

**PRESENTED AT**

The University of Texas School of Law  
2016 Water Law Fundamentals and Texas Water Law Institute  
November 2-4, 2016  
Austin, TX

**ETHICS IN THE CLOUD**

**THOMAS A. GWOSDZ**

Thomas A. Gwosdz  
City of Victoria  
Victoria, Texas 77902

[tgwosdz@victoriatx.org](mailto:tgwosdz@victoriatx.org)  
361-485-3520

# ETHICS IN THE CLOUD

OR,

KNOWING WHAT WE KNOW, CAN YOU ETHICALLY USE CLOUD COMPUTING TO  
PRACTICE LAW?

*Thomas A. Gwosdz  
City Attorney  
Victoria, Texas  
(361) 485-3520*

Edward Snowden joined the CIA as a systems administrator and telecommunications systems officer in 2006. In 2007, the CIA stationed him in Geneva Switzerland, where he was responsible for maintaining computer network security. During his time in Switzerland, his supervisor may have suspected that Snowden attempted to obtain classified information not authorized to him.<sup>1</sup>

In 2009, Snowden began working for Dell, inside an NSA facility in Japan, as a systems administrator. Investigators later estimated that “most” of Snowden’s released documents were acquired while working at Dell.<sup>2</sup> By March of 2013, Snowden had begun working for Booz Allen in Hawaii, but he had been working at the NSA facility in Hawaii for at least 12 months prior to beginning his Booz Allen position.

Snowden contacted journalists in late 2012. By May of 2013, Snowden was releasing confidential records to at least three journalists. In January of 2014, Snowden claimed that the NSA does not limit its data collection to national security issues, and accused the agency of industrial espionage.

In light of Snowden’s disclosures, attorneys must balance their obligation to protect client information against their need to communicate that information in a digital age. This paper seeks to examine that balance, first by examining what we know of the global surveillance programs, and second by examining the ethical rules under which Texas attorneys operate.

---

<sup>1</sup> Schmitt, Eric. "C.I.A. Warning on Snowden in '09 Said to Slip Through the Cracks." The New York Times. October 10, 2013. Retrieved on January 30, 2014.

<sup>2</sup> Suzanna Andrews, Bryan Burrough & Sarah Ellison (May 2014), "The Snowden Saga: A Shadowland of Secrets and Light" Vanity Fair

## ***Surveillance Programs: What we know.***

### **Five Eyes –**

*A “supra-national intelligence organization that doesn’t answer to the laws of its own countries.”*

*-- Edward Snowden*

Five Eyes is an international alliance of Anglophonic countries, including Australia, Canada, New Zealand, the United Kingdom and the United States of America.<sup>3</sup> Five Eyes can be traced to the conclusion of World War II, when the Atlantic Charter laid out goals for a post-war world. During the Cold War, Five Eyes used the ECHELON surveillance system to monitor communications among Soviet Bloc countries.<sup>4</sup> In the 1990s, ECHELON’s existence was revealed to the public, including revelations that it was used to monitor billions of private communications worldwide.<sup>5</sup> Since 2001, the Five Eyes have further expanded their surveillance capabilities, with much of the emphasis being placed on monitoring the internet.

Five Eyes is not a “program” in the same sense as the other programs disclosed by Edward Snowden. Nor was it secret before his disclosures. Rather, Edward Snowden described the Five Eyes as a "supra-national intelligence organization that doesn’t answer to the laws of its own countries,"<sup>6</sup> For the purpose of this paper, the Five Eyes are significant because they reportedly have been intentionally spying on one another's citizens and sharing the collected information with each other in order to circumvent restrictive domestic regulations on spying.<sup>7</sup> US domestic targets of the Five Eyes include Strom Thurmond,<sup>8</sup> and Jane Fonda.<sup>9</sup>

---

<sup>3</sup> The *Nine Eyes* consist of the Five Eyes plus Denmark, France, the Netherlands and Norway. The *Fourteen Eyes* consist of the Nine Eyes plus Germany, Belgium, Italy, Spain and Sweden. According to Edward Snowden, the Fourteen Eyes are officially known as SIGINT Seniors Europe, or "SSEUR."

<sup>4</sup> Asser, Martin (6 July 2000). "Echelon: Big brother without a cause?". BBC. Retrieved 28 January 2014.

<sup>5</sup> "Q&A: What you need to know about Echelon". BBC. 29 May 2001. Retrieved 28 January 2014.

<sup>6</sup> "Snowden-Interview: Transcript". Norddeutscher Rundfunk. 26 January 2014. Retrieved 28 January 2014.

<sup>7</sup> Ball, James (20 November 2013). "US and UK struck secret deal to allow NSA to 'unmask' Britons' personal data". The Guardian. Retrieved 18 January 2014. MacAskill, Ewen (2 December 2013). "Revealed: Australian spy agency offered to share data about ordinary citizens". The Guardian. Retrieved 18 January 2014.

<sup>8</sup> In 1988, Margaret Newsham, a Lockheed employee, told a closed-door session of the United States Congress that Thurmond's telephone calls were being intercepted by the Five Eyes via their ECHELON surveillance system. Campbell, Duncan (25 July 2000). "Inside Echelon". Heise Online. Retrieved 19 January 2014.

<sup>9</sup> Due to her political activism, her communications as well as those of her husband, Tom Hayden, were intercepted by the GCHQ and handed over to the NSA. Hanson, Christopher (13 August 1982). "British 'helped U.S. in spying on activists'". The Vancouver Sun. Retrieved 30 November 2013.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Ethics in the Cloud

First appeared as part of the conference materials for the  
2016 Texas Water Law Institute session  
"Communication and the Electronic Age"