COUNTRY REPORT: **POLAND**

Poland has up-to-date laws in place for privacy, electronic signatures, electronic commerce and cybercrime. These laws combine to provide a good platform for promoting confidence in cloud computing and the digital economy.

Poland also has one of the most comprehensive regimes for the protection of intellectual property and updated its laws in 2008 to deal specifically with ISP liability. However, some gaps still exist in enforcement, and Poland has recognized intellectual property enforcement requires greater skills and resources.

Poland promotes innovation and interoperability and has non-discriminatory policies in place for government procurement.

ICT infrastructure and access to broadband are still fairly limited, considering Poland's progress in other areas. Poland does not currently have a comprehensive strategy in place for delivering improvements in broadband access; significant improvements will be required to take full advantage of Poland's position in Europe and its up-to-date laws and regulations. Despite the progress in recent years (partially as an effect of the investment of EU funds) broadband penetration remains below the European average. The access in large metropolitan areas is relatively good, but in most of the countryside access is much more limited.

Q POLAND	RESPONSE	EXPLANATORY TEXT
DATA PRIVACY		
1. Are there laws or regulations governing the collection, use or other processing of personal information?	✔	The Personal Data Protection Act was implemented in Poland in 1997. It was significantly updated in 2003 and 2004.
2. What is scope & coverage of privacy law?	Comprehensive	The legislation is comprehensive, covering all sectors.
3. Is the privacy law compatible with the Privacy Principles in the EU Data Protection Directive?	✔	Poland is bound by the EU Directive and its legislation is fully compatible with the text of the Directive.
4. Is the privacy law compatible with the Privacy Principles the APEC Privacy Framework?	✔	Poland is not a member of APEC. Poland's privacy legislation is equivalent to or more far reaching than the APEC Privacy Principles.
5. Is an independent private right of action available for breaches of data privacy?	Available	In addition to specific data protection legislation, Poland also has strong constitutional privacy rights in place. In the case of violation of constitutional rights the injured party has the right of access to the court, the right to complain to the Constitutional Tribunal, and the right to apply for assistance to the Commissioner for Citizens' Rights.
6. Is there an effective agency (or regulator) tasked with the enforcement of privacy laws?	National Regulator	The supervisory authority for the protection of personal data in Poland is the Inspector General for Personal Data Protection (Generalnym Inspektorem Ochrony Danych Osobowych (GIODO)) <www.giodo.gov.pl>.
7. What is the nature of the privacy regulator?	Sole Commissioner	A sole independent commissioner is appointed by the Parliament for a 4 year term.
8. Are data controllers free from registration requirements?	✘	The data controller is obliged to notify and submit for registration to the Inspector General for Personal Data Protection (GIODO) <www.giodo.gov.pl> on any 'data filing system'. A data filing system, or database, includes any structured set of personal data.
9. Are cross border transfers free from registration requirements?	◑	Cross border transfers are only subject to the generic registration requirements in Poland.
10. Is there a breach notification law?	◑	There is not a general data breach notification requirement in Poland. However, the privacy regulator has been given the authority to issue binding guidelines for data breach notification in the telecommunications sector, although these have not yet been implemented.

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SECURITY		
1. Is there a law or regulation that gives electronic signatures clear legal weight?	✔	The Act on Electronic Signatures 2001 establishes the legal validity of electronic signatures. Polish government authorities are obliged to accept documents and/or requests in electronic format accompanied by an electronic signature. Note that the legislation only came into full force in 2008.
2. Are ISPs and content service providers free from mandatory filtering or censoring?	✔	A proposal to introduce Internet censorship legislation and a register of blocked web sites was abandoned by the Polish Government in early 2011, following protests and petitions opposing the proposal.
3. Are there laws or enforceable codes containing general security requirements for digital data hosting and cloud service providers?	Limited coverage in Legislation	Poland's data protection legislation includes general security principles. This was complemented by security regulations issued in 2004.
4. Are there laws or enforceable codes containing specific security audit requirements for digital data hosting and cloud service providers?	None	There are no enforceable security audit requirements in Poland at this stage.
5. Are there security laws and regulations requiring specific certifications for technology products?	Limited requirements	Although Poland is not a member of the Common Criteria Recognition agreement, there is a growing interest in security certification in the country. The Polish Internal Security Agency (ABW) <www.abw.gov.pl> grants security certificates for ICT products that meet high standards.
CYBERCRIME		
1. Are there cybercrime laws in place?	✔	The Polish Penal Code was heavily amended in 2004, 2008 and 2009 to include a broad range of cybercrimes.
2. Are cybercrime laws consistent with the Budapest Convention on Cybercrime?	✔	The Polish Penal Code appears consistent with the Convention on Cybercrime. Poland signed the Convention in 2001 and is in discussions with the EU about ratifying the Convention.
3. What access do law enforcement authorities have to encrypted data held or transmitted by data hosting providers, carriers or other service providers?	Not Stated	There have been no directions or decisions in Poland regarding law enforcement access to encrypted data. Although access with a warrant may be possible, citizens also have strong constitutional rights to privacy that could be applied in such cases. This law remains untested at this stage.
4. How does the law deal with extraterritorial offenses?	Limited coverage	Poland generally applies the principle of territorial jurisdiction (offences committed in Polish territory) or personal jurisdiction (Polish citizens for offences committed abroad). However, Poland also applies the principle of universal jurisdiction in limited cases. Article 113 of the Penal Code states that regardless of the law operating at the site of the offence committed, Polish penal law shall apply to Polish citizens and any foreigner facing extradition when they commit an offence abroad, in circumstances where Poland is obliged to prosecute the crime under international agreements. In practice this is usually restricted to serious crimes such as war crimes and people trafficking.
INTELLECTUAL PROPERTY RIGHTS		
1. Is the country a member of the TRIPS Agreement?	✔	Poland became a member of the TRIPS Agreement in 1995.
2. Have IP laws been enacted to implement TRIPS?	✔	The Polish Copyright Law of 4 February 1994, as amended, implements the TRIPS agreement.
3. Is the country party to the WIPO Copyright Treaty?	✔	The WIPO Copyright Treaty entered into force in Poland in 2004.
4. Have laws implementing the WIPO Copyright Treaty been enacted?	✔	The Polish Copyright Law of 4 February 1994, as amended, implements the Copyright Treaty.
5. Are civil sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	✔	Civil sanctions are available following the delivery of a warning letter.
6. Are criminal sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	✔	Criminal sanctions are available — although they are limited to breaches where there was an intention to 'disseminate' the copyright protected work.
7. Are there laws governing ISP liability for content that infringes copyright?	✔	The Act on Providing Services by Electronic Means 2002 (amended in 2008) sets out a liability regime for ISPs. This legislation interacts with the copyright law to establish a notice and take-down regime for infringing work.

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8. Is there a basis for ISPs to be held liable for content that infringes copyright found on their sites or systems?	✔	ISPs may be held liable only after receipt of a warning letter.
9. What sanctions are available for ISP liability for copyright infringing content found on their site or system?	Civil and Criminal	Both civil and criminal sanctions are available. In practice, civil sanctions dominate and criminal prosecutions are rare in Poland. The police have reported a lack of trained staff with ICT skills and knowledge to investigate and prosecute online copyright infringement.
10. Must ISPs takedown content that infringes copyright, upon notification by the right holder?	✔	Polish law requires ISPs to take action following receipt of a warning letter.
11. Are ISPs required to inform subscribers upon receiving a notification that the subscriber is using the ISP's service to distribute content that infringes copyright?	Undecided	There is no specific requirement to provide notice to subscribers regarding copyright breaches. The data protection regulator has ruled that ISPs may share subscriber information with copyright holders in some circumstances, but there is no direct requirement to do so.
12. Is there clear legal protection against misappropriation of cloud computing services, including effective enforcement?	Comprehensive protection	Poland has a useful combination of cybercrime legislation, copyright legislation and enforcement, and data protection legislation — all of these provide protection for cloud computing services.
INTEROPERABILITY		
1. Are there laws, regulations or policies that establish a standards setting framework for interoperability and portability of data?	✔	The Law on Standardization (2002) established the Polish Committee for Standardization (PKN) <www.pkn.pl>.
2. Is there a regulatory body responsible for standards development for the country?	✔	Polish Committee for Standardization (PKN) <www.pkn.pl> is the agency funded by the Government and recognized as the National Standards Body.
INTERNATIONAL HARMONIZATION OF RULES		
1. Are e-commerce laws in place?	✔	The Act on Electronic Payment Instruments (2002) and the Act on Providing Services via Electronic Means (2001) combine to provide comprehensive coverage of e-commerce.
2. What international instruments are the e-commerce laws based on?	UNCITRAL Model Law on E-Commerce	The Polish legislation follows the provisions of the UNCITRAL Model Law on E-Commerce.
3. Is the downloading of applications or digital data from foreign cloud service providers free from tariff or other trade barriers?	✔	There are no relevant tariffs or other trade barriers in Poland. Information technology tariffs in Poland were reduced to zero in 2002.
4. Are international standards favored over domestic standards?	✔	Poland originally favored mandatory national standards. However, since 2002, Poland favors a mix of EU and international standards.
5. Does the government participate in international standards setting process?	✔	Poland is an active participant in ISO standards development processes.
PROMOTING FREE TRADE		
1. Are there any laws or policies in place that implement technology neutrality in government?	✔	The National Computerization Plan for the Period 2007—2010 (Plan Informatyzacji Państwa na lata 2007—2010) <www.mswia.gov.pl/portal/pl/256/4635> mandates technology neutrality in all initiatives and procurement.
2. Are cloud computing services able to operate free from laws or policies that mandate the use of certain products (including, but not limited to types of software), services, standards or technologies?	✔	There are no mandatory requirements in place in Poland.
3. Are cloud computing services able to operate free from laws or policies that establish preferences for certain products (including, but not limited to types of software), services, standards, or technologies?	✔	There are no preferences in place in Poland. Some limited guidance in the education sector recommends the use of open source software. However this requirement is largely over-ridden by the technology neutrality principle in the National Computerization Plan.

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4. Are cloud computing services able to operate free from laws that discriminate based on the nationality of the vendor, developer or service provider?	✔	The Public Procurement Law (Act of 29 January 2004), does contain some basic domestic preference arrangements. However, a system of exceptions and waivers is in place, and the rules do not present a significant barrier for ICT contracts. Poland is a member of the WTO plurilateral Agreement on Government Procurement.
INFRASTRUCTURE, STATISTICS AND INDICATORS		
1. Is there a National Broadband Plan?	• By 2013, 23% of population to have access to broadband.	In December 2008, the Polish Ministry of Interior and Administration released 'The Strategy for the Development of the Information Society in Poland until 2013' <www.mswia.gov.pl/portal/SZS> — adopting the European policy priorities defined in European Commission's 'i2010 — A European Information Society for growth and employment.' Note: The European Commission has set targets for all European households to have download speeds of at least 30 megabits per second (Mbps) by 2020, and by 2025 50% of households at 100 Mbps.
2. Are there laws or policies that regulate the establishment of different service levels for data transmission based on the nature of data transmitted?	Limited Regulation and limited public debate	There has been no detailed public policy consideration of net neutrality in Poland. However, in 2007, the Polish Competition Authority (UOKiK) <www.uokik.gov.pl>, using generic principles of competition law, ordered discriminative degradation of IP traffic practices cease and imposed an EUR18 million fine on the major telecommunication provider. The severity of the fine is the subject of an ongoing appeal and in September 2011 it was reduced. The EU is actively considering options to manage net neutrality issues. In April 2011 the findings from a public consultation on 'The Open Internet and Net Neutrality in Europe' were released <ec.europa.eu/information_society/policy/ecomm/library/public_consult/net_neutrality>. Final recommendations may be issued in late 2011. This may have an impact on the implementation of net neutrality principles in member countries.
3. Base Indicators		
3.1. Population (2010)	38,276,660	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]
3.2. Urban Population (%) (2010)	61%	[World Bank, Data Catalog, Indicators, Urban Population % (2011) <http://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS>]
3.3. Number of Households (2009)	13,715,000	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (2009) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]
3.4. Population Density (people per square km) (2010)	126	[World Bank, Data Catalog, Indicators, Population Density (2011) <http://data.worldbank.org/indicator/EN.POP.DNST>]
3.5. Per Capita GDP (USD 2010)	$12,300	[International Monetary Fund (IMF), World Economic Outlook Database (April 2011) <http://www.imf.org/external/pubs/ft/weo/2011/01/weodata>]
3.6. ICT expenditure as % of GDP (2008)	6%	[World Bank, Little Data Book on ICT (2009) <http://data.worldbank.org/products/data-books/little-data-book-on-info-communication-tech>]
3.7. Personal Computers (% of households) (2010)	69%	In 2010, 69% of households in Poland have personal computers. This is a 17.1% increase since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
4. ICT and Network Readiness Indicators		
4.1. ITU ICT Development Index (IDI) (2010) (Score is out of 10 and includes 152 countries)	5.95	Poland has an ICT Development Index (IDI) score of 5.95 (out of 10), resulting in a rank of 38 (out of 152 economies). The 2010 IDI for Poland has deteriorated from a rank of 41 since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
4.2. World Economic Forum Networked Readiness Index (2010—2011) (Score is out of 7 and includes 138 countries)	3.84	Poland has a Networked Readiness Index (NRI) score of 3.84 (out of 7), resulting in an overall rank of 62 (out of 152 economies) and a rank of 44 in the high income grouping of countries/economies. [World Economic Forum, The Global Information Technology Report (2010—2011) <http://www.networkedreadiness.com/gitr>]
4.3. International Connectivity Score (2011) (Score is out of 10 and includes 50 countries)	4.26	Poland has a Connectivity Score of 4.26 (out of 10), resulting in a rank of 24 (out of 25) in the Innovation-driven grouping of countries/economies. [Nokia Siemens, Connectivity Scorecard (2011) <http://www.connectivityscorecard.org>]

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4.4. IT Industry Competitiveness Index (2011) (Score is out of 100 and includes 66 countries)	44.60	Poland has an IT Industry Competitiveness Index Score of 44.6 (out of 100), resulting in a rank of 30 (out of 66 countries/economies included in the index). The 2011 index score is a 12.6% increase on the 2009 score. Poland has moved up the ranking by 5 places since 2009. [Business Software Alliance (BSA) / Economist Intelligence Unit (EIU), IT Industry Competitiveness Index (2011) <http://globalindex11.bsa.org>]
5. Internet Users and International Bandwidth		
5.1. Internet Users (2010)	23,846,359	[calculated from 8.3.1. and 8.5.2.]
5.2. Internet Users as Percentage of Population (2010)	62%	In 2010, 62.3% of the population in Poland used the Internet. This is a 17.3% increase since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
5.3. International Internet Bandwidth (bits per second per internet user) (2010)	37,732	Poland has increased its International Internet Bandwidth (per Internet user) by 155% since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
5.4. International Internet Bandwidth (2010) (total gigabits per second (Gbps) per country)	900	[calculated from 8.5.3 and 8.5.1]
6. Fixed Broadband		
6.1. Fixed Broadband Subscriptions (2010)	5,044,000	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]
6.2. Fixed Broadband Subscriptions as % of households (2010)	37%	Note: this is skewed by business usage (refer to OECD comments about this) [calculated from 8.3.3. and 8.6.1.]
6.3. Fixed Broadband Subscriptions as % of population (2010)	13%	Poland has increased its Fixed Broadband Subscriptions (as a % of the population) by 14% since 2008. The OECD figures below present a breakdown on the type of broadband connections in Poland. Poland is distinguished by having the highest rate of growth of fixed broadband in the OECD in 2010 — 25% In the OECD, Poland is ranked 30 (out of 34) for Fixed (Wired) Broadband Subscribers as a percentage of population [OECD Broadband Subscribers (Dec 2010) — http://www.oecd.org/sti/ict/broadband] • DSL: 8.1% • Cable: 4.4% • Fiber/LAN: 0.2% • Other: 1.5% Total: 14.2% (5,423,410 subscriptions) and this represents a 25% increase from 2009. The OECD average total is 24.9%. Note: There may be minor variations in the ITU and OECD subscriber totals due to definition, timing or population baseline differences. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
6.4. Fixed Broadband Subscriptions as % of Internet users (2010)	21%	[calculated from 8.5.1 and 8.6.1]

COUNTRY REPORT: POLAND

Q POLAND	RESPONSE	EXPLANATORY TEXT
7. Mobile Broadband		
7.1. Mobile Cellular Subscriptions (2010)	46,000,000	Note: This figure may be inflated due to multiple subscriptions per head of population, but excludes dedicated mobile broadband devices (such as 3G data cards, tablets, etc) [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]
7.2. Active mobile-broadband subscriptions per 100 inhabitants (2010)	31%	Poland has increased the number of Active Mobile-Broadband Subscriptions (as a % of the population) by 83% since 2008. The OECD figures below present a breakdown on the type of mobile broadband connections in Poland. In the OECD, Poland is ranked 10 (out of 34) for Terrestrial Mobile Wireless Broadband Subscribers as a percentage of population [OECD Broadband Subscribers (Dec 2010) — http://www.oecd.org/sti/ict/broadband] — Satellite: 0.0% — Terrestrial fixed wireless: 2.2% — Standard mobile broadband subscription: 41.0% — Dedicated mobile data subscriptions: 9.1% Total: 52.4% (19,997,607 subscriptions). The OECD average total is 41.6%. Note: The mobile broadband subscription types were first reported by OECD in 2010. Currently the ITU data does not have this granularity. Note: The OECD figures include mobile data subscriptions, whereas this is not counted in the ITU figures.
7.3. Number of Active mobile-broadband subscriptions per 100 inhabitants (2010)	14,260,000	[International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]