for-profit or non-profit.

- *Corporate Transition/M&A:* The matter involves a change in the form of an organization, the merger of the organization with another, or the acquisition/ sale of corporate assets.

- *Tax Exemption:* The matter involves an effort to obtain tax exempt status at the state and/or federal level.

- *Corporate Maintenance:* The matter involves assistance in complying with ongoing legal requirements for recordkeeping, meetings, and other basic functions of a formal corporate entity.

- *Employment:* The matter involves legal issues relating to the employee/ employer relationship.

- *Financial Consultation:* The matter involves a request for assistance in obtaining financing or funding for a journalism venture.

Intellectual Property

- *IP Registration:* The matter involves formal registration of intellectual property rights (e.g., copyrights, trademarks, or patents) with state or federal government agencies.

- *Protection of Client's IP:* The matter involves strategies to protect the client's interests in intellectual property in a manner tailored to the client's business goals, either in a proactive manner or in response to a specific situation.

- *Advice on Use of Third Party Content:* The matter involves the client's interest in using content developed by third parties for their own purposes.

Contracts / Policies

- *Contract Drafting/Negotiation:* The matter involves the drafting or negotiation of contracts, including both form contracts to be used with third parties as needed and tailored contracts for particular relationships. Website Terms of Service and Privacy Policies are excluded from this category, even though potentially contractual in nature.

- *Development of Website Policies:* The matter involves the development of website terms of service, privacy policies, policies for removal of content under the Digital Millennium Copyright Act, and other online documentation of the rights and responsibilities of the users of a client's website.

Risk Management

- *Evaluation of Insurance:* The matter involves helping a client to understand the coverage available under insurance policies that the client is considering purchasing.

- *Prepublication Review:* The matter involves reviewing client content before publication to identify potential legal risks and advise the client as to methods of mitigating those risks.

- *General Advice on Managing Risk:* The matter involves advice on general aspects of a risk management strategy, such as data retention procedures, newsroom policies, and internal reporting.

Newsgathering

- *Acquisition of Media Credentials:* The matter involves the client's attempt to secure press credentials from a government or private entity.

- *Protection of Client's Sources:* The matter involves assisting the client with demands for the disclosure of the identity of confidential sources, as well as proactive advice regarding steps to protect sources in future matters.

- *Newsgathering:* The matter involves general advice about the client's rights and responsibilities during the course of gathering news, including rights of access to government proceedings and documents, as well as obligations with respect to behavior on private property.

Litigation

- *Defense against Legal Threat:* The matter involves a threat of legal action against the client, including demand letters, cease & desist letters, subpoenas, arbitration demands, police action, government prosecutions, and civil lawsuits. Legal threats can address the following areas (and a given matter can cover multiple areas):

    - Defense against defamation claims.

    - Defense against general tort claims (e.g., intentional infliction of emotional distress, tortious interference, etc.).

    - Defense against copyright claims.

    - Defense against trademark claims.

    - Defense against privacy tort claims (intrusion, public disclosure of private facts, etc.).

    - Government retaliation / disclosure of government information.

    - Source protection / quashing subpoenas for identity of sources.

    - Criminal legal threats.

- *Other Litigation Preparation*: The matter involves proactive efforts to prepare the client to engage in litigation or to make resources available for use in litigation.

- *Amicus Brief Assistance*: The matter involves assistance in drafting an amicus brief on behalf of the client for submission in a pending court proceeding.

Level of Assistance

Each matter may fall into multiple categories:

- **Consultation:** The matter requires an attorney to discuss legal issues with the client and advise the client as to possible courses of action

- **Drafting of Documents:** The matter requires the attorney to prepare documentation for the client, either for the client's internal use or to be used with third parties.

- **Assist Another Attorney:** The matter requires the attorney to assist another attorney previously retained by the client, either as co-counsel or successor counsel.

- **Representation before Other Parties:** The matter requires the attorney to act as the client's representative in dealings with third parties (for example, in contract negotiation). This category excludes representation before government agencies or in adversary proceedings.

- **Representation before Government Agencies:** The matter requires the attorney to appear as the client's counsel in a process or proceeding before a government agency, such as an appearance at a zoning board hearing or in connection with an application for tax-exempt status or registration of intellectual property. This category does not include situations where an attorney was simply asked to prepare an application for filing with a government agency (over their own name or the client's), without further substantial interaction with the agency.

- **Representation in Court/Arbitration/Mediation:** The matter requests that the attorney appear as the client's counsel in an adversary proceeding, whether the client is a party or an intervenor in the proceeding.