

## Business & Careers

# The virtual deal room is now more advanced

Used as data rooms, lawyers can share confidential information



**Luigi Benetton**  
Hi-Tech

Physical “deal rooms” house documents pertaining to confidential activities such as mergers and acquisitions. Access to such rooms is controlled. No photocopiers are found within, and no cameras allowed inside.

Brock Smith, a Vancouver-based partner in the technology and IP group at Clark

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**Dominic Jaar**  
KPMG

Wilson, has visited about a dozen such deal rooms. “Most of the ones I’ve used were in a boardroom or a controlled-access room at a law firm,” he says.

Smith’s firm uses virtual deal-room

systems so parties to a transaction no longer must travel to the documents they need to review.

Generic tools initially served as deal-room systems. “When, as in-house counsel, I worked with external law firms, we used basic extranets like Microsoft SharePoint to host documents,” recalls Dominic Jaar, a Montreal-based partner in information management and e-discovery with KPMG. “They resembled shared folders on file servers.”

Deal rooms have since evolved to offer the tools required by other industries. Investment funds, oil and gas, mining, government and crown corporations are some of the larger users.

Because their use goes beyond just “deals,” the term “deal room” is giving way to “data room” when discussing online systems used to share confidential content.

Setting up a data room comes more easily and takes less time when the system offers templates. For instance, an M&A deal-room template can include a due diligence section “that might be broken into types of asset documents or types of licenses, hardware and real estate,” says Michael Whitt, a Calgary-based partner and patent and trademark agent with Bennett Jones.

Document owners can determine digital rights management (DRM) on individual documents. For instance, “you can set a document to be view-only, can’t be screenshot, can’t be forwarded, can be retracted, to time out,” says Joel Lessem, CEO of Toronto-based virtual data-room service provider Firmex Inc.

Servers should not be in a jurisdiction where privacy laws pose unacceptable risks to the information. “(Server) residency is important to Canadians, and to Europeans, and even to Americans,” says Lessem.

The more people use data rooms, the more important bandwidth becomes.

“If 150 people will review documents at the same time, not only do you need a powerful server to process all the demand, but you also need a lot of bandwidth,” Jaar explains. “Otherwise, any time I want to open a document, there will be a lag. If it’s a large document, it may take minutes to open.

“If it’s a time-crunch deal, these precious minutes wasted by people waiting for documents to open can cost a lot of money.”

Auditing and reporting capabilities come in handy. “When you do deals, you want to know what people look at,” Lessem says.

Smith says: “When I’m on the buy side, I tell my team to remember people will stalk them, how many times they look at financial statements, how many times they review a

customer list. That indicates to the seller what issues are most important to the buyer.

“I’ve gone into audit controls and told clients about activity on financials and client lists in the previous 24 hours, and to expect questions on those topics. Sure enough, within 12 hours we had a meeting request to go over those very topics.”

“You can track the speed at which people review documents,” Jaar notes. “In the future, firms can provide alternative fee arrangements to clients based on historical data gathered during similar projects.”

Cost is an obvious consideration. Jaar briefly lists several licensing models: “Some are based on the volume of documents, others on the number of cases. Some are based on the number of people using the data room, a ‘per-seat’ approach.”

Lessem says most Firmex clients use his company’s service as part of their infrastructure. “About 70 per cent of our business is unlimited-use subscription, and 30 per cent (the older way) is pay-per-transaction,” he says.

Free services like DropBox, Microsoft OneDrive or Google Drive can serve as basic data rooms, but lawyers who use them run into two key types of issues: attorney-client privilege concerns, and a lack of specialized features like advanced reporting.

“By the time I get involved in deals, some clients have already set up deal rooms in Dropbox or Box or other such services,” Smith says. He sighs when I ask him how he reacts to this. “The first thing I do is ask what they put in there. Certain documents just can’t go in there if the system’s servers reside outside Canada.”

Jaar puts his blunt opposition to lawyers using such free services like this: “When a service is free, you’re the product. As a lawyer, if the service is free, your client’s data is the product.”

Learning how to use data rooms seems straightforward. “My paralegal and assistants are well-trained,” says Whitt. “A couple of hours with a trainer shows you most of the bells and whistles that are available and most of the ways to troubleshoot or configure a deal room.”

Whitt notes that clients can grow to rely on a law firm’s data-room service, which can strengthen the client’s loyalty to the firm.

For all their stated benefits, data rooms aren’t always the right choice. Based on his observations, Smith considers them a double-edged sword in a multitasking world. “If M&A people aren’t on site looking at paper, then other distractions and projects get in the way of doing the review and due diligence and negotiation,” he says.

“Sometimes the deals that work the smoothest are the ones where you don’t have a digital data room, and everybody has to show up at the same spot, get the deal done and move forward.”

Data-room usage appears to be growing in the legal industry. “By becoming familiar with the potential of a tool, lawyers can find other uses that their clients will find useful,” Whitt says.

“Lawyers are being dragged into data rooms when they receive invitations from other firms,” Smith adds. “It’s a domino effect.”

## ANNOUNCEMENT



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The Honourable R. Roy McMurtry, OC, O.Ont, QC LSM is a former Chief Justice of Ontario, High Commissioner to Great Britain and Attorney General for Ontario. He was deeply involved in the patriation of the Canadian Constitution and the creation of the Canadian Charter of Rights and Freedoms.

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