
2018 IFA
LEGAL
SYMPOSIUM
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IFA
INTERNATIONAL FRANCHISE ASSOCIATION

# Ethics and the Cloud

## [How Painful Can Colliding with a Cloud Really Be?]


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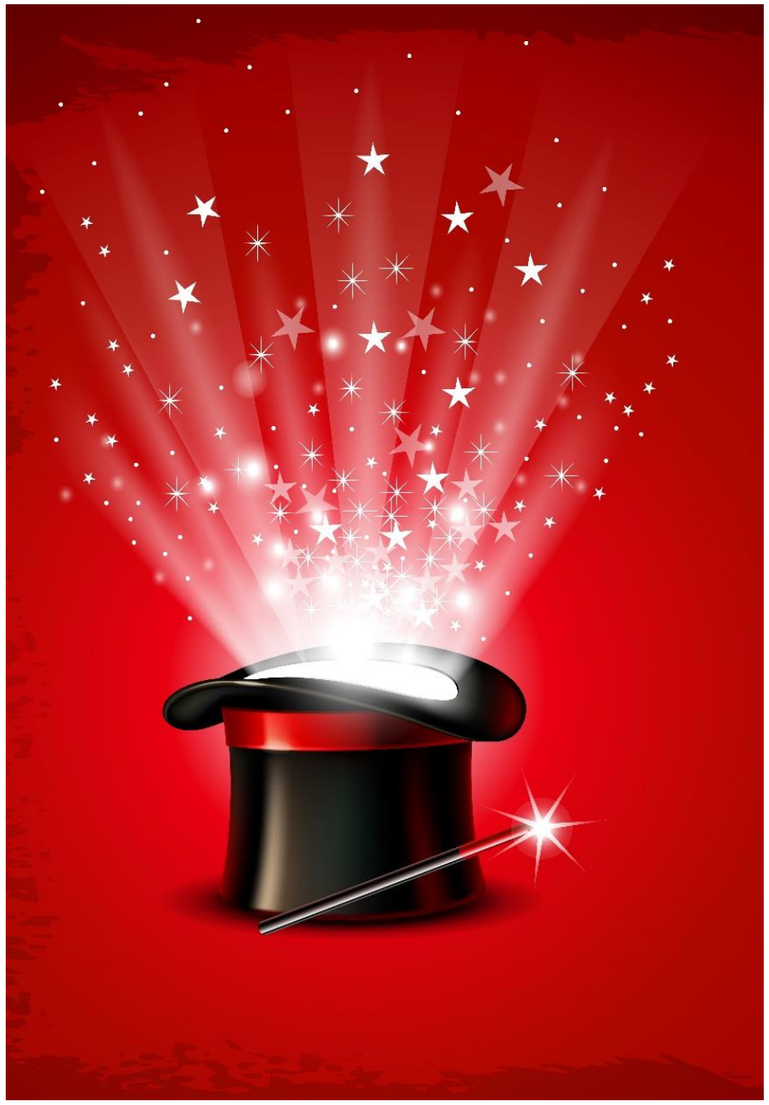
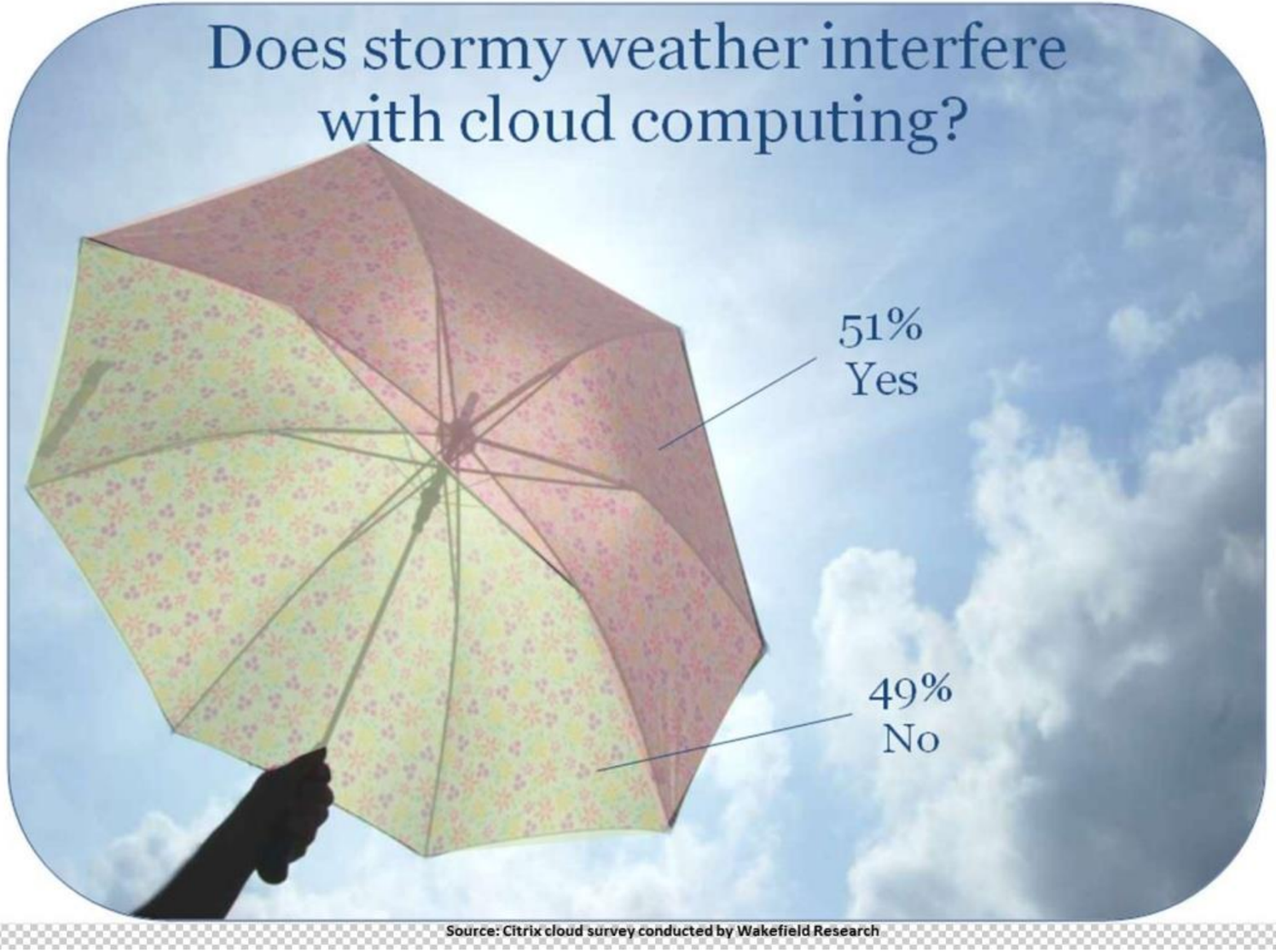


# What is cloud computing?

- Your data is not on your computer. It's on someone else's server or servers – and it could be anywhere
- Your computer is how you get to your data. It provides an interface but it isn't where the magic happens

# What is the cloud?




Source: Citrix cloud survey conducted by Wakefield Research


Gmail
by Google


YAHOO! MAIL


Outlook.com


help
Aol Mail.


Dropbox


iCloud


OneDrive


box


Google Drive

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# Where’s the Data?

International Server Farms

# Public Clouds and Private Clouds

- Public cloud services - computing resources accessed via the Internet offered by a third-party provider
- Private cloud - services that firms or individuals set up for their own use
- Hybrid cloud - a combination of public and private clouds that are managed together

# Why are lawyers so scared of the cloud?

# Conflicting, confusing info from colleagues, vendors, online resources

# Cloud Security Spotlight Report 2017

- Crowd Research partners
- 76% of organizations are piloting, implementing or already operating in the cloud

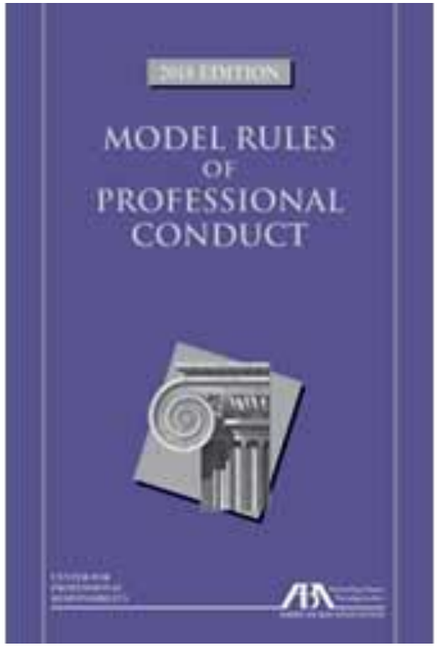
# What role do the ethics rules play?

# Rule 1.1 - General Duty of Competence

***Comment 8 to Rule 1.1***

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice,

***including the benefits and risks associated with relevant technology…***



# Rule 1.6 Confidentiality of Information

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

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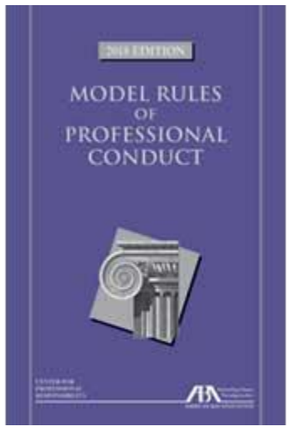
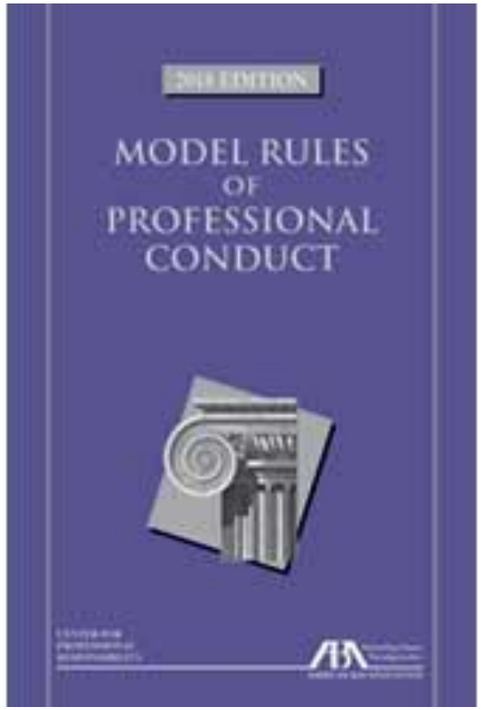


# Communication/Supervision/Client Property

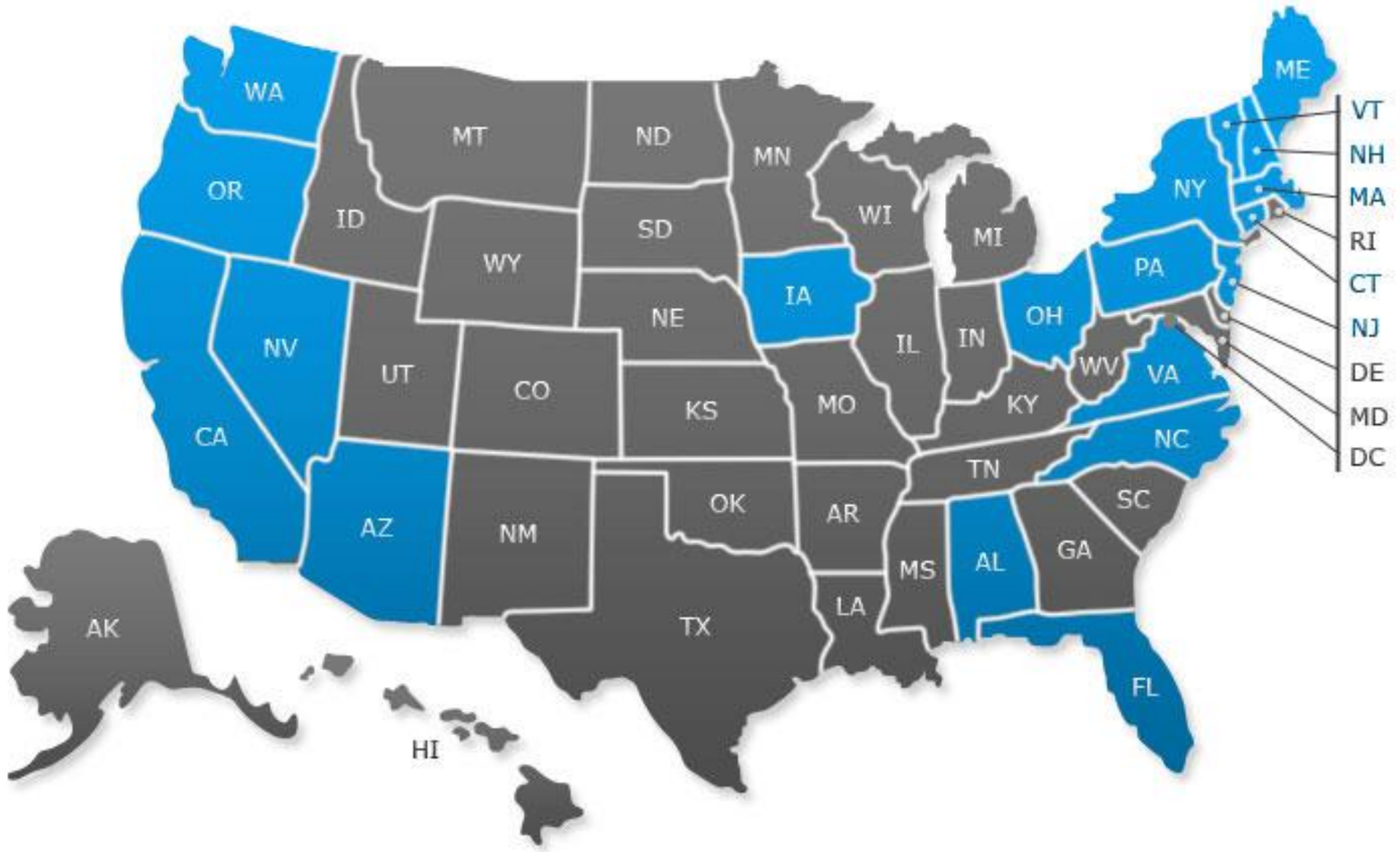



Rule 1.4 Communication

Rule 5.1, 5.2, 5.3 Supervision

Rule 1.15, 1.16(d) Client Property

# ABA Legal Technology Resource Center Cloud Ethics Opinions



“reasonable precautions”
& “reasonable efforts”
=

# REASONABLENESS

**NOT PERFECTION!!**


BREAKINGNEWS

# General Data Protection Regulation (GDPR)

- Effective May 25, 2018
- Applies to any entity offering services to European Union residents
- Also to organizations which control, process or hold personal data of EU residents

# General Data Protection Regulation


- Data breach liability
- Data practices liability – collection, storage and usage of protected data
- Fine and penalties up to 20 million Euros or 4% of the total worldwide annual turnover of the preceding financial year

# Clarifying Lawful Overseas Use of Data Act

- March 23, 2018 President signed the CLOUD Act
- Requires e-mail service providers served with warrant to disclose e-mails within their "possession, custody, or control," even when e-mails located outside the U.S. Applies to other forms of communication too
- Microsoft, Facebook and others supported the law

# CLOUD Act

- Never reviewed or marked up by any committee
- Never had a hearing
- No standalone vote
- Buried in the spending bill
- A new ethical consideration for law firms

# What are the risks of cloud computing?

The **Benefits** of the Cloud

vs.

The **Risks** of the Cloud

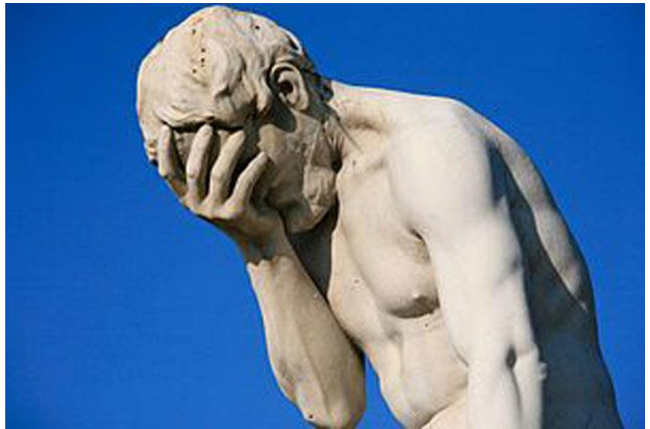
# Understand Cloud Technology (or hire an expert)

# Clouds protect you better than you protect yourself

- They are in the business of security
- Redundant power
- Redundant Internet
- Physical security
- Distributed data
- Encryption in transit and at rest

# Caveat

- Your agreement will define who is responsible for security measures
- Cloud security is FAR more complicated than traditional security
- Typically, you will want some security control – and will be responsible for it!



# Can you negotiate with a cloud provider?

- Not likely with Amazon
- But smaller cloud providers, yes

# Famous cloud data breaches

- iCloud
- Dropbox
- Yahoo!
- Box
- Google Drive
- Amazon Web Services
- Facebook
- Twitter
- Gmail

# Apple’s Celebgate

- How did it happen?
- How many lawyers have data in the iCloud or other clouds?

# April 6, 2018 - Office 365 down

- Mostly across Europe
- Users couldn’t log-in/ U.S. 50% deployment
- *Service is temporarily unavailable. Please retry later.*
- How long can you remain out of business? Who is responsible for getting you back in business?

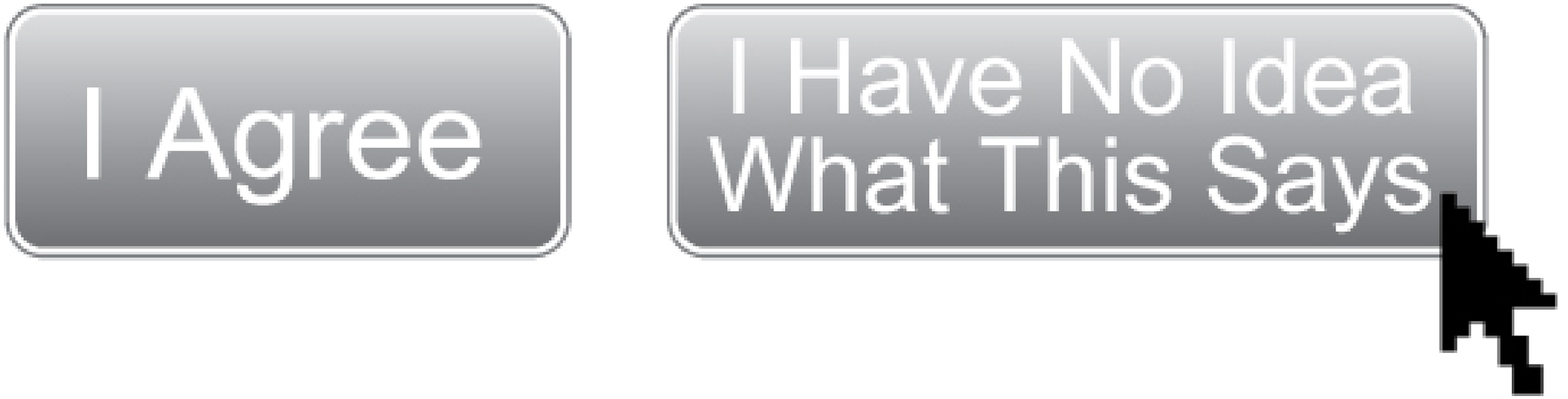
# Gartner

- 95% of cloud security failures are and will be the customer's fault
- You are responsible for the security of the cloud "buckets" (repositories) Amazon provides

# Dropbox 2012 breach

- IDs and passwords compromised by hackers for 68 million accounts
- Weak encryption
- Compromised an employee's password on LinkedIn which he reused on Dropbox

# What lawyers have to do - Read the Terms of Service



# Physical security

- Multi-tenancy or your own server
- Man-traps to get in
- How do they authenticate? Prox card? Biometrics?
- Video cameras – how long is footage kept? Are they everywhere?
- Locked server cabinets?

# Questions to ask

- Redundant power - batteries, then generators?
- Redundant Internet connection?
- 99.999% uptime?
- Compensation if that isn’t met?
- Alert if law enforcement comes with warrant?

# Questions to ask

- Where is the data stored?
- References from entities similar to yours?
- Employee background checks?
- Are all systems being kept up to date with security patches? How frequently?
- Does the vendor sub-contract any work?

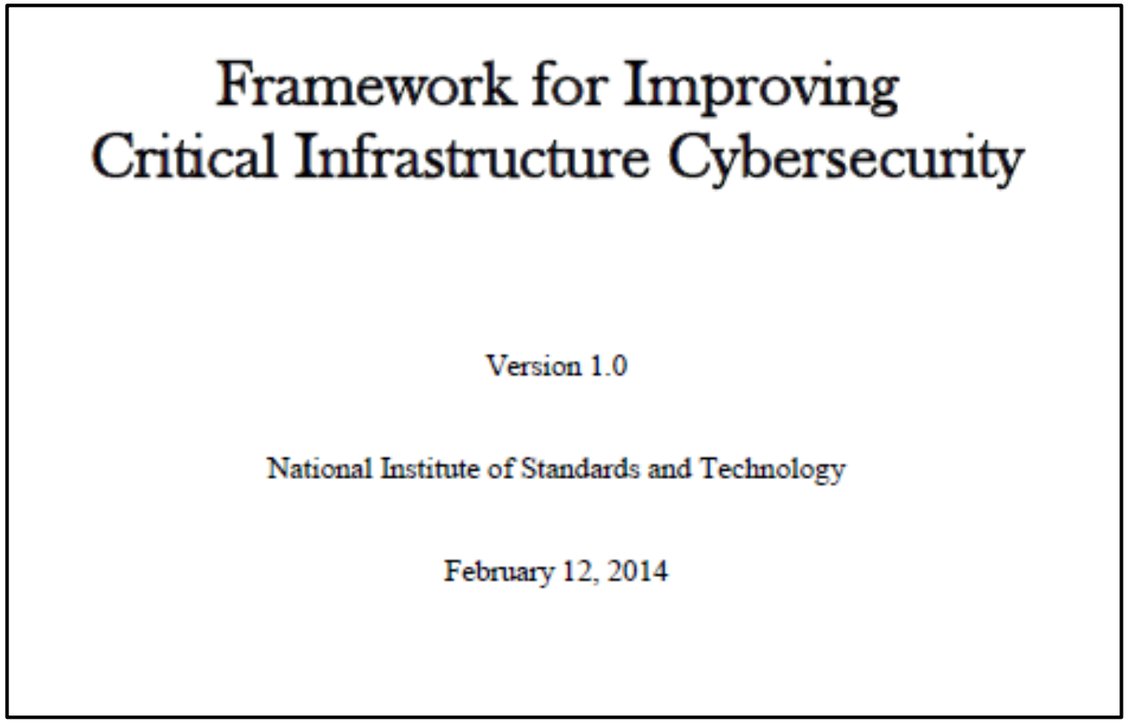
# Questions to ask

- Encryption – at rest and in transit?
- Who holds the master decryption key?
- Where is data located? Can you specify?
- What happens if you leave the cloud?
- Legal Cloud Computing Association – Cloud Security Standards

# Questions to ask

- How is the company structured? Who is legally liable for security breaches?
- How does the vendor's software integrate with your current suite of tools?
- Does cloud software let you customize security roles for your firm without having to choose from predetermined options?

# NIST Cybersecurity Framework: Small Business Information Security: The Fundamentals (30 pages)



Framework for Improving
Critical Infrastructure Cybersecurity

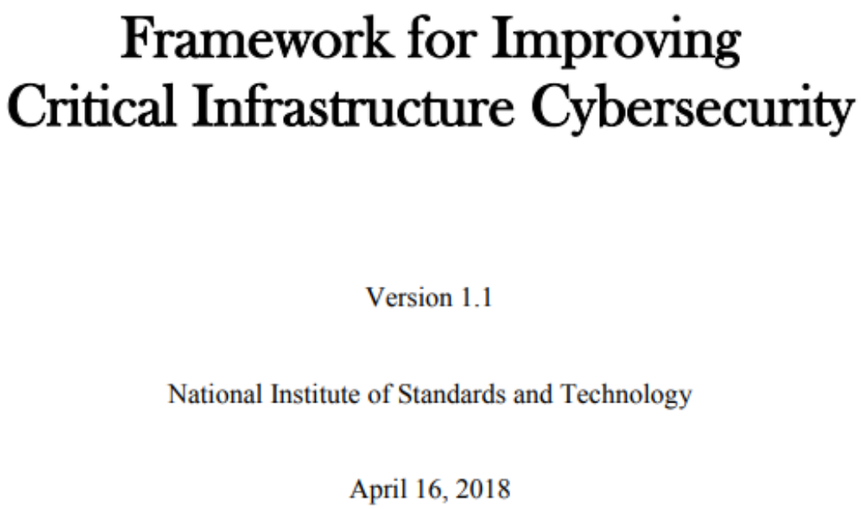
Version 1.0

National Institute of Standards and Technology

February 12, 2014

NISTIR 7621 Revision 1
Small Business Information Security: The Fundamentals
November 2016 – up to 500 employees
ISO 27001

# Version 1.1 released April 16, 2018



Framework for Improving
Critical Infrastructure Cybersecurity

Version 1.1

National Institute of Standards and Technology

April 16, 2018

- Details on managing cyber supply chain risks
- Clarifies key terms
- Introduces measurement methods for cybersecurity
- Remains consistent with 2014 document

# The Top 20 Controls from CIS

CIS Center for Internet Security®

*Confidence in the Connected World*


CIS Controls

## Download the CIS Controls Today

The CIS Controls are a prioritized set of actions to defend against the vast majority of the most common attacks.


**Trusted by security leaders in both the private and public sector, the CIS Controls:**

- Leverage the battle-tested expertise of the global IT community to defeat over 85% of common attacks
- Focus on proven best practices, not on any one vendor's

**All 20 CIS Controls**

* First Name
* Last Name
* Organization
* Email
* Industry
- Please Select -
* Number of Employees Range
- Please Select -

Continue →

# Discovery productions via Dropbox?

- Feb. 2017 – W.D. VA , privilege waived by uploading docs to Box site accessible to anyone with the link (reversed 10/2/17)
- Equivalent to leaving docs on a public bench
- *Harleysville Insurance Co. v. Holding Funeral Home, Inc. et al*

# Reasons for Reversal

- Violation of FRCP 45e(2)(B) - defense counsel refused to return, sequester or destroy info as opposing counsel requested
- Not a “park bench” – not searchable on search engines, needed the specific link of 32 randomly generated characters
- Disclosure was clearly inadvertent

# Beware of free public Wi-Fi accessing cloud

# If you use public Wi-Fi to access cloud


- You need a Virtual Private Network or other secure connection
- Never connect to Wi-Fi that doesn’t require a password

# Public computers

# Cyberinsurance: Necessary

- To manage enormous risk
- Technology is not a silver bullet
- Cloud computing is another attack surface

# Cyberinsurance: Expensive

- Pricing all over the map
- $10,000 plus is normal for small firms
- Allied Market Research – global market will reach $14 billion by 2022

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# Cyberinsurance: Confusing as Heck

- What does your current (non-cyber) policy cover?
- What happen if there is a cloud breach?
- No apples to apples comparison
- Colleagues not reliable source of info
- 2017 Deloitte report – not enough data for reliable predictive models

# How to Prepare For/Respond to a Breach

# Incident response plan

- Templates are only a start!
- Titles of those responsible for plan functions
- Contact info – FBI regional office
  - https://www.fbi.gov/contact-us/field-offices
- Contact info – data breach lawyer
- Contact info – insurance policy (attach policy)
- Attach data breach notification law

# Incident response plan

- Contact info – digital forensics company
- Assess data compromised
- PII? HIPAA? Any other regulated data?
- Preserve system logs and DLP or IDS
- Contact info for bank
- Contact info for PR firm
- Informing employees

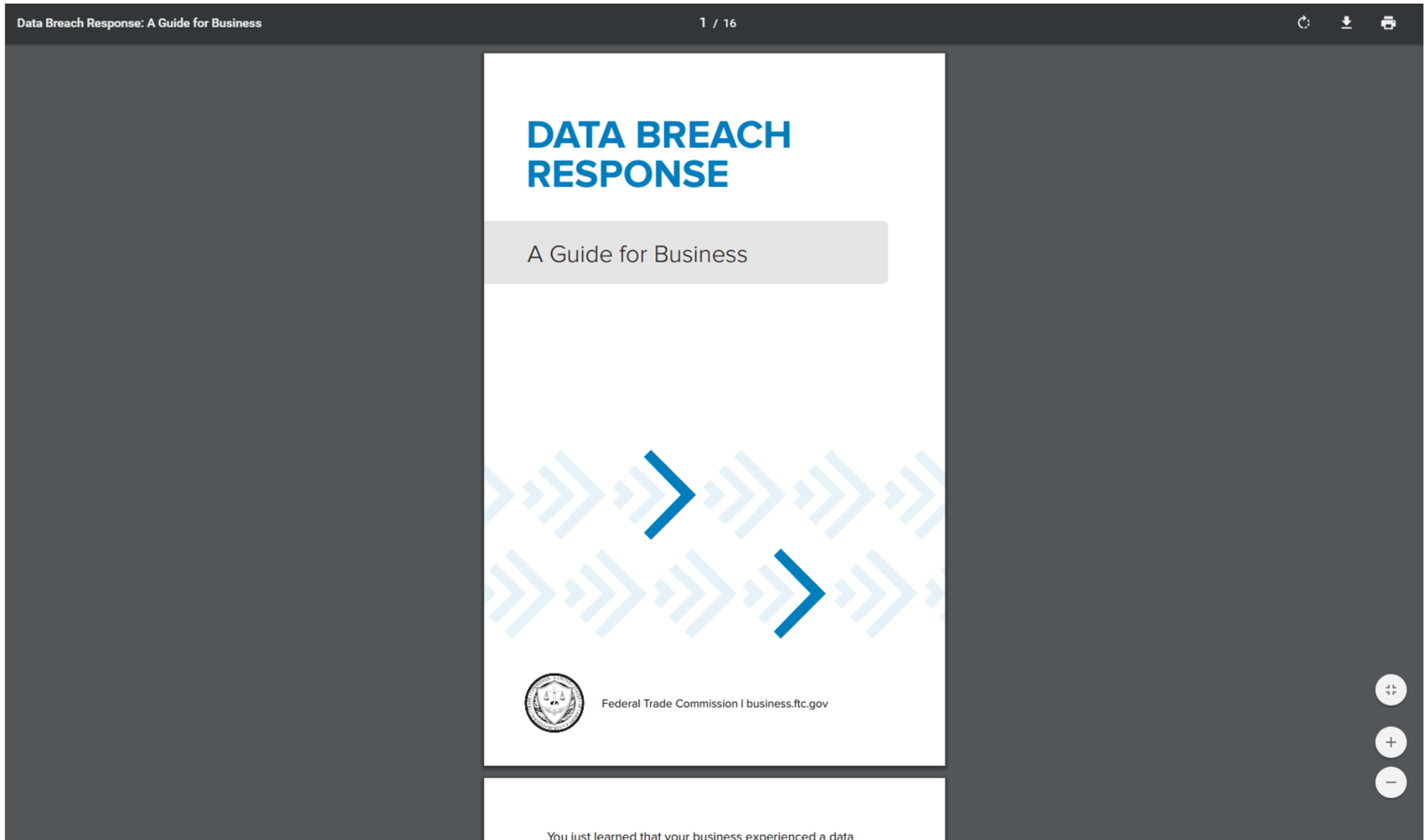
# Incident response plan

- Informing third parties
- Add and subtract issues
- Train on the plan regularly, tabletop exercises, red teams
- Annual review of plan

# The sad stats

- 2017 – took an average of 9 months to detect/contain a breach (Ponemon 2017 Cost of Data Breach Study) – took 9 minutes for compromised data posted online to be exploited (Federal Trade Commission – May 2017)

# FTC Data Breach Response Guide - released October 2016, 16 pages, plain English



# How will a disciplinary body react?

- To the firm's cloud selection efforts?
- To the firm's efforts to protect data?
- To the preparation for and response to a breach?

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