

# Understanding The US CLOUD Act

The Clarifying Lawful Overseas Use of Data (CLOUD) Act was passed in March 2018 amending existing U.S. law to clarify that, in response to proper judicial proceedings, law enforcement agencies may obtain information held by technology companies who are subject to U.S. jurisdiction, regardless of where the data is stored. This principle is in-line with other international treaties such as the Budapest Convention and requests for cross-border access to data which are routinely made by other countries, including those in the EU.

## What is Permitted Under the CLOUD Act?



Limited use for criminal investigations only.

Requires a detailed warrant describing the information sought which must be approved by an independent court that determines if there is probable cause of a specific crime.

Preserves the ability of providers to bring common law “comity challenges” if an order conflicts with a foreign country’s law.

Advises prosecutors\* to seek data directly from an enterprise customer instead of service providers, if practical and if doing so will not compromise the investigation.



Give U.S. law enforcement any new legal authority to acquire data.

Expand U.S. courts jurisdiction over companies or change the requirement that the U.S. must have personal jurisdiction over a company to request data.

Change the fundamental constitutional and statutory requirements U.S. law enforcement must meet to obtain data.

Change or expand the historical scope of warrants issued under U.S. law. Indiscriminate or bulk data collection is not permitted.

\* [Justice Department Announces Publication of White Paper on the CLOUD Act | OPA | Department of Justice](#)



The CLOUD Act also allows foreign governments to enter into agreements with the U.S., which provide reciprocal access for foreign governments to U.S. companies and reduce conflicts of law between countries. As of December 2021, the U.S. has entered into agreements with the UK\*\* and Australia\*\*\* and is negotiating agreements with the EU and Canada. In the absence of an agreement, U.S. courts can be expected to apply long-standing U.S. and international principles regarding conflicts of law.

\*\* [Cloud Act Agreement between the Governments of the U.S., United Kingdom of Great Britain and Northern Ireland \(justice.gov\)](https://www.justice.gov/cloud-act-agreement-between-the-governments-of-the-u-s.-united-kingdom-of-great-britain-and-northern-ireland)

\*\*\* [United States and Australia Enter CLOUD Act Agreement to Facilitate Investigations of Serious Crime | OPA | Department of Justice](https://www.opa.dhs.gov/2021/08/10/united-states-and-australia-enter-cloud-act-agreement-to-facilitate-investigations-of-serious-crime/)



## How does Kyndryl handle governmental requests for customer data, including CLOUD Act requests?

Trust is foundational to all we do at Kyndryl, and we are committed to protecting the privacy and confidentiality of our customer's data in all jurisdictions where Kyndryl and our customers do business. We are a technology infrastructure provider; the data that we manage for our customers is generally not the target of government requests.

Kyndryl entities are individual companies incorporated in the country where they operate. Their duty to uphold data privacy protections and adhere to local law is not affected by these entities' corporate relationships.

[Learn more](#) about how Kyndryl handles these requests and view our Transparency Report (approx. 5 mins reading).

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