

# CloudFucius Wonders: Can Cloud, Confidentiality and The Constitution Coexist?



Peter Silva, 2010-21-04



This question has been puzzling a few folks of late, not just CloudFucius. The Judicial/legal side of the internet seems to have gotten some attention lately even though courts have been trying to make sense and catch up with technology for some time, probably since the [Electronic Communications Privacy Act of 1986](#). There are many issues involved here but a couple stand out for CloudFucius.

First, there is the 'Privacy vs. Convenience' dilemma. Many love and often need the GPS Navigators whether it be a permanent unit in the vehicle or right from our handheld device to get where we need to go. These services are most beneficial when searching for a destination but it is also a 'tracking bug' in that, it records every movement we make. This has certainly been beneficial in many industries like trucking, delivery, automotive, retail and many others, even with some [legal issues](#). It has helped [locate people](#) during emergencies and disasters. It has also helped in [geo-tagging photographs](#). But, we do give up a lot of privacy, secrecy and confidentiality when using many of the technologies designed to make our lives 'easier.'

*Americans have a rather tortured relationship with privacy. They often say one thing ("Privacy is important to me") but do another ("Sure, thanks for the coupon, here's my Social Security Number") noted Lee Rainie, head of the Pew Internet and American Life Project. From: [The Constitutional issues of cloud computing](#)*

You might not want anyone knowing where you are going but by simply using a navigation system to get to your undisclosed location, someone can track you down. Often, you don't even need to be in navigation mode to be tracked – just having GPS enabled can leave breadcrumbs. Don't forget, even the most miniscule trips to the gas station can still contain valuable data....to someone. How do you know if your milk runs to the 7-Eleven aren't being gathered and analyzed? At the same, where is that data stored, who has access and how is it being used? I use GPS when I need it and I'm not suggesting dumping it, just wondering. Found a story where [Mobile Coupons](#) are being offered to your phone. Depending on your GPS location, they can send you a coupon for a nearby merchant along with [this one](#) about Location-Based strategies.

Second, is the [Fourth Amendment](#) in the digital age. In the United States, the 4th Amendment protects against unreasonable searches and seizures. Law enforcement needs to convince a judge that a serious crime has/is occurring to obtain a warrant prior to taking evidence from a physical location, like your home. It focuses on physical possessions and space. For instance, if you are committing crimes, you can place your devious plans in a safe hidden in your bedroom and law enforcement needs to present a search warrant before searching your home for such documents. But what happens if you decide to store your 'Get rich quick scheme' planning document in the cloud? Are you still protected? Can you expect certain procedures to be followed before that document is accessed? The [Computer Crime & Intellectual Property Section](#) of the US Dept of Justice site states:

*To determine whether an individual has a reasonable expectation of privacy in information stored in a computer, it helps to treat the computer like a closed container such as a briefcase or file cabinet. The Fourth Amendment generally prohibits law enforcement from accessing and viewing information stored in a computer if it would be prohibited from opening a closed container and examining its contents in the same situation....Although courts have generally agreed that electronic storage devices can be analogized to closed containers, they have reached differing conclusions about whether a computer or other storage device should be classified as a single closed container or whether each individual file stored within a computer or storage device should be treated as a separate closed container.*

But, you might lose that [Fourth Amendment right when you give control to a third party](#), such as a cloud provider. Imagine you wrote a [play about terrorism](#) and used a cloud service to store your document. Maybe there were some 'surveillance' keywords or triggers used as character lines. Maybe there is scene at a transportation hub (train, airport, etc) and characters themselves say things that could be taken as domestic threats – out of context of course. You should have some expectation that your literary work is kept just as safe/secure while in the cloud as it is on your powered down hard drive or stack of papers on your desk. And we haven't even touched on compliance, records retention, computer forensics, data recovery and many other litigating issues. The cases continue to play out and this blog entry only covers a couple of the challenges associated with Cloud Computing and the Law, but CloudFucius will keep an eye on it for ya.

Many of the articles found while researching this topic:

- [The Constitutional issues of cloud computing](#)
- [In digital world, we trade privacy for convenience](#)
- [Cloud Computing and the Constitution](#)
- [INTERNET LAW - Search and Seizure of Home Computers in Virginia](#)
- [Time to play catch-up on Internet laws: The gap between technology and America's laws hit home last week in a court decision on network neutrality](#)
- [FCC considers reclassification of Internet in push to regulate it](#)
- [Personal texting on a work phone? Beware your boss](#)
- [High Court Justices Consider Privacy Issues in Text Messaging Case](#)
- [Yahoo wins email battle with US Government](#)
- [How Twitter's grant to the Library of Congress could be copyright-okay](#)
- [Judge Orders Google To Deactivate User's Gmail Account](#)
- [FBI Warrant Sought Google Apps Content in Spam Case](#)
- [State court rules company shouldn't have read ex-staffer's private e-mails](#)
- [District Took 56,000 Pictures From Laptops](#)
- [Can the Cloud survive regulation?](#)
- [Group challenging enhanced surveillance law faces uphill climb](#)
- [Watchdogs join 'Net heavyweights in call for privacy law reform](#)
- [Digital Due Process](#)
- [Judge's judgment called into question](#)
- [Dept of Justice Electronic Evidence and Search & Seizure Legal Resources](#)
- [Electronic Evidence Case Digest](#)
- [Electronic Evidence](#)

Finally, you might be wondering why CloudFucius went from A to C in his series. Well, this time we decided to jump around but still cover 26 interesting topics.

And one from Confucius himself: *I am not one who was born in the possession of knowledge; I am one who is fond of antiquity, and earnest in seeking it there.*

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