Chapter 13
Legal and Contractual Issues of Cloud Computing for Educational Institutions

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ABSTRACT

The procurement of cloud computing services involves a wide range of issues and risks for educational institutions. The technologies and services available are rapidly evolving, differ greatly between providers, and are subject to complex contractual arrangements with potentially serious legal and business implications. There is no specific cloud computing legislation, but the area is subject to a wide and growing range of laws relating to Internet-based services, some written decades ago (Baker, 2009). Resolution of the new issues relating to security, privacy, and regulation in the cloud will take many years (Kaufman, 2009). This chapter outlines the key issues institutions need to investigate when considering the deployment of services in the cloud to students, faculty, and staff.

INTRODUCTION

Cloud providers develop legal agreements for those who wish to use their services. These are rarely written with the specific needs of educational institutions in mind, nor generally to protect the customer (Brukbacher, 2011). Negotiation is however often possible over these contracts, resulting in variations to standard agreements which can reduce risks and be otherwise advantageous to institutions. This is likely to be easier for larger or more prestigious universities than for small schools, where the resulting business for the cloud provider is minimal. The University of Cambridge for example was able to obtain significant amendments to its contract for Google Apps (Google, University of Cambridge, 2010), while smaller universities anecdotally report minimal flexibility on the part of large providers in their negotiations for similar services.

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When cloud-based services are provided for free to educational institutions, there is likely to be little incentive for a provider to engage in expensive contractual negotiations. Where services are paid for however cloud providers will be more willing to negotiate over terms and conditions, and also be willing to carry a higher level of risk. Companies are also likely to provide higher levels of service to their best customers; this is arguably simply good business practice (Daley & Rudolph, 2010c). Educational institutions should bear this in mind when discussing contracts with providers; the adversarial approach encouraged by their lawyers may be counterproductive.

Agreements are often more about perception than reality; they can give confidence about how security breaches or disruptions to service will be dealt with but may be difficult to enforce legally. While contracts transfer responsibility for certain computing tasks to cloud providers, ultimate accountability continues to reside with the educational institution (Julisch & Hall, 2010). Lawsuits against some of the vast computing companies involved in the field may also be too expensive to contemplate, particularly if they would have to be enacted in foreign jurisdictions. Neither however is the cloud provider likely to want any adverse publicity from serious contractual breaches or lawsuits. There are very good business reasons for the vendor to provide adequate service and for both parties to avoid legal action.

**Jurisdiction and Location of Data**

A key issue when negotiating contracts for cloud services is that of jurisdiction. The standard Google Apps for Education contract is subject to the laws of California, while Microsoft issues agreements based on Washington state law. There are significant legal variations across states and nations but the risks can be higher for European institutions where data protection laws are stricter than in the US. Meanwhile US institutions should be careful not to fall foul of export control laws by hosting data in prohibited countries (Trappler, 2010). There are also requirements for some universities to host their data solely in the US; state law requires this of the University of Wisconsin for example (Brukbacher, 2011) effectively negating the advantages of a global cloud computing strategy.

Some cloud providers have now developed agreements for laws in different jurisdictions. Google now has a European version of its Google Apps contract, issued from its Dublin office under English Law. In addition some companies (e.g. Microsoft for its Live@Edu services) will guarantee to host data in particular locations. This may have advantages in reducing latency as well as complying with local data protection legislation. Such variations are however costly and may be reflected in higher charges for the service.

Where the data is located is also important and involves many legal ambiguities. One of the advantages of cloud computing is the ability for providers to replicate data in multiple centres in several countries, benefitting for example from cheaper electricity at certain times of the day. Google is reported to store all data in three centres chosen randomly from across the World to ensure retrieval. When the company was asked where Yale’s data would be stored the University was given a list of “about 15 countries to which the data would not be sent” (Tidmarsh, 2010).

Another complication is that some providers split or shard data dynamically across multiple locations and, while it could be assumed that the company knows where the data is stored, it is subject to complex algorithms which they may not be prepared to release.

In addition, the data hosting could be subject to the laws of a number of jurisdictions:

1. The user’s location (particularly relevant where education is delivered internationally)
2. Where the educational institution is based (in multiple jurisdictions for those with an international presence)