

Using the Cloud Responsibly

#CTPG1

Kathy Owen and Ryan Alban

DLA Piper

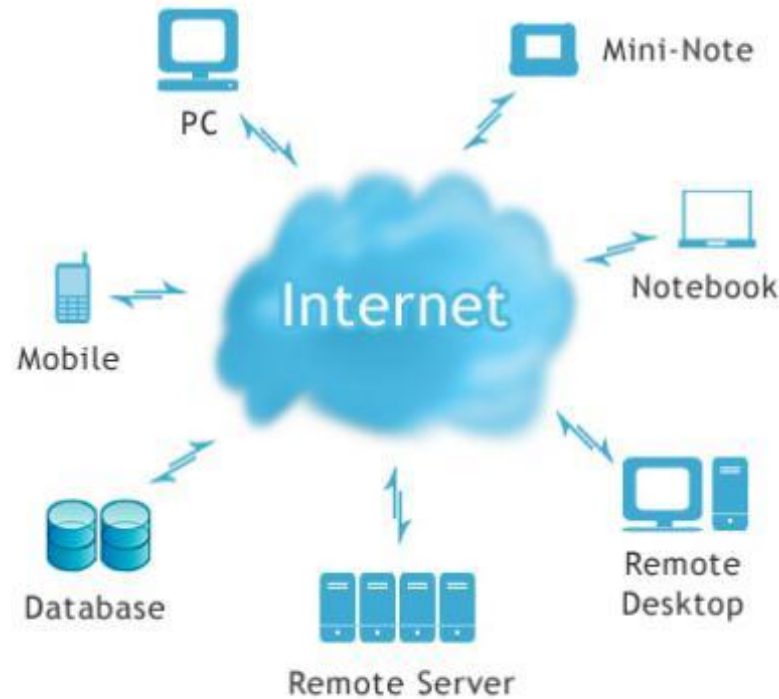


What is “The Cloud”

- ◆ Cumulus?
- ◆ Nimbus?
- ◆ Cirrus?

- ◆ No, but it is Serious!

What is “The Cloud”



Why use “The Cloud”

- ◆ Cost savings
- ◆ Scalability of storage
- ◆ Technical support
- ◆ Programming specialist
- ◆ Flexibility
- ◆ Mobility



Risks of Using “The Cloud”

- ◆ Confidentiality
 - ◆ Data Protection & Encryption
 - ◆ Control of data
- ◆ Integrity
 - ◆ Preservation of data
 - ◆ Metadata & De-duplication
- ◆ Availability
 - ◆ Accessibility of the data
 - ◆ Backups & Restoration



Confidentiality

- ◆ Data ownership
- ◆ Data protection (in-transit & at-rest)
- ◆ Privacy Policies
- ◆ Free vs. Paid



Confidentiality

Dropbox employees are prohibited from viewing the content of files you store in your Dropbox account, and *are only permitted to view file metadata (e.g., file names and locations)*. Like most online services, we have a small number of employees who must be able to access user data for the reasons stated in our privacy policy (e.g., when legally required to do so). But that's the rare exception, not the rule. We have strict policy and technical access controls that prohibit employee access except in these rare circumstances. In addition, we employ a number of physical and electronic security measures to protect user information from unauthorized access.

Confidentiality

Where do you draw the line?

At SpiderOak, we draw the line right here.



THEY can see ALL your data



WE can see ZERO

Our 'zero-knowledge' privacy environment ensures we can never see your data. Not our staff. Not a government. No one. The myth about 'online' and 'privacy' has been dispelled - leaving an environment whereby it is impossible for us to betray the trust of our users.

Confidentiality - “Free email data privacy policy”

“Free email service” provides personally relevant product features, content, and advertising, and spam and malware detection *by scanning and analyzing* Mail, Messenger, and other communications content. Some of these features and advertising will be based on *our understanding of the content and meaning of your communications*. For instance, *we scan and analyze email messages* to identify key elements of meaning and then categorize this information for immediate and future use.

Confidentiality

🔑 Upgrade To A PRO Pastebin Account!

Upgrading to a PRO account unlocks many cool features. Find out why you should go PRO!

FEATURE	FREE	PRO
Annoying ADS	YES	👍 NO
Max Paste Size	500 kilobytes	👍 10 megabytes
Direct File Uploads	NO	👍 YES
Multiple Logins	Only 1	👍 Up to 100
# Unlisted Pastes	25	👍 Unlimited
# Private Pastes	10	👍 Unlimited
Extra Security	http	👍 http & https
Annoying Captcha's	YES	👍 NO
# New Pastes Per 24h	25	👍 250
# Alert Keywords	3	👍 15
# Email Alerts	10	👍 Unlimited
Awesome PRO Badge	NO	👍 YES

1. No ADS

PRO memberships are incredibly cheap, for as little as **\$1.99 per month** you can have a PRO account.

1 Year : \$23,95 (\$1,99 p/month) ▼

[Buy Now](#)



You can downgrade your PRO membership to a free one anytime you like.



Confidentiality - Subpoena Responses

- ◆ Free providers - assurances data will be kept private, but state they will comply with subpoenas, court orders and compulsory legal requests. No indication they will notify user.
- ◆ Paid providers - SLAs can provide for higher level of notifications



Cloud “Issues” and the ABA



ABA Commission on Ethics on “Cloud Issues”

- ◆ Storage in countries with less legal protection for data
- ◆ Unclear policies regarding data ownership
- ◆ Failure to adequately back up data
- ◆ Unclear policies for data breach notice
- ◆ Insufficient encryption
- ◆ Unclear data destruction policies
- ◆ Bankruptcy

ABA Commission on Ethics on “Cloud Issues” - Cont.

- ◆ Protocol for a change of cloud providers
- ◆ Disgruntled/dishonest insiders
- ◆ Hackers
- ◆ Technical failures
- ◆ Server crashes
- ◆ Viruses
- ◆ Data corruption or data destruction;
- ◆ Business interruption (*e.g.*, weather, accident, terrorism)
- ◆ Absolute loss (*i.e.*, natural or man-made disasters that destroy everything)

Ethical Obligations and the Cloud

- ◆ Competence
- ◆ Confidentiality
- ◆ Duty to Supervise Non-Lawyers

Ethical Obligations - Competence



Ethical Obligations - Competence

- ◆ ABA Model Rule of Professional Conduct 1.1
 - ◆ A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Ethical Obligations - Competence

- ◆ ABA Model Rule of Professional Conduct 1.1 - cmt. 8,
 - ◆ [8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology ... (added in 2012).*

Ethical Obligations - Confidentiality



Ethical Obligations - Confidentiality

- ◆ ABA Model Rule of Professional Conduct 1.6(a):
 - ◆ A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Ethical Obligations - Confidentiality

- ◆ ABA Model Rule of Professional Conduct 1.6(c) (2012 *addition*):
 - ◆ *A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.*

Ethical Obligations - Confidentiality

- ◆ ABA Model Rule of Professional Conduct 1.6 - cmt. 18 :
 - ◆ Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against *unauthorized access by third parties and against* inadvertent or unauthorized disclosure ...(2012 addition)

Ethical Obligations - Confidentiality

- ◆ cmt. 18 cont. -*The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made **REASONABLE EFFORTS** to prevent the access or disclosure.*

Ethical Obligations - Confidentiality

- ◆ cmt. 18 cont. - *Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients....*

Ethical Obligations - Duty of Supervision



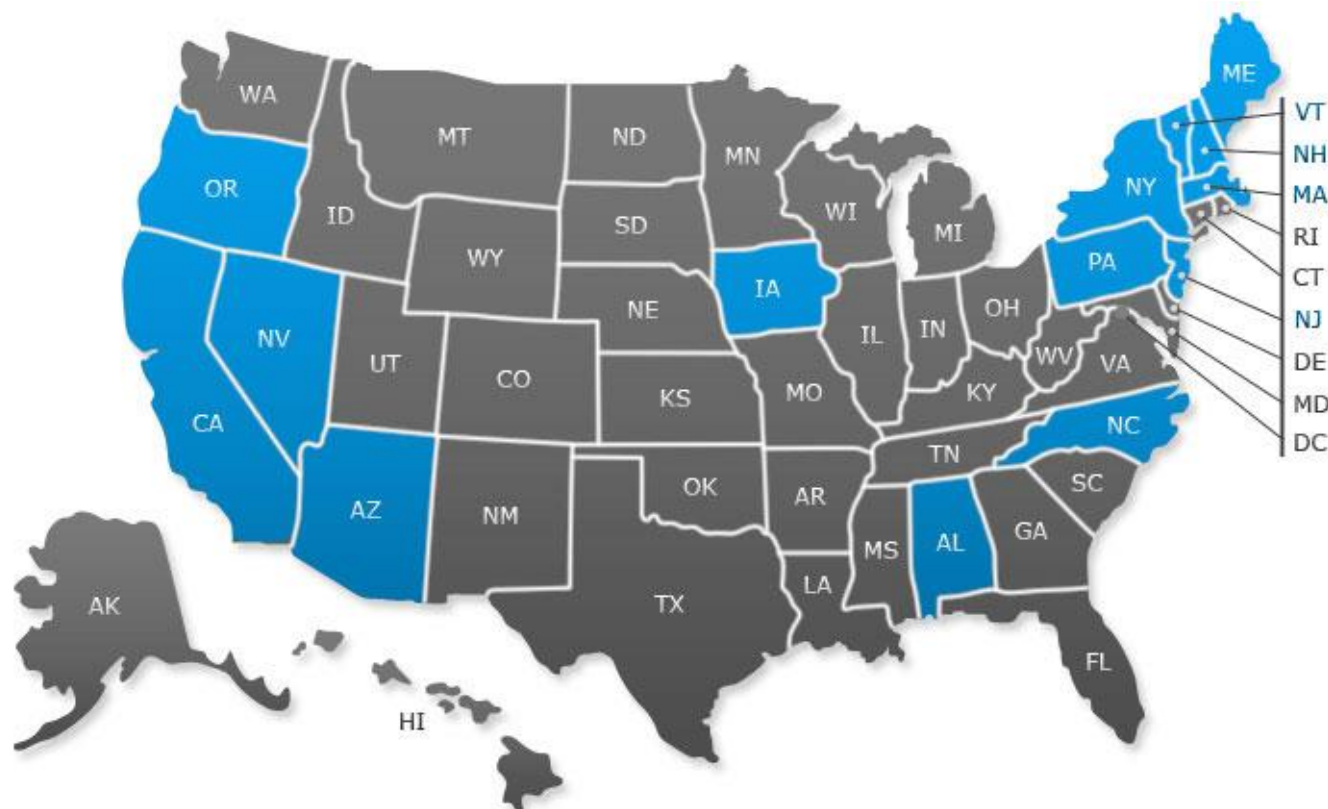
Ethical Obligations - Duty of Supervision

- ◆ ABA Model Rule 5.3 Responsibilities Regarding Nonlawyer Assistance - cmt. 3:
 - ◆ A lawyer may use nonlawyers outside the firm ...
Examples include ... hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, ...

Ethical Obligations - Duty of Supervision

- ◆ ABA Model Rule 5.3 Responsibilities Regarding Nonlawyer Assistance - cmt. 3 cont.:
 - ◆ ...and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make **REASONABLE EFFORTS** to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations.

States with Ethics Opinions on Cloud Computing



Source: ABA Legal Technology Resource Center

Summary of Ethics Opinions on Cloud Computing

The standard generally stated is

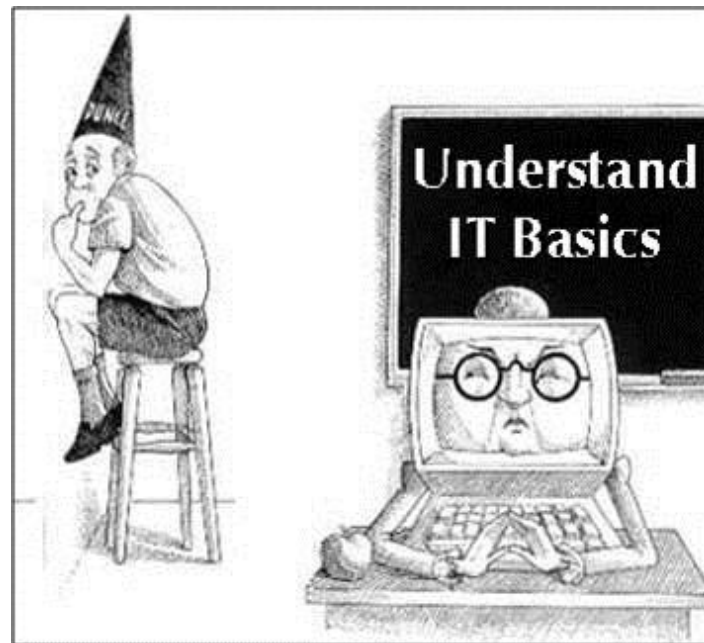
Reasonable Efforts/

Reasonable Care



Ethics Opinion Guidance on Reasonable Care

- ◆ California - Opinion 2010-179
- ◆ If needed, ask an IT expert
- ◆ Balance of factors



Ethics Opinion Guidance on Reasonable Care

- ◆ Massachusetts - Opinion 12-03
 - ◆ Follow client directions
 - ◆ Client consent needed for highly sensitive data



Ethics Opinion Guidance on Reasonable Care

- ◆ New York - Opinion 842
 - ◆ Ensure vendor has obligation to maintain confidentiality and security
 - ◆ Investigate and reevaluate vendor security policies
 - ◆ Any past security breaches?



Ethics Opinion Guidance on Reasonable Care

- ◆ Pennsylvania - Opinion 2011-200
 - ◆ Use reasonable care to assure data remains confidential
 - ◆ Use reasonable safeguards to secure data
 - ◆ Opinion contains list of safeguards



Ethics Opinion Guidance on “Reasonable Efforts”

- ◆ Read the provider's terms of use and data privacy policies
- ◆ Ensure provider's policies and procedures prohibit unauthorized access to stored data -including improper access by the provider



Ethics Opinion Guidance on “Reasonable Efforts”

- ◆ Ensure provider's policies and procedures give the User reasonable access to, and control over, the data
- ◆ Examine the provider's existing practices and available history



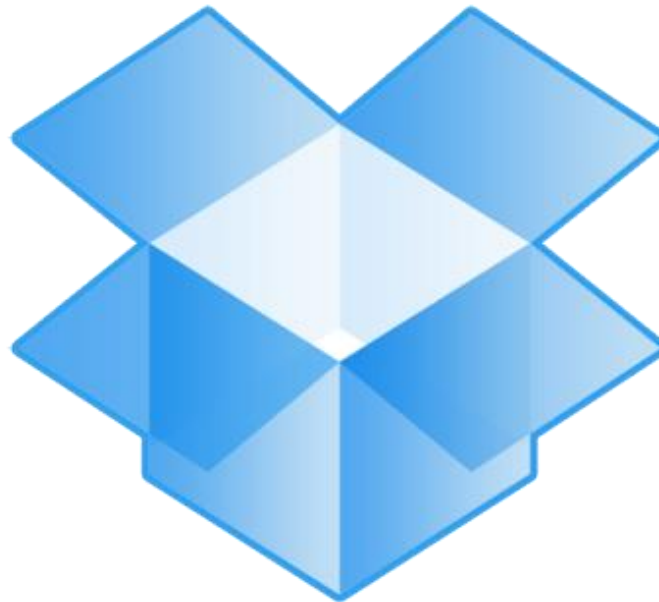
Other Cloud Considerations

Attorney-Client Privilege

**Confidential Document
Attorney-Client Privilege**

Other Cloud Considerations

Preservation of Data



Other Cloud Considerations

Legal Holds



Other Cloud Considerations

Return of Data



Other Cloud Considerations

Insurance Coverage



Summary

- ◆ Do your research before storing data
- ◆ Be careful of “free” providers
- ◆ Different treatment may be necessary if dealing with highly sensitive data
- ◆ Check and re-check