International Municipal Lawyers Association,
2012 Mid Year Seminar, Washington, DC.
Ethics Section Workshop
10:30 am – 11:30 am, Sunday, April 22, 2012

Games Cloud Vendors Play

From City of Los Angeles Agreement with Google, Nov. 20, 2009 –

"Replace the City's current e-mail system with a non-premise based e-mail solution and add Google office automation and collaboration tools, all provided in a "Software as a Service" (SaaS) model

http://clkrep.lacity.org/onlinecontracts/2009/C-116359_c_11-20-09.pdf (last accessed March 14, 2012)

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Service Level Agreements

"During the Term of the applicable Google Apps Agreement, the Google Apps Covered Services web interface will be operational and available to Customer at least 99.9% of the time in any calendar month (the "Google ADDS SLA''). If Google does not meet the Google Apps SLA, and if Customer meets its obligations under this Google Apps SLA, Customer will be eligible to receive the Service Credits described below from Customer's Reseller. This Google Apps SLA states Customer's sole and exclusive remedy for any failure by Google to provide the Service."

Max 15 days service credit per year (elsewhere in agreement);
.1 (% outage allowed) x30 (days in month) x24 (hours per day) =
72 hours a month
outage permitted before any service credit

- **Outage SLA not more limited for business hours**
- **No more restrictive provisions as to crucial services**
- **Where would your practice be if you had no data or email for 72 hours straight during an important time period?**
- **Would service credit suffice to compensate you?**

Location of Data

- "Data Transfer. As part of providing the Service, Google may store and process Customer Data in the United States or any other country in which Google or its agents maintain facilities. By using the Services, Customer consents to this transfer, processing and storage of Customer Data."

Once data is outside U.S. (or state) – what different laws apply to permissible
•Permissible content?
•Privileges?
•Security requirements?
•Access?

UNILATERAL TERMS OF SERVICE CHANGES

"On-line Google Terms of Services (TOS) agreement subject to change. On-line TOS presented at the time of service acceptance takes priority over this version of the written TOS."

Any limits on ability to modify agreement through TOS changes?

CONFIDENTIAL INFORMATION

"Obligations. Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect Its own Confidential Information, but in no event less than reasonable care; and (b) not disclose the Confidential Information, except to Affiliates, employees and agents who need to know it and who have agreed in writing to keep It confidential."

Do you have to take same precautions to protect Google's information that you must take to protect your clients' confidential information? Do you have to try to assert privileges?

If Google shows it used same level of security for your confidential information that it used for its own, is it immune from liability for hacked information?

E-DISCOVERY

FROM TABLE APPENDED TO AGREEMENT:
"01 e-Discovery Ability to search based on the following criteria:
e-Dlscovery Content Yes
e-Discovery Sender and/or recipient Yes
e-Discovery Date range Yes
e-Discoverv Metadata Yes
02 e-Discovery Ability to store search results with any metadata Yes
03 e-Discovery Ability to add and delete from search results to create an e-Discovery set Yes"

- **No definition of Metadata – particularly since "Sender", "Recipient" , "Date range" specified, what does it mean?**
- **No clarification on search methods (Text string? Boolean?**
- **No specification as to format or other details of "discovery set"**

Pointers

- Get assistance from knowledgeable lawyer or consultant in dealing with Cloud Service Provider (CSP)
- Relatively little negotiating leverage for customers
- CSPs taking lessons from software providers - disclaim responsibility for functionality
- In addition to business factors: Can you perform your ethical professional obligations under proposed deal?