

CONTENTS

PREFACE xi

ACKNOWLEDGMENTS xiii

SECTION ONE—Cloud Computing: Basics of Technologies and Applications 1

CHAPTER 1 Cloud Computing Definitions and Technical Considerations 3

Christopher Thieda

IaaS 5

PaaS 9

SaaS 10

Considerations for Discovery 10

Data Transfer Regulations 12

Notes 15

CHAPTER 2 The Proliferation of Data Available for Discovery 17

James P. Martin and Harry Cendrowski

An Example of Third-Party Data: Google Search Engine 19

Consideration of Data Points in Discovery 21

Creating an eDiscovery Plan in a Cloud-Based World 25

Production of Cloud Data 27

Notes 28

CHAPTER 3 Cloud Migration and Planning for Retention 29

James P. Martin and Harry Cendrowski

Data Retention and the Cloud 29

Considerations for Litigation 34

Notes 36

SECTION TWO—Current Laws Affecting Discovery 37

CHAPTER 4 Brief History of Privacy and Selected Electronic Surveillance Laws 39

James P. Martin and Harry Cendrowski

Communications Act of 1934 40

Title III—Omnibus Crime Control and Safe Streets Act, 1968 42

Advancements in Telephone System Technologies 45

Electronic Communications Privacy Act of 1986 47

Notes 53

CHAPTER 5 Electronic Communications Privacy Act 55

James P. Martin and Harry Cendrowski

Title II—The Stored Communications Act 57

§2703—Required Disclosure of Customer
Communication or Records 61

Backup Provisions 66

Electronic Storage and the Ninth Circuit 66

Pen Registers and Trap and Trace Devices 68

Production Demands and the ECPA 71

Notes 73

CHAPTER 6 Proposed Legislative Changes and Future Laws 75

James P. Martin

Points for Improvement 76

Congressional Action 77

Notes 78

CHAPTER 7 The Control Concept and Related Issues 79

Matthew P. Breuer and James Martin

The Application of Rule 34(a) 79

Rule 34(a) in Litigation 81

Flagg—A Modern Day Approach 86

Notes 88

CHAPTER 8 Current Issues in Cloud Data 91

James P. Martin and Matthew P. Breuer

Cell Tower Data and Location Information 91

StingRay and Location Monitoring 97

BYOD Policies and Data Ownership 100

Notes 102

CHAPTER 9 The Rise of Social Media and Its Role in Litigation 105

Sarah Marmor and Deirdre Fox

Roots of Social Media 105

Why, How, and When to Access Data on Social Media in Litigation 106

Obligations to Preserve Evidence 107

Accessing Social Media 108

Using Social Media in Litigation 115

Notes 120

SECTION THREE—Relevant Cases 131

CHAPTER 10 Modern Case Analysis Shaping Litigation 133

Matthew P. Breuer and James P. Martin

O’Grady v. Superior Court, 139 Cal.App.4th 1423 (2006) 133

Krinsky v. Doe 6, 72 Cal.Rptr.3d 231 (2008) 136

Flagg v. City of Detroit, 252 F.R.D. 346 (E.D. Mich 2008) 138

Warshak v. U.S., 631 F.3d 266 (6th Circ. 2010) 143

Ehling v. Monmouth-Ocean Hospital, 872

F.Supp.2d 369 (D.N.J. 2012) 146

Juror Number One v. California, 206 Cal.App. 4th 854 (2012) 148

Summary of Cases 150

Notes 153

CHAPTER 11 Cloud Computing and Reasonable Expectations of Privacy: Fourth Amendment Concerns 155

Matthew P. Breuer and James P. Martin

Ex Parte Jackson, 96 U.S. 727 (1877) 156

Olmstead v. United States, 277 U.S. 438 (1928) 158

Katz v. United States, 88 S.Ct. 507 (1967) 159
United States v. Miller, 425 U.S. 435 (1976) 160
United States v. Jacobsen, 466 U.S. 109 (1984) 163
United States v. Jones, 132 S.Ct. 945 (2012) 165
Summary of Cases 166
Notes 169

**CHAPTER 12 Compelled Production of Cloud Computing
Data: Fifth Amendment Concerns 171**

Matthew P. Breuer and James P. Martin

United States v. Doe, 465 U.S. 605 (1984) 172
Doe v. United States, 487 U.S. 201 (1988) 174
United States v. Hubbell, 530 U.S. 27 (2000) 176
In re Boucher, 2009 WL 424718 (D. Vt. 2009) 178
In re Grand Jury Subpoena Duces Tecum,
March 25, 2011, 670 F.3d 1335 (11th Circ. 2011) 180
Notes 183

ABOUT THE CONTRIBUTORS 185

ABOUT THE AUTHORS 187

ABOUT THE COMPANION WEBSITE 189

INDEX 191