

# **CIS' Comments on the Consultation Paper on Cloud Computing drafted by the Telecom Regulatory Authority of India**

## **Introduction**

While the term “cloud computing” has become extremely popular, many technologists have taken great pains to clarify that the word "cloud" merely means "somebody else's computer."<sup>1</sup> Richard Stallman has warned against the use of this “vague and distracting” term and called it “an obstacle to clear thinking.”<sup>2</sup> The notion and technologies of cloud computing are in a state of formation and transformation. Hence it would be an anti-competition move to define the sector, its functions, and its standard technologies at a juncture like this. Keeping this in mind we will recommend that a separate policy to deal with cloud computing is not advisable. We recommend that the regulatory authority instead keeps a close regulatory watch in this emerging sector and ensure that no unfair anti-consumer and anti-competition practices are being undertaken.

## **Regulation of Technology**

Law, regulation and ethics are constantly trying to catch up with technology.<sup>3</sup> The evolution of technology often forces regulatory frameworks to adapt in response.<sup>4</sup> However, as regulatory capacity in technology is always inferior to private sector and technological research, governments are “behind the curve of the technology”. Consequently, their determination of the most suitable technology may not always be ideal.<sup>5</sup>

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<sup>1</sup> Graham Cluley, “Don't call it 'the cloud'. Call it 'someone else's computer',” December 3, 2013, <https://www.grahamcluley.com/2013/12/cloud-privacy-computer/>; Jamie Davis, “The cloud is just someone else's computer, but people don't get it – Intel,” June 16, 2016, <http://telecoms.com/interview/the-cloud-is-just-someone-elses-computer-but-people-dont-get-it-intel/>.

<sup>2</sup> Richard Stallman, “Who does that server really serve?,” Boston Review, March 18, 2010, <http://www.bostonreview.net/richard-stallman-free-software-DRM>.

<sup>3</sup> Ryan Calo, “Robotics and the lessons of cyberlaw,” 103 California Law Review 513 (2015)

<sup>4</sup> Samir Saran, “New Norms for a Digital Society,” Observer Research Foundation, August 2, 2016, <http://www.orfonline.org/research/new-norms-for-a-digital-society/>.

<sup>5</sup> Jonathan B Weiner, “The Regulation of Technology and Technology of Regulation”, 26 Technology in Society 483–500 (2004)

It is also important to have regulatory frameworks that are technology neutral, in order to facilitate the provision of different services via different platforms.<sup>6</sup> Technology neutral regulatory framework does not recognise or advantage any particular technology and ensures regulatory uniformity for similar products or services which may use alternative technologies for delivery. It regulates the concerns that arise by use of technology (such as data security, privacy, jurisdiction, taxation) but does not regulate a particular technology (for instance, cloud computing, Internet of Things, Big Data). The consultation paper does not contemplate a technology neutral regulatory framework as it addresses the use of a particular technology, in this case cloud computing.

### **Issues with Technology Specific Regulation**

Certain issues mentioned under the consultation paper such as data protection, data ownership, security, taxation and jurisdiction (please see paragraphs 4.4 to 4.8 of Chapter 4, paragraphs 5.2 to 5.7 of Chapter 5 and paragraphs 6.20 to 6.23 of Chapter 6 of the consultation paper) should be the subject of other existing policies dealing with these issues. Having technology specific regulation as contemplated by this consultation paper involves one policy governing different implications of the use of a particular technology. This is not ideal for the following reasons:

- a) As pointed out by various technologists, 'cloud computing' simply refers to 'someone else's computer' and does not warrant a separate body of regulation. Further, as the term is vague and inaccurate, that makes it an unsuitable anchor for any regulation.
- b) As technology is constantly evolving, having technology specific regulations may often inhibit the growth of the technology.
- c) Further, the constant evolution of technology may render the technology-specific regulation ineffectual as its characteristics and implications undergo a change.
- d) With convergence of various technologies, it is likely that many actors work with multiple technologies. Having technology specific regulation will lead to multiple regulations governing the same subject matter as the technology in questions varies.

### **Creating incentives for smaller organisations**

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<sup>6</sup> Antonios G Broumas, "The Necessity of Sector Specific Regulation in Electronic Communications Law," 4(3) Journal of International Commercial Law and Technology 176 (2009).

Regulation of technology should ideally respond to one or more of the following factor— a) evidenced harm, b) undermining of public interest and c) market failure. It works best when regulation helps in development of new technology and thereafter, forbears. In this case, the regulator has a legitimate role if the market does not provide the best solutions, and step in with policies.<sup>7</sup> For instance, the risk of cloud computing industry being overrun by foreign players such as Amazon and Microsoft may be responded to by the regulator. We recommend that there are greater incentives provided to SMEs to participate in the cloud computing industry. One of the options could be for the government to purchase cloud capacity only from SMEs and thus shape the market through procurement.

We therefore, recommend that a specific policy dealing with different aspects of cloud computing is not required and may prove counterproductive. Instead, policies already covering the issues that the consultation paper brings up may be looked at, in order to make sure that these concerns are adequately addressed.

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<sup>7</sup> Anthony Falzone, “Regulation and Technology”, 36(1) Harvard Journal of Law & Public Policy 105 (2013)