

TRUST AND ESTATE ADMINISTRATION IN THE CLOUD – ARE WE THERE YET?

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I. OVERVIEW OF TOPICS

- A. The Cloud Evolution
- B. Benefits to Trust & Estates Practitioners
- C. Issues with Cloud Computing
- D. Case Studies
- E. Cloud Safety Tips
- F. The Future
- G. Resources

II. EVOLUTION OF THE CLOUD

- A. 1980s
 - i. IBM Computers at large companies
 - ii. Custom software development
 - iii. Timesharing (First “Cloud”)
 - iv. Personal Computers (Apple/Microsoft)
- B. 1990s
 - i. Dial-up access to WWW
 - ii. Computer Viruses
 - iii. Paid Email (AOL) 1993
 - iv. Cell Phones
- C. 2000s
 - i. Free Email (Gmail) – 2004
 - ii. Iphone - 2007
 - iii. Ipad - 2010
 - iv. Broadband and Fiber Optic Cable
- D. 2010s - Online All the Time
 - i. Video Streaming
 - ii. Smartphone Apps
 - iii. Sync phone/laptop/email

III. WHAT IS THE CLOUD?

A. Public Cloud - Hosting Services

- i. Amazon Web Services 40% (\$12B gross revenue)
- ii. Microsoft Azure
- iii. Google Cloud Platform 23% Combined
- iv. IBM

B. Public Cloud Software Services

- i. Document Backup and Storage
 - 1. Carbonite
 - 2. Google Drive
 - 3. iCloud
- ii. Document Sharing (CFS –Cloud File Sharing)
 - 1. Dropbox
 - 2. Box
 - 3. Google Docs
 - 4. Microsoft SharePoint
 - 5. Citrix ShareFile
- iii. SaaS - Software as a Service Applications
 - 1. Clio
 - 2. Amicus Cloud
 - 3. Constant Contact
 - 4. Evernote
 - 5. MailChimp
 - 6. Workday
 - 7. NetSuite
 - 8. Open Table
 - 9. DocuSign
 - 10. Slack
 - 11. Domo
 - 12. Hootsuite
 - 13. SurveyMonkey
 - 14. Atlassian
 - 15. Xero
 - 16. Zendesk

C. Private Cloud

- i. Company-specific Data Centers
- ii. Private servers within Public Cloud

- iii. Your Office with Intranet and VPN
 - 1. Servers
 - 2. Desktops
 - 3. Laptops
- IV. MAJOR BENEFITS OF CLOUD COMPUTING
 - A. Cost effective: no upfront investment and monthly costs are reasonable
 - B. Collaborative: easy to share information with anyone with web access
 - C. Efficient: You can work 24 hours a day from anywhere
 - D. Easy technology: No office server to manage
- V. CLOUD COMPUTING ADOPTION RATES
 - A. Businesses – 69%
 - B. Legal Industry – 37%
 - C. Trust & Estates Attorneys – 31% (one of the lowest)
- VI. ISSUES WITH CLOUD COMPUTING
 - A. Security
 - B. Confidentiality
 - C. Data Control and Ownership
 - D. Perceived Lack of Ethics Guidance
 - E. Vendor Reputation and Longevity
 - F. Vendor Terms of Use and Privacy Policies
 - G. Accessibility and Acceptable Downtime
 - H. Lack of Knowledge about Technology
- VII. TRUST AND ESTATE ADMINISTRATION
 - A. Personal Information Collected, Managed, and Shared
 - i. Social security number/TIN
 - ii. Date of Birth
 - iii. Names and Contact information (zip code)
 - iv. Driver's License number/Passport number
 - v. Credit/Debit Card numbers and PIN
 - vi. Family Tree with former names/addresses
 - vii. Bank account information
 - viii. Financial institutions online accounts/username/password
 - B. Fiduciary Standard of Care
 - i. Attorney/Client
 - ii. Trustee/Beneficiary
 - iii. PR/Beneficiary
 - C. Florida Trust Code
 - i. §736.0109 - Methods and waiver of notice.

- ii. §736.0801 – Duty of Trustee to Administer Trust
 - iii. 736.0810 - Recordkeeping and identification of trust property
 - D. Florida Digital Assets
 - E. Florida Bar Association Model Rules
 - i. Model Rule 4-1.1 Competence
 - ii. Model Rule 1.6 – Mandate to Safeguard information
 - iii. Model Rule 4-5.3 Duty to Supervise
 - iv. Florida Bar Ethics Opinion 10-2
 - v. Florida Bar Ethics Opinion 12-3
 - F. FIPA – Florida Information Privacy Act
 - i. Requirements for Data Security
 - 1. Organization must take reasonable measures to secure data
 - 2. Encryption considered reasonable measure
 - G. Federal Laws
 - i. HIPAA
 - ii. HITECH
 - iii. Cyber Security Enhancement Act
- VIII. DOCUMENT SHARING RISKS
 - A. If documents are emailed as attachments, risk of interception
 - B. Emailing unencrypted documents containing personal information would probably not be considered "taking reasonable precautions"
 - C. Many documents are too large to email as attachments
 - D. If upload to Cloud
 - i. Where is the data stored? Backups?
 - ii. Who owns the data?
 - iii. Who can access the data?
 - iv. How do I get my data back?
- IX. EMAIL SHARING RISKS
 - A. Email is accessed on every device
 - B. Malware with links are much more sophisticated
 - C. Public email sites (Gmail) are being regularly scanned for marketing purposes
 - D. Messages and Attachments not encrypted are easily read if intercepted
- X. TWO CASE STUDIES - WIRED PEOPLE SHOULD KNOW SOMETHING ABOUT WIRES!
- XI. LAW OFFICE OF PIETER VAN DIEN, PA - IN THE CLOUD
 - A. Started looking at cloud systems in 2012
 - i. WestLaw – too inflexible
 - ii. RocketMatter – didn't have all the capabilities he needed
 - iii. Decided on CLIO

1. CLIO is hosted on Amazon Web Services (AWS) with multiple backup locations
 2. 256 Encryption in transit and at data center
 3. Only CLIO employees can see encrypted data, not AWS
- B. Uses CLIO with DROPBOX with BOXCRYPTOR for Document Management
- i. CLIO is very Easy to use with lots of flexibility
 - ii. Has client portal and sends documents to clients via CLIO link
 - iii. Has private email, but not practical for day-to-day communication because both parties have to be signed in to CLIO
 - iv. He doesn't communicate with beneficiaries through Cloud application
- C. Syncing Document Management
- i. Fiduciary file is encrypted on DROPBOX
 - ii. Uploaded to CLIO when closed, and deleted on DROPBOX
 - iii. Has 3 computers – all synced with hard drive encryption
 - iv. Has DROPBOX app on phone, but not BOXENCRYPTOR app, so can't see encrypted CLIENT files from phone
- XII. OAKSTONE LAW, PL (Robert Kleinknecht) - IN AND OUT OF THE CLOUD
- A. Paralegal Now (Cathy Kleinknecht) used MYCASE and DROPBOX (Cloud)
- i. MYCASE – similar to CLIO with document sharing through link
 - ii. DROPBOX- Concerns with security (hosted on AWS at the time)
 1. No good answer on where the data was stored
 2. Replicated data on servers all over the world (Malaysia!)
 3. DROPOX was a Consumer (not business) product
- B. THE CLOUD
- i. ACTIONSTEP – New Zealand cloud practice management
 1. Great functionality for trust and estates workflow
 2. Data storage in UK or Canada
 3. But NOT dependable/fast connection
- C. REMOTE SERVER (Private Cloud)
- i. TIMEMATTERS AND WORLDDOX – server-based
 1. Still didn't want to host own Server
 2. Turned to a US-based virtual server service specializing in law firm server & exchange software.
 3. Oakstone remoted in via VPN but there were major Connection problems, and too much Downtime.
- D. NOW HAS INHOUSE SERVER and two CLOUD Applications
- i. TIMEMATTERS AND WORLDDOX hosted on Oakstone server
 1. WorldDox files are encrypted

2. Server Firewall (Watchguard) and Static IPS
 3. Mirrored hard drive for redundancy
 4. Cloud backup in Canada
 5. Separate domain for client portal with SSL
- ii. CLOUD APPS
 1. CITRIX SHAREFILE for Document Management and Sharing
 2. FORMBUILDER for Probate
- XIII. QUESTIONS TO ASK THIRD-PARTY VENDORS
- A. Terms of Service - Example from Box Terms of Service:
 - i. **DATA OWNERSHIP** - Except for material that we license to you, we don't claim ownership of any Content that is transmitted, stored, or processed in your account(s). We also don't control, verify, or endorse the Content that you and others make available on the Service.
 - ii. **CONTENT STORED IN THE UNITED STATES** -The Service is provided from the United States. By using and accessing the Service, you understand and consent to the storage and processing of the Content and any other personal information in the United States. Box reserves the right to store and process personal information outside of the United States, and will use commercially reasonable efforts to provide you with at least 30 days notice of any such changes in the processing location.
 - B. Detailed Security Capabilities – Example from Amazon Web Services
 - i. **Multi-factor authentication (MFA)** – AWS provides built-in support for multi-factor authentication (MFA) for use with AWS Accounts as well as individual IAM user accounts.
 - ii. **Private Subnets** – The AWS Virtual Private Cloud (VPC) service allows you to add another layer of network security to your instances by creating private subnets and even adding an IPsec VPN tunnel between your home network and your AWS VPC.
 - iii. **Encrypted data storage** – Customers can have the data and objects they store in Amazon S3, Glacier, Redshift, and Oracle RDS encrypted automatically using Advanced Encryption Standard (AES) 256, a secure symmetric-key encryption standard using 256-bit encryption keys.
 - C. Privacy Policy – Examples from Box Privacy Policy
 - i. Unless you have purchased a Box Enterprise subscription account or higher, you agree not to upload to or collaborate through the Box Services any Personal Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 as amended (HIPAA).
 - ii. Shares information with 3rd parties

- D. Cyber Liability Insurance – Big vendors should have insurance
- XIV. SAFETY TIPS FOR USING CLOUD SERVICES
 - A. Avoid unsecured Public Wi-Fi
 - B. Encrypt a file/folder/disk drive
 - C. Encrypt all emails
 - D. Hover over hyperlinks to check if text matches destination
 - E. Do NOT store usernames and passwords in your Browser
 - F. Do NOT leave your mobile device unattended
 - G. Use VPN tunnel for all Remote connections
 - H. Encrypt text, voice, and video messaging
 - I. Develop and implement a Data Security Policy
- XV. THE FUTURE
 - A. More companies in Public Cloud business
 - B. More Private Clouds within Public Clouds
 - C. More Hybrid Clouds (Microsoft 365)
 - D. More secure private Email systems
 - i. (Slack, iPaladin/Summitas/Trusted Family)
 - E. More secure Cloud Document Sharing (CFS) systems
 - i. BOX/Sharepoint/ShareFile
- XVI. RESOURCES
 - A. Florida Bar Association website - PRI
 - i. Basic Cloud Computing Checklist for Lawyers
 - ii. 2014 – Public Wi-Fi and Law Firm Cybersecurity
 - iii. Cloud Computing article by Dennis Kennedy
 - B. Ted Talk – Andrew Baum “What is the Internet Really?”
 - i. <http://andrewblum.net/2012/ted-talk-what-is-the-internet-really/>
 - C. Ted Talk – Gary Kovacs, “Tracking the Trackers”
 - i. https://www.ted.com/talks/gary_kovacs_tracking_the_trackers#t-376347
 - D. Firefox Browser addon Lightbeam <https://addons.mozilla.org/en-US/firefox/> -