

Putting Academics at Risk: University outsourcing of email and electronic services

James L. Turk

Teach-in on University e-Services Outsourcing to
U.S. Corporations

University of Toronto

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1. Application of American Law



2. Unacceptable Contracts



Microsoft®
Online Services



Cloud contracts

Agreement

- Customer Privacy Notice
- End User Privacy Notice
- Acceptable Use Policy



“Entire Agreement. This Agreement, and all documents referenced herein, is the parties’ entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. The terms located at a URL and referenced in this Agreement are hereby incorporated by this reference.”

Terms in Cloud Education Contracts

- The “**Customer**” is the university.
- “**End users**” are the individuals that the “Customer” permits to use the Services.
- “**Customer data**” means data, including email, provided, generated, transmitted or displayed via the Services by Customer **or End Users**.

Google Apps for Education Agreement

http://www.google.com/apps/intl/en/terms/education_terms.html

Problems with the Contract: Academic Freedom

“2.2 **Compliance.** Customer will use the Services in accordance with the Acceptable Use Policy.”

“You agree not to, and not to allow third parties or Your End Users, to use the Services...

- for any unlawful, invasive, infringing, defamatory, or fraudulent purpose;
- to violate, or encourage the violation of, the legal rights of others”

http://www.google.ca/apps/intl/en/terms/use_policy.html

Problems with the Contract: Intellectual Property

“6.1 **Intellectual Property Rights.** Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other’s content or any of the other’s intellectual property. **As between the parties, Customer owns all Intellectual Property Rights in Customer Data,** and Google owns all Intellectual Property Rights in the Services.”

Google Apps for Education Agreement

http://www.google.com/apps/intl/en/terms/education_terms.html

Problems with the Contract: Storage of Data

“1.1 ... Google may transfer, store and process Customer Data in the United States or any other country in which Google or its agents maintain facilities. By using the Services, Customer consents to this transfer, processing and storage of Customer Data.”

Google Apps for Education Agreement

http://www.google.com/apps/intl/en/terms/education_terms.html

Problems with the Contract: Liability

Disclaimers. EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. GOOGLE MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICE... TELEPHONE NETWORKS.

Limitation on Indirect Liability. NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

Limitation on Amount of Liability. NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN ONE THOUSAND DOLLARS.”

<http://www.ucs.cam.ac.uk/googleapps/google-apps-cambridge-contract.pdf>

Problems with the Contract: Privacy

Use of Customer Data. Other provisions of this Agreement notwithstanding, **Google may scan or index Customer Data for the following purposes only:** (i) to allow End Users to search for information in their End User Accounts; (ii) to allow Google to perform spam filtering, virus detection, and/or similar security tasks; (iii) to allow Google to respond to Customer's and/or an End User's request for assistance; (iv) to allow Google to meet its legal obligations; or (v) otherwise to allow Google to provide the Services. Google's scanning and indexing procedures shall be automated and involve no human interaction with Customer Data, except to the extent necessary to respond to Customer's and/or an End User's request for assistance or to meet Google's legal obligations. Unless Customer enables the Services to serve Ads, Google will not use any Customer Data for advertising purposes.

<http://www.ucs.cam.ac.uk/googleapps/google-apps-cambridge-contract.pdf>

Problems with the Contract: “Governing Law”

“13.10 Governing Law.

b. **For All other Entities** [except State and City Government Entities]:

This Agreement is governed by California law, excluding that state’s choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND **THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.**”

The Google Apps for Education Agreement

http://www.google.com/apps/intl/en/terms/education_terms.html

Problems with the Contract: Fees

“9.1 **Term.** This Agreement will remain in effect for the Term.”

“9.3 **No Fees.** During the Initial Term, Google will not charge Customer fees for the Services. Upon the parties’ mutual written agreement, (a) Google may charge Customer fees for the Services after the Initial Term and (b) Google may charge Customer fees for a premium version of the Services or for optional functionality or enhancements that may be added to the Services by Google.”

The Google Apps for Education Agreement

http://www.google.com/apps/intl/en/terms/education_terms.html

Final note

Decisions about technological services for academic staff should not primarily be about money nor about access to the latest technological niceties.

They should be about the University adopting a means for facilitating communication for its academic staff so as to enhance their ability to do their academic work in a way that protects their rights, including intellectual property, privacy and academic freedom.

Outsourcing to Google/Microsoft endangers each of these.

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