



Security Standards for Legal Technology: What Are They, Exactly?

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Things happen at places like the [ABATechshow](#) that make you feel like you are experiencing the future unfold right in the moment. Nothing like watching planes crash into the World Trade Center or the devastation of Japan's Fukushima Nuclear Power Plant on TV, mind you, but the experience of knowing a particular event would eventually occur, and then voila, there it is.

One of those moments for me was the announcement of the launch of the [International Legal Technical Standards Organization](#), which issued their white paper, [ILTSO Standards for 2011](#). It is, in a phrase, a gargantuan effort to identify, categorize and enumerate the steps to be taken by lawyers, when employing technology, to meet the "reasonable efforts" standard adopted in several state opinions that address ethical obligations to ensure client data security.

Everyone knew the definition of the "reasonable efforts" would evolve eventually. Typically, if a term needs to be interpreted or defined, we wait for a state ethics opinions, legislation or appellate decisions. But in the world of technology, we just don't have that kind of time. And better the real world community itemize the steps a "reasonable" lawyer should take in technology due diligence than the academics who don't have either foot in the real world.

[Richard Granat](#) discusses ILTSO's formation and standards in his blog post, [How Safe and Secure is Your Law Practice Environment?](#), he notes:

A positive impact of having this evaluation framework in place might be the accelerated adoption of technologies, such as cloud computing. Compliance with the guidelines would support a law firm's assertion that the firm has taken all reasonable steps to secure client data to reduce its liability in case of a security breach over which the firm had no control.

On the other hand, he also acknowledges that:

An unanticipated consequence might be a slow down in adoption, as the lack of clarity in this area might give many lawyers a reason not to become "early adopters." Many lawyers might choose to wait until standards like ILTSO's are accepted by a broad base of legal organizations and law firms.

At [MyShingle.com](#), Carolyn Elephant's first reaction was to rail against the ILTSO's standards, and then reverse her stance after gaining further insight into the motivation and intent in her post [Update: Can You Spell I Went Overboard? Try I-L-T-S-O](#). Originally, she took exception to several of the items enumerated as reasonable security precautions, and questioned ILTSO's purpose. Calling the project "ill-conceived", she emphasized the chilling-effect of its cost of compliance on the ability to

pass-on technology's cost-effectiveness to the client. Her criticisms of several of the standard's directives are well-taken. However, ultimately she states that:

Though I still think that the proposed standards are too stringent and I disagree with the ethics analysis, I was wrong about the ILTISO's purpose because I lacked the proper context for understanding its importance. . .As I [now] understand the effort, ILTISO seeks to develop uniform standards that states could readily adopt. In addition, the ILTISO standards serve a more immediate purpose right now: whether you agree with them or not, they lay out a guide to the types of security issues that solo and small firm lawyers should be thinking about.

So there is an inherent conflict in advocating the adoption of both the use of technology, and the security due diligence that is necessary to meet your ethical obligations. One huge roadblock is the legal profession's unfamiliarity with the terminology, systems and hardware employed in the use of networks, clouds, mobile applications and the like. Security precautions deepen the learning curve of technology adoption for many who are already reticent to employ it. Yet here is another 100-page document whose glossary can't bridge the gap between understanding and incomprehensibility. While the terms may be comprehensible and efforts not particularly onerous to those who are familiar with technology use, guidelines such as this could be the straw breaking the camel's back for those on the technology fence looking for a really good reason to just say no.

On the other hand, 80 – 90% of the guidelines are essential to safe use of technology to store or transmit data and communicate online with clients and other stakeholders in a legal matter. [I have argued before](#) that Google Apps is no place to be running a law firm. Yet even the ABA continues to passively endorse doing so by presenting sessions on the very topic at Techshow, knowing there is no way to obtain information necessary to adequately assess their practices.

As with most things (except, probably, the middle east's culture of tribal warfare), both sides will move closer together as time passes, technology use increases and more thoughtful and practical approaches evolve. In the meantime, as Carolyn urges, ILTISO's standards beg for input from the solo and small firm community. And as Stephanie Kimbro states in her blog post [International Standards for Legal Technology](#):

As with everything it seems, some in the industry will feel threatened by the creation of standards and attempt to find something negative about the formation of this group. I'm just glad that this resource is out there for the many attorneys that I speak to who are actively seeking this type of guidance.

I hope you will take the time to read through [ILTISO's Standards for 2011](#) and comment on them. Having unified guidelines is highly preferable to state-by-state regulation, which could lead to yet another jurisdictional quagmire. Yes, the learning curve steepens, but there are numerous available media events (often for free, or earning CLE) that can help you break down the barriers of confusion. They can be found through your state bar's CLE programs, vendor sites, [LegalTalkNetwork](#), [ABA's TechEZ](#), [ALI ABA](#) and media presentation curating sites such as [BaranCLE.com](#), [Lorman Educational Services](#), [MyLegal.com](#), and my page, [Media Events & Conferences](#).