Ensuring Legal Protections in the Cloud

INFORMATION TECHNOLOGY (IT) HAS ALWAYS HAD ASSOCIATED LEGAL ASPECTS, SUCH AS THE NEED TO ENSURE DATA COMPLIANCE AND DATA PROTECTION. However, cloud computing is making IT dramatically more intertwined with the law because it brings additional legal challenges such as those related to data portability, liability, data privacy, data governing laws, and access to data for e-discovery. That said, there is definitely a healthy move toward providing all kinds of legal protections to consumers who rely on cloud computing for their IT needs, accelerated mainly because of the fast and robust adoption of cloud computing in the market. Given that, it’s hard for me to envision a future when we can say that we’ve devised laws that will fully protect consumers when using cloud computing for the simple reason that laws usually trail advances in technology.

Contractual agreements with public cloud providers are usually clickwrap, and are nonnegotiable. Consumers must accept the terms of the agreement or forfeit use of the cloud services. Given this challenge, consumers need to balance the risks of foregoing negotiations against the actual benefits of using a cloud service. This might not be an issue for private cloud service providers because consumers can negotiate a complex written contract for using this cloud service model. Here, consumers can dictate how service providers must treat their (consumers’) data during the contract and upon termination. The contract can also be tailored to include provisions addressing any unique needs the consumer has. Moreover, an organizational structure can be established to monitor and verify that the service providers follow all agreed-upon principles and service-level agreements (SLAs). One other comment worthy of mention is that the cloud isn’t static, but is continuously evolving, requiring both parties to adapt, and to have provisions for periodic monitoring and testing as well as the ability to modify the contract as needed.

Auditing cloud service providers is an issue that requires more attention from the community at large. It’s not easy, in fact almost impossible, to verify claims from cloud providers unless they open their coffers to some independent parties to audit their technologies, processes, organizational structures, and associated governance. That’s something we should all strive for.

Cloud services crossing international borders brings another legal twist since such services can be subject to different laws depending on the geographical borders they’re crossing. Due to their different political systems, uneven industry growth, and varying business support models, countries have different laws governing how they treat data and deal with privacy. Geographical location might also play a significant role here. I urge readers to look at the world data privacy map to see how their countries deal with data privacy. It’s also fair to say that the Edward Snowden revelations taught us that we should always take privacy laws, wherever they are in the world, with a big grain of salt because governments, even western democracies, might try to...
spy on their people. In *IEEE Cloud Computing*, the “Cloud and the Law” column keeps abreast of these issues.

This special issue of *IEEE Cloud Computing* focuses on a subset of what I mentioned here—that is, how to balance privacy with legitimate surveillance and lawful data access in the cloud. Kim-Kwang Raymond Choo and Rick Sarre, both from the University of South Australia, serve as guest editors. I encourage you to read their guest editors’ introduction.***

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