

Diana Hynek
Departmental Paperwork Clearance Officer
Department of Commerce, Room 6625
14th and Constitution Avenue, NW
Washington, DC 20230

Dear Ms. Hynek:

Salesforce.com is pleased to respond to the Department of Commerce request for comments on “Information Privacy and Innovation in the Internet Economy.” Specifically, we would like to comment on Section 4. *Jurisdictional Conflicts and Competing Legal Obligations*, which references cloud computing.

Cloud computing allows individuals and organizations to build, deploy and access applications over the Internet. According to Gartner, the cloud computing market was worth approximately \$46 billion in 2009 and will increase to \$150 billion by 2013. Gartner predicts that next year 25% of new software deployments will be based on software-as-a-service cloud computing applications. According to a recent Goldman Sachs technology software report, the shift toward cloud computing is “unstoppable.” The remarkable growth of cloud computing is not limited to consumer and business applications. Numerous federal, provincial, and local governments in North America, Europe, and Asia have also implemented cloud computing solutions.

About Salesforce.com

Salesforce.com is a leading enterprise cloud computing company. We provide cloud solutions to organizations of all sizes in all industries globally. Our main service offering is an enterprise cloud computing application that allows organizations to input, store, process, and access data about their customers. Our customer relationship management services include salesforce automation, customer support, help desk, marketing automation, collaboration, and an on-demand technology platform that enables our customers and partners to build and sell entirely new on-demand cloud applications on our cloud platform.

Salesforce.com delivers its services over the Internet through commercially available Web connections and browser software. Customers log into salesforce.com’s services from our Web site using a unique username and password. Our services allow for additional authentication and security methods that may be activated by customers. Salesforce.com serves its customers through secure hardware and software, using what is known in the industry as “multi-tenant” application architecture. A multi-tenant application can be accessed and used by many users simultaneously, with logical separation of data in hardware and software. The logical separation of data allows each salesforce.com customer to view only its “instance” of our services and associated data. Our multi-tenant architecture is similar to that used to provide online banking services to consumers (which can also be accessed and used securely by thousands of users simultaneously through the logical – not physical – separation of data).

Over 77,000 customers globally, including governments and businesses in highly regulated industries – such as financial services, healthcare, insurance, and communications – trust salesforce.com to host their customer data in our secure data centers.



Transborder Data Flows

Because cloud computing applications and the associated data can be accessed anywhere with a browser, transborder data flows are intrinsic to the cloud computing model. These data flows, in turn, have raised concerns about jurisdiction, privacy and security. Some of these concerns are justified, but others have been raised by those who simply want to slow down the shift to cloud services. Fortunately, these restrictions are limited to a few countries. Where restrictions on transborder data flows do exist, however, they impede cloud computing services. These regulations fall into two categories: 1) sector-specific regulations and 2) provincial government laws. It is important to note that these are not privacy regulations per se, but broader industry and government requirements.

Among the sector-specific regulations we have encountered are the following:

- Luxembourg banking regulations
- Swiss banking regulations
- Korean banking regulations
- Indian telecommunications regulations

Among the provincial government restrictions we have encountered are the following:

- British Columbia laws
- Nova Scotia laws

It is important to note that these Canadian provincial laws were enacted in large part to respond to concerns about undue U.S. government access to data stored in the United States as a result of passage of the USA Patriot Act.

Although these laws and regulations are limited to just a few sectors and provincial governments, they have led to widespread misperceptions in these countries that businesses and government agencies cannot take advantage of cloud computing services because of prohibitions on transborder data flows. This misperception has created confusion in the market for cloud computing in these countries and, at times, prevented outright sales of enterprise cloud services.

The focus on cloud computing and transborder data flows has also led to numerous requests to build data centers in other countries. Building multiple data centers around the world is not always practical or desirable. Moreover, it would not resolve the transborder data flow issue. Even if cloud computing companies built a data center in all the countries where they conduct business, their worldwide support operations and geographically distinct back-up data centers would result in transborder data flows.

Fortunately, there are some examples of countries that have relaxed their controls on transborder data flows. For example, India had controls in place that required all banks to keep data containing personal information inside India, but these controls were relaxed in 2006.

International Data Convention

The United States has a vested interest in the emergence of the cloud computing market, not only because it will spur job creation and boost the competitiveness of US IT firms, but also because it will boost productivity and innovation across the private and public sectors. Although it is incumbent on individual companies to put in place appropriate data security and privacy controls, it is beyond their ability to

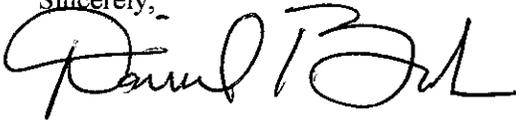
reconcile competing jurisdictional claims or to allay concerns about government access to the data they hold on behalf of their customers.

To address these concerns, we would encourage the US Department of Commerce to call for an International Convention on Transborder Data Flows. The Convention could take the form of a series of bilateral talks between the United States and key economic partners, or it could consist of multi-lateral discussions. Fortunately, many data controls are already in place and simply need to be updated to take into account the emergence of cloud computing.

The US Department of Commerce has a very good record of addressing global data issues in ways that facilitate international commerce. The US-EU Safe Harbor enabled US IT companies to demonstrate the adequacy of their privacy policies and thus comply with the EU Data Directive. The APEC deliberations also offer a potential path to address privacy issues in terms of accountability. An International Convention of Transborder Data Flows would build on these efforts to develop accepted norms for the storage, processing and access of data across countries.

We appreciate the opportunity to respond to the notice on Information privacy and Innovation in the Internet Economy and would be happy to provide additional information upon request.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Burton". The signature is fluid and cursive, with the first name "Daniel" written in a larger, more prominent script than the last name "Burton".

Daniel Burton
Senior Vice President, Global Public Policy
Salesforce.com