



# ARE WE THERE YET ?

Solutions to Problems of Effective Data Protection Legislation in Developing Countries

# Introduction

- The individual's right to privacy has been recognized internationally as a legal concept for many years now, and numerous jurisdictions have recognized it as a constitutional right. It upon this right that the need for data protection has developed.
- The concept of data protection is for an individual or an entity to disclose information to a private or public entity in order to secure a benefit. In doing so, confidentiality and the adequacy, integrity, security and necessity of the data are the essential attributes that are crucial to effective data protection.

# What is Privacy ?

- The appropriate use of personal information under the circumstances. What is appropriate will depend on context, law, and the individual's expectations; also, the right of an individual to control the collection, use and disclosure of information.
- Jurisdictional and Ideological Definitions ( US v. EU )
- Definition by the Case law
- Regulatory Bodies

# International Models of Data Protection

- **The United Kingdom** – UK Data Protection Act 1998.
- **The European Union** – The EU Data Protection Directive ( 95/46 EC).
- **Canada** - The Personal Information Protection and Electronic Documents Act (PIPEDA) ( last amended on April 1, 2011).
- **The United States** Omnibus Model- Various Pieces of Legislation such as VIPPA, HIPAA and the Patriot Act.

# Jamaica's Current Legislation Concerning Cybercrime and Data Protection

- Copyright Act (1993)
- Telecommunications Act (2000) - with amendments in 2012
- Trademarks Act (2001)
- Access to Information Act (2002)
- Electronic Transactions Act (2007)
- Cybercrimes Act (2010) - reviewed by JSCP in 2013 (amendments pending)
- Data Protection Act (pending)

# Why a Data Protection Act ?

- Compliance with international obligations eg. Economic Partnership Agreement (EPA) between the EU and CARIFORUM states (signed on October 15, 2008).
- The EPA requirements re data protection: -
  - establishment of appropriate legal and regulatory regimes, in line with existing high international standards, to ensure an adequate level of protection in the processing of personal data.
- Framework to be established no later than 7 years after commencement of the EPA.

# EVAULATION OF DATA PROTECTION



# Problems Regarding Data Protection Regulations

- ❑ Biometric Data ( health and personal statistics)
- ❑ Financial History and Particulars ( Online Banking and whereabouts of money)
- ❑ Personal Photographs and Videos
- ❑ Visual Surveillance
- ❑ Breaking into computers is against the law, most of the time.
- ❑ Civil issues of liability and privacy.
- ❑ Risks with regard to employees and other organizations on the network if internal security is lax.
- ❑ Violations of new laws that address banking customers and medical privacy.
- ❑ Inadequate Public Education
- ❑ Ambiguous Legislation



# Problems Regarding Data Protection (cont'd)

- ❑ Absence of clear legal and regulatory framework and approach to cybercrime
- ❑ High rate of unemployment with 50% being the youth
- ❑ High level of poverty
- ❑ High level of corruption
- ❑ Inadequate development of cyber security skills in government agencies and businesses especially small businesses
- ❑ Lack of cyber security awareness in the society which leads to social engineering attacks.
- ❑ The growth of e-government initiatives and e-commerce
- ❑ Lack of national databases which makes it more difficult to track criminals
- ❑ Increasing adoption of online banking without adequate security deployed by the banks
- ❑ Use of unsecure or outdated hardware and software

# Status of Data Protection Legislation in the Caribbean

Country	Status of legislation	Comments
Antigua & Barbuda	None	-
Bahamas	In force	Data Protection (Privacy of Information) Act 2003 Good treatment of the subject in keeping with international best practice
Belize	None	-
Dominica	None	-
Dominican Republic	None	-
Grenada	None	-
Guyana	None	-
Haiti	None	-
Jamaica	None	-
St. Kitts & Nevis	Drafted; not enacted	Privacy and Personal Data Protection Bill, 2012 Limited treatment of subject
Saint Lucia	Drafted; not enacted	Privacy and Data Protection Bill, 2007 Limited treatment of subject
St. Vincent & the Grenadines	In force	Privacy Act 2003 Far treatment of subject
Suriname	None	-
Trinidad & Tobago	In force	Data Protection Act 2011 Limited treatment of subject

# Overview of Data Protection in Caribbean : Trinidad & Tobago as a Case Study

- The Data Protection Bill of Trinidad and Tobago , 2011 was passed in June 22, 2011. The Act reflects several international best practices.
  - i. General Privacy Principles that reflect the Fair Information Practice Principles (FIPPS) that is the foundation of Canadian, UK and EU legislation;
  - ii. The Office of Information Commissioner to oversee data requests and the processing of data;
  - iii. Data Protection Policies on the Public and Private Sectors; and
  - iv. Penalties.

# Strengths of the Data Protection Act (T &T)

- International Best Practices such as FIPPS;
- Expands constitutional scope of privacy;
- The Act is technologically neutral;
- Harmonizes international concepts such as the definition of personal data, data quality, data security and special categories of data;
- Has stakeholder's interests in mind; and
- Whistleblower Legislation.

# Weaknesses of the Data Protection Act (T&T)

## **WEAKNESSES**

- Ambiguous terms in the Act such as ‘ Person’, ‘Enterprise’ and Individual.
- No exemptions for journalistic, literary and media purposes.
- Lack of infrastructure to encourage stakeholder involvement.
- While there are criminal sanctions in the Act, there are no channels for recovery afforded to persons who have suffered financial hardship as a result of a data controller’s failure to secure an individual’s data.
- Inadequate measures regarding transborder data flows.
- Whistleblower’s identity is not protected ( Section 99 of the Bill).

# Additional Areas for Exploration in Data Protection

- Notification Obligations
- Periodic Revisions of the Act
- Privacy Impact Assessment Audit ( Canada's PIPEDA has this in place)
- Data Protection Officer Requirement should be stated within the body of the Act.
- 'The right to be forgotten'

# Take Care :

## Recommendations for Improvements & Cautionary Notes



# The Way Forward : Infrastructural Development

## **TRAINING & DEVELOPMENT**

- There should be an emphasis on ethics education for all computing professionals and organize in-service courses for practicing computing professionals. All these will eliminate the challenges and make the culture of data access and data protection ethical in developing countries.
- Bring Your Own Device (BYOD) Policy and Training.
- Data Encryption and Timely Information Security Training



# The Way Forward :

## Understanding Digital Economy

### Privacy Risks of Cloud Computing

- Developing countries need to adopt and enforce privacy and data protection laws as they attempt to bridge the "digital divide" widened by the advent of new technologies like cloud computing, according to a new report.
- The Information Economy Report 2013 by Unctad, the UN trade and development body, warns that the global shift towards cloud computing, which allows users to store and access data remotely, brings a range of legal as well as technological and infrastructural challenges for poor countries.

# The Way Forward :

## Understanding Digital Economy

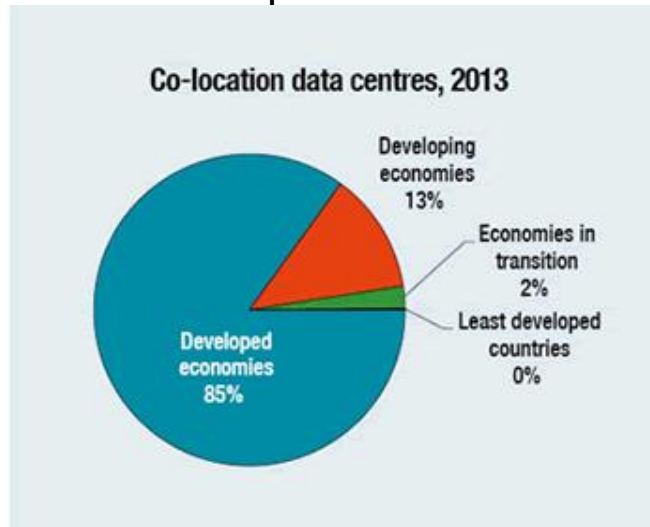
### Privacy Risks of Cloud Computing( Cont'd)

- “Cloud computing has the potential to offer users in developing countries access to unprecedented resources of computing power and storage,” says the report, noting how cloud services can help cut costs on hardware and software, provide greater flexibility and mobility, and enable worldwide collaboration.
- However, it warns that as services offered via the internet become more complex, unreliable and expensive broadband access in many developing countries, together with power outages and a lack of IT skills risk widening the digital divide

# The Way Forward:

## Capitalizing on International Data Protection Confidence

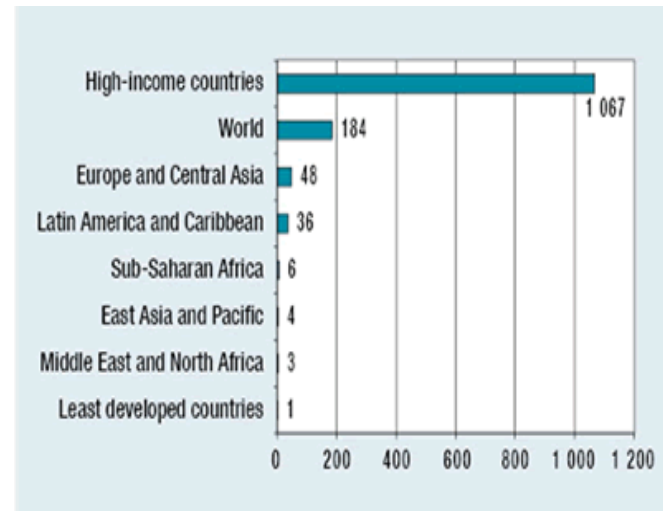
- Developing Countries are unable to take advantage of data storage opportunities due to low infrastructure resulting in a disparity and little impetus to implement regulation that is beneficial. There are countries such as Argentina, The Chile and Uruguay that are on the US Safe Harbor List and companies such as Total, BMW, and American Express.



Distribution of Colocation Centres throughout the World

Source : Information Economy Report , 2013

Subtitled : The Cloud Economy and Developing Countries



Distribution of Secure Internet Servers ( per million ), 2012

Source : The World Bank

# Monopolization of the Digital Economy by Developed Countries

## Adequate Laws and Regulations?

- As of 2013, 101 countries had data privacy laws or bills in place. Only 40 developing economies have such laws or bills. ( Source: Unctad Report, 2013 entitled
- During an average minute in 2012, Google received 2,000,000 search requests, Facebook users shared around 700,000 content items and Twitter sent out 200,000 tweets, notes the report. However, an estimated 60% of such cloud traffic came from Europe and North America, followed by the Asia-Pacific region (33%). Latin America, the Middle East and Africa together accounted for only 5%. ( Source UNCTAD Report , 2013 entitled ‘
- "Broadband prices remain high in many underdeveloped countries. While in 2011 the average monthly price for fixed broadband was estimated at less than 2% of per capita income in developed countries, in developing countries that figure was 40%. The cost of mobile broadband in poor countries is between 20% and 30% of per capita income.
- Cloud services today are dominated by a few very large service providers, almost all with headquarters in the US.

# The Eyes of the Consumer have Been Opened

## Concern over Data

- The NSA revelations have caused people worldwide to doubt the wisdom of entrusting their data to cloud services operated by American companies, and some US firms have said they risk losing billions of dollars as customers become increasingly wary of using their services.
- "The debate that has been sparked is very useful in that governments and other users are forced to think through the implications of uploading data to the cloud. This does not only relate to developed countries but to developing countries too," said the report.

# Conclusion: Are We There Yet?

- Data Protection Legislation is necessary but cannot function properly if we do not:
  - i. Train and prepare the public, stakeholders, the public and private sector and law enforcement agencies;
  - ii. Synchronize other pieces of legislation and adequately draft our legislation; and
  - iii. Budgetary Concerns are to be considered

# QUESTIONS ?

