Topic: Cloud computing and Trade Secret Law
Abstract: LOST IN THE CLOUDS?
The Implications of Cloud Computing for Trade Secret Protection.

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ABSTRACT

The high-tech industry is famous for developing new and refined uses of digital technology and new terminology to describe such uses. A term that has recently entered the high-tech lexicon and which is receiving notable buzz among the popular media is “cloud computing.” As with all terminology that is made-up as part of the development of new computer-based business models, what cloud computing ultimately means and whether it is a generic term or a protected trademark, remains to be seen. For present purposes, cloud computing refers generally to services that allow businesses and individuals to use remote servers, thereby reducing the need for local server capacity.

According to its own promotional materials, the idea for cloud computing started in 2005 when two coworkers at Rackspace (a web hosting company) “expressed envy of the clustering, load-balancing, and virtualization they saw the large enterprise customers using to stay online.” These developers convinced the leadership at Rackspace that there was a market for remote server capacity and Mosso.com (now Rackspace Cloud) was born. In turn, this led to the development of a “cloud strategy” that, in the case of Rackspace Cloud, offers three different products: Cloud Sites (web hosting); Cloud Servers (on-demand servers and storage); and Cloud Files (online storage). Other companies, including Google (Google Docs), now offer similar services.

As has been noted elsewhere, the advent of digital technology and the Internet has greatly increased the risk that a company’s trade secrets will be lost through the inadvertent or intentional distribution of such secrets. The advent of cloud computing adds another dimension to this risk by placing actual or potential trade secrets in the hands of a third-party: the cloud computing service. This article explores the legal and practical implications of cloud computing as they relate to trade secret protection. It will first discuss the requirements of trade secret law related to the sharing of trade secret information. Next, it will examine the apparent business practices of cloud computing services and the extent to which they have sought to address the risk of trade secret misappropriation.

Comments: The topic of my presentation is truly a work in process as I have just begun to conduct research on the topic. I look forward to being able to present my preliminary thoughts on the subject so that I can obtain the helpful insights of conference participants.