Chapter 11
Not Every Cloud Brings Rain:
Legal Risks on the Horizon

Sylvia Kierkegaard
International Association of IT Lawyers, Denmark

ABSTRACT
The promise of a utility-based IT service delivery model is well understood and highly desirable. Moving towards cloud-based computing is emerging and gaining acceptance as a solution to the tasks related to the processing of information. Cloud computing promises a single portal view to better manage email, archiving, and records retention. However while cloud computing certainly brings efficiencies, it is still immature and carries serious risks to business information. The questions around risk and compliance are still largely unknown and need to be ironed out. Cloud computing opens numerous legal, privacy, and security implications, such as copyright, data loss, destruction of data, identity theft, third-party contractual limitations, e-discovery, risk/insurance allocation, and jurisdictional issues. This chapter will provide an overview and discuss the associated legal risks inherent in cloud computing, in particular the international data transfer between the EU and non-EU states.

INTRODUCTION
Information is the heart and soul of many businesses. The information that companies generate and share are generating a wealth of benefits. E-mail, social media, mobile phones, drop boxes, increased internet devices and broadband connections have enabled businesses and consumers to exchange high data volumes and files everywhere and over vast networks with high speed communication.

Information is now available and shared to an extent almost unimaginable 5 years ago due to the increasing digitization and modern technology. At the same, it has caused organizations to struggle with the high volumes and diversities of information and seek solutions to manage the
Information and to reduce cost through effective information governance.

Information Governance (Info Governance) is the specification of decision rights and an accountability framework to encourage desirable behavior in the valuation, creation, storage, usage, archiving and deletion of information. It includes the processes, roles, standards and metrics that ensure the effective and efficient use of information to enable an organization to achieve its goals. (Logan, 2009) These include the management of information securely, efficiently and effectively: what information is retained, where and for how long, and how it is retained (e.g., protected, replicated and secured), who has access to it and how the policies are enforced. They encompass not only suitable policies, accountability, and procedures but also the technology to create a solid governance framework. Unmanaged and inconsistently managed information increases risk and cost.

Information technology officers are looking for technologies that will help them focus more on the benefits to the organization, which can bring institutional agility, flexibility and cost saving. Moving towards cloud-based computing is emerging and gaining acceptance as a solution to the tasks related to the processing of information. Cloud promises a single portal view to better manage email, archiving, and records retention (etc). Since web 2.0, “cloud computing” has been the buzz word in the IT industry. Cloud advocates argue that implementing any form of IT or information governance is far easier and far more effective in a fully-virtualized private cloud model than in the traditional, physical IT world.

The European Union is addressing the challenges concerning the threat to information security specific to cloud computing through several measures. This article will provide an overview of cloud computing and discuss the current and emerging legal risks and emerging legal issues for businesses using cloud computing.

CLOUD COMPUTING: ONCE UPON A TIME

“Cloud” is a metaphor for the Internet. Thus, cloud computing is the usage of the Internet as a computing infrastructure and resource. The idea of computation being delivered in public space was proposed by computer scientist John McCarthy who proposed the idea of computation being delivered in public space. In 2006, Eric Schmidt of Google described their approach to Software as Service (SaaS) as cloud computing at the Search Engine Strategies Conference. (Google Press Center, 2006) Amazon included the word “cloud” in EC2 (Elastic Compute Cloud) when it was launched a few weeks later.

Cloud Computing found its origin in the success of server virtualization and the possibilities to run IT more efficiently through server consolidation. Soon, visionaries came up with idea to bring virtualization to a next level by implementing some early storage and network virtualization techniques and thus making abstraction of the hardware in the entire data center. Add to this self-provisioning and auto scaling, and cloud computing was born. (Leyden, 2009) The most important contribution to cloud computing has been the emergence of “killer apps” that provided access to large bodies of map data. In 2009, as Web 2.0 hit its stride, Google and Microsoft, among others, formalized the Application Programming Interfaces (APIs). Mashups exploded and everyone sat up and took notice of the opportunities for innovation bootstrapped upon the shared capabilities of Google’s
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