



Lawyering in the Cloud: Where Do You Start?

Written on December 21, 2009 by [Donna Seyle](#)

So you've heard all the great cost effective and time saving benefits of managing your law practice online (also known as a virtual law firm), and you start researching your options. All of a sudden you're reading articles that include words and concepts you have no comprehension of: Saas, Iaas, Paas, public clouds, private clouds. Mind starts spinning, eyes glaze over, and soon those well-known desktop applications and fax machines seem like old, comfortable friends. Let's see if I can help you make sense of this.

The term cloud computing is really a misnomer. Information accessible online is actually stored on servers, much like desktop data is stored on local drives, in-house servers or mainframes. The differences are scale, location and accessibility. Open source (i.e., accessible to anyone who has a web connection) servers, often called server farms, have massive storage capacity and can be located anywhere. Additionally, companies who own the servers (like Google or Amazon) often share capacity when their demand exceeds or drops below their existing capacity. For lawyers, using open source web applications for storage create jurisdictional, security and chain-of-custody issues.

The terms Iaas (infrastructure as a service), Paas (platform as a service) and Saas (software as a service) refer to how the storage ability is delivered. The "as a service" concept refers to the user's ability to call up the needed information on demand. The differences among these services is the degree to which your IT is involved in creating the applications. Large, international law firms often have dedicated IT departments who create the firm's platforms and work directly with server capacity providers. Saas providers actually create the application and either contracts with third-party servers or houses data on their own servers. (For a thorough analysis of these issues, read Legal Implications of Cloud Computing – Parts One, Two, Three and Four.)

Fortunately, there are many Saas providers that have designed platforms specifically for law firms. Each provider is unique in the services it offers and how their service functions. Some are strictly practice management tools. Others are full-service law firms which include the capacity to communicate and interact with clients through a secured portal. Still others include document automation assembly services in combination with legal direction.

It is clear that using open source platforms to communicate with clients and share documents is fraught with legal pitfalls. You have no information about or control over where the servers are located, creating jurisdictional issues. Nor do you know who is handling the data, creating authenticity issues. The data is unsecured, creating confidentiality and attorney/client privilege issues. For example, in U.S. v. Weaver, 636 F. Supp. 2d 769 (C.D. Ill. July 15, 2009), the court held that for a communication to be in "electronic

storage,” the storage has to be either temporary or intermediate, or for purposes of backup protection. As these e-mails were already opened, the court concluded that the storage could not be temporary or intermediate. Accordingly, the question of whether the requested e-mails were in “electronic storage” boiled down to whether they were in storage for purposes of backup protection.

In order to avoid these pitfalls, it is necessary to investigate your hosting company to determine what security measures they employ, where their data centers are located and how they are protected. You need to determine their data retention policies and clarify what process will be employed to return data if the company goes out of business. If the hosting company contracts with third-party server companies, you need to know the terms of their agreement to be sure third parties are required to adhere to the guidelines necessary to protect legal data. The same information is necessary as these providers are now creating applications for mobile devices.

There are further issues which must be addressed once you begin to practice virtually. Because your communications with your potential clients may be conducted solely online, you need to take all necessary steps to establish the identity and residency of the person or entity seeking your representation carefully to avoid unauthorized practice of law. You must establish and clearly state the point at which the attorney/client relationship is created, and you must clearly define the scope of representation.

Although these efforts may seem daunting, the benefits of practicing online (which are listed in the article cited below) far outweigh the efforts to change how you practice law. Moreover, lawyers must move toward adopting these measures in order to stay relevant and retain a competitive edge. Stephanie Kimbro, in her article [Virtual Law Practice: Taking All or a Portion of Your Practice Online](#), states:

“The online demand for legal services and the number of people using the internet to transact business is surging. During January, 2009 – one month alone – an estimated 4.5 million people searched online at one of ten websites seeking legal solutions.²¹

Although we cannot know the demand for web-based law practice, the clear trend is toward e-commerce transactions. Consumers shop, bank, conduct business, and pay their credit cards and taxes online. Per Forrester, e-commerce growth from 2009 to 2010 is estimated at 13%, (\$176.9 Billion) at a time when the National Retail Foundation forecasts traditional retail sales will drop .5% in 2009.²² As one example of the increased demand for legal services, in the 12 months ending June 30, 2008 business bankruptcy filings jumped more than 41% and personal filings surged to 934,009, up 28% from the previous year.²³”

To that end, the [ABA’s Law Practice Management Section](#) has created the eLawyering Task Force to discuss the evolution of online law. Recently, they have issued guidelines entitled [Suggested Minimum Requirements for Law Firms Delivering Legal Services Online](#). Also, read [Practicing in the Virtual Realm: A Framework for Delivering Legal Services Online](#) for further guidance.

I hope this has clarified some of the issues you will face in your journey toward creating a virtual law practice, and provided you with resources to that will help make sense of what this movement is all about. Please post any further questions you have in the comments section and I will be happy to respond. In the meantime, have a wonderful holiday season!