

# Cloud Computing 2020

**The Changing Attitudes to Compliance from Governments on  
Legislation and Regulation for Corporates**

Keynote Presentation by Dr Bob Duncan



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# Presentation Outline

- What do Governments do?
- What is Legislation?
- What is Regulation?
- How do they work?
- What is Compliance?
- Who has to do it, and why?
- What happens if you get it wrong?
- Some examples: UK, US and EU
- Summary and Questions

# What do Governments do?

- They run the country on behalf of the population
- How do they do that?
- They prepare a budget of planned income and expenditure annually
- Raise money through taxes
- Spend it for the benefit of the population according to the budget
- Pass laws to make sure everybody pays and does what they are told
- What happens if they do not?

# What is Legislation?

- Legislation is where the government passes laws, which must be obeyed
- There are generally two types: Criminal Law and Civil Law
- They should be well defined, explaining what must be done
- There will be penalties for those who fail to conform
- Criminal Law could incur fines, imprisonment, or capital punishment
- Civil Law could generally incur fines
- Some Criminal Law examples:
  - Being a witch when our university was founded in 1495
  - Stealing a loaf of bread 170 years ago
  - Murder in modern day Scotland

# What is Regulation?

- Over time, particularly as business evolved, many industries became too complex to govern using laws alone
- Regulation was the way government dealt with this increase in complexity
- Often used where the state controlled whole industries
- A professional expert regulator was appointed to oversee the industry
- He would regulate based on the regulatory powers set up
- Penalties for non-compliance would be defined in the regulations
- There could be a simple reprimand, or fines, or the ultimate sanction would be loss of license to operate in the industry

# How does Legislation and Regulation Work?

- Laws state what must be done. Failure to comply might result in fines, or imprisonment
- Some try to 'fiddle' to make extra profit. Great if you don't get caught
- Regulations state what must be done. Failure to comply might result in sanctions, but would not be subject to criminal law
- However, each regulation could be different, with different levels of sanctions available

# What is Compliance?

- Compliance is the method where companies demonstrate they are complying with laws and regulations
- There are many different means of doing this
- Sometimes, this can be well spelt out in the legislation, or not
- For example, companies must have their annual accounts audited by qualified auditors, in order to be compliant with the law
- What happened to Enron and Arthur Andersen?
- Auditors are a regulated industry, and must abide by a high level of behaviour
- Compliance can be achieved by accreditation, inspection, audit, or any of a number of different mechanisms, usually spelt out in the laws and regulations



# Who has to do it and why?

- The laws and regulations spell out who must comply, and often how
- Sometimes, there is no detail provided
- Clearly, companies, and sometimes people must prove they have complied with the law or be able to demonstrate they have complied with the regulations. Sometimes they will try to take short cuts,
- The people responsible for enforcing the laws, for example the Inland Revenue (HMRC in the UK, the Internal Revenue Service in the US) will enforce the laws to make sure everyone who must pay does pay and does not cheat
- The regulator of a regulated industry must ensure the companies or people operating within that industry behave responsibly

# What happens if you get it wrong?

- If a company or person gets it wrong, they could be subjected to the full force of the law
- This could mean fines and imprisonment
- Obviously, a company cannot be jailed, but its top directors can
- In the case of regulation, they could be sanctioned by the regulator, depending on the severity and duration of the non-compliance
- What happens if you cheat?

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# UK, US and EU - Laws

- Different approach to law in the UK versus the US
  - The UK uses a principles-based approach
  - The US uses a rules-based approach
- What about the EU?
  - There are 28 countries in the EU, shortly 27. What are the chances of a uniform approach?
- Some countries know exactly what they are doing
- Some countries don't have a clue
- Some countries are simply not sure what to do

# Some examples: US – Laws

- The US need to write new laws, sometimes every year
- The US Tax Laws are a great example. Every year they write a new Law. Teams of expensive accountants and lawyers work out how to massage compliance. Then they have to write new versions to keep the tax take up, and on it goes
- The US will use anything in their armoury to get a conviction
  - Back in the time of the great depression, they could not convict Al Capone on Racketeering charges, so they did him for Tax Evasion, and he got a life sentence. He died in jail.

# Some examples: UK – Laws

- The UK laws usually run for many years, with the occasional update
- The UK Data Protection Act has been around for over 20 years
  - The level of fines has been low for most of that time. The maximum fine was only raised to £500,000 a couple of years ago
  - Most of the fines in the early years were levied against Local Authorities
    - Leaving laptops or mobile phones on trains and buses
    - Failing to purge hard drives at end of life disposals
    - Dumping sensitive files in bins or even in the street
- If your company is earning £2 billion of profit a month – will a £500,000 fine make you change your behaviour? The approach is usually, just send us a bill

# Some examples: EU – Laws

- The EU have laws
- They are beautifully translated into all the languages spoken in the EU
- It can take a long time to get consensus
- There is a big question. Who will enforce these laws?
- The country of the victim?
- The country of the perpetrator?
- The country of the criminal act?
- Somewhere completely different?



# UK, US and EU - Regulation

- Different approach to regulation in the UK versus the US
  - The UK uses a regulator to regulate specialized industries
  - The US uses regulators like the UK, but sometimes uses regulators to enforce the law
  - The EU uses Regulation like many countries use Laws
- Confused yet?
- Some countries don't have a clue
- Many corporates don't have a clue
- There are many people who are very happy to take advantage

# Some examples: US - Regulations

- The US do not regulate as many industries as the UK
- They generally always have competent regulators
- They have huge fines for non-compliance
- Between overlapping laws and regulations, if you get caught in the middle, it is likely to hurt
- Look at BP in 2010 with the major oil spill in the Gulf of Mexico
  - Guess how much it cost them between broken laws, regulations, clean up and compensation?
- Look at their approach to the likes of Facebook and Google

# Some examples: UK - Regulations

- Guess how many regulated industries there are in the UK?
  - Is it 30, 300 or 3,000?
- They generally always have competent regulators, but occasionally they get it wrong. A few years back, a new electricity regulator was appointed, and he had no clue about the industry. He asked the big 6 companies what he should do. What do you think the outcome was? Tough new regulations, or an easy ride?
- Some regulators have very sharp teeth
- Some regulators have no teeth at all
- Guess who gets listened to?

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- Somewhere completely different?
- This looks the same as the Law page. Why would that be?

# Some examples: EU – Regulation GDPR

- The EU GDPR is a regulation with serious teeth - potentially
- It is beautifully translated into all the languages spoken in the EU
- It took a long time to get consensus
- There is a big question. Who will enforce these laws?
- The country of the victim?
- The country of the perpetrator?
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- Somewhere completely different?
- This looks the same as the Law and the Regulations page. Why would that be?

# Discussion and Questions