Preface

Across the world, countries are introducing more – and more stringent – data localization laws, requiring certain digital data to be kept within equipment physically located on national soil, with limited exceptions. This increasing trend threatens digital globalization. Data localization laws are major barriers holding organizations back from using cloud computing, despite cloud's acknowledged benefits. Data localization is touted in the name of preserving individuals' privacy, which is of course an important goal. However, better ways exist to safeguard privacy and protect individuals' personal data from both corporations and governments, whether of individuals' own countries or other countries. These better ways should be developed further, instead of always focusing on data localization, which I argue is the wrong solution for privacy.

Calls for further and tighter data localization laws were spurred particularly by contractor Edward Snowden's revelations in 2013 ('Snowden's revelations') of mass collection and interception, by the US National Security Agency (NSA), the UK intelligence agency (GCHQ) and other authorities, of the digital data of many countries' citizens. Underlying these calls is the understandable aim of protecting a country's residents from excessive surveillance by other countries' authorities. However, far from data localization laws achieving their purported aim of preserving privacy and preventing bulk surveillance, the constant emphasis on data localization as the 'one true way' in fact primarily serves to cause other, better ways to be overlooked and, the cynical might suggest, diverts attention away from countries' mass surveillance of their *own* citizens (Ferracane 2015), enabling them to maintain and enhance their ability to surveil (Sargsyan 2016) – and control (Chander and Lê 2015) – their citizens by keeping citizens' data within easier reach (Kuner 2013a).

Taking a multidisciplinary approach, this book demonstrates data localization's dangers by using, as a case study, the EU restriction on international transfers of personal data in the context of cloud computing, as the most pertinent exemplar. However, most of its arguments apply equally to other countries' data localization laws, i.e. cross-border transfers from *non*-EU countries, partly because many non-EU countries have adopted very similar data protection laws. While I analyse the

impact on cloud computing of the international transfers restriction under the Data Protection Directive and General Data Protection Regulation, many of my arguments also apply to cross-border transfers of *non*-personal digital data, and to cross-border transfers in technology sourcing, outsourcing or other transactions *not* involving cloud computing.

This book outlines cloud computing; explains the reasons for its scope, delineating it more precisely; and provides an overview of the DPD and the Restriction. Then, it discusses the Restriction's historical background and objective; analyses the meaning of 'transfer' 'to' third countries; unpicks assumptions underlying the Restriction, showing their inapplicability today; discusses uncertainties and practical problems with the Restriction's 'adequate protection' and 'adequate safeguards' concepts; and highlights compliance and enforcement problems. It then suggests how, given such issues, a different approach would better achieve the Restriction's avowed legislative objective, while being more technology-neutral: notably, focusing on control of access to personal data, particularly intelligible personal data, through emphasizing security and accountability regardless of data location. Where relevant, I also discuss other privacy-related policy objectives that may now underlie the Restriction's invocation, showing how they, too, are not necessarily advanced by restricting data location.

This book reflects the position as at October 2016. Developments thereafter are not covered unless stated, but updates (and links to many references cited here) are available from www.e-elgar.com/data-localization-laws-and-policy-companion-site.

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