Cloud Computing and the Legal Profession
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Cloud computing has recently become a hot topic within the legal community and for good reason – it has a number of benefits, but legal professionals should take into account their unique confidentiality and privilege requirements when entrusting the cloud with their firm’s and their client’s data. There are two new major applications of the cloud for legal professionals: storing data for a law firm and using a document repository to store or review data for litigation.

Basic Definition
The “cloud” is generally defined as a bank of computers at a remote location where users can store data or use certain applications. You may not know at any given time where the data is being kept since that decision is made by those administering the cloud company’s network. These administrators are tasked with processing and storing data most efficiently and effectively which often means distributing tasks across a number of computers.

Keep in mind that the term “cloud computing” is loosely defined - by many common descriptions, a typical office network with desktop computers and a centralized file server can be considered a cloud. However, the clouds most recently referenced online and in the news are large “server farms” where high-powered computers are kept in a large warehouse. They provide an enormous amount of processing power and data storage. Cloud providers are typically third parties and serve clients from a variety of professions, ranging from manufacturers to retail stores, service-based businesses (such as lawyers), entertainment companies, and more.

Cloud Types
There are two types of cloud computing: software and hardware. The software cloud is by far the most prevalent and it involves using someone else’s software to perform an operation – webmail programs such as Hotmail or Gmail are good examples. In those cases, a user is interacting with the software program solely over the Internet, they do not install any additional software on their computer. Instead, they use a mail client that also runs on the cloud’s computing resources. Customers do not have to manage licenses or updates, and they are not limited to using only their computer to check their email – they can use any computer connected to the internet. Software-based clouds have also been called “Software-as-a-Service” or SaaS.

It is also common for companies to put large databases into the cloud for administration and storage. These can range from customer lists to sophisticated

This type of cloud has been around since the advent of the Internet and has also been called “Application Service Provider” or more recently “Software as a Service.” File-sharing sites are another example of a software cloud and many attorneys already use sites such as DropBox.

In the hardware cloud, a user buys processing power on someone else’s computer to run their own application – a good example of this is animation companies using external computers to render high quality 3-D graphics.

Cloud Benefits
The most basic benefit of cloud computing is the ability to pool a large number of computing resources without having to build, maintain, and store all the necessary equipment and
programs. Essentially, using the cloud lets companies take advantage of the conveniences of outsourcing information technology. For some companies, it may be less complicated and less costly to pay a monthly fee to run their programs and store their data rather than employing IT staff in house to install, update and maintain software.

Cloud customers also have the option of using the substantial processing capabilities that large server farms have to offer. This may be a good solution for companies that prefer to keep the majority of their active electronic information in house.

**Unique Challenges**
Privacy and security concerns are paramount for legal professionals when using the cloud. It is difficult to ensure that confidential client data is secure since the computers containing that information are in an unknown location and being administered by personnel outside the legal realm.

File sharing is an example of an easy-to-use tool that, on its face, appears to solve some major logistical problems. Many attorneys share documents with their co-counsel or clients on file sharing sites that are not designed with the privacy and security concerns of the legal world in mind. The same is true when emailing confidential information to webmail accounts such as Gmail or Hotmail; the user agreements for these sites typically divest users of any right to privacy. With forwarding capabilities and email aliasing, you may not even know that you are transmitting something to a major webmail provider.

Disposal of data is an issue as well, since most litigators sign protective orders that require data destruction at the end of a case. When case data is stored on cloud computers, it may be difficult to definitively state that specific information has been purged. The cloud simply doesn't allow for controlling data all the time, but attorneys have professional obligations to do so.

Jurisdiction can become a major issue since many cloud computing facilities may not be located geographically close to the actual users of the data. Computers holding key data may not be located within the borders of the United States and would therefore not be subject to the same privacy and privilege rules.

**Considerations When Choosing a Cloud**
In order to determine whether the cloud is an appropriate place for firm or client data, attorneys must evaluate their particular risks. A firm on continuous litigation holds may not want to release control over their information by storing it offsite. Alternatively, a firm with a large number of regional offices and geographically dispersed litigation teams may find that the cloud provides an excellent solution to collaborative document review and case strategy.

When choosing a vendor, legal professionals should research the following and determine how closely a vendor aligns with their most common needs:
- Data retention and archiving
- Is data discoverable by a third party (with or without consent)
- Whether the cloud company’s staff can sign an affidavit
- Privacy and security policies for employees
- Experience and familiarity with legal holds, including the ability to enact a selective litigation hold
- Ability to actually obtain documents from the cloud in a timely fashion
- If deletion can be certified (typically required in protective orders)
- Forensic collection procedures (and whether you can specify a vendor to come into their facilities and collect)
- Logging information – how much is kept and for how long
- Data transfer rates (particularly for litigation document review repositories)
- Experience with production requests
Conclusion
It is inevitable that more applications will be served and more data will be stored in cloud farms in the near future - the amount of information in the modern digital world combined with the processing and storage requirements of businesses demand it. Given the discussions currently revolving around cloud computing, the federal government is likely to develop a set of standards for the industry sooner rather than later.

But the legal industry has special considerations when using the cloud. This is particularly true since cloud computing is an excellent example of where a litigation risk may outweigh an IT gain. The move towards cloud computing in some instances is inevitable, but using cloud resources means extra planning on the part of companies and attorneys when handling electronic information for litigation.