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SECURITY
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September 13-14, 2010 > Marriott Brooklyn Bridge > New York, NY

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**Defending the Fortress:
New Threats Meet New Defenses**



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CONTRACTING WITH YOUR CLOUD COMPUTING VENDOR: THE LEGAL PITFALLS YOU MAY BE OVERLOOKING

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What we will cover

The Legal and Regulatory Issues You Need to Consider in Cloud Contracts

- Privacy
- Data Security
- Service Availability
- Compliance Issues



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Privacy

Owners of data have statutory, regulatory and common law duties to protect personally identifiable information that must be accounted for in cloud contracts

- Promises made to data subjects must be respected
- Restrictions on data use must be clear
- Retention and destruction must be addressed
- Notice of legal requests for the information must be provided



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Security

Data security provisions address the *administrative, technical, and physical safeguards* necessary to maintain the confidentiality, integrity, and availability of information stored and processed with a cloud computing vendor.



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Security

- Range of issues to consider:
 - (1) authentication procedures;
 - (2) employee and subcontractor selection procedures;
 - (3) encryption requirements for data in transit and at rest
 - (4) incident response procedures;
 - (5) logging and monitoring requirements;
 - (6) network security considerations;
 - (7) physical security considerations;
 - (8) audit rights; and
 - (9) data disposal and destruction procedure.



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Service Availability

The availability of computing resources in the cloud obviously is critical.

- Depending on your bargaining power, you should focus on optimal uptime availability, hours of scheduled maintenance, customer service availability



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Compliance Issues

To ensure that your own compliance obligations are met, e.g. privacy, data security, data security breach notification, cloud supplier must assume duties

- At a minimum, customers should insist that vendors self-certify compliance with all applicable laws, including all privacy and data security laws, for all jurisdictions that may be applicable to the vendor.
- Customers in more highly regulated jurisdictions or industries should also consider including specific, customized privacy and data security provisions in their contracts.



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Indemnification and Limitation of Liability Provisions

Indemnification in the event of a data security breach or privacy violation should be addressed in your contract, and beware of overly-broad limitations of liability.



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Take-Aways

- 1. If you are using a cloud provider to store or process data for which you have legal obligations, take-it-or-leave it contracts (e.g. “clickwrap”) are dangerous.**
- 2. Know what your own obligations are to protect data before contracting**
- 3. At a minimum, ensure that privacy, data security, availability and compliance issues are addressed in your cloud contract.**
- 4. Have a mechanism to ensure compliance (such as audit rights, certifications)**
- 5. Do-it-yourself contracting is dangerous; seek legal help.**



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Questions and Answers

- Thank you for listening
- For further information:
christopher.wolf@hoganlovells.com
- And see our privacy and data security blog, The Hogan Lovells Chronicle of Data Protection, www.hldataprotection.com