

112TH CONGRESS
2D SESSION

S. 3569

To improve the enforcement of criminal and civil law with respect to cloud computing, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2012

Ms. KLOBUCHAR (for herself and Mr. HOEVEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To improve the enforcement of criminal and civil law with respect to cloud computing, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cloud Computing Act
5 of 2012”.

6 **SEC. 2. UNLAWFUL ACCESS TO CLOUD COMPUTING SERV-**
7 **ICES.**

8 (a) IN GENERAL.—Section 1030 of title 18, United
9 States Code, is amended by adding at the end the fol-
10 lowing:

1 “(k) For purposes of an offense described in para-
2 graph (2)(C), (4), or (5) of subsection (a) or an attempt
3 or conspiracy to commit such an offense, if the protected
4 computer is part of a cloud computing service, each in-
5 stance of unauthorized access of a cloud computing ac-
6 count, access in excess of authorization of a cloud com-
7 puting account, or attempt or conspiracy to access a cloud
8 computing account without authorization or in excess of
9 authorization shall constitute a separate offense.”.

10 (b) DEFINITIONS.—Section 1030(e) of title 18,
11 United States Code, is amended—

12 (1) in paragraph (11), by striking “and” at the
13 end;

14 (2) in paragraph (12), by striking the period at
15 the end and inserting a semicolon; and

16 (3) by adding at the end the following:

17 “(13) the term ‘cloud computing account’
18 means information stored on a cloud computing
19 service that requires a password or similar informa-
20 tion to access and is attributable to an individual,
21 which may include allowing a customer of the cloud
22 computing service to have multiple accounts; and

23 “(14) the term ‘cloud computing service’ means
24 a service that enables convenient, on-demand net-
25 work access to a shared pool of configurable com-

1 puting resources (including networks, servers, stor-
2 age, applications, and services) that can be rapidly
3 provisioned and released with minimal management
4 effort or interaction by the provider of the service.”.

5 **SEC. 3. PRESUMED LOSSES.**

6 Section 1030 of title 18, United States Code, as
7 amended by section 2(a), is amended by adding at the end
8 the following:

9 “(1) If an offense under this section involves a pro-
10 tected computer that is part of a cloud computing service,
11 the value of the loss of the use of the protected computer
12 for purposes of subsection (a)(4), the value of the informa-
13 tion obtained for purposes of subsection (c)(2)(B)(iii), and
14 the value of the aggregated loss for purposes of subsection
15 (c)(4)(A)(i)(I) shall be the greater of—

16 “(1) the value of the loss of use, information,
17 or aggregated loss to 1 or more persons; or

18 “(2) the product obtained by multiplying the
19 number of cloud computing accounts accessed by
20 \$500.”.

21 **SEC. 4. INTERACTION WITH INTERNATIONAL FORA TO AD-**
22 **VANCE INTERNATIONAL INTEROPERABILITY**
23 **WITH LAW AND POLICIES OF UNITED STATES.**

24 The Secretary of State shall work with other inter-
25 national fora, such as the Organization for Economic Co-

1 operation and Development, to advance the aims of ensur-
2 ing interoperability between the provisions of this Act, the
3 amendments made by this Act, and other laws and policies
4 of the United States and foreign countries, including in
5 consultations between the United States and the European
6 Union.

7 **SEC. 5. ANNUAL STUDY AND REPORT ON INTERNATIONAL**
8 **COOPERATION REGARDING DATA PRIVACY,**
9 **RETENTION, AND SECURITY.**

10 (a) IN GENERAL.—Not later than 180 days after the
11 date of the enactment of this Act and not less frequently
12 than once each year thereafter for 4 years, the Secretary
13 of State shall—

14 (1) conduct a study on international coopera-
15 tion regarding data privacy, retention, and security;
16 and

17 (2) submit to Congress a report on the findings
18 of the Secretary with respect to the most recent
19 study carried out under paragraph (1) and the ac-
20 tivities of the Secretary under section 4.

21 (b) MATTERS STUDIED.—Each study conducted
22 under subsection (a)(1) shall include development of rec-
23 ommendations for best practices, treaties, common policy
24 frameworks, mutual recognition agreements, the creation
25 of hybrid public-private authorities, codes of conduct, or

1 other guidance the Secretary of State considers necessary
2 to promote the development of laws and policies in foreign
3 countries that are interoperable with and that will rein-
4 force the effectiveness of—

5 (1) the provisions of this Act and the amend-
6 ments made by this Act; and

7 (2) policies relating to data privacy, data reten-
8 tion, security of data, and assertions of jurisdiction
9 over data, including with respect to law enforcement
10 access to data.

11 (c) INTERAGENCY COORDINATION.—In conducting
12 the studies required by subsection (a)(1), the Secretary
13 of State shall consult with the heads of relevant agencies,
14 such as the following:

15 (1) The National Economic Council.

16 (2) The Attorney General.

17 (3) The Secretary of Commerce.

18 (4) The Federal Trade Commission.

19 (5) The Secretary of Homeland Security.

20 (6) The United States Trade Representative.

21 **SEC. 6. ANNUAL FEDERAL INFORMATION TECHNOLOGY**
22 **AND CLOUD COMPUTING PROCUREMENT**
23 **FORECAST.**

24 (a) CLOUD COMPUTING SERVICE DEFINED.—In this
25 section, the term “cloud computing service” has the mean-

1 ing given the term by the Under Secretary of Commerce
2 for Standards and Technology.

3 (b) FORECAST REQUIRED.—Not later than 180 days
4 after the date of the enactment of this Act and not less
5 frequently than once each year thereafter for 4 years, the
6 head of each Federal agency described in section 901(b)
7 of title 31, United States Code, shall, consistent with
8 Cloud First policy outlined in the document of the Office
9 of Management and Budget entitled “Federal Cloud Com-
10 puting Strategy” and dated February 8, 2011, submit to
11 the Administrator of the Office of Electronic Government
12 and Information Technology of the Office of Management
13 and Budget a 3-year forecast of the plans of the agency
14 relating to the procurement of cloud computing services
15 and support relating to such services.

16 (c) PUBLICATION.—The Administrator shall make
17 each 3-year forecast submitted under subsection (b) avail-
18 able to the public via an Internet website.

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