

# International Regulatory Issues in the Cloud

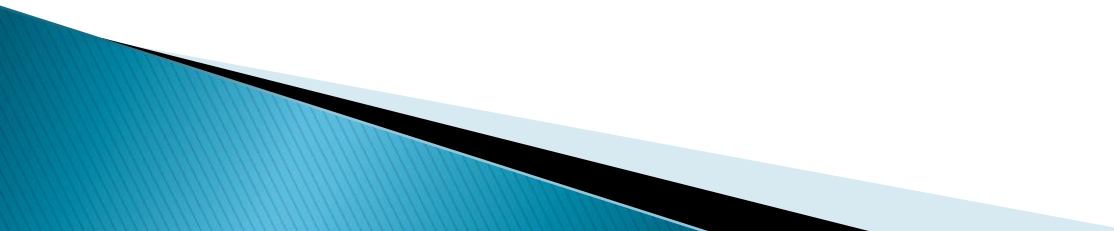
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# International Regulatory Issues in the Cloud

- ▶ Definition
  - ▶ Data Privacy and Information Security
  - ▶ Digital Evidence
  - ▶ Other Regulatory Concerns (IP, Antitrust, Etc.)
  - ▶ Different from Outsourcing?
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# Definition



# Definition -- NIST

- ▶ Draft NIST Working Definition of Cloud Computing (v15): <http://csrc.nist.gov/groups/SNS/cloud-computing/index.html>
- ▶ “Cloud computing is a model for enabling convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This cloud model promotes availability and is composed of five essential **characteristics**, three **service models**, and four **deployment models**.”

# Definition – NIST (cont.)

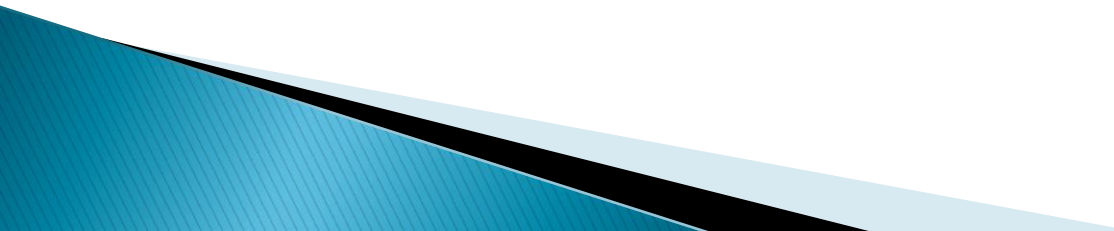
## ▶ Essential Characteristics:

- On-demand self-service.
- Broad network access.
- Resource pooling.
- Rapid elasticity.
- Measured Service.

## ▶ Service Models:

- Cloud Software as a Service (SaaS).
- Cloud Platform as a Service (PaaS).
- Cloud Infrastructure as a Service (IaaS).

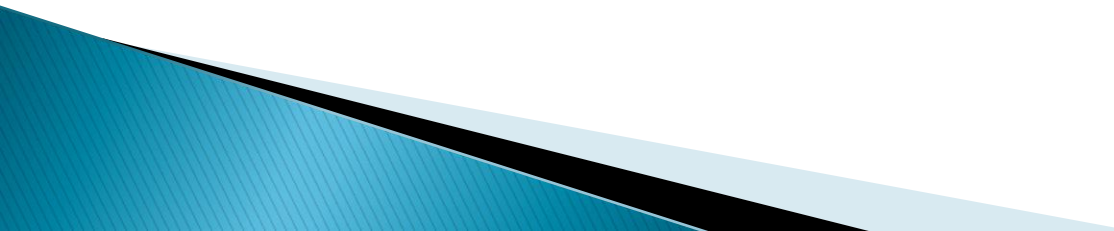
## ▶ Deployment Models:

- Private cloud.
  - Community cloud.
  - Public cloud.
  - Hybrid cloud.
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# Data Privacy and Information Security



# Data Privacy and Information Security

- ▶ Where is the Data?
    - Data Mapping
  - ▶ What is the Data?
  - ▶ What laws apply?
    - Federal – GLBA, HIPAA, etc.
    - International – EU Data Protection Directive, non-EU jurisdictions
    - State laws – Massachusetts, Nevada, etc.
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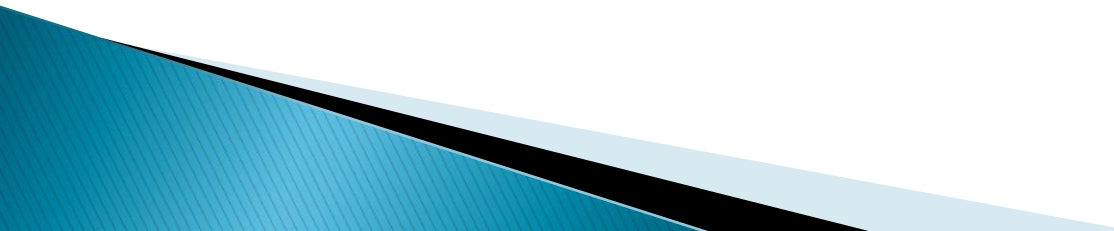
# Data Privacy and Information Security (cont.)

- ▶ EU Data Protection Directive
- ▶ Cross-Border Data Transfers
- ▶ Compliance Mechanisms
  - Safe Harbor
  - Model Contracts
  - BCRs
- ▶ Data Retention Issues
  - Example -- Irish Retention of Data Bill (compels Internet and telephone operators to retain customer data on calls, texts and emails for up to 2 years) exempts webmail and communications on social networking sites

# Data Privacy and Information Security (cont.)

- ▶ Massachusetts and other state data security laws
  - Must require third-party service providers by contract to implement and maintain appropriate security measures for personal information
- ▶ Encryption
  - Mass regs.
  - Nev. Rev. Stat. § 597.970

# Data Privacy and Information Security (cont.)

- ▶ Due Diligence
  - ▶ Contracts
  - ▶ Standards?
  - ▶ FTC Scrutiny/Enforcement
- 

# Digital Evidence



# Digital Evidence

- ▶ Possession, custody or control
- ▶ Preservation
- ▶ Accessibility
- ▶ ECPA, 18 U.S.C. §§ 2701–2711
- ▶ International Discovery
  - EU Data Protection Directive
  - Blocking Statutes

# Other Regulatory Issues



# Other Regulatory Issues

- ▶ Professor Jonathan Zittrain NY Times Op-Ed July 20, 2009, “Lost in the Cloud”
  - “real dangers”
  - Parade of horrors:
    - Amazon Kindle 1984 issue
    - Hackers – once you needed the computer; now you just need the password
    - Patriot Act
    - Monitoring abroad (e.g., China)
    - “Freedom to innovate” at risk – vendor has more control over “whether and how to let others write new software” – fear of market settling “into a handful of gated cloud communities whose proprietors control the availability of new code”

# Other Regulatory Issues (cont.)

## ▶ Zittrain Proposed Solutions

- “Fair Practices Law” – require companies to release data back and erase your digital footprint with “just a click”
- Can’t take back content sold in the cloud
- Security – “adopt safer Internet communications and password practices, including the use of biometrics like fingerprints to verify identity”
- Restrictions on government monitoring – search of the cloud no different than search of a rented house for a whiskey still – Fourth Amendment violation
- Prohibit discrimination in the cloud via regulation, tax breaks or liability relief

# How is This Different From Outsourcing?

- ▶ Location
  - ▶ Time
  - ▶ Identity
  - ▶ Contracts/Subcontract Structure
- 

# Want More?

- ▶ [www.infoseccompliance.com](http://www.infoseccompliance.com)
- ▶ [Legal Implications of Cloud Computing — Part One \(the Basics and Framing the Issues\)](#)



# Questions?

- ▶ Please feel free to contact:

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