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*
• 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, models 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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