Going Virtual with Web Applications: New Forms of Practice

Written and Presented by Will Hornsby Marc Lauritsen

March 25 – 27, 2010 www.techshow.com
Going Virtual with Web Applications: New Forms of Practice

**Introduction**

Emerging forms of Web-based law practice present dramatic service opportunities, fascinating technical possibilities, and thorny ethical issues. These materials are in support of a session that will touch on some of the latest developments. We'll cover advanced tools like interactive advice systems and intelligent document assembly applications, and explore how eLawyering can facilitate multi-jurisdictional and multi-disciplinary practice. What are the regulatory and ethical aspects of adopting these changes in a law firm practice? How can lawyers prosper in the face of such changes?

**What’s new?**

The Web (or nowadays increasingly the “cloud”) has become a familiar place in which lawyers not only market their services and interact with clients, fellow professionals, and other service providers, but operate their businesses. Online marketing has gone from basic websites to blogs, social networking, and Twitter feeds. Back office functions like document management, time keeping, and file system backups happen more and more online. Many pure Web-based case management systems are now available. Lawyers can also turn to a variety of online services to file materials with courts, prepare routine forms, and initiate alternative dispute resolution processes.

Our focus here is on applications that come closer to the actual delivery of legal services. Such applications typically embody substantive legal knowledge, and behave intelligently in interaction with users.

**Some examples**

- *Virtual law practice services.* A number of law firms are now signing up with providers like Direct Law and Virtual Law Office Technology to establish “out of the box” Web practices on a Software as a Service basis. For a modest monthly fee, you can have a secure online space in which to interact with clients, manage matters, share documents, and perform other functions.
DirectLaw™ enables easy delivery of online legal services. We make virtual lawyering simple.

The first virtual law firm in a box™, DirectLaw transforms your law firm’s website into a revenue generating, online law practice. Clients purchase the legal services they need and enjoy the convenience of interacting with your law firm through a secure, password-protected “client space.”

Our virtual law firm platform levels the playing field for solo and small law firms who want to compete with larger law firms - without spending capital resources for developing, licensing complex software applications, or automating legal documents. Read more...

Using the power of the Internet to deliver direct-to-client legal services through an online law firm is a proven strategy for capturing new clients and offering more efficient services to existing clients.

DirectLaw™ is offered on a monthly subscription basis. No major, up-front capital investment is required. Click here for features & pricing info.

Law firms are now under great pressure to be more transparent, more competitive and to extend their client services. Law firms must exploit the Web to add new services, create new income opportunities, and protect the margins of their traditional business.

Embrace the competitive benefits of the Web:

recent news
Kassimali Law, LLC Opens Missouri Virtual Law Office
January 13, 2010
We are pleased to announce the opening of Kassimali Law, LLC, a virtual law office providing legal services pertaining to Missouri Law. Kassimali Law is owned and operated by Jamil Kassimali and will provide a variety of legal services to clients online, including intellectual property.

product news
VLO Expands Forms Feature
November 24, 2008
We are pleased to announce the latest VLO software update which expands upon the VLO Forms Feature and provides new methods for operating a form-focused VLO.

This newest release of the VLO Forms Feature allows for the creation of forms from PDF Acrobat. PDF Acrobat are the same editable forms as those used by the IRS and other government agencies. The expanded feature leads to a new workflow option for an attorney’s virtual law practice.

Want to compete with the LegisZones of the marketplace for online clients but also provide high-quality legal services? Read the full post »

about VLOTech
VirtualLaw Office Technology, LLC (VLOTech) was founded with the purpose of providing a secure, software as a service, web-based product that connects solo and small firm lawyers with the online consumer. The goal of the software is to provide a complimentary method for the solo and small firm practitioner to compete by expanding their client base to tap into the online consumer and the need for unbundled, online legal services.

Read More About VLOTech »
• **Non-profit form services.** Legal aid programs and courts are making use of services like Law Help Interactive to deliver ‘smart’ forms to large populations of low-income individuals and their advocates. Users are guided through the necessary facts and issues via intelligent ‘interviews’ right in their Web browser. Customized documents are assembled on the spot and delivered for local use.

• **Term sheet generators.** Several US firms, notably Wilson Sonsini and Orrick, have recently deployed free online services through which start-up companies can generate financing term sheets and other routine documentation. These are richly annotated with explanations and guidance.
WSGR Term Sheet Generator

This tool will generate a venture financing term sheet based on your responses to an online questionnaire. It also has an informational component, with basic tutorials and annotations on financing terms. This term sheet generator is a modified version of a tool that we use internally, which comprises one part of a suite of document automation tools that we use to generate start-up and venture financing-related documents.

Because it has been designed as a generic tool that takes into account a number of options, this version of the term sheet generator is fairly expansive and includes significantly more detail than would likely be found in a customized application.

Please direct any general questions regarding the term sheet generator to Tony Yikata (t.yikata@wsgr.com) or Yukim Taku (y.taku@wsgr.com) at (650) 493-9300. For technical issues, please contact the WSGR help desk at (650) 493-9300 (ext. 6161).

By using the WSGR Term Sheet Generator, you agree to the Terms and Conditions below.

LAUNCH

Related Information
Click here to learn more about the firm’s Entrepreneurial Services

Start-Up Tool Kit

Orrick’s Emerging Companies Group is a leading advisor to start-ups, with more than 700 emerging company clients in the United States, Europe and Asia. The group features lawyers in nine offices around the globe, including more than 100 lawyers in our Silicon Valley office.

Orrick’s Start-Up Tool Kit is a comprehensive set of resources designed to aid start-ups and their founders on the journey from the “garage” to the global marketplace.

Use our Start-Up Tool Kit to memorialize agreements with co-founders or potential investors, understand the terms and terminology of key legal documents, and network and learn business strategy and the latest industry news.

Term Sheet Creator
Create drafts of start-up and venture financing documents ranging from your company’s founding to a preferred stock financing.

Start-Up Forms Library
Use this reference source for the key legal documents you will need to start and grow your company.
• **Answers from experts.** Services like Just Answer ([http://www.justanswer.com/](http://www.justanswer.com/)) offer panels of experts, including lawyers, who will respond to specific questions online for a small fee.

**Ethical dimensions**

Our state-based rules of professional conduct, more commonly referred to as the ethics rules, impose limitations on the use of technology to deliver legal services.

- Is the service the practice of law? If so, does the lawyer comply with the ethics rules?
- Does the lawyer meet his or her duty to provide competent representation?
- If the service has a limited scope, is it reasonable under the circumstances?
- Does the lawyer comply with the obligation to provide “zealous representation”?
- Are the rules of confidentiality and conflicts of interest being observed?
- Is outsourcing being done properly?

Using technology for the delivery of legal services may or may not arise to the level of practicing law and creating an attorney-client relationship. Lawyers need to consider two issues here. Most states have a definition of the practice of law, either through statute or court decisions. These definitions frequently set out functions or tasks that are defined as the practice of law, such as drafting documents. If the technology is undertaking a function that is within the definition of the practice of law, then the question becomes whether an attorney-client relationship is formed. The answer to this lies in the eyes of the beholder. If a person receiving services believes the lawyer is acting as that person’s lawyer and that belief is a reasonable one, then the attorney-client relationship has been formed. When this is the case, the lawyer is then obligated to comply with the rules of professional conduct.
Technology enables a lawyer or firm to provide disassociated services or a retail package. However, when services are provided pursuant to an attorney-client relationship, the lawyer has a duty, under the rule governing competent legal services, to inquire into the facts and circumstances of the client’s situation.

A lawyer may enter into an agreement with the client to limit the scope of the representation of his or her services, for example, doing only document preparation for a legal matter. However, the client must give informed consent to the limitation and the limitation must be reasonable under the circumstances. Seemingly, a lawyer must know the circumstances in order to know whether it is reasonable to limit them. Again, a lawyer cannot comply with the ethics rules when providing disassociated services when an attorney-client relationship has been formed.

The obligation for a lawyer to provide “zealous representation” is a hold-over from earlier versions of our ethics rules. Nevertheless, the obligation continues in many states. The application of this rule to services provided through technology is open for interpretation. However, it is clear that the lawyer must act with “commitment and dedication to the interests of the client.”

Confidentiality and conflicts of interests are core values of the legal profession. They work to set the profession apart from businesses that do not provide “customers” with these assurances. Therefore, legal services that are provided to “clients,” again pursuant to the attorney-client relationship, must adhere to these obligations.

Where might this be going?

In our personal lives we’ve become accustomed to ever more robust online experiences. Travel reservations, movie rental, shopping, and similar experiences seem to be getting faster and easier. Legal services mostly are way behind. But market pressures and entrepreneurial energy are changing that. Actors outside the legal profession like LegalZoom may set the bar for simple, fast customer service, however debatable the wisdom of using them may be without the protections of a lawyer-client relationship. And we can certainly count on Web technologies continuing to evolve.

As food for thought, here are a couple scenarios that strike us as plausible circa 2020:

- The United States has followed Australia and the United Kingdom in deregulating the legal profession. Non-lawyer investment and involvement in law firms is no longer prohibited. Venture financiers have poured hundreds of millions of dollars into a handful of large firms, along with dozens of boutiques. Those funds have been used to build vast collections of proprietary knowledge systems that enable lawyers to outperform others without access to such systems. Complicating the situation, an even greater quantity of interactive legal advice systems have become available essentially for free from commercial providers whose prices have been driven to the bottom and by governmental and not-for-profit organizations. The result has been a troubling spiral of firm bankruptcies and lawyer unemployment. Half of US law schools have closed their doors.
The remaining schools have begun to take legal knowledge engineering seriously as part of the curriculum.

- High definition video conferencing and even more striking forms of telepresence have become commonplace. In person meetings and events are now the rare exception. People are comfortable interacting with artificial personas that can elicit details of legal problems, display convincing empathy, and render fine grained advice that in many circumstances obviates the need to interact with a human. Lawyers in turn practice by interacting with artificial clients.

- Full length contracts and other legal documents are increasingly rarities, as systems that capture the gist of their substance serve to memorialize the non boilerplate content within them. When you file a pleading or motion with a court, you may see the ‘form,’ but only the case-specific details actually are transmitted and recorded. Most contracts are now collections of pointers to standardized terms documented in cyberspace, along with small sets of specific parameters, making them much easier to understand, manage, and enforce. Electronic signatures are required in most circumstances, and paper materials are severely disfavored.

**What should you be doing?**

It will be incumbent on lawyers of just about every age and context to start paying attention to these developments. Your clients, colleagues, and competitors will likely be doing that. The Web is not a passing fad, and business reality is not going to hold still. Start taking time now to examine how your own practice might take advantage of the new tools and resources that cloud-based computing makes possible. Study what your more adventurous peers are doing. Find a way to experiment with new modalities of practice.

At the same time, watch out. We’re kind of in a Wild West stage of new online legal applications. Ethical pitfalls abound. It’s hard to know who and what to trust. Well meaning service providers may misjudge their markets, and under-vet the technologies and staffs they put in place. Supposed clients and counterparties may not be who they say they are. And of course, change may not happen nearly as fast as some of us imagine.
Some useful resources

Ron Friedmann’s Strategic Legal Technology blog, http://www.prismlegal.com/wordpress/


Legal OnRamp - http://legalonramp.com/

American Bar Association eLawyering Task Force - http://www.elawyering.org
Hey, You, Get Off of Onto My Cloud: Tools to Run Your Practice in the Cloud

Written by
Catherine S. Reach
Erik Mazzone

Presenters
Catherine S. Reach
Erik Mazzone

March 25 – 27, 2010
www.techshow.com
<table>
<thead>
<tr>
<th>Introduction</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mission Critical Applications</td>
<td>3</td>
</tr>
<tr>
<td>Practice Management Software</td>
<td>4</td>
</tr>
<tr>
<td>AdvologixPM</td>
<td>4</td>
</tr>
<tr>
<td>Clio</td>
<td>6</td>
</tr>
<tr>
<td>RocketMatter</td>
<td>7</td>
</tr>
<tr>
<td>VLO Tech</td>
<td>8</td>
</tr>
<tr>
<td>Word Processing</td>
<td>9</td>
</tr>
<tr>
<td>Adobe Buzzword</td>
<td>10</td>
</tr>
<tr>
<td>Google Docs</td>
<td>10</td>
</tr>
<tr>
<td>Zoho Writer</td>
<td>11</td>
</tr>
<tr>
<td>Online Calendaring/Scheduling</td>
<td>11</td>
</tr>
<tr>
<td>Online Research</td>
<td>12</td>
</tr>
<tr>
<td>Litigation Support and Ediscovery</td>
<td>13</td>
</tr>
<tr>
<td>ImageDepot (Trial Solution Technologies of Texas)</td>
<td>13</td>
</tr>
<tr>
<td>Lexbe</td>
<td>14</td>
</tr>
<tr>
<td>NextPoint (Trial Cloud)</td>
<td>15</td>
</tr>
<tr>
<td>Online Backup</td>
<td>16</td>
</tr>
<tr>
<td>Mozy Pro</td>
<td>16</td>
</tr>
<tr>
<td>Corevault</td>
<td>17</td>
</tr>
<tr>
<td>i365 (a Seagate Company) SaaS Backup for Small Business</td>
<td>18</td>
</tr>
<tr>
<td>Carbonite Pro</td>
<td>19</td>
</tr>
</tbody>
</table>
The Internet computing "cloud" isn't just for online backup anymore. There are cloud-based tools available to help lawyers run every aspect of their practices through the Internet from almost anywhere. This survey session takes a look at some of the more useful tools available to make the delivery of legal services to clients more effective and efficient, from word processing and collaboration to litigation and E-Discovery to practice management applications. And yes, even online backup. From cost to convenience, from functionality to accessibility, we'll help you find the right tools for your practice.

Introduction
In a recent Law Practice Today article Josh Poje gives a great introduction to factors that help lawyer’s make a decision about using cloud-based applications versus traditional software in The ABC’s of Cloud-Based Practice Tools. Lawyers have viable options now to traditional software. With a mobile workforce, virtual offices, and elawyering these cloud tools free up an attorney to consider how the applications meet their needs without being burdened by the additional costs of consultants, infrastructure and maintenance/support.

Mission Critical Applications
In the SaaS (software as a service) market there are thousands of free offerings. Some of these may be great tools, but lawyers must keep their ethical and legal obligations in mind regarding confidentiality, data breach and applicable legislation like SOX and HIPAA. In an opinion issued by the Arizona Bar in December the ethics committee responded to a question submitted by an attorney who “wants to offer a service to clients that would allow clients online access to view and retrieve client files.” Comment on this opinion from the ABA/BNA Lawyer’s Manual on Professional Conduct (26 Law. Man. Prof. Conduct 11) summarized:

…the duty to take reasonable precautions does not force a lawyer to guarantee a system's invulnerability to unauthorized access. Instead, the lawyer is required to exercise sound professional judgment about the steps needed to secure client confidences against foreseeable attempts at unauthorized access, the opinion says, citing New Jersey Ethics Op. 701 (2006) and North Carolina Ethics Op. 2008-5 (2008).

Being aware of how a SaaS vendor operates, what security and encryption methods are used, and basic due diligence speaks to these concerns.

Awhile back Office Watch reported that 60 Gmail users lost all of their email because of a program glitch. The article provided some useful instruction on how to backup web-based email to your local hard drive or server. Ironically, if you are not adequately backing up your hard drive or server, it is likely that the online webmail repository will serve as a backup, if the need arises. While many are lured by the price tag, attorneys must give thought to the potential repercussions of relying on free technology for mission-critical functions.

Free software often provides little to no technical support, or maintenance. Some free software, like Google Desktop Search, can create privacy concerns, depending on its configuration. Free online services in BETA often become fee-based if successful, or lose funding and disappear entirely. Lawyers should be extremely zealous in investigating free downloads and read the EULA (end user license agreement) or Terms of Use to make sure they are not agreeing to...
download adware or spyware along with the free software, and also check for potential privacy concerns.

The next generation of software is going to be on the Internet - call it .Net, ASP, or SaaS (software as a service) - with some distinct advantages. Lawyers need to be ready to take advantage of this model, and be smart about selecting software and services, whether free or fee. Following is an overview of some of the common types of software that lawyers use in practice, SaaS-style. As more SaaS vendors develop and market to the legal vertical it is likely that more traditional vendors will also begin offering SaaS versions of their products. Even now there are many traditional vendors offering “web-based” versions of their products, where the data is still hosted and stored locally but can easily be accessed over the web and through a browser. However, ensuring security for this type of setup can be costly and complicated, necessitating IT support, setup and maintenance. Weigh your options and no your vendors – and yourself.

The information in this guide originates from the vendors, is not a comprehensive review of all available products in each category, and does not constitute endorsements or recommendations of any kind.

**Practice Management Software**

There are lots of options in the practice management software space, and the list seems to grow daily. In order to provide a fairly broad view of the range of options, this manuscript will focus on four solutions:

- AdvologixPM
- Clio
- RocketMatter
- VLOTech.

This is not a comprehensive list of cloud based practice management solutions, particularly if one opens the search to solutions not expressly designed for the legal market, such as Central Desktop.

Before exploring each product offering further, it is worth noting some common traits among practice management solutions. In general, a solution will offer either front office support (calendar, conflicts, tickler, case management, etc), back office support (time, billing, reporting, etc) or both. There is far too much detail to cover each product in depth, so instead consider this to be a 30,000 foot view of what is available – it will help you get a wide view of the landscape so you can narrow your interests and focus later on the solutions that work best for you.

All prices are $US and monthly unless otherwise noted.

**AdvologixPM**
AdvologixPM runs on Salesforce’s Force.com platform.

*Entry into Market: 2006*

*Integration*
- Office - MS Outlook, additional $10 per user
- Accounting - Quickbooks coming spring 2010
- Word Processing - Google Apps
- Document Management - Net Documents, Box.net, and others
- Mobile
  - Advologix Lite (contact, event, task management)
  - Fully featured Advologix app for iPhone, Blackberry, Windows Mobile; additional $30 per user
- Email support

*Pricing*

Pricing based on one year term.
- 1 user: $90 per month
- 2-5 users: $75 per month
- 6-10 users: $65 per month
- 11-20 users: $55 per month

Additional volume pricing on request. Discounts for quarterly and annual payments.

*Features*

**Practice Management**
- Group calendaring, docketing
- Client/matter management
- Time, billing, expenses
- Reporting, dashboards
- Trust accounting

**Document Automation**
- Document/form assembly
- Advanced document automation – additional $10 per user

**Client Extranet**
- Available at additional cost

**Offline Access**
- Yes

**Storage**
- Database storage - 1GB; additional 500 MB $30 per firm
- File storage – 1 GB; additional 1 GB $10 per firm

**Support**
- Technical support
- Online training
- Personalized training available at additional cost
Other
- CRM (through Salesforce)
- Database and fields are customizable

Privacy Policy

Security
- Secure data centers
- SSL 3.0 Encryption

Terms of Service

Clio

Clio is a product of Themis Solutions.

Entry into Market: 2007

Integration
- Office - MS Outlook sync (beta)
- Accounting - Quickbooks
- Document Management - on board document management; no additional integration
- Mobile web interface
- No email support

Pricing
- $49 per month per attorney.
- $25 per month per non-attorney staff member.

Features

Practice Management
- Group calendaring, docketing
- Client/matter management
- Time, billing, expenses
- Reporting, dashboards
- Trust accounting

Document Automation
- No

Client Extranet
- Yes

**Offline Access**
- Yes

**Storage**
- Unlimited; bandwidth limit 5GB per month

**Support**
- Technical support available by phone and email

**Other**
- Online bill payment for clients

**Privacy Policy**

**Security**
- Secure data centers
- SSL Encryption

**Terms of Service**

---

**RocketMatter**

RocketMatter is a product of RocketMatter, LLC.

**Entry into Market:** 2007

**Integration**
- Skype integration
- Fujitsu ScanSnap integration
- Document Management - on board document management; no additional integration
- Mobile web interface
- No email support

**Pricing**
- First user: $59 per month
- Users 2-6: $49 per month
- Users 7-20: $39 per month
- 20+ Users: $29 per month

**Features**

Practice Management
- Group calendaring, docketing
- Client/matter management
- Time, billing, expenses
- Reporting, dashboards
- No Trust accounting

**Document Automation**
- No

**Client Extranet**
- No

**Offline Access**
- Calendar access on iPhone offline

**Storage**
- Unknown at time of writing

**Support**
- Technical support available by phone and email
- Personalized training available at additional cost
- Free weekly training webinars

**Other**
- Integrated timer for billable work

**Privacy Policy**
- Privacy statement unavailable at time of writing

**Security**
- Security statement unavailable at time of writing

**Terms of Service**
- TOS unavailable at time of writing

---

**VLO Tech**

VLO Tech is a product of Total Attorneys.

**Entry into Market:** 2007

**Integration**
- Document Management - on board document management; no additional integration

**Pricing**
- Call for pricing

**Features**

**Practice Management**
- Group calendaring, docketing
- Client/matter management
- Time, billing, expenses
- Reporting, dashboards

**Document Automation**
- Yes
Client Extranet

- Yes

Offline Access

- Unknown at time of writing

Storage

- Unknown at time of writing

Support

- Unknown at time of writing

Other

- Online bill payment for clients
- Jurisdiction check to prevent unauthorized practice of law
- File library
- Form library
- Customizable

Privacy Policy

- Privacy statement unavailable at time of writing

Security

- SSL Encryption

Terms of Service

- TOS unavailable at time of writing

Word Processing

Lawyers live and die by the word, so our word processing programs are a key weapon in our arsenal. Word processing in the cloud involves a few trade-offs. On the positive side, your word processor is available from anywhere you have a web-connected computer; your documents are stored for you by your program of choice (though you should still backup!); and collaboration becomes much simpler when all the key players are working on the same document at the same time instead of emailing endless and often conflicting versions of a document back and forth between authors.

All that good comes at a cost, though. In general, cloud based word processors are not as fully featured as their locally installed cousins. So if you are a power user, you may find these options less enticing (at least for now – new features are added regularly). Complex formatting, in particular, may be compromised in some of these cloud solutions. Too often cloud fans feel that they no longer need to concern themselves with backing up their documents and data; while cloud vendors do a commendable job of keeping your data safe and secure, there is no substitute for vigilance by each user to keep important documents backed up. Microsoft Office 2010 will offer cloud access soon, as well.
Adobe Buzzword

Lesser known than the offerings from Google and Zoho, Adobe’s Buzzword is an elegant cloud based word processor. The interface is gorgeous which instantly makes you wonder why Google and Zoho haven’t gotten the look and feel put together yet.

Buzzword is offered as part of a suite of applications through Acrobat.com, and include tools for PDF conversion, web conferencing, and office applications.

Pricing
- The basic version is free. Confusingly, the lowest paid tier is called “Basic” and is $15 per month. The top of the line is “Plus” for $40 per month (or $400 per year).

Features
- The flash interface is the key distinction with this product. It results in petty annoyances (like the inability of Roboform to autofill the password and username) but also makes for a user experience that is a delight by comparison to Google and Zoho. In other respects it is about on par, feature-wise, with the other products mentioned.

Collaboration
- Buzzword offers read-write and read-only collaboration and sharing options.

Storage
- 5 GB online storage.

Google Docs

The ubiquitous Google has a strong offering in this arena with Google Docs (an umbrella term covering spreadsheets, word processing, presentation documents and form building). Formerly Writely, Google Docs suite integrates nicely with Google’s other services, such as Gmail, Calendar, etc. If you are a user of those other services, the integration makes Google Docs a nice cloud based application.

Pricing
- free

Features
- Google Docs, like much SaaS software, continually rolls new features into its products. New and noteworthy features include bulk uploading, sharing folders, language translation, themes for forms.

Collaboration
Google Docs offers read-write or read only collaboration and sharing. Other users must have a Google account (free) to use Google Docs.

Storage
- 500 documents and spreadsheets plus 5000 images.

Zoho Writer

Zoho, it is worth noting, has an enormous suite of cloud solutions, including everything from word processing to web-based email to a notebook to CRM to wikis, with lots of stops in between. Zoho Writer is the word processing application and in our review we found it to be a strong entry in this market.

Pricing
- Zoho is free for personal use. Moving up to professional or business levels will net you more storage and features for $3 and $9 per month, respectively. Personal and professional use only allows one user per account; business level can be expanded up to 500 users.

Features
- Zoho offers archiving and antivirus protection at its basic level. It supports groups and tagging and a pretty decent feature list. At higher (paid) levels additional features are offered to support revisions (versioning) and group management.

Collaboration
- Zoho allows sharing on either a read/write level or a read only level.

Storage
- 1 GB for personal users, 5 GB for professional users, or 15 GB for business users.

Online Calendaring/Scheduling

For lawyers or staff who need to frequently set up meetings with multiple participants from different organizations, logistics can be difficult. Within an organization, it is easy to use Outlook or Google Calendar to see the other participants’ free time. The inability to see the free time of meeting invitees outside one’s organization means that setting up a meeting often involves frustrating games of phone and email tag. Depositions and mediations can be so difficult to schedule that they absorb hours of staff time.

A series of cloud-based tools has stepped into the breach to address this difficulty. Rather than review each of the tools independently, we will just mention that as a group they behave in a
similar way: the meeting organizer inputs the email addresses of all attendees along with a slate of available times; each attendee selects the times that he or she is available; the software program combines the results and produces the times where the most people are available.

Each of the following free programs works differently and features a different interface. We’d suggest that you try all four and see which one or ones work best for you. Since each meeting is a discrete event, there is no pressure to adopt a long term commitment to one of these solutions. Try these and keep an eye out for the new ones that will doubtless come along.

- Meet-o-matic
- ScheduleOnce
- Doodle
- Meeting Wizard

**Online Research**

Internet access to premium legal and business information databases has become the de facto standard. Access to these online services has been via the WWW for at least a decade. Before that many of the established research databases, both legal and corporate, were previously available only via proprietary systems. The movement to provide premium content via the Internet rather than a TCP/IP or dial-up modem took the legal and business research database providers to a new level of service and accessibility.

Lawyers flocked to online research because of its speed, ease-of-use and availability. However, by merely accessing the research online firms give up the ownership of the information in print. Many law firms would find that without a current subscription to an online research provider they have no research tools. There are low cost and free providers, but the premium services keep lawyers coming back for more. While lawyers may look to libraries as the repositories of the history of the law, note that many libraries are migrating to online legal research database providers due to demand from patrons and budget woes. The library may or may not keep the books you want. Attorneys should decide what, if anything, they will want to own, rather than access for their legal research needs.

There are many vendors in the legal research space. Some provide primary and secondary materials with significant value add from lawyer-editors. These include LexisNexis, Westlaw, BNA, CCH, Louislaw/Aspen and others. Other providers add enhanced search capabilities and other electronically produced value to the database of primary law, such as Fastcase and Casemaker. Both of these providers have worked with the state bars, and many lawyers have free access to the basic services from them. There are many other ways to get online legal research - through Findlaw, LexisOne, Google Legal Scholar, Cornell’s Legal Information Institute, GLIN, and many more. See this article for more low cost options: Research on a Dime: Effective Authoritative Sources for the Budget-Minded

There is another concern when fully relying on online legal research. Many of the states provide free public access to court opinions and legislation. However, reading the disclaimers on these
sites will show attorneys that the information posted is not always authenticated, authoritative, updated or official. For more information on this issue see: When is a Law THE Law? Why Authenticity and Quality Matter.

Litigation Support and Ediscovery

Most litigation support software provides a searchable database to host documents and analytical information related to a litigation matter. They generally provide a way to import, view, search, sort, filter, tag, code, redact, export and produce the documents. For solo and small firms who are dealing with a larger data set than they have previously - due to the proliferation of documents and information generated by the use of technology - their ways of dealing with discovery data may no longer work. There are tools that do myriad things, often with complex and confusing pricing base on multiple factors including complexity of the data input, number of custodians, volume of data, and others. Some vendor of traditional litigation support software will readily admit that their products are not designed for smaller (less than a terabyte) file loads, or are not meant to be run as a single license product. Enter the SaaS model. Many of the vendors with a SaaS approach charge for the amount of data in storage, rather than by licenses. In some cases there is a small monthly fee for access, and a scaled rate for the amount of data. In this way attorneys who don’t always need litigation support or document review software can use it when they need it, possibly charging the client for use and not paying out for a sophisticated and expensive piece of software that sees only occasional use.

In addition to the “pure” SaaS products listed below, see this comparison chart for information on several brands of litigation support software - traditional, SaaS and mixed.

ImageDepot (Trial Solution Technologies of Texas)

Entry to the Market – Not Available

Pricing

- Pricing is based on a per gigabyte rate of data hosted. Unlimited Users (No user license fees.) Unlimited Access

Features

- Litigation document hosting and first pass native review for electronic discovery.
- User Level Security (View, edit, print, download, etc.)
- Audit Trail (User tracking of database edits, printing, viewing, etc.)
- Microsoft SQL Server Database
- Data Backup Included (Daily database backup and images stored in RAID array for redundancy)
- Dual Internet Connectivity (Level 3 affiliated data center)
- Data Loading (Included with each plan)
- Printing and Downloading of Documents (Batch print documents)
- Index Searches (Search on available indexing)
- Saved Searches
- Unlimited Index Fields
- Customizable Reports
Free Bulk Data Removal (Deletion of data)
Tiff, JPG Hosting (Black and white tiffs and color jpegs)
OCR, PDF Hosting
Full Text Search Capability (OCR search)
Image Annotation Capabilities
Administrative Rights (Self administer users and user rights)
Native File Hosting

Terms of Use/Privacy Policy
http://www.trialsolutions.net/terms.htm

Support and Service Level Agreement
- 24/7/365 Monitoring and Maintenance
- Free Software Support 7am - 6pm CT (Phone, online and email support included)
- Free Online Training (Group training)
- 24 Hour Software Support (Phone, online and email support included)
- Guaranteed Uptime (Uninterruptible power supply with generator backup)

Offline Access
- Free Bulk File Downloads and Exports

Security
- Secure Server Environment
- SSL 128bit Encryption (Secure Socket Layer)

Lexbe
Entry to the Market -2007
Pricing
- Base Plan includes 2 users (each additional is $30/month), 1GB of shared storage, and costs $99/month.
- Firm Plan includes 10 users (each additional $15/month), 10GB of shared storage, and costs $249/month.
- Under either plan, additional storage is available for $15/GB.

Features
- Case analysis features include fact and issue analysis, case calendaring, tracking of case participants, deposition analysis, case research, fact tracking and dynamic chronology and timeline generation. Document management features include full-text search, automatic optical character recognition (OCR) of PDF files, document sorting, retrieval and repository, native file review, metadata analysis, document coding, document encryption and off-line access.
- Litigation production tools include, relevancy and privilege tagging, Bates stamping, and automatic privilege log generation.
Terms of Use/Privacy Policy
- http://www.lexbe.com/hp/termsofuse.htm

Support and Service Level Agreement
- 24/7/365 phone support
- online knowledgebase and ticketing
- Service Agreement: http://www.lexbe.com/hp/a/masterservicesagreement-e.htm

Offline Access
- copy all files to your local computer via “briefcase” function

Security
- Data is maintained at our state-of-the-art, access controlled data center and monitored 24-7
- 99.9% uptime guarantee
- Back-ups are encrypted and mirrored nightly to physically discrete data center
- Users access data through an encrypted SSL connection

NextPoint (Trial Cloud)

Entry to the Market – Not available

Pricing
- $250 per GB to process native files, and then $50 per GB per month to host the data

Features
- Currently offer Trial Cloud which provides trial preparation and evidence management. In BETA are the preservation and discovery “clouds”
- Advanced Deposition and Transcript Management Features
- Powerful search capabilities include full Boolean controls
- Built-in OCR and PDF to TIF capabilities
- Support for native files
- Standard coding fields are pre-loaded
- Customizable label, issue and tag fields provide flexibility during the litigation process
- Hyperlink from deposition transcripts to documents
- Color-coded designations management
- Automatic exhibit stamping
- Automated exhibit list generation
- Tiered user permission structure allows for sophisticated permissions management
- Support for multiple file types and individual files of up to 5 gigabytes
- Robust single and batch PDF report generation
- EDRM XML Compliant
- DAT, CSV and OLL Exports built-in and user-facing
Terms of Use/Privacy Policy
- Not available

Support and Service Level Agreement
- Guarantee 100% uptime, with refunds for any unplanned outages.

Offline Access
- export tools preserve the ability to download into EDRM XML-compliant formats at any time, and as many times as you want, at no additional charge.

Security
- With data backed up every four hours in geographically separate locations
- Meets many federally regulated security standards, including Sarbanes-Oxley and HIPAA compliance standards, as well as meeting the Statement on Auditing Standards No. 70: Service Organizations, Type II (SAS70 Type II). Encryption
- 256-bit SSL encryption and advanced data virtualization techniques-deployed both on the web-server operating system and within the application layer
- Administrators can set up differentiated access levels for unique users, providing control over what individual users can do in the application
- Every use of the application is authenticated and logged, providing an audit trail of user activities and modifications.

Integration
- Imports/exports for Concordance, Summation, and LiveNote

Online Backup
Online backup providers should be well scrutinized by any law firm considering this backup strategy. There are some of the disadvantages, including the time for the initial backup and any restores, security, and corporate longevity. For lawyers add to that the complexities of storing confidential client information with a third party and the repercussions. This is not to say that online backup is inherently too risky for attorneys. It simply means that free and low cost options are not the right solution.

Companies from LexisNexis to LiveVault/Iron Mountain to eVault are providing secure, fee-based online backup with monitoring. But, even with these companies firms must ensure that the right questions are asked and answered to make a reasonable attempt to protect the firm's data. Courtney Kennaday, SC Bar Practice Management Advisor, has posted a helpful list of questions to ask of online backup providers. This list can also help remind firms of questions to ask of any SaaS provider.

Mozy Pro

Entry to the Market - 2005
Pricing:
- Desktop Licenses: $3.95 + $0.50/GB per month
- Server Licenses: $6.95 + $0.50/GB per month

Features
- Desktop, laptop, and server backup
- Administrative account management
- Automatic or scheduled backups
- Block-level incremental backups
- Bandwidth throttling
- Alerts and permissions
- Open and locked file support
- Version (snapshot) support restores file versions up to 30 days in the past.
- SQL, Exchange, and network drive support

Terms of Use
http://mozy.com/terms/mozypro

Privacy Policy
http://mozy.com/privacy

Support
- free 24/7 toll-free telephone support

Security
MozyPro offers encryption in transit and encryption on their servers. If you lose your encryption key they can’t even unlock it for you.
- Encryption
  1. Blowfish: At the beginning of the backup process, all files are locally encrypted with 448-bit Blowfish encryption.
  2. AES: MozyPro users have the option of supplying a personal key utilizing military-grade 256-bit AES encryption en lieu of 448-bit Blowfish encryption.
- SSL: These encrypted files are then sent via 128-bit SSL—the same encryption used in online banking— to a Decho-managed data center where they remain in their encrypted state.
- Data centers: All data centers employ state-of-the-art security and are SAS70 certified.
- Near Continuous Data Protection: Mozy automatically detects and backs up new and changed files.
- Alerts: Administrators may create customized email alerts regarding the backup health of their account to be sent to their email address on a daily, weekly, or, monthly basis.

Corevault
Entry to the Market - unknown

Pricing
Varies depending on amount of data

Features
- Daily off-site backup with daily e-mail notification
- Fully automated and centrally managed backup
- Regulatory compliant with HIPAA, Sarbanes-Oxley and other important ones
- Data stored off-site at our two private data centers
- Data analysis and reporting
- 24/7 restoration of single files and e-mails
- Emergency restoration services

Terms of Use/Privacy Policy
Not available

Support and Service Level Agreement
If you require after hours technical support, our on-call support is available to you 24x7, 365 days a year. A stand-by Customer Care Representative will contact you within 3 hours on telephone inquiries. Charges may apply.

Offline Access
- Local backup storage option for added redundancy
- Also offer offline and nearline backup options

Security
- 256-bit AES level data encryption
- limit access to data to authorized users by password authorization;
- encrypt data prior to transmission and storing it in an encrypted state.

i365 (a Seagate Company) SaaS Backup for Small Business

Entry to the Market – 1997 (formerly evault)

Pricing
Varies depending on level of service and amount of data stored

Features of Evault for small businesses
- Automated online data protection
- Backups run automatically, transferring your data over the Internet to a secure offsite facility.
- Affordable solution with no capital investment
• Installs in minutes. A dashboard confirms your backups occur as scheduled. It’s easy to customize views and delegate tasks.
• Easy restoration of files from dashboard
• Hot backups
• Protects mission-critical applications even while they’re in use.

Terms of Use/Privacy Policy
http://www.i365.com/about/legal/terms.html

Support and Service Level Agreement
24/7/365 support

Offline Access
I365 offers many options, including managed services and a “Plug and Protect” box

Security
• Guaranteed end-to-end security
• Government approved encryption algorithms are used in transit and in storage, ensuring the security of your data. You have exclusive access to the key to decrypt your data—not even EVault can see it.
• SAS 70 Type II certification
• Independent audits confirm facilities and processes conform to industry standards.

Carbonite Pro

Entry to the Market - 2006

Pricing
• no charge for "licensing" individual computers or servers
• no set up fee

<table>
<thead>
<tr>
<th>Gigabytes</th>
<th>Monthly Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 20GB</td>
<td>$10</td>
</tr>
<tr>
<td>20GB - 49GB</td>
<td>$25</td>
</tr>
<tr>
<td>50GB-99GB</td>
<td>$50</td>
</tr>
<tr>
<td>100GB-149GB</td>
<td>$75</td>
</tr>
<tr>
<td>150GB-199GB</td>
<td>$100</td>
</tr>
<tr>
<td>200GB-299GB</td>
<td>$150</td>
</tr>
<tr>
<td>300GB-499GB</td>
<td>$250</td>
</tr>
</tbody>
</table>

For space over 499 GB call 866-596-7988

Features
• Only does file backup. Does NOT backup System files or applications, so is only appropriate as secondary backup of files.
Terms of Use/Privacy Policy

- http://www.carbonite.com/terms/

Support and Service Level Agreement

- unlimited phone, email and chat support for account administrators
- Windows XP, Windows Vista, Windows 7
- Standard 32-bit and 64-bit versions of XP and Vista

Security

- Data is encrypted before it leaves your computer, then sent to servers over encrypted lines. It remains encrypted for as long as it's backed up with Carbonite Pro.
Introduction to "Cloud" Computing

Written by
David Bilinsky
Matt Kesner

Presenters
David Bilinsky
Matt Kesner

March 25 – 27, 2010
www.techshow.com
Cloud computing has emerged as a force in the technology marketplace, but few lawyers really know what it is or how it can impact the delivery of legal services to clients. This introductory session will walk through the basics (without being too technical) to help you understand how it differs from traditional software applications, what types of tools are offered via cloud computing, as well as the advantages and disadvantages of using the cloud to serve your clients. Today, popular cloud tools include online backups, document processing, and virtual meetings, but how safe and reliable is this new delivery method? Join our experts for this introductory, jargon-free session that is a suggested foundational session for the remainder of this track.
INTRODUCTION TO CLOUD COMPUTING ............................................................ 4
WHAT IS ‘CLOUD COMPUTING’ ............................................................................. 5
SUSSKIND’S FOUR QUADRANT MODEL APPLIED TO CLOUD COMPUTING: ............................ 5
EXAMPLES OF CLOUD COMPUTING IN EACH OF THE FOUR QUADRANTS: ................. 7
 External and Knowledge: Provision of access to knowledge (online legal services) 7
 External and Technology: External Technology Links (client relationship systems). 8
 Technology and Internal: Internal use of Technology (back-office technology)........ 9
 Internal and Knowledge: Internal management of knowledge (internal knowledge systems) ................................................................. 11

HOW DOES CLOUD COMPUTING DIFFER FROM TRADITIONAL SOFTWARE/COMPUTING? ....................................................................................... 12
ONE LAYER DOWN: WHAT ARE THE KINDS OF CLOUD OFFERINGS AND HOW DO THEY WORK? ........................................................................................................ 13
PRIVATE CLOUD VERSUS PUBLIC CLOUD.......................................................... 13
THE COMMON FLAVORS OF CLOUD ........................................................................... 13

WHAT ARE THE BENEFITS OF CLOUD COMPUTING? ..................................... 14
TO THE FIRM ........................................................................................................ 14
 The One True Advantage—More Predictable Cost ............................................ 14
TO THE LAWYER .................................................................................................. 15
TO THE CLIENT ...................................................................................................... 15

WHAT ARE THE DRAWBACKS TO CLOUD COMPUTING? ............................. 16
TO THE FIRM ........................................................................................................ 16
 Outsourcing Risks: .................................................................................................. 16
 Data Segregation/Lack of Data Integration: ......................................................... 16
 Additional Security Risks: ...................................................................................... 16
 Long-term Viability................................................................................................ 17
TO THE LAWYER .................................................................................................. 17
 Lack of Flexibility .................................................................................................. 17
 Less Service/Less Handholding .......................................................................... 18
 Need to Set Explicit Expectations With Client .................................................. 18
TO THE CLIENT ...................................................................................................... 18

ETHICS OF PRACTICING ON THE CLOUD .......................................................... 18
THE UNAUTHORIZED PRACTICE OF LAW: .......................................................... 19
CONFLICTS ........................................................................................................... 19
JURISDICTIONAL ISSUES ....................................................................................... 24
ESTABLISHING YOUR ATTORNEY/LAWYER-CLIENT RELATIONSHIP ......................................................................................... 26
COMMUNICATION ................................................................................................. 26
HOW DO YOU 'KNOW YOUR CLIENT' ONLINE? WHAT ABOUT CLIENT IDENTIFICATION REQUIREMENTS? ........................................................................... 27
MALPRACTICE CONCERNS / LIMITING YOUR INVOLVEMENT IN A FILE / LIMITED SCOPE REPRESENTATION ................................................................................................. 27
INSURANCE COVERAGE ......................................................................................... 28

CONCLUSIONS ...................................................................................................... 28
Introduction to Cloud Computing

When people first hear of ‘cloud computing’ they typically think of services that are hosted by third parties and accessible over the Internet (Google Mail is a good example here). However, in the wider sense, cloud computing encompasses much more than that.

In reality, it can be any computing resource that is delivered to the user over the Internet who does not need knowledge of, expertise in or control over the infrastructure that supports it. An electronic ‘war room’ that is put up over the Internet to support and host all the documents, information and processes involved in a merger & acquisition, for example, hosted by a law firm’s own servers (say using Microsoft’s SharePoint) is indistinguishable to the user to a war room put up on a third party server. The work is done over the internet and is only available to those who are approved and authenticated to have access to the data.

This example illustrates that there are really three clouds: A “public cloud”, a ‘Hybrid cloud” and a ‘Private cloud”.

The “public cloud” is what is thought of as cloud computing: the traditional hosted services by a third party, accessible using the Internet.

A ‘hybrid cloud’ is a blend of both public and private providers and in fact is the typical configuration for most enterprises. They will use a combination of third-party and private technologies to conduct their business.

The ‘private cloud’ consist of internally hosted technologies that appear to the world as if they exist on the third party cloud, but in fact remain at all times within the control of the enterprise. In this sense they are a virtual cloud (you have read it here first!) or private cloud.

It is this resultant confusion over the multiple uses of the term ‘cloud computing’ that Cnet news quoted Larry Ellison (Sept 26, 2009: http://news.cnet.com/8301-13953_3-10052188-80.html);

“Finally, a technology executive willing to tell the truth about cloud computing. Speaking at Oracle OpenWorld, Larry Ellison said that the computer industry is more fashion-driven than women's fashion and cloud computing is simply the latest fashion. The Wall Street Journal quoted the Oracle CEO's remarks:

"The interesting thing about cloud computing is that we've redefined cloud computing to include everything that we already do. I can't think of anything that isn't cloud computing with all of these announcements. The computer industry is the only industry that is more fashion-driven than women's fashion. Maybe I'm an idiot, but I have no idea what anyone is talking about. What is it? It's complete gibberish. It's insane. When is this idiocy going to stop?

"We'll make cloud computing announcements. I'm not going to fight this thing. But I don't understand what we would do differently in the light of cloud."

ABATECHSHOW 2010
CONFERENCE AND EXPO + MARCH 25-27, 2010

March 26, 2010
So with Larry Ellison’s introduction, we delve into the question, “What really is cloud computing and how does it matter to a lawyer and a law firm?”

What is ‘Cloud Computing’

Susskind’s Four Quadrant Model applied to Cloud Computing:

Richard Suskind’s 4 quadrant model:

http://www.oup.co.uk/law/practitioner/richardsusskind/

is a good framework to consider when looking at the evolution of law practice into the virtual technological space (i.e. “the cloud”).

Richard starts by looking at information and whether it is external to the law firm or internal:

![Diagram of Susskind's Four Quadrant Model](http://www.oup.co.uk/law/practitioner/richardsusskind/)

From there, he looks at where systems can be built in each of the quadrants:
As we can see, there are many different ways to provide legal services using the ‘cloud’. In some of these cases, the data is hosted on your own servers but made available on-line to clients and others, and in other cases the data is hosted on servers owned by others.

In this paper we may use the term e-lawyering and cloud computing equivalently. An e-lawyer is someone who is providing legal services using some aspect of the Internet to deliver those services. In this sense, a lawyer using email is venturing into cloud computing, particularly if that email is HTML based and hosted on someone else’s servers (such as Gmail or Yahoo). So is a lawyer using MS SharePoint to host ‘war rooms’ for clients that have restricted access to just a very few.

Who is an e-lawyer or lawyer on the cloud? Is it the solo lawyer working out of a home office? Or, is it the mid-size firm collaborating via a Google document? Or is it the 100 year old bricks-n-mortar firm with multiple offices creating extranets and virtual deal rooms? The logical answer is all three. The degree of adoption, tools chosen and physical location of the business may vary, but each instance can be called e-lawyering or cloud computing. There is also a fourth category - the law firm that has built an on-line advisory or expert system in discrete areas of the law. Science fiction? Not really - we have firms such as Linklaters and Clifford Chance and others that are definitely moving in this direction.

There is a distinction, however, to be made between virtual practice -vs- a web-enhanced traditional practice. While the idea of an entirely virtual law firm may have a certain innovative ring to it, and may be newsworthy, the adoption of this style of practice is extremely low. Furthermore, moving a firm totally into the virtual space may not be entirely possible. Even a virtual firm will have a physical address (you have to be able for a client to mail the check
somewhere!), you need to be able to receive court documents (not everyone will be prepared to send documents electronically) and you will also be limited by lawyers' jurisdictional licensing and other ethical constraints. So even the most virtual of law firms (that tries to exist totally on the cloud) will still need some degree of physical ‘location’ to receive physical documents, clients and to meet real people in real time.

Where many firms are gaining stature however is through placing web tools in front of their legal practice in order to provide transparency and robustness. Web software can be blended and customized, at each attorney's discretion, to support many facets of practice. From the trend of public-facing knowledge (e.g. blogging, web publishing) for marketing purposes, to collaborating on secured websites (deal rooms, extranets), lawyers can engage web tools with both a public and private agenda. They can mix cloud resources with private resources on a needs-driven basis.

The key to competing online is to provide depth to one's brand and services that won't position a lawyer's services in the 'race to zero', i.e. competing purely on price and reducing expenses (& more importantly cutting corners) to the point where the only evaluation tool lawyer's have given a prospective client is price.

**Examples of Cloud Computing in each of the Four Quadrants:**

**External and Knowledge: Provision of access to knowledge (online legal services)**

Stephanie Kimbro ([www.kimbrolaw.com](http://www.kimbrolaw.com)) is one of a growing number of lawyers who offer legal services virtually – or in other words, on the cloud. In her case, her web site is and practice states it is limited to North Carolina Civil Law. She also assists other lawyers who wish to build a virtual law practice.
External and Technology: External Technology Links (client relationship systems)

One example of an external technological link using the Internet is Erik Mcgraken’s web page, where he offers a free injury and claim consultation by video using SKYPE:
Technology and Internal: Internal use of Technology (back-office technology)

CLIO (www.goclio.com), RocketMatter (www.rocketmatter.com) and other sites offer internal use of web resources to practice law. These are the ‘traditional’ SaaS vendors:
Web-based Practice Management

Clio makes practice management easy with a full suite of tools targeted specifically at the needs of sole practitioners and small firms.

Stay organized, on top of billings, and in control of your practice with Clio. Best of all, it’s web-based so there’s nothing to install. Your practice is wherever you are.

Sign up now or Take the Tour

Security

The security of your data is of the utmost importance, as such we take all reasonable precautions to protect the information you entrust to us. Traffic to your web-browser is secured using bank-grade 256-bit SSL encryption. Data is stored in an enterprise-class, secured hosting environment that is backed-up daily to aid recovery in the event of an emergency.

All information remains your property indefinitely and will never be revealed, shared or sold for any reason.

“Solos and small firms won’t even think twice before trying Clio out.”

Sean Doherty, Law.com
Internal and Knowledge: Internal management of knowledge (internal knowledge systems)

Microsoft’s SharePoint services can facilitate the creation of private cloud services for the internal management of knowledge. They can offer web-based collaboration, project (case) management functions, document management, wikis and blogs all for the internal use of the firm.
How does Cloud Computing differ from traditional software/computing?

Cloud Computing, at its core means, that some of the computing happens outside your computer and outside the servers that are owned and operated by your business.

If you think for more than a moment about that definition, it sounds like we have all used Cloud computing in the past and it cannot be something new. That is probably true. The mainframe computers used for payroll processing since the 1960s would qualify as Cloud Computing. So would the early days of Compuserve and AOL. In our personal lives in this era of the Internet, we are all used to computing that happens on Google, Facebook, YouTube, Yahoo!, Wikipedia, Amazon and Twitter. In our business lives we use Google, SalesForce, LEXIS, Westlaw, and Bloomberg. All of these are Cloud Computing examples yet we began using them long before we heard of Cloud Computing.

Despite the great buzz about Cloud Computing, we agree with Mr. Ellison that it does not differ a great deal from traditional software and computing. However, there are some operational and functional differences that change the balance of risk. For the purposes of contracting with Cloud vendors and assessing your risk management portfolio these differences are important.
Before we get to that, we probably need to explain why is there so much excitement about Cloud Computing. We suspect that the buzz has been created by IT vendors. IT spending has not increased in the last few years in the ways it had historically since the late 70s. One of the few sources for growth is to expand into other areas of IT spending. For vendors Cloud Computing has the potential of massively reallocating IT spending from certain traditional vendors and resources, particularly traditional software vendors like Microsoft and in-house IT personnel to other players in the market.

The basic sales pitch for Cloud Computing is that IT can be as accessible and reliable as utilities like telephone and electrical service. We believe that the most important thing to keep in mind is that Cloud is a vendor-driven change in the industry. There are new inherent risks. As a consumer of IT services or as a lawyer counseling those consumers, you need to keep in mind that all Cloud vendors seek to redirect some current spending on in-house IT capacity, (people, software and hardware), to them.

One Layer Down: What are the Kinds of Cloud Offerings and How Do They Work?

Private Cloud versus Public Cloud

Most of the discussions of Cloud computing has referred to public cloud. Public Cloud is an offering that allows access by anyone on the Internet. Private Cloud restricts access only to pre-authorized computers. This does not sound like a big difference but it makes a huge difference when it comes to security.

This is an analogy that may help illustrate the point. Spam, or unwanted commercial e-mail, is a consequence of allowing access to our e-mail servers to any other e-mail server on the Internet. If we only allowed e-mail from servers on a pre-authorized list of trusted e-mail systems, spam would no longer trouble us. For now, part of the utility of e-mail as a communications system is that it is open to all people, (and computers), with which you have not previously communicated or authorized. However, unlike e-mail many of your computing needs do not require access to all. Our present in-house IT systems were all built as private systems. They work well despite this.

Since the business of law is one where we are required to keep secrets, Private Cloud, all other things being equal, is a more secure and therefore preferred option.

The Common Flavors of Cloud

- Software as a Service (SaaS) – (examples: Gmail or Salesforce.com)
  This is a model of software deployment whereby the provider licenses an application to customers for use as a service on demand. SaaS software vendors usually host the application on their own web servers with access provided to the customer through her browser.

- Platform as a Service (PaaS)—(examples: Amazon EC2, Google App Engine or Microsoft Azure)
This model delivers both hardware and software. Typically the software offering is a Web server or service that must be configured by the customer to provide the final service to her customers. In other words the Cloud provider supplies hardware, operating systems, and Application Protocol Interfaces (APIs) that allow customers to write their applications to be run on the platform being offered.

- **Storage Cloud**—(examples: Atmos and Mozy)
  Offers storage or backup in the cloud. Often the most straightforward Cloud offering for law firms or legal departments especially where the data can be stored in encrypted form.

- **Infrastructure as a Service (IaaS)**—(examples: Rackspace, Savvis and Terremark)
  Delivers hardware and base levels of software, usually including operating systems and a virtualization platform as a service. Rather than purchasing servers, software, data center space and network equipment, customers instead buy/rent those resources as a fully outsourced service.

**What are the benefits of Cloud Computing?**

**To the Firm**

Cloud vendors generally promise some combination of the following to customers and law firms: 1) a better service than their current in-house offering; 2) lower overall cost; and 3) a greater scale of IT experience that can be brought to bear on their issues; and 4) extremely high uptime. In the early examples of which the authors are aware, the actual results have been mixed.

Some of the more established pre-Cloud-era Cloud services like SalesForce do offer a very good product. In many business sectors SalesForce has proved itself to be the better product. However it has not taken off in law firms. Some of the suspected reasons for this will be discussed in the drawbacks sections below.

As with most outsourcing contracts of the past, defining the desired level of service can be difficult. Other than SalesForce, few Cloud offerings have established themselves as offering demonstrably better service than in-house options. In fact most of the Cloud offerings so far seem to be offering exactly comparable services.

**The One True Advantage—More Predictable Cost**

Lower cost also seems to be a questionable claim. While the upfront costs are usually much less, the five-year projections are not so clear. However, there is a significant advantage that most vendors are not pushing: cost predictability. Cloud can even out IT-related expenses so that they are more consistent and will more closely track their business cycle. Reports that Cloud customers can avoid the rollercoaster of capital spending on IT are true. Because the infrastructure needs can be converted to expense rather than large point-in-time capital spending, Cloud does offer a taste of more predictable spending. However, we have been surprised to see very few Cloud contracts that reduce pricing when needs or the number of needed user licenses shrinks. Even those that offer some scaling back tend not to offer one-for-one reductions. This is an area that should be subject to hard negotiations with any Cloud contract.
It is difficult to judge the third and fourth claims—greater IT knowledge and extremely high uptime—but the anecdotal evidence so far is not compelling. News reports over the last year have detailed a number of outages from the biggest names in Cloud—Google, Amazon and Microsoft.\(^{1}\) The explanations offered in each case suggest typical, basic IT blunders as the root cause.

In discussions with leaders at the largest law firms and corporations offers an interesting dichotomy on the subject of uptime, particularly as it relates to e-mail. Most large law firms have achieved extremely high levels of uptimes (defined as the lack of unscheduled downtime) for their e-mail systems. Most are able to measure uptime in years. Many have actually achieved the mythical five-nines level of uptime with these systems. (Five-nines uptime refers to the concept that a system or systems will be up 99.999\% each year or less than 6 minutes per year of unscheduled downtime.) On the other hand, many corporate CIOs claim success with e-mail systems that are up 99\% of the time (or down about a day per month). Most major Cloud vendors either make no specific claim for uptime, (e.g., Amazon EC2 general contract), or make relatively modest claims (99.9\% uptime claim from Microsoft’s BPOS service).

To the Lawyer
The promised advantages for lawyers are the same as those for the firm with one addition—Cloud is salable as a fashionable feature of their service. As Mr. Ellison aptly noted, IT has become fashion conscious and Cloud is the current fashion. In the last several years, traditional law firm practices have been heavily criticized by clients as backward, wasteful and the antithesis of efficient business practice. As Cloud promises efficiency, it is one way lawyers can claim that they have “seen the light” and are becoming more efficient. As noted above, Cloud is not necessarily more efficient or less expensive. That said one cannot underestimate the value of marketing spin.

To the Client
Again, the promises to all users of Cloud are similar. Clients are very likely unaware of the high operational uptime legal IT has achieved. From their view, the firm that employs a Cloud option, particularly if it is a known brand, will probably be perceived favorably. On the other hand, if the relatively low levels of uptime promised in Cloud Service Level Agreements (99.9\% uptime at best) turn out to be accurate; clients will probably be less than pleased over time.

Despite its buzz, Cloud is still in its early phase. The majority of corporations, (the most significant category of law firm clients), do not yet use Cloud and less than 5\% use it to provide all business needs.\(^{2}\) However, as Cloud expands more firm clients will use Cloud. That may lead to possible synergies in the future of clients and firms are using the same Cloud vendor.


What are the drawbacks to Cloud Computing?

To the Firm
Outsourcing Risks:
At its core, Cloud is an outsourcing play. There have been many articles and books written about the risks and dangers of outsourcing. Most of the risks involve the lack of shared expectations at the beginning of the relationship which result in a greater disparity of expectations over time. We do not have the time or space to delve further into this area. Suffice it to say the contract for any outsourced service needs to be very thoughtful and explicit.

Data Segregation/Lack of Data Integration:
Beyond the typical outsourcing risks, there are other, less obvious traps for the unwary. First, while we have come to expect that the world and particularly the IT world is more and more interconnected, many Cloud offerings are disconnected islands. Many Cloud systems do not share data nearly as easily as do current in-house systems. By way of example, every in-house Customer Relationship Management system offers ways to move data from and to other systems and databases, SalesForce, one of the first and best Cloud offerings, makes it considerably more difficult to import and export data.

Additional Security Risks:
Second, security in the Cloud can be considerably more difficult. Cloud is evolving. Many of the Cloud offerings include sub-vendors that may or may not be apparent. Each participant in these Cloud offerings likely has privileged or super-user access to all or a part of the system. It is so difficult to figure out who has high levels of access that many Cloud contracts completely avoid this issue. It seems plain that law firms and other legal buyers need to specify exactly what access is available to whom.

Similarly regulatory compliance becomes much more difficult. Audits are a necessary part of most regulatory schemes and they become much more difficult and costly when auditing outside service providers.

Data location is a new risk with Cloud. There are specific duties regarding the privacy and security depending upon where data is located. In the United States the laws do not yet vary a great deal but some states like Massachusetts are becoming much more restrictive regarding the safeguarding of data. Outside the United States and particularly in the European Union, personal privacy rights greatly restrict the export and use of data between countries. Many Cloud vendors taught (advertise?) that they have IT operations that span the country and even the global. While this does mitigate risks of outages, it greatly increases the risk of having the laws of foreign jurisdictions apply to your business. Many of you might be surprised that one of the largest Cloud vendors, Amazon EC2, does not disclose where your data will reside.

When the law firm is located outside of the United States (Canada, Europe, Asia etc), then they will most probably have privacy and confidentiality concerns if the data is maintained on servers located in the USA, given legislation such as the Patriot Act.
Long-term Viability
Many Cloud offerings have already disappeared. Cloud offerings are more transitory. Because of this almost-ephemeral nature of the services, buyers must have thoughtful alternatives instantly available should their primary Cloud vendor stop providing its service. Buyers of Cloud services must be sure that their data will remain available even if their Cloud vendor stops doing business, changes its business focus or is acquired. Probably the only viable hedge against this risk is to conduct parallel or at least fail-over Cloud operations with a second vendor.

While many cloud vendors advertise that their data is securely backed up and ‘safe harboured’ with a third-party in the event of a financial or other failure of the Cloud provider, in reality there are practical difficulties with this. Even if you get access to your data, you will not, in most cases, have access to the application that is necessary to access that data. That means you will be faced with the difficulty of importing that data into another application. It may well be that another cloud computing provider comes forward with the ability to convert your data to their cloud, but that is by no means assured (nor is it advertised on most Cloud websites – after all, they do not wish to even acknowledge the fact that if they disappear, potentially so does your data). The possibility that access to your data can disappear (even if your data is safe on a safe harbour service somewhere) can pose a significant risk to your law practice as you scramble to keep your business going.

To the Lawyer
Lawyers seem to have one of two knee-jerk reactions to Cloud: Either they assume it is a perfect opportunity and should be exploited immediately or they become instantly mired in a mental swamp of risk. Neither of these views is completely accurate. There are advantages and disadvantages in Cloud computing.

Lack of Flexibility
This more than other points seems to surprise lawyers. Cloud is more profitable for vendors in large part because it is designed to be less flexible/more standardized. This is also the alleged reason that Cloud is less expensive. While we have seen that low-cost claims have yet to be proven, Cloud offerings are clearly less flexible.

Lawyers have always demanded greater customization of software than have other markets. Cloud offerings generally do not allow for this. One of the authors has attended several sales meetings with SalesForce sales team. In every meeting involving lawyers, the lawyers become fixated on the use of the word “customer” throughout SalesForce system. SalesForce is unwilling to change this reference to “client”. Surprisingly, this single example of lack of flexibility has caused more than one large law firm to dismiss SalesForce.

SalesForce---In part this is probably due to a downside of Cloud offerings—the lack of flexibility.

Most Cloud vendors are assuming economies of scale that preclude heavy customization and flexibility. Cloud vendors do not plan to provide close to the same customization as is assumed
in the traditional software world. Buyers of Cloud services need to understand this and set forth their expectations in the initial negotiations.

**Less Service/Less Handholding**
Similarly, most Cloud offerings offer less training and support than do traditional offerings. Traditional software vendors do offer a great deal of training and support. Most of this filters from the vendor to the in-house IT department to the lawyers. When lawyers outsource bigger segments of their IT to Cloud vendors, they will not have the in-house IT personnel to rely on and Cloud vendors do not plan to offer a substitute for that support.

For example, most of Google’s Cloud offerings have no option for telephonic support. None.

**Need to Set Explicit Expectations With Client**
As they begin to rely on Cloud vendors, lawyers will need to communicate more with clients regarding IT expectations. At most large law firms, like most large companies, there are regularly scheduled maintenance windows, including downtime, for IT to perform updating and repairs. It is typical today to shift those windows if there are any time sensitive deals or litigation occurring. Cloud vendors will not be accommodating in that way. While they will generally provide advanced notice, Cloud maintenance windows will not be subject to change because a partner at a law firm requests it.

**To the Client**
Downside risks for clients include all of the limitations listed above. We predict that law firm Cloud vendors will create serious security and particularly regulatory compliance risks for clients. The lack of flexibility will also be a limitation in the short run. In the longer time frame, clients will likely demand that law firm data flow into the clients’ systems in a way they prefer to see it. This also puts Cloud on a collision course with client desires.

**Ethics of practicing on the Cloud**

There are several ethical concerns regarding moving your practice onto the cloud. Some we have mentioned supra in the paper.

The ABA e-lawyering task force has a number of papers on their web site for reference by those interested in this area:

Suggested Minimum Requirements for Law Firms Delivering Legal Services Online (For Discussion Only)

eLawyering for Competitive Advantage: How to Earn Legal Fees When You Sleep
(http://meetings.abanet.org/webupload/commupload/EP024500/relatedresources/eLawyering_for_Competitive_Advantage.pdf)

Bibliography on disrupting conventional legal business models
Best Practice Guidelines for Legal Information Web Site Providers

Best Practice Presentation

The ABA also has listed a number of external links:

Practicing Law Online: Creating a Web-Based Virtual Law Office
(http://www.vlotech.com/ebooks/PracticingLawOnline.pdf)

A Quagmire of Internet Ethics Law and the ABA Guidelines for Legal Website Providers
(http://www.allbusiness.com/legal/882375-1.html)

BLOG: eLawyering: Practicing Law on the Web
(http://www.elawyeringredux.com/)

BLOG: Virtual Law Practice
(http://virtuallawpractice.org/)

While these papers and resources are very useful when considering moving your practice onto the Cloud, you must be observant of the view of your local jurisdiction. For example, the State Bar of Arizona recently (Dec. 2009) issued an ethics opinion on Maintaining Client Files on the Internet:

(http://www.myazbar.org/Ethics/opinionview.cfm?id=704)

This opinion not only commented on whether a lawyer in Arizona can ethically store client files on the Internet, but it specifically commented on how this can be done.

There is commentary on this ethics opinion on www.slaw.ca at:


Accordingly, it is suggested that any lawyer carefully monitor the ethics opinions in his/her jurisdiction before venturing too far down the virtual practice of law.

The Unauthorized Practice of Law:

This part of the paper discusses some of the more emergent issues involved in setting up a service on the Internet (via your firm web page and your own servers, using a mixture of
public/private cloud services or using one of the cloud providers) that allows you to practice law virtually.

One of the challenges of practising on the web is the fact that the web knows no geographic bounds. The implications of this is that the reach of your web page or online services can get you in hot water with the different legal regulators. For example, in Canada, there is the Interjurisdictional Practice Protocol that allows a qualifying lawyer to practice up to 100 days a year as a visiting lawyer in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member (for example, see Rule 2-10.2 of the Rules of the Law Society of British Columbia). However, a visiting lawyer is not supposed to establish an 'economic nexus' with any reciprocating jurisdiction - doing so requires the lawyer to then obtain a practice permit (Rule 2-10.21 supra).

**Inter-jurisdictional practice without a permit**

2-10.2 (1) Subject to the other requirements of this Rule, a visiting lawyer may provide legal services without a permit

(a) in the case of a visiting lawyer who is entitled to practice law in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member, for a maximum of 100 business days in any calendar year, or
(b) in all other cases, on not more than 10 legal matters and for not more than 20 business days in total during any 12-month period.

(2) A visiting lawyer must not hold himself or herself out or allow himself or herself to be held out as willing or qualified to provide legal services, except as a visiting lawyer.

(3) Subject to subrule (4), to qualify to provide legal services on a temporary basis under this Rule, a visiting lawyer must at all times

(a) carry professional liability insurance that

(i) is reasonably comparable in coverage and limits to that required of lawyers under Rule 3-21(1), and

(ii) extends to the visiting lawyer’s temporary practice in British Columbia,

(b) have defalcation compensation coverage from a governing body that extends to the visiting lawyer's temporary practice in British Columbia,

(b.1) not be subject to conditions of or restrictions on the visiting lawyer's practice or membership in the governing body in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity,

(c) not be the subject of criminal or disciplinary proceedings in any jurisdiction,

(d) have no disciplinary record in any jurisdiction, and

(e) not establish an economic nexus with British Columbia, contrary to Rule 2-10.21.
(4) On application of a visiting lawyer who otherwise qualifies under subrule (3), the Executive Director may allow the visiting lawyer to provide legal services without a permit beyond the limits set in subrule (1).

(4.1) On the written request of a visiting lawyer affected by a decision made by the Executive Director under subrule (4), the Executive Director must refer the matter to the Credentials Committee, and the Committee may
(a) confirm the decision of the Executive Director, or
(b) substitute its decision for that of the Executive Director.

(5) The requirement in subrule (3)(a) does not apply to a visiting lawyer who is exempt from compulsory liability insurance under Rule 3-25 with respect to legal services to be provided in British Columbia.

(6) A visiting lawyer who provides legal services without a permit must, on request,
(a) provide evidence to the Executive Director that the visiting lawyer has complied with and continues to comply with this Rule, and
(b) disclose to the Executive Director each governing body of which the visiting lawyer is a member.

(7) Notwithstanding Rules 2-10.1 to 2-17.1, a member of the Canadian Forces who is entitled to practice law in a home jurisdiction in which he or she is a member of the governing body
(a) may provide legal services for or on behalf of the Office of the Judge Advocate General without a permit, and
(b) does not establish an economic nexus with British Columbia under Rule 2-10.21, provided that he or she provides legal services exclusively for or on behalf of the Office of the Judge Advocate General.

[added 11/99; amended, (4.1) added and (5) rescinded 06/01;
(1) to (4) and (6) amended, (5) replaced and (7) added effective 07/03]

An economic nexus is established by actions inconsistent with a temporary basis for providing legal services:

**Disqualifications**

2-10.21 (1) A visiting lawyer who has established an economic nexus with British Columbia is not permitted to provide legal services without a permit under Rule 2-10.2.

(2) For the purposes of this Rule, an economic nexus is established by actions inconsistent with a temporary basis for providing legal services, including but not limited to doing any of the following in British Columbia:
(a) providing legal services beyond 100 business days, or longer period
allowed under Rule 2-10.2(4);
(b) opening an office from which legal services are offered or provided to the public;
(c) becoming resident;
(d) opening or operating a trust account, or accepting trust funds, except as allowed under Rule 2-16;
(e) holding oneself out or allowing oneself to be held out as willing or qualified to provide legal services, except as a visiting lawyer.

(3) A visiting lawyer who provides legal services in or from an office affiliated with the visiting lawyer's law firm in his or her home jurisdiction does not, for that reason alone, establish an economic nexus with British Columbia.

(4) A visiting lawyer who becomes disqualified under this Rule must cease providing legal services forthwith, but may apply under Rule 2-49 for call and admission or under Rule 2-11 for an inter-jurisdictional practice permit.

(5) On application by a visiting lawyer, the Executive Director may allow the visiting lawyer to continue to provide legal services pending consideration of an application under Rule 2-11 or 2-49.

Similarly, in the USA, the ABA's Model Code provides as follows:
Model Rules of Professional Conduct
Law Firms And Associations
Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
(b) A lawyer who is not admitted to practice in this jurisdiction shall not:
   (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
   (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
   (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
   (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
   (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another
jurisdiction, if the services arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer’s employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or
(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

It is reasonable to believe that setting up a web page or service on the cloud that purports to promote the provision of legal services in a "reciprocating jurisdiction" in Canada may constitute the establishment of an economic nexus with that jurisdiction. Similarly we believe in the USA, setting up a web page or legal service via the cloud promoting the provision of legal services would be "establish[ing] an office or other systematic and continuous presence in this jurisdiction for the practice of law."

Accordingly, the lawyer or lawyers who are offering those services would be required to obtain a permit or qualify for the bar in each jurisdiction in which they purport to offer these services. We do not believe that "temporary" or "visiting lawyer" provisions would be sufficient to justify a web page or service via the cloud that holds out the practice of law in a jurisdiction where the lawyer is not otherwise entitled to practice.

We think that disclaimers and such that purport to limit the practice of the on-line lawyer to the jurisdiction(s) in which they are licensed to practice will only be effective to the extent that the lawyer doesn't overstep these bounds themselves - meaning that a lawyer in Alabama would be hard-pressed to justify rendering a will and estate plan that is to be implemented in the state of Florida where the client is resident in the State of Florida and contacted the Alabama lawyer via their on-line will and estate planning web site. Any reasonable interpretation of this situation would be that the Alabama lawyer is purporting to practice the law of Florida and would be required to comply with the State of Florida's rules and regulations regarding temporary lawyers, licensing and practice permits.

We are also of the opinion that the situation is even worse where there is no such enabling "visiting" or "temporary" legislation (the ABA model code of course, being only a model) as there is no possible argument that the lawyer or lawyers were only intending on providing services as a visiting lawyer or on a temporary basis. Where there is no such enabling visiting or temporary lawyer legislation, then setting up a web site or cloud service that purports to offer legal services outside of the jurisdiction where the lawyer or lawyers are entitled to practice raises additional considerations such as the unauthorized practice of law.
As a result, we suggest that a cloud service be designed in a 'dual-layer' configuration to avoid any potential difficulties in this regard. The first 'layer' is passive - it merely sets out information of a general nature, it specifically disclaims the formation of a lawyer-client relationship and states that all information is for general information only and specifically states the jurisdiction(s) in which the lawyer(s) is/are entitled to practice.

The second 'layer' of the web site is gained by password or similar access - which is only granted after the formation of a lawyer-client engagement. This deeper 'second layer' is where the actual legal advice or service is granted (a secured cloud). The lawyer can make the determination that they fully comply with the jurisdictional issues as well as determine if they wish to act for a potential client prior to issuing them the requisite password or other means of entry to the second 'layer'. In this way, you have set up the virtual practice so that you may state that the first 'layer' is not the practice of law at all - it is merely a passive method of attracting the appropriate type of client who is then subject to an appropriate legal and business 'screening and selection' process before any legal services are provided. The active provision of legal services does not occur until the second 'layer' is penetrated. This configuration, we suggest, provides a reasonable degree of protection against any allegation that you are purporting to practice law in a jurisdiction where you are not entitled to do so. Of course, this all assumes that the lawyer(s) in question keeps to their licensed areas of practice once a client enters the second layer of the web site!

Conflicts

Dealing with conflicts when operating an online legal practice presents some interesting issues, depending on the type of online practice you are offering. If the online site is anything other than just a barebones document download service where you do not enter into any dialogue or discussion with the purchaser of the document, you will have the potential of rendering advice to both sides of the same transaction. Accordingly you will need a client intake and screening system that specifically negates the formation of a lawyer-client relationship unless and until you have checked conflicts and determined that you in fact can and in fact, do wish to act for this client and have confirmed this in writing. Furthermore, you will need to take in only as much information as possible that will allow you to identify a conflict. Once you have cleared the conflict, you can then enter into the process of deciding whether to act for this person or not. Your conflict checking system, from a technological standpoint, will have to integrate with your website and allow you to quickly determine if you have a conflict. This would typically mean a 'fill-in' form or other similar method for eliciting the necessary information on which to make a conflict determination.

Jurisdictional issues

In order to negate any implications that you are purporting to practice the law of a jurisdiction in which you are not entitled to practice, you will need an appropriate
Disclaimer on your web site which limits the fact that you are only soliciting work in the jurisdictions in which you are entitled to practice (State, Provincial and Federal, if applicable). Other jurisdictional issues to consider (not an exhaustive list) are:

- **Privacy legislation, particularly regarding the collection, retention and use of private information.** These differ from jurisdiction to jurisdiction (for example, in Canada we have Federal privacy legislation as well as provincial privacy laws). You must be conversant as to when each applies - which poses challenges particularly if you are a visiting lawyer. Moreover, you should also address the collection, creation, duration and retention of such matters such as confidential information, cookies, IP addresses and other personal information and what use you will make of such information, whether the potential client is entitled to know what is retained and be able to request a copy, how someone can 'opt-out' of any future marketing campaigns and the like.

- **Lawyer advertising and marketing rules.** These are almost always regulated jurisdiction by jurisdiction and accordingly, your web site and all other marketing materials must be compliant with the rules in each jurisdiction in which you seek to practice. The form and content of such things as: photographs, video clips, LLP notifications, client endorsements, areas of specialty or particular claimed expertise, any expectation as to future results, lawyer rating(s) and the like are all highly regulated and a great source of trips and traps for the unwary.

- **Copyright provisions.** To what extent do you allow the downloading and reproduction of any materials on your web site? Must any such download be limited to personal use only? What about the necessity to reproduce your claim of copyright on any such materials? Do you allow people to link to all or part of your web site? Do they need to seek permission? (This is very interesting for unless you perform a search for incoming links, you may not be aware of who and to what extent, your materials are being linked to from other web sites). You may have outgoing links yourself to other web sites - if so, consider a disclaimer regarding any information on those third-party sites.

- **Client Identification rules.** Anti-money laundering and fraud-prevention provisions are becoming more and more common. These anti-money laundering initiatives seek to have lawyers comply with new regulations for both client identification and verification. These provisions are particularly onerous on a lawyer seeking to craft an on-line practice since virtually all clients will not be face-to-face clients, raising challenges for client id and verification.

- **'opt-out' provisions regarding email and other communications.** The ability to collect email addresses and other information for the purposes of future marketing is wonderful, but it is equally important to comply with 'opt-out' requirements for any email or other 'push' marketing initiatives. You do not wish to offend anti-spam legislation!
• "no reliance on information provided on this web site" disclaimer. Aside from negating any presumptions that you may be undertaking the practice of law in jurisdictions where you are not entitled to practice, you would also wish to specifically place readers on notice that the information on your web site is for general information only. For example, Linklaters LLP has on their web site:

"The information on this site is for general information purposes only and does not claim to be comprehensive or provide legal or other advice. Linklaters accepts no responsibility for loss which may arise from accessing or reliance on information contained in this site. Linklaters is not responsible for the content of external internet sites that link to this site or which are linked from it."

Of course my favourite disclaimer stated as follows:

“Nothing on this web site constitutes legal advice. Legal advice you have to pay for. This is free.”

Establishing your attorney/lawyer-client relationship

There are a number of issues with regard to establishing a lawyer-client relationship online. Some states restrict the 'personal solicitation' of clients, which may raises concerns if the lawyer is using any sort of interactive means to deal with a potential client. Most of the interactive methods of the web such as email and chat raise issues of solicitation, and lawyers are well advised to consider their state jurisdiction and regulations in this regard.

While we would hope that the potential client who initiates contact through the lawyer's web page would be treated no differently as a potential client picking up the telephone to call a law firm, there is certainly no guarantee of this. Any interactive content on the lawyer's web page (video clip, podcast, chat, even VoIP etc.) may be viewed as being equivalent to TV advertising, as a result of which lawyers are cautioned to consider their state or provincial regulations that cover this.

We suggest that the law firm use an interactive form for the initial collection of information on a potential client or alternatively, the client is encouraged to call the lawyer to begin the intake process. The web site should be clear that no lawyer-client relationship is formed unless and until the client has 'signed' a retainer agreement and the lawyer has confirmed the engagement in writing. This signature may take place via a 'click-thru' screen or by the client downloading a retainer agreement, printing it and emailing it back to the law firm, duly signed, depending on the state, province and law regarding e-commerce.

Communication

The ABA model rules provide as follows:
- Model Rules of Professional Conduct
- Client-Lawyer Relationship
- Rule 1.4 Communication
(a) A lawyer shall:
(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
(3) keep the client reasonably informed about the status of the matter;
(4) promptly comply with reasonable requests for information; and
(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Subsection (b) raises interesting implications for online legal services. Typically a bricks and mortar lawyer and client meet at least once in person and subsequently by telephone and email. When using email or chat or other interactive but asynchronous communication method, there is the danger of misunderstandings arising...accordingly where a lawyer conducts all communications via asynchronous communications, they must ensure that they have fully complied with Rule 1.4 (b). Confirming instructions, always a necessity, will be particularly important here.

**How do you 'know your client' online? What about client identification requirements?**

In Canada and in other jurisdictions, in an attempt to curtail money laundering and lawyers being used to play a role in client's fraudulent activities, rules regarding the identification and in certain financial transactions, the verification of client's identification is now a requirement. Accordingly, any law firm seeking to render legal services in these jurisdictions will be required to comply with these provisions. Other jurisdictions have 'know your client' requirements, which present similar difficulties.

**Malpractice concerns / limiting your involvement in a file / limited scope representation**

Many virtual law offices will be providing a limited scope of services to their clients. In these situations, it is a danger that the client may believe that the lawyer is going to do more than the lawyer is prepared to do. A careful management of client expectations is paramount. A well-crafted retainer agreement is a good start. Continued communications is also very important. Web 2.0 features may assist in this regard - an extranet where the client can see the retainer agreement along with all documents that have been drafted, all deadlines set and met, all to-do's done...will go a long way towards negating any assertions that the client did not realize the scope of the work being undertaken. It also offers the client the ability to raise questions regarding the scope of work, based on what they can readily see within the extranet.

Of course the extranet should also the record of all communications between the lawyer and client in order that the client can see the dialogue and the history concerning the
engagement.

**Insurance coverage**

Insurance requirements and disclosure vary by jurisdiction. Again, lawyers are advised to ensure that they have complied with the requirements of every jurisdiction in which they seek to render services.

**Conclusions**

The cloud offers some tremendous advantages for lawyers seeking new ways of providing legal services. The cloud offers back-office support, secure war rooms, secure back-up, reliable cost and relief from looking after IT support. It also opens up a number of concerns regarding confidentiality, reliability, potential loss of data and other ethical and practical problems.

Lawyers need to check their own ethical rulings in their jurisdiction before venturing too far out onto the cloud lest they find themselves ethically hanging onto thin air…

© 2010 Kesner and Bilinsky.
Taking Your Office Virtual

Written by
Nicole Garton-Jones

Presenters
Nicole Garton-Jones
Alan Wernick

March 25 – 27, 2010
www.techshow.com
The Current State of the Business of Law

The current economic recession has had a significant adverse impact on clients, including the entire financial services, real estate, high tech sectors, that are the foundation of revenue for many law firms. Law firms big and small have responded through aggressive cost reductions, including lowering associate salaries and laying off significant numbers of staff. There have been approximately 14,000 lawyer and legal staff jobs lost since the beginning of 2008, and US law firms shed 4600 lawyers in 2009 alone.¹

In addition to the current economic realities, longer term financial pressures are at play. The cost to litigate an issue in court often exceeds the amount in dispute. Legal services are increasingly only available to individuals who are very low income through legal aid or who are very high income and can afford high hourly rates. Small businesses increasingly find that legal services are beyond their budgets. General counsels of large companies and financial institutions are facing significant internal demands to rein in legal costs. General counsels are responding with competitive bidding processes, demanding flat fees, unbundling complex tasks such as litigation and outsourcing lower level tasks such as document review to overseas providers.

On top of financial pressures, law firms are grappling with technological changes and new competitors that are altering the business landscape. The democratization of information and access to forms through the internet has started to level the playing field between lawyers and clients. Non-lawyer competitors are taking an increasing share of the traditional marketplace, particularly in the more commoditized areas of law such as wills, simple business agreements, divorces and real estate transactions.

Another key trend in law is the current demographic issues facing the legal profession. The Law Society of BC Report on the Retention of Women in Law Task Force² notes as follows: 1) Women have been entering the legal profession in BC in numbers equal to or greater than men for more than a decade, yet represent only about 34% of all practicing lawyers in the province and only about 29% of lawyers in full-time private practice; and 2) The legal profession in BC is aging and there will be a net reduction in the number of practicing lawyers – a looming shortage – as older lawyers retire without a corresponding increase in younger lawyers joining the profession.

A February 2007 cover story of California Lawyer magazine was entitled “We’re Outta Here: Why Women are Leaving Big Firms.”³ The article noted the serious issue of high attrition rates from the legal profession:

““The past few years have witnessed the highest levels of associate attrition ever documented, with an average annual attrition rate for both sexes of 19 percent, as recently reported by the NALP Foundation for

² http://www.lawsociety.bc.ca/publications_forms/report-committees/docs/Retention-of-womenTF.pdf
Law Career Research and Education. Within five years of entering a firm, more than three-quarters of associates leave. Female associates were nearly twice as likely as males to depart to pursue a better work/life balance.”

The article’s key quote was:

"If law firms want to get the best and brightest young women to join them and stay, they will likely need to change radically and adopt different definitions of sacrifice and partnership."

On December 20, 2009, the Economist ran an article entitled “Female Power”, headlining that “across the rich world more women are working than ever before. Coping with this change will be one of the great challenges of the coming decades.” The article notes that despite almost equal representation in the workforce, women still represent lower percentages of professional firm partnerships, upper management and CEO positions. Interestingly, the author states that:

“the biggest reason why women remain frustrated is more profound: many women are forced to choose between motherhood and careers. Childless women in corporate America earn almost as much as men. Mothers with partners earn less and single mothers much less. The cost of motherhood is particularly steep for fast-track women. Traditionally “female” jobs such as teaching mix well with motherhood because wages do not rise much with experience and hours are relatively light. But at successful firms wages rise steeply and schedules are demanding. Future bosses are expected to have worked in several departments and countries. Professional-services firms have an up-or-out system which rewards the most dedicated with lucrative partnerships. The reason for the income gap may thus be the opposite of prejudice. It is that women are judged by exactly the same standards as men.”

Women, 50% or more of law school graduates, are leaving the profession in droves, just as law firms are beginning to face a shortage of qualified lawyers to serve their clients with the retirement of baby boomers. This is not unique to law: a combination of an ageing workforce and a more skill-dependent economy means that all industries will have to make better use of their female employees in the “war for talent”.

It’s not just women who are seeking greater work life balance from employers to enable them to juggle the demands of child rearing with a professional career. Millenials, even in this recession, still value work-life balance above all else when listing top characteristics of an ideal employer. Men increasingly are taking more significant role in raising children and seek to pursue other interests concurrent with paid employment.

4 http://www.economist.com/displaystory.cfm?story_id=15174418
As economic, technological and demographic forces put increasing pressure on the traditional law firm business model, virtual law firms provide one solution of how lawyers cannot only survive but thrive now and in the future.

**Definition of a Virtual Law Firm**

The definition of virtual law firms is an evolving concept, but generally speaking when people discuss virtual law firms they are referring to two distinct things:

1) A law firm where legal services are delivered to clients entirely online through a secure web-based portal; or

2) A law firm where there is a centralized brand, administration and management, and individual lawyers primarily work from satellite offices, often from client offices or their home. Lawyers meet with clients in person as required.

**Law Firm Strategy**

The professional services firm management guru David Maister, in the introduction to his latest book *Strategy and the Fat Smoker* states as follows:

“In the last two-and-a-half decades, I have been trusted to see a large number of strategic plans from a wide variety of professional firms around the world, including direct competitors. What is immediately noteworthy is how similar (if not identical) they all are.”

Noting that the underlying ideas remain the same around the world, over time, and from competitor to competitor, Maister states that:

“Real strategy lies not in figuring out what to do, but in devising ways to ensure that, compared to others, we actually do more of what everyone knows they should do.”

Arguing that the necessary outcome of strategic planning is not analytical insight but resolve, Maister’s book focuses on the idea that law firms can distinguish themselves in the marketplace via their comparative discipline and out-execution of the same goals of their competitors.

The difficulty with Maister’s concept is that the traditional legal marketplace is becoming fundamentally altered by technological changes, current financial unsustainability, demographic trends and a rebalancing of power between lawyers and clients. The law firms that will survive and thrive through these changes will be the ones which can successfully out-innovate their competitors in responding to a rapidly evolving competitive landscape.

---

6 Ibid.
An alternative strategic methodology is set out by INSEAD business professors W. Chan Kim and Renee Mauborgne in their best selling book *Blue Ocean Strategy: How to Create Uncontested Market Space and Make the Competition Irrelevant*. Rather than assuming that the operating environment for a business is a given and compete head on with competitors, a firm could instead employ a reconstructionist strategy that seeks to reshape the competitive environment. Specifically, to innovate, firms should break out of the traditional “red ocean” cycle of intense direct competition and sail into the open “blue ocean” by using a strategy of creating new markets where none previously existed.

The concept of “value innovation” is the cornerstone of blue ocean strategy. This is contrasted against a conventional value-cost trade-off strategy, i.e. the concept that companies can either 1) create greater value for customers at a higher cost or 2) create reasonable value at a lower cost. In contrast, value innovation is breaking the value-cost trade off and creating a new blue ocean of market space, by pursuing value for the customer and low cost for the company at the same time.

Competition-based red ocean strategy such as the one set out by Maister assumes that an industry’s structural conditions are a given and that firms are forced to compete within them. In contrast, value innovation is based on the view that market boundaries and industry structure are not given and can be reconstructed by beliefs and actions of industry players.

Some basic tools of a blue ocean strategy are:

- The strategy canvas - to chart the competition and exploit their shortcomings
- The Four Actions framework
- The Eliminate-Reduce-Raise-Create Grid
- The initial litmus test for blue ocean strategy: focus, divergence, compelling tagline

The goal of the strategy canvas is to capture the current conditions in the known market space and to allow you to understand where the competition is investing, the factors the industry currently competes on in products, service and delivery, and what customers receive from the existing competitive offerings on the market.

Then you must begin to re-orient your strategic focus from competitors to alternatives, and from customers to non-customers of the industry. As you shift your strategic focus from current competition to alternatives and non-customers, you gain insight into how to redefine the problem the industry focuses on and thereby reconstruct buyer value elements that reside across industry boundaries.

Next, a firm should employ the Four Actions Framework to attempt to break the trade-off between differentiation and low cost and create a new value curve. There are four key questions to challenge an industry’s strategic logic and business model:

---

How to drop cost structure:
   1. Which of the factors that the industry takes for granted should be eliminated?
   2. Which of the factors should be reduced well below the industry’s standard?

How to lift buyer value and create demand:
   3. Which of the factors should be raised well above the industry’s standard?
   4. Which factors should be created that the industry has never offered?

A supplementary analytic to the four actions framework is the Eliminate-Reduce-Raise-Create Grid which pushes companies to fill the grid with the actions of eliminating and reducing, in addition to raising and creating. It is also easily understood across the organization and drives companies to consider each factor the industry competes on.

Finally, an initial litmus test for a successful blue ocean strategy is focus, divergence and a compelling tagline. A good strategy has focus; the company doesn’t diffuse its efforts across all factors of competition. It diverges; the shape of the value curve diverges from other players, a result of not benchmarking competitors but instead looking across alternatives. And, it has a clear and compelling tagline.

One of the methodologies to assist with reconstructing market boundaries is to look at the horizon for emerging trends. To exploit a trend, it should pertain to your business, have momentum and cannot be reversed. For example, Apple recognized an emerging trend when it captured the music downloading market.

**Law Firm Strategy and Virtual Law Firms**

1. *Proving Legal Services Entirely Online Through a Secure Portal*

As noted above, one of the trends in today’s legal marketplace is the impact of technology on and the commoditization of law, leading to potentially the *End of Lawyers*, as Richard Suskind so provocatively phrased it. Most private practice lawyers today provide customized solutions for individual clients at high hourly rates, which is expensive for the client and unscalable for the lawyer. The democratization of information and forms on the internet, client demands for more cost effective solutions and the increasing encroachment on the profession by non-lawyers using new, often web-enabled technologies are all eroding the traditional law firm client base.

A potential solution to this trend is offering cost effective legal services to clients entirely online. Across the US, many solos and small law firms now deliver legal services to their clients entirely over the internet, often called “e-lawyering.” In addition, many firms integrate a virtual firm into their traditional, brick-and-mortar law practices.

A web-based virtual law firm is a professional law practice that exists online and is accessible to the lawyer and clients through a secure portal anywhere those parties may access the Internet.

---

Some web-based technologies, such as VLOTech, permit lawyers and clients to securely discuss legal matters online and handle the transactions of a physical law office within a secure digital environment. Other technologies, such as one offered by DirectLaw, allow lawyers to provide individual clients with web-enabled legal forms bundled with legal advice for an affordable fixed price.

At Heritage Law, we are developing an online branch office of our firm, www.heritagelawonline.com, to deliver 100% online legal services directed towards moderate income clients who struggle with affording traditional legal services. Our goal for 2010 is to provide low cost, basic estate planning legal services to an unserved population, specifically the approximately 50% of British Columbians who will die without a will. We intend to expand to estate administration and basic family law documents in the future. People who require more sophisticated advice will be referred to public resources and our existing firm at their option for further information and possibly traditional legal advice.

We have entered into an agreement with DirectLaw to build the website and automate the forms and have received permission from the Law Society of BC on January 8th, 2009 to practice online.

The Eliminate-Reduce-Raise-Create Grid for www.heritagelawonline.com is as follows:

<table>
<thead>
<tr>
<th>Eliminate</th>
<th>Raise</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical location</td>
<td>Cost effectiveness for client</td>
</tr>
<tr>
<td>Meeting with client</td>
<td>No intimidation of having to go to a lawyers office</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reduce</th>
<th>Create</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specialized drafting from scratch for each client</td>
<td>Convenience - legal services from anywhere, 24/7</td>
</tr>
</tbody>
</table>

The focus is: convenience, accessibility and cost effectiveness.

Our tagline is “lawyer assisted estate planning for BC residents at a cost effective price – available anywhere, 24/7”.

2. Virtual Firms with Centralized, Cloud-Based Brand, Administration and Management

Another strategic opportunity for Heritage Law is the marketplace for legal talent, where a prospective lawyer hire can be thought of as a “customer” we are competing for against other law firms, in-house departments and government. In response to the demographic challenges facing the profession as noted above, we have built a firm culture predicated on balance and flexibility with applied technological solutions to facilitate it, which has enabled Heritage Law to access top talent and retain it.
Well known examples of virtual firms such as Virtual Law Partners, FSB Legal Counsel and Rimon Law Group all have similar business models. They recruit senior lawyers with an established corporate client base, cut their large law firm hourly rates by 25-50% and permit the lawyers to keep most of what they bill. The lawyers work remotely and access a centralized, cloud-based infrastructure with centralized branding, administration and management. The lawyers collaborate through in person meetings if possible and via technology such as VoIP phones, video conferencing and email as required. A technology enabled association of autonomous lawyers with similar goals, these firms essentially operate financially more as collectives than traditional law firms.

Our business model differs from Virtual Law Partners et al as our clients are primarily individuals, and we practice in the areas of wills and estates and family law. We do have a traditional office, shared with another law firm, with standard reception, a boardroom and administrative support on site. Lawyers can work from the bricks and mortar office or from their home offices, at their option. Other than the principal lawyer and owner of the firm, all lawyers and staff are contractors and earn a sliding percentage of billed time and flat fees, depending on the referral source, responsible lawyer and working lawyer. Our lawyers were mid level associates who left larger firms looking for greater work-life balance. The firm is at full capacity, and the lawyers and staff determine the amount of their earnings by how much they choose to work.

How it Works - Technology

Heritage Law is “paperless” and utilizes practice management software to centrally manage billing, time tracking, matter information, contacts, appointments, documents and document assembly. All staff log into one remote, secure server over the internet which is a repository for all firm data and software applications. We have a VoIP phone system which allows ten staff in ten different locations to use the same phone line and system. We have a remote answering service which answers client calls during the business day if a staff member is out of the office and routes the message to the appropriate person to deal with. All staff have a computer, high speed internet, a VoIP phone and a scanner at their home offices.

With respect to software, we use PCLawPro version 9 for billing and time keeping.

We use Time Matters Enterprise version 9 for matter management and tracking contacts and appointments. Time Matters has been customized for Heritage Law as follows. There are tabs for matters in the categories of: Corporate, Litigation, Estate Admin, Estate Planning, Family Law, Mediation and by responsible lawyer so every open matter in the firm is categorized and viewable from one central location. Each matter has an electronic client intake sheet so the user can see information including the date the file was opened, the responsible lawyer, the referral source, bring forward dates, relevant limitation dates, conflict check info, retainer letter info, any special billing info and a current status field where a short update is typed as the file progresses.

We use Worldox for document management. No paper is kept except for original client documents. Every document is saved or scanned into the system and saved according to client
and matter. Every document saved in Worldox is searchable by client, matter, description and text.

We use HotDocs 2009 Professional Edition for document assembly. All our standard firm documents (memo, fax cover sheet, retainer letters, non-engagement letters, reporting letters and demand letters) are automated. We are currently working on a project to automate our estate planning practice (wills, powers of attorney and representation agreements). Document automation, in addition to the other programs, enables staff to generate client documents in an efficient and high quality manner.

PCLaw, Time Matters, Worldox and HotDocs are all linked together to work as a cohesive whole.

Each member of the firm shares a Microsoft Windows desktop running on a shared server in the Heritage Law IT infrastructure, and every desktop offers all of the core productivity applications previously described. Because all of the desktops reside on the same server, rather than on individually configured and field deployed desktop PCs, all that is required for a staff member to access and begin work for Heritage each day is a Windows PC and an internet connection. The Windows PC does not have to have any special applications installed on it, and might be a home PC, a borrowed PC, a laptop on the road or any other PC to which the staff member has access throughout their work day.

Each staff member has a Polycom SoundPoint IP 560 desk phone with HD Voice technology. Each phone has an ordinary 3 digit extension registered through Iristel, a Canadian internet telephony service provider. The power of the phone system is derived from the fact that the phones can be connected to any ordinary internet connection in any of the staff member’s home offices, and yet all remain reachable through simple 3 digit extensions. Calls to other phones in North America are toll free, and calls within the firm have HD voice quality. There is an automated attendant to greet callers and provides a directory for them to reach the appropriate staff member’s extension.

As the staff all wish to have flexible schedules, we employ a call answering service. If a staff member does not pick up a client call directed to their local on our phone system, the call is then automatically forwarded to the answering service. The answering service can then call the staff member directly on their cell phone, email the message to them or forward the message to another staff member, depending on the circumstances. This allows us to be able to maintain a high level of client service while staff are out of the office during regular business hours.

How it Works – Schedule

Each of the staff set general guidelines of the days and hours they are available to work so the firm can plan around accepting and allocating new client files. The overriding concept is that everyone is a professional whose goal it is to provide excellent client service. Provided that client work is completed in a timely and efficient manner and sufficient notice is given of absences and time off, lawyers and staff are welcome to structure their individual schedules as
they see fit. Lawyers bear final responsibility for client files and supervise staff to ensure that clients are served well. Heritage Law has a weekly staff meeting via conference call to facilitate communication on firm matters and to maintain a sense of firm cohesion.

The autonomy and flexibility of the work environment suits our staff, who have a self directed and pro-active work style. The flexible work environment has enabled Heritage Law to have access to and hire highly skilled staff, to the benefit of both the firm and clients alike.

The Eliminate-Reduce-Raise-Create Grid for Heritage Law as a virtual firm is as follows:

<table>
<thead>
<tr>
<th><strong>Eliminate</strong></th>
<th><strong>Raise</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement to go to physical office</td>
<td>Compensation – more money for less hours</td>
</tr>
<tr>
<td></td>
<td>Autonomy – lawyer owns own practice and guides his or her own direction</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Reduce</strong></th>
<th><strong>Create</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Training – hire already trained lawyers</td>
<td>Flexibility to work when and for how long the lawyer wishes</td>
</tr>
</tbody>
</table>

Our focus is flexibility, autonomy to guide own direction and more money for less hours. Our tagline is “have it all: a professional practice, a good income and work-life balance”.
Conclusion

Law is an honoured, ancient profession, but it is also a business facing increasingly competitive pressures. Virtual law firms are one solution towards retaining cherished principles of client service and professionalism while simultaneously surviving and thriving in an ever evolving legal marketplace.
Google Tools for Lawyers

Written by
Dan Pinnington
Mark Rosch

Presenters
Dan Pinnington
Mark Rosch

March 25 – 27, 2010
www.techshow.com
Google Apps: Free Collaboration Tools to Help Solos & Small Firms Compete with Big Firm Technology Budgets

Google has created a set of Web-based tools that allow you to create, share, and store documents on the Internet and communicate online – Google Apps (http://www.google.com/apps). These Apps include e-mail (Gmail), word processing (Google Docs), appointment calendar (Google Calendar), spreadsheets (Google Spreadsheets), slide presentations (Google Presentations).

Using Google Apps, you can draft documents online and share them with clients or co-counsel for comment. Online storage eliminates the need to attach documents to e-mails. Google’s tracking of the changes made to these shared documents makes viewing revision histories easier, with each contributor’s changes date stamped. So the concern of whether or not you’re working from the most recently revised version of a document is precluded. As the owner of the document however, you have final say over which changes are accepted/included in the final document.

Gmail

The most familiar of the Google Apps is the Gmail e-mail service.

Gmail can be accessed either via its robust Web-based inbox interface or through your favorite e-mail client like Microsoft Outlook. If you use Google Apps for your practice and have multiple e-mail users, they can each choose how they want to access their messages. Mark prefers to receive his messages in Gmail’s Web-based inbox because he can access his e-mails (and any attachments) form anywhere he can get an internet connection. If you prefer to receive your
Gmail messages in Outlook or some other e-mail client, Google has created a step-by-step guide to set up your e-mail client at http://mail.google.com/support/bin/topic.py?topic=12912.

**Google Calendar**

Google Calendar is a full-featured appointment calendar. You can add appointments, events, reminders, etc. and access them anywhere you have Internet access – including Web-enabled cellular phones.

![Google Calendar Screenshot](image)

Google Calendar can also sync with Microsoft Outlook, Apple iCal, and Mozilla Sunbird. One advantage Google Calendar has over stand-alone products is the ability to share your calendar with others on the Web. Like Gmail, however, you can also store your Google Calendar information on your own hard drive to access your events and appointments when you do not have an Internet connection.

**Google Documents**

Sometimes Google Apps is sometimes incorrectly referred to as *Google Docs*. The *Google Docs* name can be a bit confusing though. When most people hear it they think only of word processing documents (like the ones we’re all used to creating in Microsoft Word or Corel Wordperfect). While this service does create those kinds of documents, it also offers the ability to create, edit, store, and share Spreadsheets, Presentations, Forms and numerous other productivity tools.

You can create new documents online with the system or upload existing documents from your computer to edit and share.
You can upload the following file types:

- documents up to 500KB in size; there is a limit of 500 Documents and Presentations in a Docs account; acceptable filetypes are .doc, .docx, .html, plain text (.txt), .rtf, odt
- spreadsheets up to 256 columns wide; there is a limit of 1000 Spreadsheets in a Docs account; acceptable filetypes are .xls, .xlsx, .ods, .csv, .tsv, .txt, .tsb
- presentations up to 10 MB in size or containing up to 200 slides; acceptable filetypes are .ppt, .pps
- .pdf files up to 10 MB in size can be uploaded and viewed but not directly edited; there is a limit of 100 .pdf files in a Docs account

Regardless of whether you uploaded a Google Document from your computer or created a new one online, Google Docs includes editing and formatting tools that will look very familiar to you if you are a regular user of Microsoft Office, Corel WordPerfect Office, OpenOffice, or Apple’s iWork productivity software.

**Google Word Processing Documents**

Google Documents is an online word processing documents creation and sharing service. It allows you to create word processing document similar to the way you would with Microsoft Word, Corel Wordperfect, or Apple Pages.
Google Documents started out life in August 2005 as Writely, an independent service. Writely was purchased by Google in March 2006.
Google Spreadsheets

Like Google Docs, the Menu Toolbar of the Google Spreadsheet editor (File, Edit, View, Insert, Format, Table, Tools, Help) will look very familiar to regular users of commercial spreadsheet software like Microsoft Excel. Also like Google Docs, Spreadsheets was born as part of the previously-independent company Writely, before it was acquired by Google.

Google Presentations

Google Apps also includes a slide presentation editor and creator similar to Microsoft Powerpoint, Corel’s Presentations, or Apple’s Keynote.

The Menu Toolbar of the Google Presentations editor (File, Edit, View, Insert, Format, Table, Tools, Help) will look very familiar to regular users of commercial presentation tools like Microsoft’s Powerpoint.

One shortcoming of Google Presentations is that it does not support the animation of text, images, or other elements that are supported in commercial presentation software. Any animations contained in presentations imported into Google Presentations will not be active.
Google Forms

Google Forms allows you to create forms and surveys that you can post online to collect information from others.

Google Forms also allows you to receive, review, and analyze the results in your Google Account.
Google Sites

Google Sites is one more way you can post and share information online for a selected group to review, edit, or just comment. The group can be as large or small as you like. The service allows you to access elements from many of the other Google Apps services (e.g., Google Docs, Calendar, et al) through a Web interface you can customize.

You might choose to create a “private” Google site to organize documents, comments, and events for a working group or practice area within your firm; to update and/or collaborate with clients about their case; or to share documents and update co-counsel on a particular case.

You might choose to create a “public” Google site – available to everyone on the Internet to market a particular area of your practice, or gather information, or locate potential plaintiffs for a potential class action lawsuit.
Google Wave

Google Wave is an online communication and collaboration tool. One element that can be a bit confusing is that “Wave” (with a capital “W”) is the name of the service, and “wave” (with a lower case “w”) is the name used for an individual conversation created in Wave.

In one online explanation of the service, Google describes it this way, “a wave can be both a conversation and a document where people can discuss and work together using richly formatted text, photos, videos, maps, and more.”

Like Google Docs, any wave participant can add or edit content anywhere in the conversation.

Currently, access to Google Wave is by invitation only. Visit http://www.googlewave.com to request one.

Google Talk

Google Talk is a free text, voice, and video chat instant messaging service offered by Google.
There are three ways to access the service: one way is through a stand-alone application that you download and install on your computer, second is through a Web-based Google Talk Gadget interface (at https://talkgadget.google.com/talkgadget/popout), and the third is through a browser plug-in that integrates Google Talk into Gmail, iGoogle and some other Google services.

**Google Voice**

Google Voice (http://www.google.com/voice) is Google’s free telephone service offering a wide range of calling and voicemail services.

The service was born with Google’s 2007 acquisition of telephone management start-up GrandCentral. It was relaunched as Google Voice in March 2009. At the time of our publication deadline, Google Voice was only available by invitation. You can request an invitation directly from Google at https://services.google.com/fb/forms/googlevoiceinvite/.

**Google Translator**

Google translator is a great tool for quick and dirty translations of text, webpages or documents from or to any of the following languages:

- Afrikaans
- Albanian
- Arabic
- Belarusian
- Bulgarian
- Catalan
- Chinese
- Croatian
- Czech
- Danish
- Dutch
- English
• Estonian  
• Filipino  
• Finnish  
• French  
• Galician  
• German  
• Greek  
• Hebrew  
• Hindi  
• Hungarian  
• Icelandic  
• Indonesian  
• Irish  
• Italian  
• Japanese  
• Korean  
• Latvian  
• Lithuanian  
• Macedonian  
• Malay  
• Maltese  
• Norwegian  
• Persian  
• Polish  
• Portuguese  
• Romanian  
• Russian  
• Serbian  
• Slovak  
• Slovenian  
• Spanish  
• Swahili  
• Swedish  
• Thai  
• Turkish  
• Ukrainian  
• Vietnamese  
• Welsh  
• Yiddish

It is very easy to use. Are these sworn perfect translations that you can take to court? N – but there are darn good translations.
**Picasa**

Picasa allows you to share photos online. Like Google Talk, there is a stand-alone Picasa application and a Web-based version (Picasa Web Albums).

The stand-alone version is available for the Windows (Windows XP through Windows 7) and Mac Operating Systems (OS 10.4.9 or newer; also requires a Mac with an Intel processor). It can be downloaded at http://www.Picasa.com.


**Searching with Google**

It is amazing how Google can search the Web and find exactly what you're looking for. But by sharpening how you present your search terms, you can improve your Google results still more. Millions of people around the world use Google on a daily basis. One of the secrets to Google's success, of course, is that it's just so darn easy to use. Simply enter one or more search terms, and almost instantly it seems to be able to magically find precisely the stuff you want it to retrieve. Yet as amazing as Google is, you can do a few things to help it better find the information you are searching for—read on.

**Search Term Essentials**

Choosing the right search terms is the key to finding the information you want online. Most people are becoming pretty adept at this, after loads of practice using Google and other search
engines. Using multiple search terms helps because, by default, Google will return only pages that include all of your search terms. Thus, there is no need to include "and" between search terms in the search box.

You should try to make your search terms as specific as possible by using terms that you expect will be used on the Web page or document you are hoping to retrieve. And remember, changing the order of terms can change the results, so if you aren't finding what you want, try swapping the search terms around.

Also be aware that Google searches are not case sensitive, and everything will be understood as lower case. For example, john smith, John Smith, and JoHn SmIth will all return the same results, so don't waste your energy typing in the capital letters.

Note that Google uses stemming technology, which means that it will search not only for your exact search terms, but also for words that are similar to some or all of those terms. Thus, a search for "diet" will also include results with diets, dieting, dietary and so on.

The Story on Common Words

To make searches faster, Google automatically ignores various common words (like "the," "of," "its," etc.) and some single digits and letters. And just in case you haven't notice (which I suspect most haven't), Google actually tells you which search terms it used and didn't use to get a given list of search results. On the results page, look on the blue bar at the top, to the right of the hits count summary. All your search terms will be listed, and the words that Google ignored during the search will be in black.

If a common word or a digit is essential to getting the results you want, you can include it by putting a space and a plus sign ("+") in front of it. Here's an example:
Star Wars, Episode +1
Or, you can use a phrase search, as discussed in the next section.

The Fabulous Phrase Search

My absolute favorite trick for finding things more quickly is the phrase search. You do a phrase search by putting double quotation marks around two or more search terms. This little trick forces Google to return pages that have exactly the text you placed within the quote marks (as opposed to all pages that have your search terms).

Phrase searches are particularly effective if you're searching for the following:
- Proper names (for example, "George Washington")
- Lyrics (such as "the long and winding road")
- Famous phrases (like "Four score and seven years ago")
- Computer error messages (for example, "Maximum_Wait_Objects_Exceeded")
- Negative Terms for Multiple Meanings
If your search term has more than one meaning—"bass," for example, could refer to fishing or music—you can focus your search in the correct direction by putting a minus sign ("-") in front of words related to the meaning you want to avoid. Here are a couple of examples:

- good bass lakes in Vermont -music
- London Arkansas - England

Note that when you include a negative term in your search, you need to be sure to include a space before the minus sign.

**Phrase Search as Answer versus Question**

More than a few people are prone to typing questions into the Google search box, but what you really want to do is phrase your question in the form of an answer. Think about it: You don't want Web pages that ask a question, you want pages that answer a question. So do not type "Who decided Marbury vs. Madison?" Instead, type "Marbury vs. Madison was decided by."

If you want to be walked through some of the many options Google offers for controlling search parameters, click on Advanced Search on the Google home page (www.google.com).

**Throw Out Your Phone Book**

In Google you can find publicly listed U.S. residential phone numbers and addresses by typing any of the following combinations into the search box:

- "first name (or initial), last name, city"
- "first name (or initial), last name, state"
- "first name (or initial), last name, area code"
- "first name (or initial), last name, zip code"
- "last name, city, state"
- "last name, zip code"

Do you want to do a reverse phone number lookup on publicly listed U.S. residential numbers? Type just the phone number (with area code) in the Google search box. Also, you can enter an area code to see a map of the region covered by that area code.

**Fun with Other Kinds of Numbers**

You can enter other types of numbers into the Google search box to track down often useful information from a variety of sources. For example, you can enter a car's VIN to see the vehicle's year, make and model. To see information on a FedEx, UPS or USPS shipment, enter the package number. To look up information on a particular U.S. patent, simply type the word "patent" following by the patent number (e.g., "patent 5960411"). Or, if you want information about a product, you can search using its UPC bar code number only (e.g., "036000250015"). And for the mathematically challenged, Google does all sorts of calculations and conversions. Here are examples of what you would type in:
• To evaluate equations: "23+45"; "14*(23/24)-2"; or "12^2"
• To get units of conversion: "liters in a gallon"; "ounces in a cup"; or "centimeters in a foot"
• To convert units of measurement: "16 liters in gallons" or "half a cup in teaspoons"
• To get currency conversion factors: "US dollars in euros"
• To convert one amount of currency to another: "12 GBP in US dollars"

**How Google Helps You Travel**

Whether you're traveling by land or air, Google can tell you what you want to know. For example, you can see details on the status of a flight by entering the airline name and flight number (e.g., "United 123"). To see delays and weather conditions at a particular airport, type the airport's three-letter code followed by the word "airport" (e.g., "LAX airport").

Or, to see weather conditions and a four-day forecast for a particular U.S. location, type "weather," followed by the location. Usually a city name will be enough, but you may also want to include the state or a zip code.

Next, if you need a map, directions or the address of the nearest pizza joint, click on the Maps link on the Google home page to go to Local search. To see just the stores or businesses you want in a specific neighborhood, use a city name or zip code.

And for a totally out-of-this-world experience, check out Google Earth. It combines satellite imagery, maps and the power of Google Search to put the world's geographic information at your fingertips. Fly from space to your neighborhood. Search for schools, parks and hotels. Get driving directions. Tilt and rotate the view to see 3-D terrain and buildings. It is amazing!

**The Ultimate Library**

Google Books lets you search for specific books or books on a particular topic. And, in some cases, you can get the full text of older books for free and even search a book's full text.

But Google also works as one of the most important books of all: a dictionary. To get a definition for a word or phrase, simply type the word "define," followed by a space, and then the word or phrase you want defined. You can also get a list of definitions by including the special operator "define:" with no space between it and the term you want defined (e.g., "define:World Wide Web").

**It's a Great Feast**

We haven't come close to exhausting all you can do with Google, but these tricks give you the idea. Although just in case you've missed some of the main links on the Google home page, don't forget to check out these: Click on Images to search the Web for images; click on Videos to search the Web for videos; and click on News to see a summary listing of news stories from online news sites all over the world.
While you're on the News page, consider signing up for the Google News Alerts. These are e-mail updates that will be sent to you that will include information on the latest relevant Google results (from the news, the Web, blogs, etc.) based on your choice of query or topic. Use the alerts to monitor your name, your firm's name, key clients' names, a developing news story and so on, or to keep current on a competitor, industry or your favorite sports team.

And for those of you who aren't totally Googled out yet, click on the More link on the Google home page, then on Even More. This lets you see a full listing of all of Google's products and services. Explore some of these—you'll be astounded. Wait, though, there's still more to come: Visit Google Labs to see some way cool and scary experimental things that the Google staff are working on.
Beyond the Ethics of Web 2.0 – What’s Now, What’s Next, What If…

Written by
William Hornsby

Presenters
William Hornsby
Matthew Homann

March 25 – 27, 2010
www.techshow.com
Commercial Speech. States have the constitutional right to impose limits on “commercial speech” but not to speech that is an expression of opinion, known as “political discourse.” According to the courts, commercial speech is that “which beckons business” or “proposes a commercial transaction.” An advertisement for legal services is commercial speech, which is subject to restrictions imposed by the states. We call those restrictions the “advertising rules.” However, efforts to get business and “commercial speech are not concentric. Courts have held that we do not look at the intent of a communication to determine whether it is commercial speech, but rather to the content of the communication. If a communication beckons business through its content, it is commercial speech. But, if it does not, the communication is not commercial speech, even if the lawyer wants to get business through that communication. Therefore, if the content of a communication does not beckon business and is, then, not commercial speech, the state does not have the constitutional right to impose limitations on it and the state’s “advertising rules” do not apply.

Commercial speech is not dependent on the medium that is used for the communication. Whether a lawyer’s communication is broadcast on television, through a traditional web site or via a blog, the issue is not the media, but the content of the message.

Application of the rules. For the most part, the state rules that govern client development are indifferent to the media that are used. A few state rules specifically govern “broadcast” communications, but most rules govern content and impose operational requirements, such as the obligation to retain or file ads with the state. A few states specifically govern technology-based communications, but for the most part, lawyers are simply required to comply with the rules regardless of whether they advertise through the Yellow Pages or Twitter. The rules are the rules and they apply even though they may not have been promulgated prior to the use of the Internet to promote legal services.

Suitability of the rules. Sometimes these pre-existing rules and even those tailored to govern technology-based communications do not fit well with the technology-based models that have emerged and are emerging. Business models may be deemed impermissible referral services or permissible forms of group advertising. Payment methods may challenge the notion of permissible flat fee payments or impermissible fee splits. Templates used by social networking vehicles may violate specific terms that are set out in the ethics rules.

The policy lag. The science behind technology and the need of lawyers to advance their client development combine to assure that the policy developed to govern Internet-based lawyer advertising will always lag behind, sometimes years behind. Various scenarios of the future challenge policy-makers to be pro-active, while lawyers are faced with the decision to assume ethical risks or be disadvantage when competing with those lawyers who do.