

Cloud Computing: How a data-escrow agreement with your hosting provider can potentially save your business.

by Jason L. Molder

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I recently attended LegalTech® New York 2010, where the latest buzz on the tradeshow floor and in some of the sessions was on hosted services and cloud computing. For those of you that aren't familiar with these services, essentially, it's where your company's data (and in some instances even the application itself) is stored on someone else's computer. Usually the "someone else" is a hosting company running a data center that maintains servers specifically for this purpose. In this type of arrangement, space on the servers are shared among many of the data center's customers, and all control and access to the physical hardware (such as the hard disks) is in the hands of the hosting provider. Cloud computing has both its benefits and its drawbacks, none of which are the subject of this blog post.

However, consider the following issues that may affect your company should you choose to have your data stored on a third-party's servers:

1. What if your hosting provider suffered a catastrophic data loss and your data was not adequately backed up, resulting in a loss of your data?
2. What if your hosting provider goes out of business and you are unable to get your data back from them (either immediately or in the long-term)?
3. What if your hosting provider's equipment is repossessed by one of their creditors, with your data on it?
4. What if your data is on a machine that is stolen?
5. What if your data is on a machine that is lawfully seized because of another customer's data?

These are just some considerations that immediately came to mind while I was writing this post – that said – I'm sure there are more.

There is also a way in which you can help to mitigate your chances of suffering an involuntary data loss due to any of the above, i.e., by always having an up-to-date copy of your data stored locally (and securely) on your own hardware or media which you control. However, Florida companies and organizations may also wish to consider having a data-escrow agreement in place with their hosting provider.

A data escrow agreement is relatively simple, and works essentially the way you would expect any other escrow agreement to work. With data escrow, the hosting

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provider is typically required to mirror the data you store with it (at an agreed-upon frequency) with yet another third party, the data escrow agent. The data escrow agent then holds a copy of the data, should access to it ever be necessary. Both the data escrow agreement with your hosting provider, and the terms of the actual escrow agreement with the data escrow agent, should address in detail who can access the data, when, and under what terms.

Since these agreements may ultimately have serious implications for your business should an issue with your hosting provider ever arise, it is important to make sure that the agreements cover all possible bases, and allow you immediate access to your data upon request to the data escrow agent. Language that requires both parties to agree before the data is released may seem fair, but when disputes arise, it may also mean a long delay before you are actually able to get your data. Finally, be careful with data escrow companies that are affiliated with or are operated by the same company as the hosting provider, as this does not offer a true escrow.

Before trusting your valuable data (and possibly your entire business) to a third party hosting provider, consider a data escrow agreement with your hosting provider. With cloud computing becoming more and more popular, providers should be increasingly open to such agreements, which offer an added layer of protection (and peace of mind) to their customers.

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