Cloud Computing Continues to Loom Large on the International Data Privacy Agenda

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While we wait for the next steps of the European Commission, Federal Trade Commission and Department of Commerce on the current consultations on European and U.S. data privacy laws, the shift to cloud computing continues to loom large on the international data privacy agenda. Government agencies on both sides of the Atlantic have begun to provide guidance to public sector bodies on moving to the cloud, and industry and policymakers continue to focus on the need to reflect this technological shift in today’s legal frameworks. This article summarizes relevant reports and speeches on cloud computing from the past few weeks.

ENISA Reports on Data Breach Notification and Governmental Cloud in the EU

January was a busy month for the EU’s “cyber security” agency, ENISA. First, it issued a report on January 13 on data breach notifications in the EU. This is in response to the 2009 amendments to the ePrivacy Directive requiring telecom and internet service providers to issue notifications for personal data breaches, which Member States must transpose into national legislation by May 2011. The report reviews best practices in countries where data breaches already are required or are expected to be notified (e.g., Germany, Spain and Ireland), highlights concerns of providers and regulatory authorities regarding the new EU-wide mandatory notification regime, and identifies areas where further EU level or local guidance is needed.

ENISA followed up the data breach paper with a report on January 17 on cloud computing in government. (To date there have been few such reports, other than draft German guidelines that were released in September 2010 on information security issues relating to the cloud.) The ENISA report is targeted at senior managers of public bodies who are considering cloud computing platforms and services. It summarizes relevant legal and regulatory considerations and highlights the pros and cons of different cloud models regarding information security and resilience. While ENISA acknowledges that cloud computing has the potential to offer public administrations substantial benefits and improvements over current IT provisioning, overall it urges European governments to adopt a staged approach in integrating cloud computing into their operations.

National Institute of Standards and Technology Draft Guidelines on Security and Privacy in Public Cloud

In the U.S., the National Institute of Standards and
Cloud Computing Continues (from page 4)

Technology ("NIST") issued drafts guidelines on February 2 for managing security and privacy in the cloud (SP 800-145). The document provides an overview of the security and privacy challenges for public cloud computing and presents recommendations that organizations should consider when outsourcing data, applications and infrastructure to a public cloud environment. Aside from the obvious suggestion to plan the security and privacy aspects of cloud computing solutions before engaging them, NIST encourages federal departments and agencies to ensure that any selected public cloud computing solution is configured, deployed, and managed to meet their security, privacy, and other requirements; emphasizes the importance of maintaining security in the client-side environment (e.g., over mobile devices, browsers, plug-ins and applications that are used to access cloud services); and stresses the need to maintain accountability over the privacy and security of data through strong management practices. Similar to the ENISA report, NIST emphasizes that cloud computing should be approached carefully with due consideration to the sensitivity of data, and addresses the issue of negotiating service agreements with public cloud providers. NIST invites comments on the guidelines by February 28. Complementing the guidelines, NIST also has published “The NIST definition of cloud computing” (SP 800-145), which is intended to enhance and inform the public debate on cloud computing.

Microsoft’s General Counsel Discusses the Policy Challenges and Opportunities for Cloud Computing at the French Assemblée Nationale in Paris

Building on a speech and white paper that was released last January, Brad Smith gave a speech on January 24 at the French Assemblée Nationale about the trends and possibilities of cloud computing, and what needs to be done in the way of better laws and improved industry and government cooperation to get ready for this technological shift. Microsoft has identified several regulatory reforms to enable Europe to maximize the economic and social benefits of the cloud, including harmonizing the EU’s data governance rules, applying a single law to cloud providers operating in multiple Member States, facilitating international transfers, establishing clear and consistent data retention rules, and bolstering security in the cloud. Microsoft set out more detail about these topics in a new white paper and summary of “Steps Europe Can Take to Promote the Cloud” that it published to accompany Brad Smith’s speech.

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Commissioner Neelie Kroes outlines a European Cloud Computing Strategy at Davos

Finally, following on from ENISA’s report on cloud computing in government, Commissioner Neelie Kroes set out some further thoughts on a European Cloud Computing Strategy at Davos on January 27. In an encouraging sign for cloud providers and European industry more broadly, Commissioner Kroes spoke positively about the need to ensure that effective data protection and the EU’s Single Market do not clash with cloud computing, and her wish to make Europe “not just ‘cloud-friendly’ but ‘cloud-active’. “To help achieve these goals, Commissioner Kroes indicated that her strategy would cover three broad areas: the legal framework regarding data protection and privacy; technical and commercial fundamentals, including research, security and technical standards; and the market, e.g., support for pilot projects aiming at cloud deployment. Commissioner Kroes will be inviting cloud providers and cloud users to Brussels “for a series of intense consultations” in the spring.

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