

# Data Sovereignty and Data Localization

– Does it matter?

# Overview

- To focus the mind: *Microsoft vs. USA 2015*
- Stepping back to leap forward:
  - The basic notions of sovereignty and data localization
  - The practical context:
    - International national security and public safety enforcement coordination
    - Storage in the cloud
- Setting realistic goals in a connected world

## ***Microsoft vs US 2015*** (Microsoft Ireland case)

- US search warrant against Microsoft for personal information held by Microsoft Services in Ireland
- Microsoft's refusal based on non-application of US law in Ireland thus requiring use of MLAT
- US DoJ argument that criteria is not residency of data but control and custody
- Ireland “would be pleased to consider, as expeditiously as possible, a request under the treaty, should one be made.”

# Upshot

- Whoever wins, the data will be within US reach
  - By U.S. warrant under U.S. *Stored Communications Act*
- or
  - By Irish warrant through MLAT which Ireland is ready to concede

What about data sovereignty and localization?

# Sovereignty

- The power of a State to govern a defined territory
- Territorial link is defined by
  - Physical location (of victim, act, parties, etc....)
  - Rules of international law (jurisdiction in the high seas, immunity of embassies...)

In what territory is data localized?

# Data localisation

- Local:
  - on local servers
  - Limited accessibility
- Multinational:
  - on data centres held by multinationals
  - Limited but wide accessibility
- International:
  - on cloud
  - Variable accessibility

But does it matter?

# The practical context

- Mutual legal assistance treaties (MLATs) allow State signatories to exchange personal information for law enforcement
- Letters rogatory, from foreign to Canadian court, seek assistance such as obtaining records, in the absence of an MLAT
- Inapplicability of the *Canadian Charter of Rights and Freedoms* to foreign authorities on information gathering

*U.S. vs Viscomi ONCA 2015*

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- Multinational storage on cloud allows multinational accessibility
- Five Eyes intelligence alliance for joint cooperation in signals intelligence is an information sharing space for Canada, US, Australia, New Zealand and UK.

So what about sovereignty and localisation?



# Data sovereignty and data localisation in a connected world – 1

- International norms
  - ISO 27018 Code of practice for protection of personally identifiable information (PII) in public clouds acting as PII processors
  - New Safe Harbor, model clauses and BCRs
- Technological protections
  - Default encryption

# Data sovereignty and data localisation in a connected world – 2

- Political protections
  - Limitation of collection and sharing through legislative amendments
  - Oversight of information sharing
  - Supporting EU pressure on US law enforcement access
  - Requiring compliance with ISO 27018 as an industry standard for privacy on the cloud
  - Exclusion of States with “dubious court records” – Justice O’Connor, Arar Inquiry

## In a word...

- Data localization matters in process not outcomes
- In a democracy, process is the value
- Data protection in a connected world rests on process

# Thank you

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