The truth is not for all men, but only for those who seek it.

Ayn Rand
CLOUD COMPUTING: IS IT RIGHT FOR YOU?

What is Cloud Computing?

I

f you use gmai, Facebook, linke

din, or flickr you are already using

cloud computing services. The term
“Cloud Computing” derives from the
flowcharts used to depict computer sys

tems. The cloud image is used to signify
the fact that resources are not stored in
a definite and permanent location, but
are distributed over a variety of servers
residing in many different physical loca
tions. Office programs, research notes,
pictures, music, billing records, interrog
atories, or trial exhibits can all be placed
on a cloud server from any computer
with Internet access; you do not even
need a computer equipped with a hard
drive. When a lawyer wishes to access
the information previously stored in the
cloud or use a calendaring or billing pro
gram, he or she merely goes to the web
site of the company providing the service
with the proper username and password
and opens the account.

What are the Advantages of Cloud Computing?

There are a number of advantages for
attorneys using cloud based services.

1. The upfront cost of purchasing a com
puter network and all the attendant costs
of hardware and software upgrades are
reduced to a small monthly charge.

2. The attorney or firm only pays for the
computing power it needs. As usage
expands the firm acquires a larger and
somewhat more expensive plan from the
company.

3. Cloud services are rapidly becoming
platform independent, meaning they
work with PC, mac, smartphone, and
iPad/tablet devices. This makes access
far more flexible and mobile than being
tied to a desktop computer.

4. All of the major cloud computing
companies provide a backup service and a
higher degree of security and redundan
cy than a server in one room of a law
firm.

What are the Disadvantages of Cloud Computing?

1. Total internet dependency. Access to
user data is now dependent upon a solid
internet connection on the user’s end
and on the company server end.

2. Data loss (temporary or permanent).
In 2011 Google accidentally erased
more than 100,000 Gmail accounts dur
ing a software upgrade. They were un
likely able to restore the data but users
were unable to access any of their
e-mail for more than a week. Data loss
can also occur if the system stored the
data in a non-standard format that can
not be exported out of the system in a
format recognized by other software.
In addition some companies cut off access
to data in the event of a billing dispute.

What Options are Available for Cloud Computing?

Some services offer free options for
small accounts. This enables users to
try the service before moving to fee
based plans. Here are some of the
popular free options and the number of
gigabytes allotted to the free accounts:

Amazon Cloud Drive 5GB
Box 5GB
Dropbox 2GB
iCloud 5GB
Google Drive 5GB
SkyDrive 7GB
SugarSync 5GB

While a gigabyte is not much room when
storing photographs or video, remem
ber that one gigabyte is approximately
60,000 pages of word processing. An
nual cost for 100+ GB ranges between
$50 and $100 depending upon what
other web based tools and services the
company provides.

In addition to simpler file storage ser
vices, there are cloud computing compa
nies offering other complex services
alined squarely at the legal marketplace.
These companies include other services
and tools in the areas of practice man
agement, billing, calendaring, document
management, and case tracking. Some
popular services include Clio, Direclaw,
Houdini ESQ, LexisNexis Firm Man
ager, and Rocket Matter. Most offer a
free trial period. Single user li
censes range from $40 to $70
per month. An implicit ben
efit of a cloud service aimed
at lawyers is the incentive
the companies have to tailor
their contractual
agreements to meet the ethical concerns
of the bench and bar.

What are the Ethical Considerations
of Cloud Computing?

Attorney disciplinary bodies have been
loathe to lay down detailed rules in an
area where technology might render
them obsolete in a matter of weeks.
Kentucky has issued no opinion explic
itly concerning standards for using com
puting services. Some trends do seem to
be emerging in other states.

No state has forbidden the use of cloud
computing services. Eleven states have
issued explicit opinions allowing attorney
use of cloud computing services as ethi
cal. Every state thus far has applied a
reasonable care standard. An attorney
may allow confidential client materials to
be stored in the cloud provided the at
orney takes reasonable care to assure
that all such materials remain confiden
tial, and that reasonable safeguards
are employed to ensure that the data is
protected from breaches, data loss and
other risks.

According to the New York ethics opin
ion, reasonable care to protect a client’s
confidential information against unau
thorized disclosure may include consider
ation of the following steps:

1. Ensuring that the online data storage
provider has an enforceable obligation
to preserve confidentiality and security,
and that the provider will notify the law
yer if served with process requiring the
production of client information;

2. Investigating the online data storage
provider’s security measures, policies, recoverability methods, and other procedures to determine if they are adequate under the circumstances; and

3. Employing available technology to guard against reasonably foreseeable attempts to infiltrate the data that is stored.¹

The last statement about guarding against attempts to infiltrate stored data appears to be a roundabout way of saying that the files themselves need to be encrypted, either by the lawyer or the computing service, in such a way that, if stolen, they would be unreadable.

Several states’ opinions make clear that the attorney is responsible for performing due diligence in investigating the company and scrutinizing the terms of the service agreement. Some attorneys have criticized the standard agreements of major cloud service providers as being unclear regarding who is permitted to access the data on their servers and for what purposes.

Conclusion

The cloud computing model is already taking hold across many industries due to its ability to deliver affordable services to large and small clients over a variety of communication devices. Small and medium size firms can enjoy the secure file storage and up to date applications that had been the province of large firms with expensive IT departments. While the technical disadvantages and ethical concerns are undeniable real, the twenty-first century lawyer will need the flexibility and power behind cloud computing to meet the expectations of twenty-first century clients.