

LEX LOCI

OCTOBER 2012

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

Ayn Rand

Campbell County Courthouse Dedication – August 30, 2012



Northern
Kentucky
Bar
Association

CLOUD COMPUTING: IS IT RIGHT FOR YOU?

Thomas Heard

What is Cloud Computing?

If you use gmail, Facebook, linkedin, or flickr you are already using cloud computing services. The term "Cloud Computing" derives from the flowcharts used to depict computer systems. 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 locations. Office programs, research notes, pictures, music, billing records, interrogatories, 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 program, he or she merely goes to the website 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 computer 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 redundancy 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 during a software upgrade. They were ultimately 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 cannot 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, remember that one gigabyte is approximately 60,000 pages of word processing. Annual 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 services, there are cloud computing companies offering other complex services aimed squarely at the legal marketplace. These companies include other services and tools in the areas of practice management, billing, calendaring, document management, and case tracking. Some popular services include Clio, Directlaw, Houdini ESQ, LexisNexis Firm Manager, and Rocket Matter. Most offer a

free trial period. Single user licenses range from \$40 to \$70 per month. An implicit benefit 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 explicitly concerning standards for using computing 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 ethical. 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 attorney takes reasonable care to assure that all such materials remain confidential, 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 opinion, reasonable care to protect a client's confidential information against unauthorized disclosure may include consideration 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 lawyer 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 undeniably real, the twenty-first century lawyer will need the flexibility and power behind cloud computing to meet the expectations of twenty-first century clients.

¹ New York State Bar Association Committee on Professional Ethics, Opinion 842 (Sept. 10, 2010), http://www.nysba.org/AM/Template.cfm?Section=Ethics_Opinions&CONTENTID=42697&TEMPLATE=/CM/ContentDisplay.cfm.

MEMBERSHIP DRIVE

THE NKBA 2013 MEMBERSHIP DRIVE IS IN THE MAIL. RENEW TODAY ONLINE- BY FAX- BY EMAIL OR MY MAIL.

WE LOOK FORWARD TO SERVING YOU IN 2013!

Get your hands on the Northern Kentucky Bar Association Legal Directory App today!

Find contact information on local attorneys and firms.
Find an attorney for a specific area of practice.
Available legal resource link.

Search **NKY BAR LEGAL DIRECTORY** on the **Android Market** or Scan this Code for the **Android Version**

Search **NORTHERN KENTUCKY BAR ASSOCIATION LEGAL DIRECTORY** on **iTunes** or Scan this Code for the **iPhone Version**



www.NKYBAR.com