Data Localisation

Overview

Data Localisation

- Data localisation is emerging as a significant challenge for many organisations and jurisdictions around the world.
- Cloud computing has demonstrated that infrastructure at scale can be utilised by many entities.
- Governing entities around the world perceive challenges around security and privacy concerns of protecting data but also recognise the economic opportunities.
- Enterprises and organisations need to consider the complexity of data localisation when devising systems and solutions but also when considering other important business process, e.g. contingency planning.

Perspectives

Perspectives

Data localisation

Equivalent Standards Restrictions

Consent Restrictions

No transfer rules

Data Mirroring

Outsourcing

Non-personal data

Equivalent Standards Restrictions (ESRs)

Data localisation perspectives

- Regulations and rules that are designed to ensure that if data is being transferred to another jurisdiction then the **same** or **equivalent** standards are in enforce in the other jurisdiction.
- These rules and regulations may seem sensible and straightforward when first encountered but are complex when you consider competing jurisdictions.

Equivalent Standards Restrictions (ESRs)

Data localisation perspectives

- European Union and GDPR are a good example of ESRs. If we consider the challenge around transferring data outside the realm of the legislation.
- Need consider elements such as adequacy decisions, e.g. what are the challenges if a relevant infrastructure element is located outside the realm of European legislation?
- May need to consider if an adequacy decision has made for a particular jurisdiction or if other instruments or solutions are viable, e.g. Standard Contactual Clauses (SCCs) or Binding Corporate Rules (BCRs).

Consent Restrictions

Data localisation perspectives

- Regulations and rules that ensure that data can not be transferred to another jurisdiction **without the consent of the individual** in question.

Consent Restrictions

Data localisation perspectives

- European legislation is another strong example of consent restrictions. It may be assumed that organisation could simply require all individuals to provide consent in advance for all sorts of potential future applications.
- European legislation states that consent must be given freely. Consequently, the argument can not be made that no consent equals no service.
- Furthermore, constructing infrastructure and business processes around individual consent could be complex, costly and potentially undermine security.

No transfer rules

Data localisation perspectives

- Rules and regulations that are designed to ensure that **data is not permitted to leave a jurisdiction** in any circumstances or without significant hurdles.

No transfer rules

Data localisation perspectives

- India is an interesting example of the potential of no transfer laws with a patchwork of legislation and evolving data protection legislation potentially meaningfully restricting some personal data.
- India and other jurisdictions could require assessment of data to determine whether it is deemed as ‘no transfer’ outside the realm of the legislation.
- Potential for an organisation within the country to determine what data would be deemed under no transfer, e.g. financial information or health information.

Data Mirroring

Data localisation perspectives

- Rules and regulations that are designed to ensure that a **local copy** of data is maintained in the originating jurisdiction.

Data Mirroring

Data localisation perspectives

- India and other jurisdictions could require assessment of data to determine whether it is deemed that a **local copy** of data must be maintained.
- Potential for an organisation with the country to determine what data would be deemed under local copy rules, e.g. again, some financial information or health information.

Outsourcing

Data localisation perspectives

- Regulations and rules that are designed to regulate and control **outsourcing** of data and data processing.
- Outsourcing restrictions are a common feature of a many different jurisdictions around the world when it comes to data protection.

Outsourcing

Data localisation perspectives

- Switzerland is a good example of such outsourcing restrictions as it has fierce legislation regarding financial secrecy and other domains.
- Consequently, when devising infrastructure and solutions that encompass such jurisdictions, it would require specific clauses in any contracts that ensure domain-specific and other protection concerns are upheld.

Non-personal data

Data localisation perspectives

- Regulations and rules that are designed to control the flow of **non-personal data.**
- Non-personal data is an interesting aspect and is emerging concern in data protection legislation especially as regions view technology and data as important economic drivers.
- Depending on the jurisdiction non-personal data could be generated from personal data and includes data generated by companies.

Non-personal data

Data localisation perspectives

- India is another example where a patchwork of legislation and evolving data protection legislation could impact significantly.
- Non-personal data is potentially considered either public, private and community and that organisation a would potentially be required to share such data.

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- Governing entities around the world perceive challenges around security and privacy concerns of protecting data but also recognise the economic opportunities.
- Enterprises and organisations need to consider the complexity of data localisation when devising systems and solutions but also when considering other important business process, e.g. contingency planning.

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