



THE SECURITY STANDARD™



Securing the Enterprise from a Dangerous Cyberworld

September 19-20, 2011 • Marriott Brooklyn Bridge, New York City

Produced by
CSO

Securing the Cloud: A Legal Perspective

Using Contracts to Keep Grounded in Security,
While Your Data is in the Clouds

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A Simple Question



With all the potential risks, why would anyone ever use cloud computing services?

Magnitude of Security Breach

X

VS

Cost Savings From Cloud Model

X

Likelihood of Security Breach

Likelihood of Achieving Savings



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A Little Math



Some back of the envelope answers . . .

X	Big	VS	Big	✓
	X		X	
	Small		Big	

And what is the likelihood of a security breach
in an internal, non-cloud environment?

Generally, a lot more than in a hardened, cloud computing facility



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Guiding Principles for Contracting with Cloud Computing Suppliers

- Cloud computing is here to stay
 - Commercial benefits likely outweigh the security risks on an expected value basis
- We must find ways to make it as safe as possible to further tip the balance
- We must make certain tradeoffs
 - Keeping the value proposition in mind
 - Making smart commercial decisions



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The Typical Cloud Computing Contract

This AGREEMENT contains lots of really fine print and we really do not feel like negotiating any of it. This AGREEMENT contains lots of really fine print and we really do not feel like negotiating any of it. This AGREEMENT contains lots of really fine print and we really do not feel like negotiating any of it. This AGREEMENT contains lots of really fine print and we really do not feel like negotiating any of it. This AGREEMENT contains lots of really fine print and we really do not feel like negotiating any of it.

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The Typical Cloud Computing Contract

- Almost always dealing with supplier paper
- Less willing to change their terms in cloud computing than in a traditional one-off computing transaction
 - Standard service to all customers
 - Lack of customization
 - Scale and a standards-based model with consistent, repeatable processes
- Must accept a standard delivery model to take advantage of the cost savings



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Cloud Security -- Negotiation

- There ARE still pieces to negotiate!
 - Step 1: Understand what security is being offered
 - Technological safeguards (i.e., physical + logical security)
 - Compliance with applicable regulations, depending on your industry (e.g., financial, healthcare)
 - Notification (i.e., how quickly are you informed of problems?)
 - Step 2: When the form agreement is not sufficiently descriptive, ask to have more robust information added to the contract
 - Step 3: Forget about changing the cloud supplier's security and privacy standards
 - If you cannot live with them, you may need a new supplier



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Beware . . .

- Be on the lookout for references to web pages
 - An online privacy policy that governs the relationship
 - “Then-current” versions of anything
- If it is referenced by the contract but not included, it can change over time
 - Allows the supplier to change its applicable terms during the term of the contract unilaterally
- “But, what about step 3?”
 - How do you protect yourself if suppliers can change their security standards and they will not negotiate them?



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Beware . . .(continued)

- Unlikely to get a supplier to allow you to operate in a cloud environment without the changing terms being applicable to you
 - For standardization (discussed above)
 - This generally is good (can address change in applicable law or upgrades in technology)
- Have options if you cannot accept the new standards
 - Ability to exit without cost
 - Transition assistance
 - Move to a private cloud



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What else do we need to worry about?

- Where is the data stored?
 - May matter for certain regulated industries
 - May matter if data is from other countries (e.g., Europe)
- What are your audit rights?
 - None
 - In a shared environment, would you want the other customers having access to the environment in which your data is stored/processed/...
 - SSAE 16 (successor to SAS 70 Type II) can help



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What else do we need to worry about?

- How will your supplier support data requests in eDiscovery?
 - Data you need to collect?
 - Data others are seeking (i.e., can others subpoena your data directly from the supplier?)
- Who controls handling of a security breach?
 - Who pays for the cost?
 - Most state laws do not “require” credit monitoring, but a company may have little practical ability not to provide it
- Anything else you would consider when contracting with a third party that will have access to your data or systems in a non-cloud environment
- “Legal issues” (indemnities; warranties; limits of liability . . .)



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In Summary

- Cloud computing means giving up CONTROL
AND
- Cloud suppliers are inflexible (*sometimes* for the right reasons) . . .
BUT
- Cloud computing is often nevertheless a good business decision

By understanding where a cloud supplier *can* negotiate and where the cloud model *precludes* negotiation, you can find a way to balance *reduction of risk* with *increases commercial benefit*.



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Thank You!



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