

Your Digital Home Is No Longer Your Castle: How cloud computing transforms the (legal) relationship between individuals and their personal records

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About us

- established in 1989
- research priority area at the University of Amsterdam
- one of the largest research centers in the field of information law in the world
- cutting-edge research; interdisciplinary by nature

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Cloud computing

Consumers

Agenda

1. Transformation of personal record keeping
2. Consumer-facing cloud services
3. Individual consumers' interests affected by cloud sourcing
4. Cloud service contracts for individual consumers
5. Legal protection afforded to personal records in the cloud
6. European Commission's cloud computing strategy
7. Conclusions

Transformation of personal record keeping

- everyone keeps information for private purposes
 - Eg., personal record-keeping, memories, intellectual explorations
- **digital records** increasingly replace physical artefacts
- era of local storage is about to give way to **remote computing**



If a cluttered desk is a sign of a cluttered mind, of what, then, is an empty desk a sign?

Albert Einstein



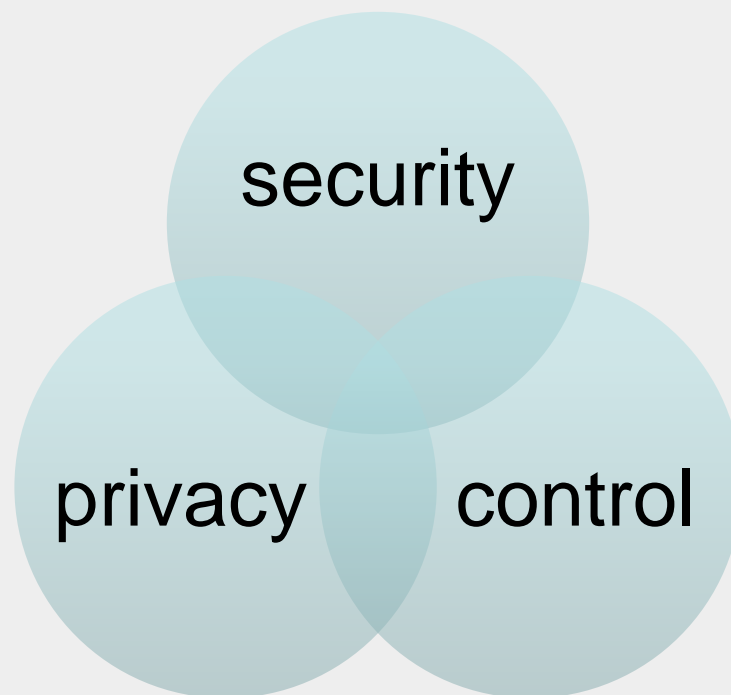


Consumer-facing cloud services

- 'cloud' is shorthand for **remote computing** accessible over the Internet
- consumer demand and uptake driven by growing storage needs, mobility, multiple devices, thin clients
- 2014 EuroStat survey
 - 20 % made use of cloud storage
 - 88 % sign-up for free services
 - 12 % use online software



Individual consumers' interests affected by cloud sourcing





Cloud service contracts for individual consumers

- standard terms of service
 - leverage the contract as much as possible to shield the service provider from their customers' claims (exclude liabilities and limit obligations)
 - termination at any time without valid reason
- access and use rights
 - necessary to render the service
 - legal obligations (e.g. disclosure authority, copyright enforcement)
 - secondary purposes



Legal protection afforded to personal records in the cloud

- Exclusive rights (?)
- EU data protection law and reform
- EU consumer protection law





EU data protection law (95/46/EC)

- ❑ personal records of individual cloud consumers is protected subject matter
- ❑ scope of application
- ❑ private household exemption/ controller
- ❑ legitimate basis for access and use rights (data subject's consent?)
- ❑ data subject's rights do not correspond well to the specific risks (e.g. no data portability)



EU Data Protection Reform

- draft EU data protection regulation is in the last stages of the legislative process
- important changes for consumer cloud services
 - scope of application triggered if a controller outside the EU offers goods or services to EU data subject (incl. **free services**)
 - scope of private and household exemption clarified
 - right to **data portability**
 - general **data breach notification**



European Commission's cloud computing strategy

- 2012 European Commission strategy "Unleashing the Potential of Cloud Computing in Europe"
- develop 'safe and fair' model contract terms and conditions
 - data preservation after termination of the contract,
 - data disclosure and integrity,
 - data location and transfer,
 - ownership of the data (?),
 - direct and indirect liability change of service by cloud providers and subcontracting.
- incl. uniform application of data protection rules

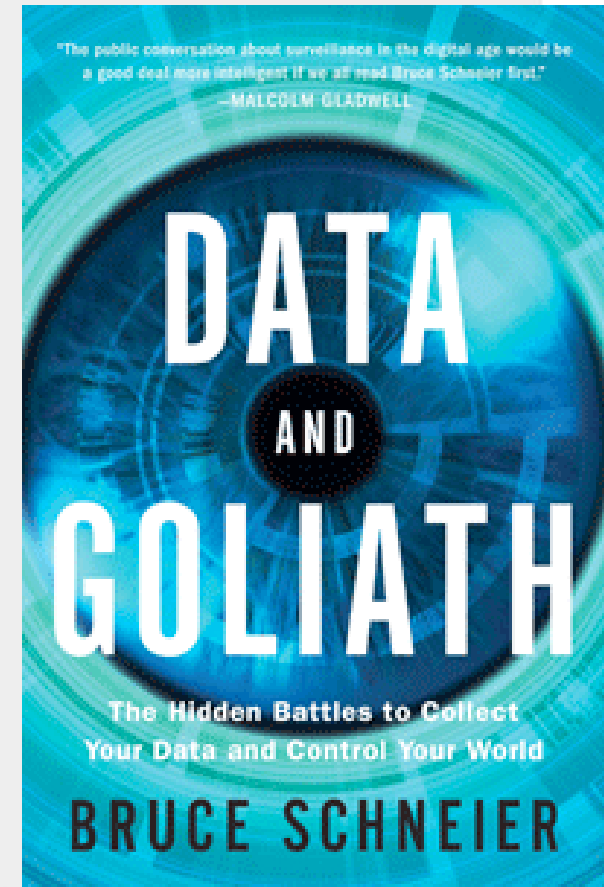


Conclusion

- both, disruption of physical control and cloud services' commercial propositions produce a backslide for individual positions of rights
- sectoral laws produce disparate levels of protection and even gaps where no protection is afforded to personal records
- additional safeguards necessary to adequately protect consumers' digital content in the custody of a third party

Conclusion

“We need information fiduciaries. The idea is that they would become a class of organization that holds personal data, subject to special legal restrictions and protections. (...) Perhaps some types of business would be automatically classified as fiduciaries simply because of the large amount of personal information the naturally collect.”



The End



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Consumer cloud services

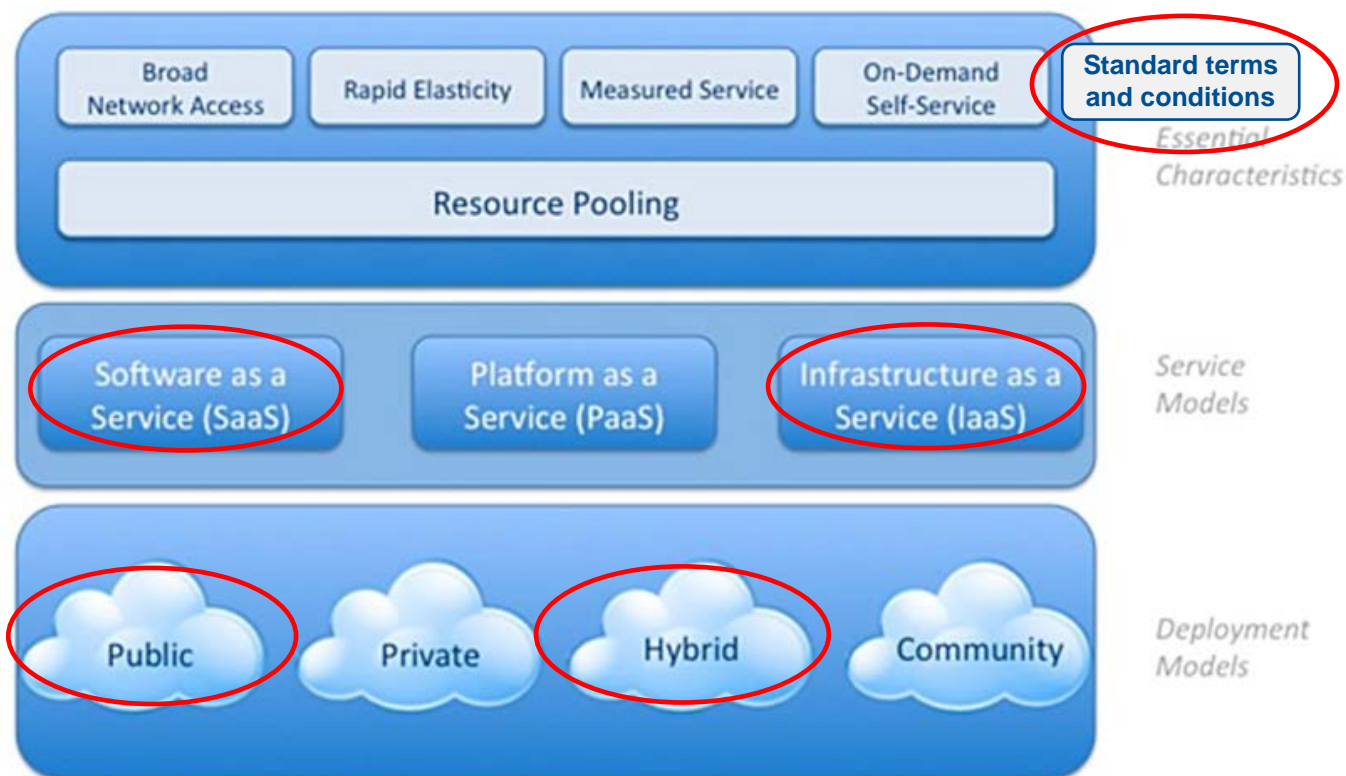
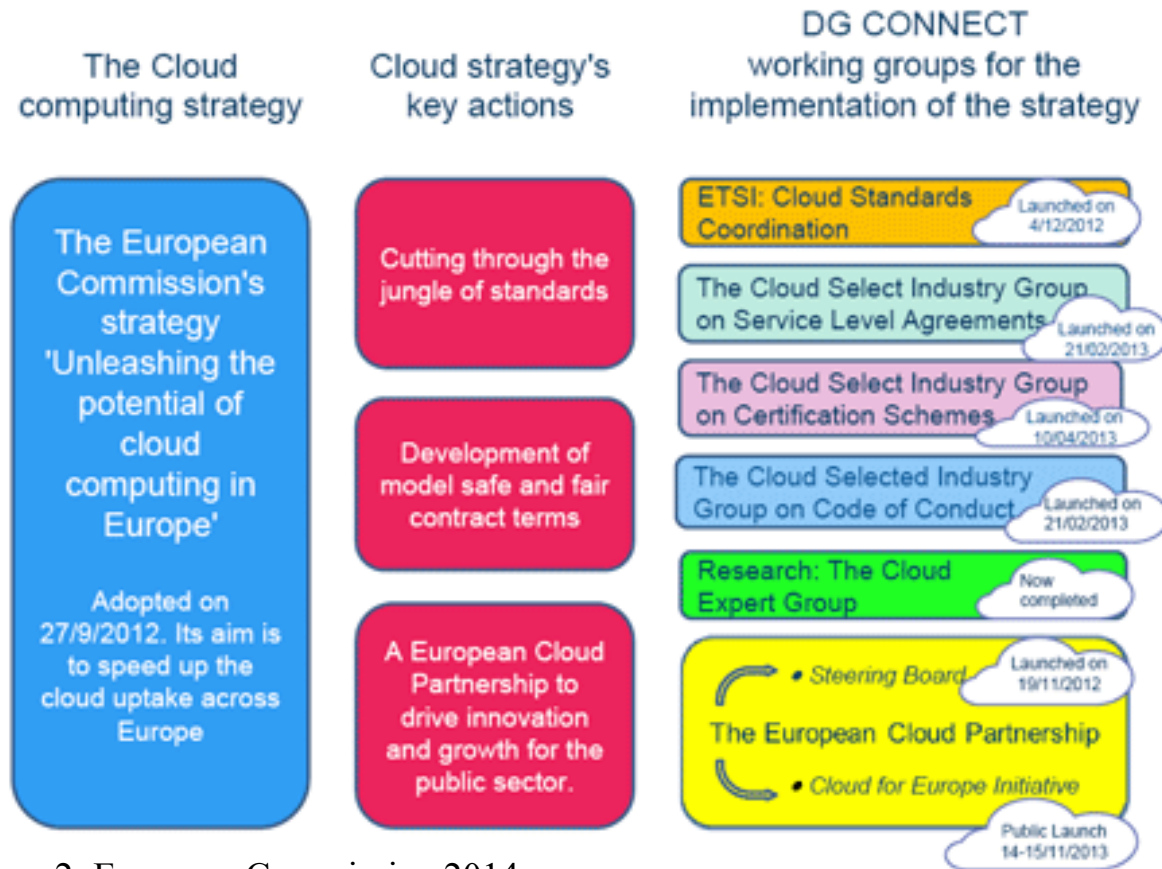


Figure 1: NIST's Visual Model of Cloud Computing Definition (2009)

Commission cloud computing strategy



Key action model contract terms

- develop model contract terms that would regulate issues not covered by the Common European Sales Law such as:
- data preservation after termination of the contract,
- data disclosure and integrity,
- data location and transfer,
- ownership of the data,
- direct and indirect liability change of service by cloud providers and subcontracting.

Figure 2: European Commission 2014