

[Short Speech]

Protection of Privacy and Information Security facing Catastrophe – The Collapse of the Global Economy will lead to the Break-down of Fundamental Models

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In general, models of management systems for information security, personal data protection and internal control have been based on a premise that every organization can exist to make a plan, to perform that plan, to check the results and to assess the management system. When a business entity is facing bankruptcy or was bankrupt, another stronger business entity may be able to merge with such a bankrupted business entity, to access information assets and personal data from the bankrupt business entity, and to protect them normally and lawfully.

However, world economic conditions have changed completely. They have been and will be failing. The change has brought a flood of bankruptcy of numerous business entities, many local governments and other public organizations. Due to such a terrible change, no business entity can rescue or merge with any other bankrupted business entity. As a result, the cycle of management of the information assets and personal data collected by such bankrupt organizations will stop suddenly and will be left alone without any adequate protection.

Also, in such an economic environment, personal data protection laws and information security laws may have no substantial ability to protect personal data and information assets. This is due to the fact that current laws have been composed and enacted without any thought given to the premise of such dangerous fundamental changes to the world's economic condition.

We have to rebuild a new protection scheme for personal data and information assets as soon as possible.

[Introduction of Speakers]

(Omitted)

[Discussions]

Natsui: Introduction to Session III

I mentioned that ‘the world will be unified’ in my “Culture and Law in Networked Society” which was published in 1997. Such a ‘unification’ phenomenon can be observed in several social categories. For instance, some major methods of information security have become common all over the world. Also, world nations have been seeking a common resolution to manage privacy protection independently of differences between Common Law and Continental Law. Standardization of technology used in conjunction with the Internet has increased broadly and today, there is a very interesting piece of technology known as cloud computing.

Much kind of business services based on this new technology have been provided already. Today, numerous different nationalities and various types of business entities have used a common computer system and shared the same information resources using cloud computing on the Internet. I want you to understand that cloud computing is a symbol of ‘unification’ for a networked society.

Now, cloud computing has brought various legal issues in the context of privacy protection. Main issues might be in relation to jurisdiction, application of laws and certification.

In the discussion in Session III, as a test model of existing complete international spheres, I would like to choose cloud computing to make our discussions easier to understand both for us and for all audiences.

We will discuss some issues relating to privacy protection in the course of operation of the assumed cloud computer during half of our discussion. We will discuss privacy protection as a response to the crisis of cloud computing after the recent worldwide financial catastrophe. Also, at the end of session III, I would like to sum up our discussions and provide my opinion on these issues.

Natsui: Question 1 to Mr. Gellman

Let’s assume that there is an imaginary cloud computer. Its name is ‘CX’. Also, let’s assume that its server is located inside the United States and CX is under the jurisdiction of the United States and the laws of the United States apply and are enforceable.

Mr. Gellman, I have some questions. Please tell us your ideas in regards to a contract with international jurisdiction and the application of laws between the CX owner as cloud computing provider and its user business entities.

In this case, in the context of privacy protection:

- 1-1) Who is subject to the applied laws of the United States – the owner of CX or each of the user business entities of CX?
- 1-2) When user business entities of CX consist of hospitals, medicine production companies, life insurance institutes, investment companies and other different types of business entities, and

if the United States' law should be CX but not each user business entity, what kind of laws should apply?

Mr. Gellman

[Answer](#)

Natsui: Question 2 to Mr. Komukai

Using the same example, I also have some questions for Mr. Komukai.

Let's assume that there are many CX user business entities that are located in APEC nations. If only the United States' laws can apply to CX and APEC laws have to be excluded, then the privacy protection laws of APEC can not apply.

In this case:

- 2-1) Are APEC nations unable to apply their own APEC laws to business entities who are located in APEC nations and the protection of private data managed by such business entities?
- 2-2) Even if APEC laws can apply to APEC business entities themselves, if only the United States' laws can be applied to data privacy protection, then the integrity of law enforcement in APEC nations may be destroyed. Did APEC examine or research such important issues?

Mr. Komukai

[Answer](#)

Natsui: Question 3 to Madame Sawada

Trust Marks can be given to each business entity. It might be assumed that the reliability of the system should be assessed as being at the same level for every user business entity because every user business entity uses the same computer system or database system of within CX.

I have some questions for Madame Sawada.

In this case:

- 3-1) When a CX user business entity is certificated and entitled as a Trust Marked Company, does every other CX user business entity have reliability at the same level as said Trust Marked Company?

- 3-2) When the question can be limited to the matter of the reliability of the computer system, what do you think?

Madame Sawada

[Answer](#)

Natsui: Question 4 to Mr. Araki

By previous discussions, I believe that there have been many legal issues in the case of the concurrence of laws and control systems (for instance, cloud computing), even if the world economic environment and financial conditions may be functioning normally.

Also I am assuming that there have been some important issues dealing with the construction and operation of management systems for cloud computing.

I have some questions for Mr. Araki.

In this context:

- 4-3) What are the important points of the construction of the management system for cloud computing?
- 4-4) What are the important points of the operation of the management system for cloud computing?

Mr. Araki

[Answer](#)

Natsui:

I mentioned that ‘bankruptcy law is powerless to control any intangible properties’ in my article ‘Bankruptcy and Computers’, published in 1989. Today’s conditions may still be the same as they relate to bankruptcy. The Bankruptcy Act of Japan has especially had little to no interest in the protection of personal data.

When legitimate management and control procedures under the Bankruptcy Act or the Civil Rehabilitation Act can be enacted, the property of a bankrupt company may be protected and reserved for use at a later date. Through such reasonable procedures, personal data collected by a bankrupt company may be protected and reserved for second-hand use. However, in the case when a company simply stops and ends its business activity, personal data collected and managed by said company may be scrapped or sold to anyone without any adequate protection under relevant laws and policies. This is due to the fact that there is no organization with the company designated with the responsibility of managing personal data assets should such a situation arise. Once the company goes belly up, no one is left to take such a responsibility.

A cloud computer has hundreds of user business entities whose business activities rely on the many systems and services of said cloud computer. Database systems located in the cloud computer should be one of the most important business bases for its user business entities. If a cloud computer is bankrupted, its user business entities become unable to use any such systems and services. These effects can be compared to those of a dangerous natural disaster such as an earthquake.

In such a case, even if only the cloud computer is bankrupted and its user business entities are still running successfully, every user business entity of the cloud computer will become unable to continue their business activities. As such, the user business entities of the cloud computer will also go out of business. Moreover, every user business entity has no way to protect and manage its business information as well as the personal data stored on the database systems of the cloud computer once said cloud computer has been shut down.

Natsui: Question 5 for Mr. Gellman

Let’s assume that the imaginary cloud computer CX has become bankrupt. The United States’ laws should apply to CX.

In this case:

- 5-1) Is the Bankruptcy Act of the United States enough to protect information assets?
- 5-2) Under the United States’ laws, are there any legal methods to protect any personal data stored on database systems in CX when the managers and employees of CX have already left the company?

Mr. Gellman

[Answer](#)

Natsui: Question 6 for Mr. Komukai

Assuming the same situation as the previous set of questions, I also have some questions for Mr. Komukai.

In this case:

- 6-1) Are there any discussions or examinations regarding the case of the bankruptcy of a cloud computer in an APEC nation?
- 6-2) If a user business entity of CX is a Japanese company, are there any means to protect its information which stored on CX?

Mr. Komukai

[Answer](#)

Natsui: Question 7 for Madame Sawada

I have some questions for Madame Sawada.

In this case:

- 7-1) Let's say a CX user business entity is certificated and entitled as a Trust Marked Company, and said CX user business entity becomes unable to perform its business after bankruptcy of CX. In such a case, how is the Trust Mark given to the CX user business entity considered effective?
- 7-2) In general, are there any ways to inform the public that the Trust Mark is not functioning effectively?

Madame Sawada

[Answer](#)

Natsui: Question 8 for Mr. Araki

I have some questions for Mr. Araki.

To avoid a chain bankruptcy for the user business entities of CX, I think that reconstruction of its Risk Management Systems may be necessary.

In this context:

Session III on 22nd November 2002, Tokyo, Japan

- 8-1) What are the important points of risk management for a user of cloud computing?
- 8-2) To avoid a chain bankruptcy of the user business entities of a cloud computer, what efforts are needed in the management of the cloud computer?

Mr. Araki

[Answer](#)

Natsui: Summing up and Recommendations

[See. PPT File](#)

[Reference]

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