Cloud Data

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being utilized do more than simply export the data to a folder on your system. They also need to preserve and duplicate the data in its unaltered state so that it can be put into a tool and further processed for e-discovery. This protects the data integrity so that all parties involved in the dispute can be assured that no one tampered with the data. Also, be very careful about leading software tools on the market that only offer in-place hold, a feature that prevents file deletion but isn't designed with strict protections against alterations that can impact data integrity. Forensically sound collection and preservation require software tools with robust litigation hold capabilities.

2. Be comprehensive. Many corporate legal teams mistakenly believe the only way to perform data collection in the cloud in a defensible manner is to apply digital forensics practices to every piece of data that is possibly relevant. On the other hand, some teams are tempted to apply a short list of search terms to a cloud-based data set and narrow down the number of collected files as much as possible. Our experience is that the best practice is to be comprehensive in your data collection and not too narrow in what you extract. It's unlikely that you will know with certainty all relevant keywords to search at the time of collection, so it will ultimately cost more time and money to perform a second collection later if the initial collection was insufficient.

Many in-house legal teams have learned this lesson the hard way. Some of the leading software tools on the market were built for mass-market uses, not for the rigors and peculiarities of digital forensics and e-discovery. As a result, these tools tend to lack the precise indexing capabilities needed in order to pull in everything the legal team needs during an e-discovery search. The point is that it's wise to use a tool that pulls in all data, indexes it quickly and accurately, and then processes that data with precision.

3. Use reliable software. To meet the rising challenges associated with forensic collection of data in the cloud, corporate investigators and legal IT professionals need access to better and faster software tools that will help them process complex data collected during litigation and digital investigations. With so much data lurking in so many places, getting that relevant evidence from collection to analysis is crucial. For example, AccessData's new AD eDiscovery allows users to quickly collect data in the cloud from Office 365, SharePoint, OneDrive for Business and Office 365 Exchange.

Make sure that your software tool enables your team to collect data from the cloud *and* from on-premise repositories – anywhere the data lives. Even though the cloud migration is in full motion, your team still requires access to a tool that can collect from other end points as well. The optimal solution is to use reliable tools that can collect from any data source.

4. Have experts on your team. It's important to be realistic about the complexities associated with data collection in the cloud. It's not just a matter of clicking a few buttons and checking a few boxes. For your collections to be conducted effectively and accurately, it's important to have the proper expertise on your team. If you work with a cloud services provider, you may be able to connect with their professional support team and obtain the assistance you need.

Of course, you will likely need access to more than just technical expertise and support. You may also want to have access to experts who can instruct and train your team about when to issue litigation holds, how to perform the cloud-based data collection, etc. This might require the services of an outside consulting firm with specific experience assisting corporate legal and IT departments when it comes to their discovery management requirements.

5. Document the chain of custody. Courts want assurance that electronic evidence presented during litigation is the same as what was originally collected (*U.S. v. O'Keefe*, 537 F.Supp.2d 14 [2008]). It's crucial to document the collection process as thoroughly as possible so that your legal team can clearly and credibly demonstrate respect for the digital chain of custody. This includes the proper audit logs discussed above, as well as the use of collection tools that can establish an electronic fingerprint of each collected document.

Corporate counsel who are lax about the digital chain of custody are vulnerable to problems with litigants or investigators, but a detailed process suggests the execution of a forensically sound and fully defensible cloud-based data collection.

The Bottom Line

The steady movement of corporate data and systems from on-premise servers to cloud computing and storage is not an aberration; it is here to stay. This means that data collection in the cloud is going to be a long-term fixture in the worlds of digital forensics and e-discovery.

For those of us in the trenches, the result of the swift migration of corporate systems and data into the cloud is that we're suddenly confronting the daunting challenge of collecting electronic evidence from sources we can't touch or see. It's important to understand the challenges you're going to confront and use the best available tools to navigate those challenges in a forensically sound manner.

Professionals Weigh In

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high-end, big-data discovery projects certainly recognize the cost-benefit of investing in technology, he asserted. But not that many of them are jumping into this work.

And AI? Only 23 percent said they use it in their shops. Kaplan said that the subject still elicits fear – not of AI itself, but of its potential to steal jobs. "They're concerned about actually educating the AI to get to a point where it actually is more efficient, rather than yet another burden, another tool," he said.

There's also some confusion about definitions. Is predictive coding AI? That wasn't clear to some of the surveys' respondents. Marcus jumped in with a graphic that showed the number of companies that use AI would have been substantially higher if predictive coding were understood to be an AI tool, since 34 percent said they'd used it in the last year.

Despite the numbers, Stanton and de Freitas expect the adoption of AI in the business world to expand rapidly, as it has in the consumer world. Stanton noted that it's already infiltrated modern life – in the auto-correct on our phones and the recommendations offered by Netflix and Pandora (among many others). "The legal industry seems to be slow to adopt anything," lamented de Freitas. Still, she and Stanton predicted that change in this area is inevitable.

Slowly Moving to the Cloud

There's a different issue when it comes to adopting cloud storage. For many lawyers, there's an ethical impediment. "The notion of being somebody else's fiduciary is kind of ingrained in lawyers from the beginning," Stanton said. That gets in the way of losing control of data. But here, too, he sees the inevitability of change. The driving force, he said, is that other large organizations that have the same concerns and the same duties have already made the leap: "Largely, it's our clients."

Viacom's de Freitas has seen the debate over pricing and security, but she agrees that for large companies, it's only a matter of time.

Kaplan then noted that the discussion, in a sense, is beside the point. Companies have been moving their data to Microsoft Office365, where all of their email and much else is firmly in the cloud (even if users don't always know it).

Massive Mounds of Data

The last topic revealed the ugly underbelly of the data world. Enterprise content management (ECM) is supposed to organize data. But it seems common for large companies to have competing ECM systems. When Kaplan asked respondents how many ECM systems their companies had, some of them had no idea. "Unknown. *Many*," responded one. Another person just laughed.

To make matters worse, e-discovery data exists in a separate silo. The survey found that 74 percent of the legal ops directors would like to see the ECM and e-discovery systems integrated in their enterprises, but that doesn't seem likely to happen anytime soon, according to de Freitas. She'd welcome the prospect, she said, but it would take a lot of cooperation and discipline among different divisions of the company, especially IT and Legal. And the technology changes so quickly that it would be very difficult to maintain.

Kaplan cited one last statistic near the end of the webinar. The survey revealed that 80 percent of the respondents influence content-related decisions at their companies, but 83 percent noted that responsibility for these choices rest squarely in the hands of IT.

That seemed to capture the theme that ran through the discussion. Though it may be a bumpy road with lots of disconnects, lawyers are slowly adjusting to the opportunities and challenges of the data explosion, and the technology that both produces and can help tame it.