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Cloud-Based Electronic Discovery Is in Your Future

Lawyers have a reputation for exerting caution when it comes to embracing advances in technology. So it was with the fax machine. So it was with e-mail. So it was with the Internet. And so it is now with cloud computing.

But once they understand the benefits and allay their fears, lawyers not only embrace new technology, they run with it. So it was with these earlier technologies, and so, again, it is with cloud computing.

Over the last few years, legal professionals have begun using the cloud for everything from practice management to client relations. Even so, one area of legal practice stands out as particularly well suited to the cloud—electronic discovery and the handling of electronically stored information (ESI).

In electronic discovery, the cloud offers distinct advantages: power, flexibility, mobility, economy of use, and ease of deployment. In fact, in a 2010 report on electronic discovery, the technology research firm Gartner, Inc. concluded that the future of electronic discovery technology is in the cloud. A cloud-based e-discovery platform, Gartner said, “offers benefits that on-premises software or applications cannot.”

WHY THE CLOUD FOR E-DISCOVERY?

As a new lawyer, you are entering a profession that is increasingly unbounded. The businesses you represent—even small and mid-sized ones—will be global in their operations. The cases you take will require you to interface and collaborate with people all over the country, if not the world.

And everything you do will be driven by data. Whereas lawyers once pushed paper, they now deal with electronic information—and lots of it. Even relatively run-of-the-mill cases can involve megabytes of electronic documents and e-mails stored on any num-

ber of servers in any variety of locations. Big cases can reach into terabytes.

At a time when the information that lawyers deal with is electronic, the cloud is uniquely well suited to the task.

WHAT IS CLOUD COMPUTING? Think of cloud computing as a method of harnessing computer power, as much or as little as you need for the task at hand—available when you need it and out of sight when you don't. Using

You use your computer to access data and applications located elsewhere on computers with far more firepower and capacity than your paltry PC could ever provide.

Consider the following:

- When a single case can involve multiple terabytes of data, cloud computing offers virtually unlimited power and scalability.
- As enterprises increasingly become global, cloud computing enables the loading and processing of data from locations anywhere in the world.
- When multiple languages threaten Babel-like confusion, cloud computing simplifies sorting and searching.
- When legal teams are likely to be spread across multiple venues, cloud computing enables them to collaborate seamlessly.
- As litigation costs spiral out of control, cloud computing eliminates capital and maintenance costs, cuts staff requirements, and enhances efficiency.
- When time is of the essence, cloud computing allows rapid deployment, faster processing, and quicker review.

Whereas the early development of e-discovery technology was centered in locally installed appliances, the future is in the cloud. And that future is already here.

nothing more than a laptop or iPad, you can tap into virtually limitless computing power.

Vivek Kundra, named by President Obama as the nation's first chief information officer, compares cloud computing to the public water supply. Where once each household had to find and maintain its own water supply, we now turn on a tap when we need water and turn it off when we're done. By drawing on the public supply, our lives are greatly simplified.

Kundra led the charge to move the federal government's IT infrastructure to the cloud. “By using cloud services, the federal government will gain access to powerful technology resources faster and at lower costs,” he wrote. “This frees us to focus on mission-critical tasks instead of purchasing, configuring, and maintaining redundant infrastructure.”

Just as the public-works utility delivers a virtually unlimited supply of water to your kitchen tap, cloud computing delivers virtually unlimited power to your local computer. Instead of pipes and reservoirs, cloud computing uses the plumbing of the Internet to tap into files and applications on remote computers.

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THE DIGITAL HUB IN THE CLOUD. When Apple CEO Steve Jobs unveiled the company's iCloud service in June 2011, he described a world in which our data is increasingly disembodied from our devices. The solution, Jobs said, is "moving the digital hub into the cloud."

Jobs's notion of a digital hub in the cloud is an apt description for cloud computing. In reality, of course, the data is not "in the cloud." It is stored on a server somewhere and perhaps on multiple servers. Rather than access data and applications directly on your computer, you use your computer to access data and applications located elsewhere on computers with far more firepower and capacity than your paltry PC could ever provide.

The National Institute of Standards and Technology (NIST) says that cloud computing is defined by five essential characteristics:

- On-demand self-service. The user can access the system unilaterally whenever needed.
- Broad network access. The system is available over the Internet and accessed through standard computing devices such as laptops, mobile phones, and PDAs.
- Resource pooling. The provider pools its computing resources to serve multiple consumers, with different physical and virtual resources dynamically assigned and reassigned according to demand.
- Rapid elasticity. Capabilities can be rapidly and elastically provisioned to quickly scale up and rapidly released to quickly scale down.
- Measured service. Cloud systems automatically control and optimize resource use, providing system monitoring, control, and transparency.

Cloud-computing services are delivered according to various models, NIST says. The one most familiar and applicable to e-discovery is Software as a Service. With SaaS, the consumer uses applications that run on the provider's cloud infrastructure.

ADVANTAGES OF THE CLOUD FOR E-DISCOVERY. So, what does all this have to do with e-discovery? Consider the following. Your client, a multinational corporation, recently concluded an intricate and interconnected series of major commercial transactions in Eastern Europe, Europe, and Asia. Now it is under investigation by the U.S. Department of Justice for possible violations of the Foreign Corrupt Practices Act. The DOJ has demanded that your client produce all documents related to those transactions—and that it produce them within 90 days.

Complying with the request will require collection and review of some 500 gigabytes of ESI, which translates to more than 30 million pages. The documents reside in the custody of many individuals in various divisions and subdivisions on computers in far-flung locations—including Russia, Italy, and China—and are written in at least a dozen different languages.

You face the daunting task of collecting, translating, indexing, searching, reviewing, and producing the documents, with little time to do it. How does a cloud-based e-discovery provider help? Here are some of the ways:

- Zero to 60 in a flash. Appliance-based systems require purchase, installation, and setup, consuming precious time. With a cloud-based application, no time is wasted getting up to speed, because a computer and Web browser are all you need.
- Universal access. When your case is far-flung, your team may be also. Lead counsel may be in New York. One review team might be in the Midwest. Foreign-language reviewers might work in Hong Kong. Wherever your team is working, at whatever hour, the cloud provides easy access to the system and the data.
- Unbridled power. When you face a massive document review, sluggish computers don't cut it. With a cloud-based system, you tap into an expandable grid of high-capacity processing power. With an appliance-based system, you can hit the wall, but in the cloud, there are no walls.
- Capability of handling multiple languages. Cloud systems often have specialized tools and applications not available in locally installed systems. Some cloud platforms offer sophisticated multilanguage capabilities, translating documents on the fly and searching across multiple languages.
- Elasticity to meet demand. Cloud platforms are built using high-capacity storage devices with massive processing power. If your project suddenly scales up, you need not rush out to buy more hardware. The system scales to the demand.
- Reliability and security. With cloud-based platforms, you have no maintenance worries. Hardware systems become redundant. Software is always up to date. And electronic discovery companies are zealous about system security.
- Lower costs. Cloud-based systems are the most economical because they do not require up-front investment for hardware and soft-

ware, nor additional IT staff. Training is simplified, and project time is reduced.

Lower costs translate to an added plus for lawyers in smaller firms. With a cloud-based system, small firms stand on a level playing field with their larger firm counterparts.

CAUTIONS REGARDING CLOUD COMPUTING. Before you conclude that cloud computing is all pie in the sky, a new lawyer should consider certain cautions when selecting a cloud provider.

One is ethics. Lawyers are duty bound to ensure the confidentiality and security of client documents and communications. A handful of state ethics panels have examined whether it is ethical for lawyers to store their clients' documents in the cloud and use cloud-based applications. Every panel so far has concluded that cloud computing is on solid ethical ground.

At the same time, these panels urge lawyers to exercise common sense in selecting a cloud provider. In particular, they urge lawyers to thoroughly vet a provider's security and stability. That means you should look for a provider with an established reputation, not only for the strength of its security but also for the viability of its business. An established provider can supply you with detailed information regarding its system security and its practices regarding backup and disaster recovery. Once you are satisfied, be sure to enter into an express, written nondisclosure agreement with the provider.

In addition to ethical considerations, there may be legal issues. One involves the location of the data. A U.S.-based company should fully understand the legal implications before using a provider whose servers are outside the United States. The converse is equally true: A foreign company may not want to use a U.S. provider unless the provider also has non-U.S. data centers.

Of course, lawyers' use of any technology should be guided by caution and common sense. In e-discovery, however, the choice of technology is increasingly driven by the sheer magnitude of the task at hand. As megabytes become gigabytes and then terabytes, as data is stored in multiple locations in multiple formats and in multiple languages, as the task of document review becomes more complex and the consequences of mistakes become more severe, one form of technology stands out as having the power, capability, and flexibility to handle the task. In e-discovery, the future is in the cloud. ❖