



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

January 11, 2011

Dear Ms. :

This advisory opinion is issued in response to your March 16, 2010 request to the Bureau of Industry and Security (BIS), on behalf of , for confirmation that the Export Administration Regulations (EAR), 15 CFR Parts 730-774 (2010) do not require cloud computing service providers to obtain deemed export licenses for foreign national information technology ("IT") administrators who service and maintain their cloud computing systems.

Your letter defines "cloud computing" as a model in which IT applications, such as those offered through , allow users to access applications from the internet ("in the cloud") without needing to maintain the infrastructure that supports them. The data, software applications, and computer processing are accessed from "clouds" of online resources (including servers) rather than downloaded and stored locally on hard drives or local servers. These "clouds" consist of many computers spread out in a multitude of locations and include data stored and shared by the users of the service for applications such as e-mail, calendar, messaging, and video "in the cloud," via data loaded onto web-based programs. Your letter states that does not monitor or screen user-generated content stored and/or shared in the cloud except when required to do so by law (pursuant to a valid law enforcement request), through automated tools such as spam-filtering or spell-checking, or with user consent (e.g., troubleshooting individual accounts). Your letter also notes that certain data stored "in the cloud" may constitute "technology" under the EAR.

As stated in BIS's January 13, 2009 Advisory Opinion regarding the applicability of the EAR to grid and cloud computing services, the service of providing computational capacity through grid or cloud computing is not subject to the EAR, since the service provider is not shipping or transmitting any commodity, software or technology subject to the EAR to the user. Because the service provider is not an "exporter," would not be making a "deemed export" if a foreign national network administrator monitored or screened, as described above, user-generated technology subject to the EAR

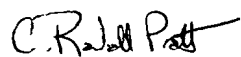
Please note that the analysis above addresses only the facts presented in your March 16, 2010 letter. The analysis does not apply to the release by of technology subject to the EAR to its foreign national employees under other sets of facts. Such release may constitute a "deemed



export” or “deemed reexport,” depending on the location, and may be subject to licensing requirements.

Should you have further questions concerning this Advisory Opinion, you may contact me at 202-482- 5303 or cpratt@bis.doc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Randall Pratt". The signature is stylized with a cursive-like flow.

C. Randall Pratt
Director, Information Technology Controls Division
Office of National Security and Technology Transfer Controls