



# The Cloud: Data Protection and Privacy *Whose cloud is it anyway?*

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# *The Cloud: What is it?*

- Defining benefits
- Freedom and flexibility v personal privacy and data protection

## *Data Protection & Privacy Regulation*

- Background
- Europe
- Asia
- Middle East



# *The Value and Effectiveness of Regulation*

## *To Regulate or Not to Regulate?*

- Is the current patchwork of regulation fit for purpose in the cloud?
- The opportunity cost of regulation
- The role and importance of international co-operation



# *Enforcement of Data Protection and Privacy Laws in the Cloud*

- The regulator's role
- Practical barriers to enforcement
- Examples
- The value and effectiveness of:
  - Self regulation
  - Regulation of commercial relationships
  - Technology solutions



# *Are the Issues different in the Developed v Developing World?*

- The infrastructure challenge
- The opportunity
- Lack of privacy protection



## *The Future is the Cloud*

- Best practice policy in the development of data protection and privacy laws in the cloud eco-system
- Recommendations for future regulation
  - Who is responsible for the protection of personal data?
  - What restrictions, if any, should be placed upon the trans-border transfer of data?
  - What security obligations should be imposed upon the party responsible for the personal data?
  - What law should apply in the cloud?



# *Recommendations to Policy Makers and Regulators*

## ■ Facilitate knowledge

Regulators have the opportunity to advance and facilitate 'Cloud Literacy'. This will assist consumers and citizens to:

- make informed choices about what personal information they put in the cloud
- advance understanding of who to complain to if personal information is misused and,
- enhance understanding of the value to businesses of their personal data and how it might be used

## ■ Develop expertise

Policy makers and regulators must ensure they take account of current technical and social developments in the cloud, its usage and potential. They must also keep current by taking soundings from all stakeholders to be in a position to develop, evolve and enforce laws.

## ■ Adopt fit for purpose laws

We are at a cross-road where regulatory associations and national policy makers need to work together to develop efficient, effective, proportionate and enforceable laws to protect an individual's reasonable expectation of privacy. Responsibility should also be devolved to stakeholders developing self regulation.



# *Recommendations to Policy Makers and Regulators*

## ■ Clearly allocate responsibility

Regulations should ensure that responsibility for compliance is effectively and efficiently allocated to the party who is in the best position to ensure compliance. Responsibility and enforcement powers should be clearly allocated between national regulators and supra-national regulatory associations as well as between domestic ICT and data protection regulators.

## ■ Understand and use technology

Cloud technology has evolved extraordinarily quickly. Policy makers and regulators now have the opportunity to take account of the development of new PETs, and other practical means of protecting individual privacy and enhancing security systems.

## ■ Review existing laws

Policy makers internationally need to review existing laws to facilitate the national and international use of cloud services. The development of common standards and interoperability requirements will facilitate information flows with appropriate security and privacy protections. The elimination of restrictions on the trans-border flow of data is critical to the growth of the cloud eco-system.





# *Recommendations to Policy Makers and Regulators*

- **Raise awareness and promote uptake by the public sector**

Cloud services and the opportunities and savings they make available to governments around the world should be actively pursued and promoted. Bringing awareness and opportunities will lift the economic opportunities and provide great value to citizens, consumers and businesses.
- **Encourage clarity and transparency in cloud contracting**

Confusion caused by the inconsistent patchwork of current laws may be assisted by clear contractual arrangements. Governments and stakeholders should establish a continuing dialogue to define best practice contractual terms.
- **Encourage self-regulation**



# *Recommendations to Policy Makers and Regulators*

- **Effectively enforce relevant laws**

As some current legislation restricts behaviour that is virtually impossible to monitor in the cloud, regulators need to establish a means of identifying breaches to ensure they are able to respond effectively. This may be effected through self regulatory mechanisms, CSPs notifying the appropriate regulator of breaches of security and ideally changes to those aspects of data protection legislation which are impossible to monitor and hence unenforceable in practice.

- **Work together to develop a consistent international approach!**

**We need now to combine and balance the energy of governments in creating new laws with the goal of securing private rights to adopt a clear, consistent, pragmatic and internationalist approach to a fundamentally global digital eco-system.**