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Into the clouds or lost in the fog?

Cloud computing and data processing in
IGOs: Selected legal considerations



Background of this presentation

- Cloud computing is an ubiquitous reality in corporate/professional environments;
- IGOs such as the UPU (a specialized agency of the UN) have, over the last few years, faced an increasing trend towards the use of cloud computing services;
- However, there is still a scarcity of comprehensive studies on the use of these services by IGOs (as well as its legal implications).



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Objectives

- Briefly present an overview of what cloud computing means and the main legal issues associated thereto (including the processing of cloud-based data);
- Discuss a number of cases where cloud computing and remote data storage may pose difficulties to IGOs;
- Present possible alternatives to mitigate legal risk and to ensure observance of the specific principles applicable to IGOs in general.



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Structure of this presentation

**Cloud computing:
Overview and
use by IGOs**

**Main legal issues
and selected
case studies**

**Conclusions
and possible
risk mitigation
approaches**



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Overview of cloud computing (1)

- Definitions of **cloud computing** (first known uses of the term - 2006):
 - Oxford dictionary - The practice of using a network of remote servers hosted on the Internet to store, manage, and process data, rather than a local server or a personal computer;
 - Merriam-Webster dictionary - The practice of storing regularly used computer data on multiple servers that can be accessed through the Internet.



Overview of cloud computing (2)

- Recent Harvard Business Review (2011) survey – 72% of respondents' companies have been using cloud services for one or more years (adoption by IGOs follows a similar trend but has been more cautious);
- Main types (used with public, private/non-shared or hybrid clouds):
 - Software as a Service (SaaS) – “on-demand software” functionality (email, CRM, online surveys etc.);
 - Platform as a Service (PaaS) – platform where developers can write their own SaaS applications (Facebook is one example);
 - Infrastructure as a Service (IaaS) – Internet-accessible equipment is rented to support certain operations (Amazon supports certain online services such as Foursquare).



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Overview of cloud computing (3): Advantages

- Lower cost on average when compared to internal solutions (frees up internal IT resources for more important uses);
- Deeper collaboration within the organization as well as with outside stakeholders;
- Improved external communication/outreach possibilities and visibility for the organization.



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Overview of cloud computing (4): Concerns

- Data security and reliability;
- Legal and compliance issues (including a virtual absence of legal precedent);
- Lack of interoperability with internal or other existing systems;
- Vendor lock-in/proprietary solutions;
- Ultimately, lack of control over the adopted solutions;
- Lack of transparency (which may include data protection concerns);
- Lack of international technical standards.



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Use of cloud computing by IGOs in general (1)

- Recent survey by the CEB ICT network (April 2012): 16 IGOs within the UN system responded with cloud use scenarios such as:
 - Promotion and outreach;
 - feedback and survey;
 - collaboration;
 - communication and messaging;
 - human resources;
 - ERP/CRM systems;
 - library and research;
 - identity management.



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Use of cloud computing by IGOs in general (2)

facebook.

Google™

twitter 

flickr ^{GAMMA}™

 SurveyMonkey™

amazon.com 

Linked 

webex
powering real-time meetings on the web

VOCUS



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The current state of affairs for some IGOs (compiled responses)

- Most of the IGOs are still in the process of assessing legal and technical concerns (mainly on P&Is, procurement and security);
- Generally NO policy on the use of cloud computing services, although some contracts already contain IGO-specific clauses;
- Location of stored data and archives is a major factor to consider;
- Cloud services already being used by individual units or staff on a “personal” basis as opposed to true institutional arrangements;
- Sensitive data preferably kept “inside”, non-confidential information may be “out in the clouds”.



What about the main legal issues for IGOs?

- Privileges and immunities, particularly in regard to the inviolability of archives (including physical location of servers) and data security (UPU: Host country agreement with Switzerland and Convention on the privileges and immunities of specialized agencies);
- Protection of sensitive data in the cloud and IPR aspects (ownership of data/imposed licenses?);
- Use of cloud services by individual units or staff on a “quasi personal” basis, as opposed to agreements signed in accordance with existing procurement rules (RFP price thresholds?);
- Insufficient contractual provisions/“adhesion” contracts?



Specific cases (1)

(a) Google Apps Terms of Service (Gmail, Groups, Docs, Video etc.):

- “Publicly-available” data is put under a “worldwide, non-exclusive, royalty-free license to reproduce, adapt, modify, publish and distribute such content (...) for the purpose of displaying, distributing and promoting Google services.”
- Imposed advertisements? Restrictions on the use of the emblem, name and initials of IGOs;
- Indemnification obligations? “Reasonable efforts” clause only;
- Laws of the State of California? Not acceptable for IGOs;
- Subject to US export laws/sanction lists – conflict with non-discriminatory character of IGOs?



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Specific cases (2)

(b) SurveyMonkey Terms of Use:

- Granting by users of an “irrevocable, non-exclusive, royalty-free and worldwide license to use such User Content for the purpose of operating the Site and supplying the Services”;
- Right for SurveyMonkey to “purge User Content from its databases at any time” and without notice;
- Unrestricted indemnification obligation on the user; laws of Luxembourg apply.



Specific cases (3)

(c) UPU agreement on registry services for the .POST sTLD:

- Application of the UPU General Terms and Conditions;
- Specific clause on “privileges and immunities of the UPU and inviolability of the facilities hosting or processing Registry Data or any other UPU data” (labelled facilities);
- Changes in server locations subject to prior written consent of the UPU (location as one important factor for selection);
- Provision of services on a non-discriminatory basis for the benefit of all .POST project participants (irrespective of diplomatic relations);
- Tax exemption and “reasonable efforts” indemnity clause.

(d) UPU agreement on management of WNS database (Amazon cloud?)



Specific cases (4)

- (e) Data hosting agreement between the UPU and a Swiss provider:
- Similar privileges and immunities clause as the previous example; notification of archives to the host country;
 - Positive example of Switzerland as a reliable host country (as far as the respect for P&Is is concerned).
- (f) Agreement on services related to the UPU financial disclosure programme (leading international consulting firm):
- Signed with the Swiss subsidiary/branch of the company;
 - Strict confidentiality provisions;
 - No personal data transfer to locations or even email addresses outside Switzerland – on-site handling of detailed inquiries.
- (g) UNICCC/Google Postini clarifications sufficient? (Data controller issues)



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Structure of this presentation

***Cloud computing
is here to stay***

***Main issues
identified and
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**Conclusions
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Conclusions and possible risk mitigation approaches (1)

- Clear usage policies must be established ASAP (UPU currently initiating this effort – other IGOs: CTBTO, EUROCONTROL, ILO, NIB and WHO);
- Individual approaches to be avoided (ideally the IGO negotiates and contracts, not single employees/units);
- Servers and contracted entities to be located ideally in countries with a reliable legal framework for P&Is;
- Use of UNICC facilities is another recommended option (it may be costly for certain scenarios);
- Insertion of treaty-level provisions (recent amendment of the UPU General Regulations - Secretariat confidentiality obligations);



Conclusions and possible risk mitigation approaches (2)

- Overcoming the “adhesion contract” approach may require concerted efforts by the IGO community;
- No disregard for the observance of existing procurement rules (especially in terms of financial thresholds);
- Avoid sharing of personal/sensitive data in public clouds; if in doubt on the type of data to be shared/stored, do NOT use public clouds;
- NO WAIVER of P&Is should be granted or implied under any circumstances (avoidance of negative precedents).



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In summary

***Cloud computing
is here to stay***

***Main issues
identified and
cases presented***

***Possible
risk mitigation
approaches
discussed***



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Thank you very much for your attention!

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