



## **CLOUD ACT AND USA FREEDOM ACT**

### **EQUINIX POSITIONING STATEMENT**

This is a positioning statement from Equinix in relation to the CLOUD Act, enacted in the United States in March 2018, the USA Freedom Act, enacted in June 2015 and related legislation in the United States, and their relevance to the data centre business activities being carried out by the Equinix group of companies in the EMEA region.

Equinix has taken advice from its internal and external legal advisers in EMEA and the United States to assess the possible application of the CLOUD Act, the USA Freedom Act, and the USA Patriot Act by US enforcement authorities to compel disclosure of data stored on equipment in an Equinix data centre in EMEA.

Equinix's clear position is that the CLOUD Act, the USA Freedom Act and related legislation have no application to the data centre business activities Equinix is currently undertaking in EMEA. Notwithstanding the changes to the law, US law enforcement authorities cannot force the disclosure of, or execute a warrant against, customer or end user data that is processed by or stored on equipment by reason of the fact it is situated in an Equinix data centre in EMEA.

The reason for this is that, by their nature, data centre services do not fall within the scope of the activities covered by the Freedom Act and related legislation. In the provision of data centre services, Equinix has no access or control over the customer or end user application data that is being processed by or stored on the server equipment, and so such data is outside the reach of any application of the Freedom Act or any related legislation to Equinix's business.

The adoption of the CLOUD Act does not change this analysis. The CLOUD Act authorizes US law enforcement, in certain circumstances, to obtain customer data stored overseas from US data centre operators. The CLOUD Act also provides a process for non-US governments to demand data directly from certain US data centre operators, but this provision does not go into effect right away, and requires a non-US government to enter into an agreement with the US government to establish a reciprocal mechanism before it can take effect outside the US. Even after the CLOUD Act would take effect, however, Equinix's business in providing data centre services to the enterprise is unaffected. The CLOUD Act allows data to be demanded of a US entity by the US government when that US entity is in possession and control of the data, despite the fact the data may be stored in a foreign jurisdiction. Because Equinix has no possession or control over the customer or end user application data that is being processed by or stored on the server equipment in its data centres, such data will continue to be outside the reach of any application of US law to Equinix's business in EMEA.



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In any event, US law also provides important procedural checks and limits on law enforcement authority, including those bodies enforcing the CLOUD Act, the USA Freedom Act and related legislation, where it is considered that the authority is being proposed to extend beyond the scope of its proper application.

This positioning statement is not to be taken as or understood as being the provision of legal advice or opinion by Equinix.

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