Chapter 13
Key Legal Issues with Cloud Computing:
A UK Law Perspective

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ABSTRACT
The chapter considers the key legal issues with cloud computing, including: (1) liability for service failure; (2) service levels and service credits; (3) intellectual property issues; and (4) jurisdiction and governing law.

INTRODUCTION
Cloud computing is designed to offer on-demand access to a flexible IT facility at reduced cost. This is attractive to a customer with pressures on budgets and possible uncertainty about predicting its IT requirements. However, cloud computing also carries certain additional risks. The chapter considers the key legal issues with cloud computing including:

• Liability for service failure;
• Service levels and service credits;
• Intellectual property issues; and
• Jurisdiction and governing law.

Data protection issues are also relevant for cloud computing. However, given the complexity of the subject matter and the coverage which would be required to explain the issues, data protection is beyond the scope of this chapter.

In this chapter the service providers who are providing the cloud services are referred to as service providers and the customer is the party in receipt of the benefit of the cloud services.

This chapter is based on the law as at 1 December 2011.

EXISTING RESEARCH
There has been only a limited amount of research and writing from a UK law perspective on the topic of general legal issues related to cloud computing (with the exception of data protection). Whilst there are numerous short articles (less than 5 pages) on this topic (Tayyip 2011), the number of detailed articles and studies are limited. Marchini
Liability under Contract

Under contract law, a contracting party is entitled to damages for reasonably foreseeable losses that were caused by the other party’s breach of the contract. Damages are the money that a court decides is to be paid by one person to another person as compensation for loss or damage sustained by that other person in consequence of the actions or omissions of the first person (Chitty and Beale 2011). The object of an award of damages is to place the wronged party in the position they would have been in had the contract been performed (Gates v City Mutual Life Assurance Society Ltd (1986) 160 CLR 1).

Generally, there are two types of losses arising from a breach of contract: direct losses and indirect losses.

Direct Loss

Direct losses are:

- Losses which arise naturally from the breach; or
- Losses that arise that would reasonably have been considered to be in the contemplation of the parties as a probable result of the breach.

In summary, if losses do not arise “naturally”, or where not reasonably contemplated by the parties at the time the contract was made as a probable result of the breach, then they are not recoverable. These losses are generally categorised as indirect or consequential losses (see below).

Exclusions of Liability: Indirect or Consequential Loss

Service providers will usually argue that an exclusion of consequential or indirect loss is needed because the amount of such losses is related to the...
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