Cloud Computing: Privacy & Jurisdiction from a Canadian Perspective

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Cloud Computing - Canada

• Competitive advantage?
  – Climate: reduced energy costs
  – Infrastructure: networks running north
  – Geography: proximity to U.S.
  – Legislative: national privacy legislation
Canadian Privacy 101

• National privacy legislation takes effect in 2004; sub similar provincial rules in BC, Alta, Quebec
• Privacy Commissioner - ombuds power but has proven effective (Facebook)
• Consent requirements for collection, use, disclosure
• Security and safeguard requirements
• Accountability principle - collector responsible regardless of location, future uses
• Access requirements
Privacy Meets Jurisdiction
B.C. Outsourcing Case

• Not strictly a cloud computing issue, but puts outsourcing, jurisdictional concerns on the map
• BC Gov’t plan to outsource health management data - U.S. companies likely RFP winners
• Concerns focus on USA Patriot Act (non-disclosed disclosure)
• Quickly expands - NSA letters, grand jury, etc.
• Provincial privacy consultation
Privacy Meets Jurisdiction
B.C. Outsourcing Case

- New legislation enacted targeted public sector outsourcing of personal information
  - effectively prohibits export of citizen’s data, with some exceptions (e.g., system upgrades or repair, with ministerial consent)
  - All BC public bodies must ensure personal information stays in Canada and is accessed only in Canada
  - Cannot disclose in response to foreign requests or demands
  - This extends to service providers to public bodies
  - Exceptions: other Canadian legislative authority; Canadian court order; installation, repair, upgrade, etc. of electronic systems or equipment
  - Disclosure also allowed by law enforcement agencies to foreign counterparts under an arrangement, written agreement or treaty
Other “Patriot Act” Cases

- **LSAC**
  - Privacy complaint against LSAC for requiring fingerprint for test takers
  - Object to mandatory collection of biometric data, transfer to the U.S.
  - Commissioner rules in favor of complainants
  - LSAC adjusts requirements in Canadian testing centers

- **SWIFT**
  - Complaint re: transfer of banking information
  - Not well-founded
  - Law does not block outsourcing of data
  - Banks ultimately responsible under accountability principle
Subsequent Cases - Web based email

- **Canada.com (2008-394)**
  - Major media organization switches email management to U.S.
  - Privacy Commissioner receives multiple complaints
  - Rejects complaint
    - “The risk of a U.S.-based service provider being ordered to disclose personal information to U.S. authorities is not a risk unique to U.S. organizations.”
    - “emphasizes the importance of organizations assessing the risks that could jeopardize the security and confidentiality of customer personal information when it is transferred to foreign-based third-party service providers. It is essential that organizations using third-party service providers outside Canada use contractual or other means to provide a comparable level of protection while the information is being processed by the third party.”
Subsequent Cases - Web based email

- **Lakehead University v. CAUT**
  - University wishes to switch email management to Gmail
  - Faculty association objects - raises Patriot Act privacy concerns
  - Case proceeds to arbitration
  - University wins
  - Privacy concerns arise regardless of whether data transferred to U.S. or remains in Canada
Subsequent Cases - Jurisdiction

• **Abika**
  – Complaint against U.S. provider advertising access to personal info
  – Privacy Commissioner refuses to investigate, claims no jurisdiction
  – Judicial appeal of decision - orders Commissioner to investigate
  – Well-founded finding - works with FTC in taking action
  – Opens door to future cases - ie. Facebook
The Cloud Computing Consultation

- Privacy commissioner launches cloud computing consultation in
- Comments due by April 15, 2010
- Roundtable scheduled for Calgary in June 2010
- Includes panel on jurisdiction
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