Introduction to the 2018 Edition

Back in 1997, Steve Jobs said this about cloud computing: “I can’t communicate to you how awesome this is unless you use it. And what you would decide within a day or two is that carrying around these non-connected computers or computers with tons of state in them—tons of data and state in them—is Byzantine by comparison.”

We often hear of “the cloud” in our daily lives, from music services to data warehousing to commercials lauding the advantages of “the cloud.” Fundamentally, “the cloud” refers to computer services “delivered over the Internet, on demand, from a remote location, rather than residing on one’s own desktop, laptop, mobile device, or even on an organization’s servers.”

In just a few short years, the cloud has taken on an increasingly integral role in our society—its proliferation and ubiquity should not be understated. In 2012, Wired reported a prediction by a research firm that by 2014, the personal cloud would replace the personal computer as the center of our digital lives: “Emerging cloud services will become the glue that connects the web of devices that users choose to access during the different aspects of their daily life.”

Today, we can see that the prediction was not far off.

Cloud computing has continued its tremendous growth over the past decade and there are no signs of stopping. Three years ago, 70% of businesses were either using cloud services or investigating the future use of such services. As of 2014, 37% of small businesses used cloud computing; that...

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figure is expected to increase to 80% by 2020.\textsuperscript{5} And 48% of Federal government agencies have moved at least one operation to the cloud pursuant to the government’s “Cloud First” policy.\textsuperscript{6} Thus, notwithstanding the already impressive array of globally available cloud services, the cloud will continue to increase in importance. Cloud providers and their customers must be ready for the opportunities and risks of that growth.

Cloud services are credited with providing significant advantages to users and businesses, including decreased maintenance and upgrades, improved flexibility, economies of scale, better collaborative capabilities, usage-based pricing (eliminating steep fixed costs), reduced infrastructure needs, reduced environmental footprint, improved disaster recovery capabilities, and on-demand service.\textsuperscript{7} Cloud services, however, also present a unique set of challenges for those users, cloud service providers, and legal practitioners navigating this complex intersection of technology and law. This Deskbook is meant to serve as a compass to those who undertake such navigation. Additionally, we hope that this Deskbook also will serve as a resource to help users, providers and counselors alike identify the areas of and reasons for potential future growth of the Cloud.

Our prior editions of Deskbook focused a great deal of scrutiny on cloud computing in the government arena. Indeed, given the United States Government’s “Cloud First” policy—meaning that, for every Information Technology system or product an agency wishes to adopt, a cloud solution first must be pursued, considered, and if tenable, adopted—such a focus was not surprising. With this edition, we have undertaken to maintain that attention and update the legal considerations in that area, while expanding the scope of this Deskbook to address emerging legal issues in additional areas. Existing law has still not caught up with the current state of technology yet. Many, if not all, legal

\textsuperscript{7} Wyld, IBM Center for the Business of Government, Moving to the Cloud: An Introduction to Cloud Computing in Government 6-7 (2009).
practice areas interact with cloud computing.

Since Steve Jobs made his pronouncement in 1997, cloud computing has advanced to become almost ubiquitous. The law continues its struggle to catch up or even keep pace. It remains our hope that this Deskbook, and its future updates, will serve to elucidate the areas in which the law may be abstruse and archaic by comparison so you, the reader, may be prepared for the opportunities cloud services provide and the legal risks the cloud may present.

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