



NIEDERLÄNDISCH-DEUTSCHES  
RECHTSANWALTSSYMPOSIUM

# Recht 4.0 – The Cloud and beyond

Gerrit-Jan Zwenne



Universiteit Leiden





gerrit jan zwenne



Afbeeldingen Video's Nieuws

### Professor mr. dr. G.J. (Gerrit-Jan) Zwenne - Medewerkers - Faculteit ...

Professor mr. dr. G.J. (Gerrit-Jan) Zwenne aan de Faculteit Rechtsgeleerdheid, Instituut voor Metajuridica, eLaw@Leiden, Universiteit Leiden met als expertise ...

[law.leidenuniv.nl/org/metajuridica/elaw/medewerkers/gerritj...](http://law.leidenuniv.nl/org/metajuridica/elaw/medewerkers/gerritj...)

### Gerrit-Jan Zwenne | LinkedIn

Gerrit-Jan Zwenne, Partner at Bird & Bird LLP and Full Professor at Leiden University. Locatie Den Haag en omgeving, Nederland Bedrijfstak Advocatuur

[nl.linkedin.com/in/zwenne](https://nl.linkedin.com/in/zwenne)

### zwenneblog

Gerrit-Jan Zwenne is verbonden aan eLaw@Leiden, het onderzoekscentrum voor recht in de informatiemaatschappij. Ook is hij advocaat bij Bird & Bird te Den Haag.

[zwenneblog.weblog.leidenuniv.nl](http://zwenneblog.weblog.leidenuniv.nl)

### Gerrit-Jan Zwenne - Bird & Bird - International Law Firm

Gerrit-Jan Zwenne is a well-known and extensively published specialist in privacy and telecommunications law. Gerrit-Jan heads our Data Protection Practice in the Netherlands.

[twobirds.com/en/our-lawyers/g/gerritjan-zwenne1](http://twobirds.com/en/our-lawyers/g/gerritjan-zwenne1)

### Gerrit-Jan Zwenne | Netkwesties - Netkwesties | Magazine

Gerrit-Jan Zwenne kwam na ruim twee jaar Buruma Maris en twee jaar Houthoff Buruma & Maris in dienst van Bird & Bird toen het kantoor in Den Haag werd ...

[netkwesties.nl/profiel/78/gerrit-jan-zwenne.htm](http://netkwesties.nl/profiel/78/gerrit-jan-zwenne.htm)



gerrit jan zwenne



Web Maps Bilder News Videos Mehr > Suchoptionen

Ungefähr 9.020 Ergebnisse (0,63 Sekunden)

### Professor mr. dr. G.J. (Gerrit-Jan) Zwenne - Medewerkers ...

[law.leidenuniv.nl/org/.../elaw/.../gerritjanzwenne.ht...](http://law.leidenuniv.nl/org/.../elaw/.../gerritjanzwenne.ht...) ▾ Diese Seite übersetzen

Per 1 oktober 2011 is Gerrit-Jan Zwenne benoemd tot hoogleraar recht en de informatiemaatschappij bij de afdeling eLaw@Leiden. Hij houdt zich bezig met de ... 2014 - 2013 - 2012 - 2011

### zwenneblog

<https://zwenneblog.weblog.leidenuniv.nl/> ▾ Diese Seite übersetzen

Posted by G.J. Zwenne at 07:45 ... Gerrit-Jan Zwenne is verbonden aan eLaw@Leiden, het onderzoekscentrum voor recht in de informatiemaatschappij. Ook is ... Sie haben diese Seite 4 Mal aufgerufen. Letzter Besuch: 26.10.15

### Bird & Bird - Gerrit-Jan Zwenne

[www.twobirds.com/en/our.../gerritjan-zwenne1](http://www.twobirds.com/en/our.../gerritjan-zwenne1) ▾ Diese Seite übersetzen

Gerrit-Jan Zwenne is a well-known and extensively published specialist in privacy and telecommunications law. Gerrit-Jan heads our Data Protection Practice in the ... Sie haben diese Seite oft aufgerufen. Letzter Besuch: 26.01.15

### Gerrit-Jan Zwenne | LinkedIn

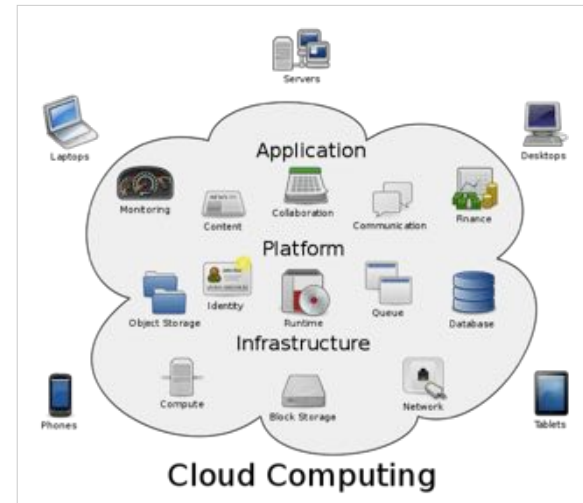
<https://nl.linkedin.com/in/zwenne> ▾ Diese Seite übersetzen

The Hague Area, Netherlands - Partner at Bird & Bird LLP and Full Professor at Leiden University



# cloud-computing -- back in the days

- *supplement, consumption, and delivery model for IT services based on internet protocols, and it typically involves provisioning of dynamically scalable and often virtualized resources [Economist 2009]*
- *provision of computation, software, data access, and storage services that do not require end-user knowledge of the physical location and configuration of the system that delivers the services [Gartner 2008]*



*storage and services as a utility  
(like electricity)*



# beyond the utility model (eg. electricity)

obviously there are many similarities

- cloud and electricity are both general purpose technologies
- drivers for increased productivity and innovation
- economies of scale and cost savings



however, there are also differences

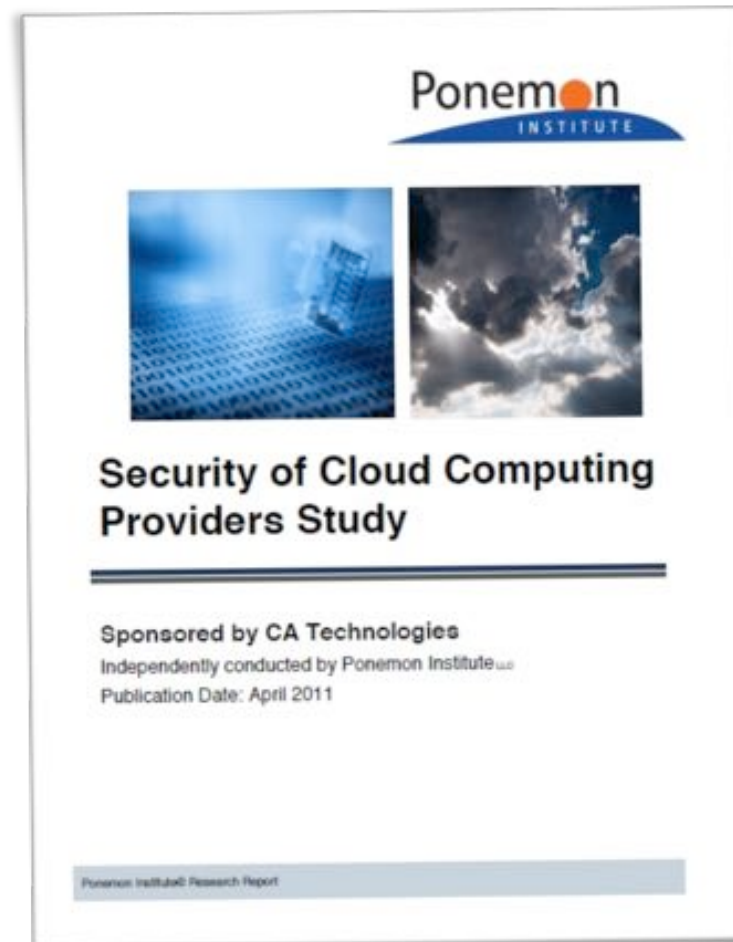
- electrons are not bytes
- distance is not dead
- interoperability is an issue
- lock-in risks

*different problems,  
other solutions!*



# security -- back in the days...

- *cloud providers do not view security a competitive advantage*
- *security is the customers responsibility*
- *main drivers for customers are lower cost and faster development*
- *improved security and compliance are unlikely reasons for choosing cloud services*



# cloud contracts – back in the days...



## obligation to retain records

*You're responsible for backing up the data that you store on the service. We have no obligation to return data to you after the service is suspended or cancelled*

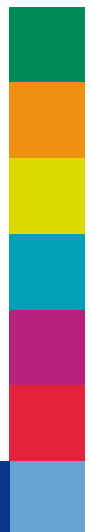
## encryption

*You shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.*

## personal data

*As part of providing the Services, Supplier may transfer, store and process Customer Data in any other country in which Supplier or its agents maintain facilities.*

*NEW: If you reside outside of the United States of America, Canada and Mexico ("North America") your agreement is with Dropbox Ireland, and if you reside in North America your agreement is with Dropbox, Inc.*



# controllers and processors

- controller determines purposes and means of processing
- processors process personal data on behalf of the controller
- controller ensures the processor implements appropriate security measures



*Both SWIFT and instructing financial institutions share joint responsibility, although in different degrees, for the processing of personal data as "data controllers" within the meaning of Article 2(d) of the Directive.*



# behandling af følsomme personoplysninger i cloud-løsning

*“a multitenant, distributed environment...”*

- Google Apps’ use by teachers in municipality of Odense
- Google Ireland Ltd is processor
- data processed in Google Inc’s datacenters in US and Europe

*Odense has, in reality, no control of how the data will be processed*

*Odense cannot actively ensure security measures are upheld*

*Danish DPA willing to reconsider ... if Odense continues work on the case and seeks solutions*



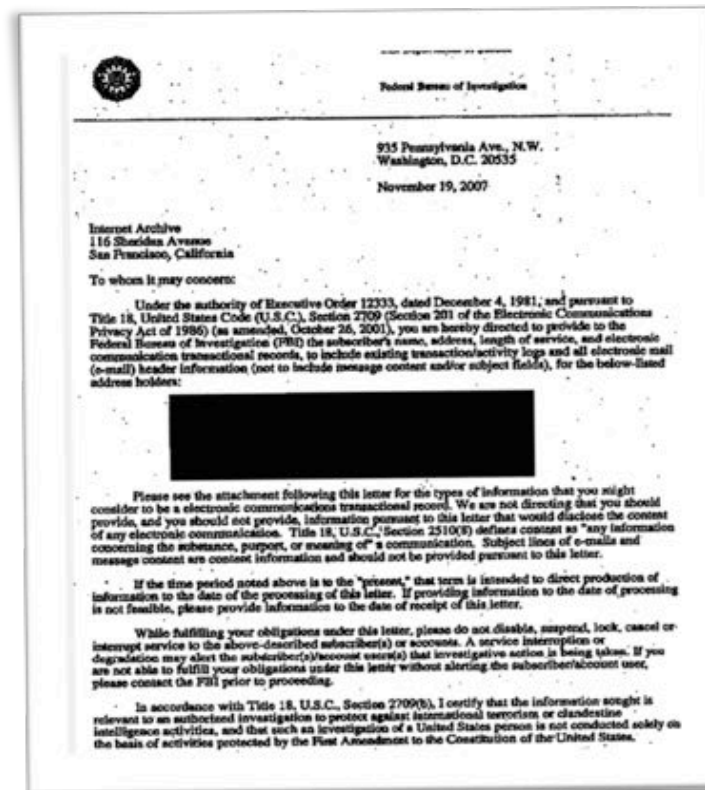


# NSA, GCHQ, etc.

*Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism*

- Patriot Act 2001 & National Security Letter (NSL)
- FISA...

*demand letter to turn over various records and data pertaining to individuals; only non-content information, such as transactional records, phone numbers dialed or email addresses etc.*



# third country data transfers...



**BIJLAGE**

**Modelcontractbepalingen ("verwerkers")**

voor de toepassing van artikel 24, lid 2, van Richtlijn 95/46/EG, voor de doorgifte van persoonsgegevens aan verwerkers die evenwel aan in derde landen de meest passende beschermingsniveau waarborgen

Naam van de organisatie die de gegevens uitvoert: \_\_\_\_\_

Adres: \_\_\_\_\_

Telnummer: \_\_\_\_\_ fax: \_\_\_\_\_ e-mail: \_\_\_\_\_

Andere gegevens ter identificatie van de organisatie:  
\_\_\_\_\_  
(de gegevensoprichter)

en

Naam van de organisatie die de gegevens invoert: \_\_\_\_\_

Adres: \_\_\_\_\_

Telnummer: \_\_\_\_\_ fax: \_\_\_\_\_ e-mail: \_\_\_\_\_

Andere gegevens ter identificatie van de organisatie:  
\_\_\_\_\_  
(de gegevensoprichter)

Elk afzonderlijk "partij" en gezamenlijk "de partijen" genoemd.

ZIJN OVEREENGEKOMEN de volgende contractbepalingen, hierna "de bepalingen" genoemd, voor te stellen passende voldoende waarborgen te bieden ten aanzien van de bescherming van de persoonlijke levenssfeer en de fundamentele rechten en vrijheden van personen, bij de doorgifte van de in aanhangsel 1 vermelde persoonsgegevens door de gegevensoprichter aan de gegevensoprichter.

M1



## Microsoft Office 365

- *As a general rule, customer data will not be transferred to datacenters outside that region [ie EU/EEA].*
- *There are, however, some limited circumstances where customer data might be accessed by Microsoft personnel or subcontractors from outside the specified region (e.g., for technical support, troubleshooting, or in response to a valid legal subpoena)*

## Dropbox



- *We may disclose to parties outside Dropbox files stored in your Dropbox and information about you that we collect when we have a good faith belief that disclosure is reasonably necessary to ... comply with a law, regulation or compulsory legal request*
- *we will remove Dropbox's encryption from the files before providing them to law enforcement*





[g.j.zwenne@law.leidenuniv.nl](mailto:g.j.zwenne@law.leidenuniv.nl)

THANK YOU!

