

Are You Ready For the Cloud?

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Introduction

Is cloud computing a shift or is it the next natural step in strategic business development? Is the cloud the right answer for your law firm or company? Is the cloud the right answer for all applications and infrastructure or is it just a piece of the puzzle? These are a just few of the many questions law firms and companies are asking themselves as they consider a move to the cloud. There are many reasons why cloud computing is a very seductive solution to the cost cutting environment we find ourselves dealing with today. However, there are many issues, legal and organizational, that must be considered to determine the validity of the cloud for each environment.

The "cloud" means different things to different people. For most of us, we have been using cloud computing technology for years without defining the term. Example cloud environments are extranets, legal research websites, online file storage and much more. By definition, the cloud is a metaphor referring to internet based computing in which applications, data, software or network functions are stored on remote servers. There are presently three types of cloud environments:

1. Infrastructure as a service or hardware cloud which serves as a data center,
2. Software as a service or the software cloud, and
3. Desktop applications operated within a hardware cloud.

Although we have been using the cloud in the past, the difference at this time is the potential of using the cloud for core business applications.

Why the Cloud?

For strategic business leaders, the cloud offers a way to minimize cost, increase mobility, prepare for disaster recovery, offer device flexibility, collaborate on demand and reduce downtime. Let us take a look at the different sections of a law firm and see how the cloud can affect the overall business functions.

In the information management world collaboration is key. The more a firm can offer needed collaboration tools with a client, the more the client becomes entrenched in that firm culture. The cloud provides law firms with a unique opportunity to offer clients a collaborative environment in an

on-demand system. The client can truly be connected with the law firm from anywhere with any device in the world.

Fewer applications or errors and easier upgrades are phrases application and support specialists love to hear. The cloud environment can make them a reality. The cloud offers software functionality to users regardless of locality or device. Therefore, fewer setups, downloads and support hours are spent dealing with application changes and upgrades. This new environment aids a law firm in flexibility allowing the firm to change applications as rapidly as the needs of the users change.

The main concern of most in the applications world is support. How do current structured IT staffs support an environment when the applications are not local? What will be the skill set of an applications and desktop support staff individual with applications in the cloud? These are areas IT departments must address before making the move to the cloud.

The cloud offers business and cost savings in a very unique way. The upfront costs of moving to the cloud are large. However, over time the cost savings from increased efficiency and reduced hardware, software, support and downtime help to offset the upfront costs. The biggest hurdle for cloud computing may not be cost but instead data security. It is easy to argue that a law firm or company can protect its data when it lives in a server room on site with a locked door but how do IT departments protect their data when it sits thousands of miles away on servers not owned by the company? Law firms will need to determine if this is a deal breaker or is this an area of contract negotiation with the cloud provider.

What are the contractual issues?

Now that we see the potential of cost savings, flexibility, mobility and more, we will address the contractual issues and concerns each law firm will need to consider. The first step in any contractual negotiation is due diligence of both parties. Law firms must evaluate news, law suits, current events, financial stability, customer references, provider longevity and any other possible information that could affect the contractual obligation fulfillment. Only then can the contract negotiations begin.

The largest areas of concern in the cloud are data security and privacy. A demonstration of these concerns is seen in the 2009 complaint filed with the Federal Trade Commission (FTC) by the Electronic Privacy Information Center (EPIC) regarding cloud services of Google. In the complaint, EPIC alleges Google did not adequately safeguard the confidential information obtained from clients. This complaint raises serious questions for the vendor to address and draft into the contract. Questions to ask include where the data is stored, what are the physical security measures to protect the data, is a shared resource used in storage, what is the security during transmission, what are the disaster recovery measures and what are security incident response times. In addition, questions around data migration and transition should be addressed.

Another issue to consider is legal compliance. Highly regulated industries such as health care facilities falling under HIPAA must think twice about moving information to the cloud. Vendors are expected to maintain the data at the same standard required of the company. This can become a contractual deal breaker if the vendor will not agree to the higher standards. The regulated industries affect law firms that maintain work product and client information for clients working in these regulated industries. Law firms must now consider the standards guaranteed to their clients when moving to the cloud and verify the vendor will agree to that level of maintenance.

A point that is only just beginning to emerge in the cloud discussion is the level of control and

ownership of the servers and data existing on the servers. Questions to consider are data termination and vendor claims and rights to the data. The control influences discovery, liability and litigation hold processes. Negotiation can help prevent future claims of spoliation.

Performance, reliability and service features shape the day to day experience of users in the cloud. Therefore, inquiring about disaster recovery set up, scalability of applications, process for upgrades and feature releases, suspension of services, offline capabilities, base subscription services and add-on services of applications can affect the contract obligations of the vendor, expectations of the client and most importantly cost of the contract.

Global performance and legal compliance of data across international borders are concerns for many large law firms. Is the vendor only offering a cloud solution that is U.S. based? This is a discussion point for the contract and can possibly be a deal breaker when adhering to EU standards of compliance.

All of the above contract negotiation points lead to the largest decision, cost. What is included in the cost of the cloud services? What is not included? And the final and most important question to ask, whether the move to the cloud is a benefit if the law firm already owns the software licenses and hardware to maintain the status quo.

What will the courts be deciding?

The courts are well aware of the cloud computing movement. In *Oregon v. Bellar*, 217 P. 3d 1094 (Or. App. 2009), the court took note that 69% of U.S. residents that are online utilize at least one cloud site. Due to the unique custodial issues involved with cloud computing, the cloud can present challenges to e-discovery and jurisdictional questions. Decisions concerning these issues are just starting to appear but with conflicting rulings. The question of what the courts will decide has yet to be seen.

What will the future bring?

As we stated earlier, many of us have been using the cloud for years without calling it the cloud. The difference surrounds the movement of core business functions such as email and document management to the cloud. In the past, these features have been kept at a local level. But as you see above, this is changing. As more and more cloud providers make their way to the forefront, this movement will only increase. The question is whether the cloud is the right solution for your law firm?

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