Assent in Cloud Computing Contracts: Old Wine in New Bottles

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Abstract

Cloud computing is sometimes called software as a service. It appears set to revolutionise the computer industry over the next few years due to globalization. Hence, enterprise governance of cloud projects requires acknowledgment of regulatory compliance requirements at both where the data are sourced and where the data are stored. New legal issues are already arising relative to the cloud. Detailed due diligence, an understanding of expected cloud client responsibilities, and review and negotiation or candidate CSP SLAs and contracts are needed by both users as well as providers. Hence, this paper will highlight how mutual assent can be understood and any accompanying legal issues which can adversely affect this contractual relationship. In doing so, this paper will also examine the European Commission’s approach regarding end user agreements between the customer and provider.

Keywords: Cloud Computing, Assent, European Union
1. INTRODUCTION

1.1 Introduction

Cloud computing is a technology model that allows users to access and obtain delivery of information and resources over the Internet. This model generates all of the features required to support the complete cycle of constructing and delivering web-based applications. Nowadays, more and more companies are investing in the development of this powerful and valuable technology which has revolutionized the way of doing business, selling and marketing products.\(^1\) The quick development of cloud computing is being fuelled by the emerging computing technologies which allows for reasonably priced use of computing infrastructures and mass storage capabilities. It also removes the need for heavy upfront investment in Information Technology (IT) infrastructure. Cloud computing is a computing paradigm that involves outsourcing of computing resources with the capabilities of expendable resource scalability, on-demand provisioning with little or no up-front IT infrastructure investment costs.\(^2\)

Cloud computing adoption is faced with a number of challenges, these challenges are: security challenges, legal and compliance challenges and organisational challenges. Linked to all these challenges is the issue of trust between clients and vendors, because cloud computing calls for organisations to trust vendors with the management of their IT resources and data. Trust


being a critical factor in cloud computing adoption, this research project will focus specifically in identifying the challenges facing organisations when seeking to adopt cloud computing\(^3\).

With reference to the European Union, the Directive 95/46/EC of the EP and of the Council of 24 October 1995 has a comprehensive privacy framework provided by the EU Data Protection\(^4\). However, within the framework, each member state has its own unique law implementing this directive. It can be said that the most notable thing about the EU Directive and member state laws for purposes of cloud computing is that in the absence of specific compliance mechanisms, the EU prohibits the transfer of personal information of the EU residents out of the EU to the United States and the vast majority of countries around the world. The 2009 Review of the European Data Protection Directive, conducted by RAND and commissioned by the Information Commissioner, is highly critical of the lack of international accord on data protection and the failure of rules to address ubiquitous computing environments\(^5\).

This scenario presents a nightmare for cloud forensics where activities might involve the transfer of data from one jurisdiction to another for data concerning personal information of EU residents, perhaps an e-mail address or employment information. All stakeholders, including investigators, should consider the kind of data they are likely to encounter in the cloud, where subjects reside, where and how data will be stored, where servers are located, the likelihood of the data being transferred, the possibility of restricting it to certain geographical areas, and the presence of an effective compliance plan.\(^6\)


\(^6\) ibid.
1.2 Aims and Objectives

The aim of this paper is to discuss issues which can arise as to what extent the online user will be bound by a long list of terms which he/she may not be able to understand as online standard contracts contain ‘legal jargon’ not commonly understood by the lay person or even due to the longevity of these contracts which many users do not even read.

1.3 Significance of the Study

It is estimated that within the next few years, the global market for cloud computing will grow up to $95 billion and that 12% of the worldwide software market will move to the cloud in within this period. In short, cloud computing is basically about hosting data/code anywhere within the distributed infrastructure, present anywhere in the world. The use of cloud computing has improved rapidly and at this point, it is important to distinguish between cloud computing and the World Wide Web. There is a need to enhance trust in innovative technological revolution of cloud computing to speed up and increase the use of cloud computing worldwide. The use of these clouds is usually associated to some terms and conditions which the user has to agree to get full access to the service. These terms and conditions are considered as non-negotiable standard terms in contracts where the user does not get to have any say. Hence, this study will delve into the arena of contractual relations between the provider and end user as there has not been enough focus on this specific area, which is strongly needed in today’s technological world.

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2. CLOUD COMPUTING – A BRIEF OVERVIEW

Various definitions and interpretations of cloud computer or as some call it the “cloud” exist. Trying to set one definition to cloud computing is not an easy task, some even describe it as difficult\textsuperscript{10} ‘as attempting to capture a genuine cloud with one’s hands’.\textsuperscript{11} Hence, in most cases the contract is governed by the laws of the country in which the Cloud provider, not the Cloud user, has its seat. In some cases however the laws at the location of the server may apply. As far as contract law is concerned, choice of law is possible. Therefore the Cloud provider and the Cloud user can choose to render a more advantageous law (though in most cases this is simply the own, known law) applicable. An essential aspect of drafting a contract is the legal type of the particular Cloud contract. This depends, on the one hand, on the services obtained, on the other hand, on the applicable law. From this classification certain legal restrictions or liberties may result, which the lawyers drafting the contract need to take into consideration for standard contracts certain constitutions may therefore require amendments. Such amendments are usually not extensive, as to influence whether the interest in Cloud services remains or wanes. Yet it is important that such indirect influences exist, as the parties may in turn control e.g. through the choice of the IT server location or of the applicable law\textsuperscript{12}.

Similarly, the European Commission defines cloud computing as ‘the storing, processing and use of data on remotely located computers accessed over the internet’.\textsuperscript{13} Another definition

\begin{thebibliography}{13}
\bibitem{11} ibid.
\end{thebibliography}
is set by a report published by the EC, as ‘an elastic execution environment of resources involving multiple stakeholders and providing a metered service at multiple granularities for specified level of quality (of service).’ In short, and as defined by the Information Commissioner’s Office defines cloud as ‘accessing to computing resources, on demand, via a network’. 

2.1 Cloud Computing versus the World Wide Web

Often, the concept of cloud is confused with the internet or the World Wide Web. The later is the medium in which the cloud can operate. In other words, the www makes information available to everyone at anywhere, while cloud computing makes computer power itself available everywhere to everyone. To understand cloud computing, it is essential to address the main component of cloud computing, its different types, and the main grouped involved.

The most important non-functional aspects of cloud computing as described by the EC are: elasticity, reliability, quality of service, agility and adaptability in addition to the availability of services and data. In addition to the fact that cloud computing does not require specific skills to manage them, this means that there is no need to have an army of staff which can also lead to cutting down of costs in hiring qualified employees to manage the infrastructure and to develop the services offered by the cloud. Furthermore, cloud computing helps in the distribution process of different IT product, as distribution process is easier and automated.

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14 European Commission (fn 1).
17 European Commission (fn 13).
19 ibid.
2.2 Purpose of Cloud Computing

Looking at cloud computing from different angles, it is safe to say that users use cloud computing for many purposes, some, for example, use such services to host their websites, while others use them to store and manipulate scientific data.\(^{20}\) Cloud computing services come in many types; they can be classified as follows:

- **Private clouds**: this type of clouds is usually owned by the respective enterprise and/or leased. They are usually used to refer to internal data centers of business or other organization. They are not made available to the public.\(^{21}\) This type of clouds indicates a customized service. In other words, the service which is offered by the cloud is different for each customer.\(^{22}\)

- **Public clouds**, this type of clouds is usually made available to the public on the pay as you go manner.\(^{23}\) In this type of clouds, the provided services are the same for each customer. The word “Public”, as described by the EC ‘point out the universality of the service.\(^{24}\)

- **Hybird cloud**: this type of clouds is a combination of the above mentioned two types. As described by the Commissioner’s Office, ‘[a] cloud customer will segregate data and services across different cloud services. With access between them restricted depending on the type of data they contain.\(^{25}\)

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\(^{20}\) Callowey, T (fn 10), 167-168.


\(^{22}\) European Commission (fn 18) 49.

\(^{23}\) Armbrust, M (fn 21), 51.

\(^{24}\) ibid, 48.

\(^{25}\) ICO (fn16), 5.
• Community cloud: this special type of clouds is between not a public cloud, neither a private one. The infrastructure of this cloud is being shared by several organizations and supports a specific community that has communal concerns.\textsuperscript{26}

The use of cloud computing faces some obstacles, some of them affect the adoption of cloud computing,\textsuperscript{27} while others affect the growth,\textsuperscript{28} policy and business obstacles\textsuperscript{29, 30}. The following paragraphs will highlight one of the legal challenges that are linked to the common use of cloud computing. This paper will mainly focus on reaching mutual assent when entering a cloud computing contractual relationship.

\textbf{2.3 Legal Challenges with Cloud Computing}

It is not the purpose of this article to dig deep in cloud computing from a technological viewpoint, rather this paper serves to highlight one of the main problem points associated with the common use of cloud computing – user assent in cloud computing agreements. As the following figure show, many legal challenges are associated with the common use of the cloud computing, these challenges need an immediate action and cannot be overlooked or left behind if cloud computing need to reach its full optional power in the IT industry\textsuperscript{31}.

\begin{flushright}
\begin{itemize}
\item \textsuperscript{27} These are usually linked to the availability, data lock in, and data confidentiality and auditability.
\item \textsuperscript{28} These are usually linked to data transfer bottlenecks, performance unpredictability, scalable storage, bugs in large disturbed systems, scaling quickly.
\item \textsuperscript{29} These are linked to reputation fate sharing and software licensing
\item \textsuperscript{30} Armbrust, M (fn 21).\textsuperscript{54}
\end{itemize}
\end{flushright}
From the different legal challenges that customers can face while using cloud computing, the following section will only deal with selected aspect related to the contractual relationship. Since contracts are based on mutual assent, it is expected that other legal challenges will be solved throughout the terms and conditions of the contract. 

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3. CLOUD COMPUTING CONTRACTS

The contract theory is as old as primitive people. Contract is a complex legal discipline both in its jurisprudential foundation and its practical foundation. Generally talking, contracts are agreements by which one or more persons bind themselves in favor of one or more persons to give or to do or not to do something it follows from the terms of this definition that a contract is a result from an agreement of two persons or more who mutually express their will to create a legal relation between themselves.  

Contrary to the idea that contracts mainly based on a human “will” to enter a relationship, in which both parties have rights and obligations; this “will” is derived from the fact that each person is free to enter any kind of contractual relationship unless the law prevents him to do so, having said that, it is important to have two parties to a contract; i.e. the offeror and the offeree, as a contract is formed once the offer is met by an acceptance from the other party.

3.1 Contractual Relations between the Provider and Customer

This article will focus on the contractual relationship between the customer and the provider offering the service. In legal terms, the contract between them is resemble typical software license agreement. Many questions could rise as to what extent the online customer will be bound with the terms and conditions which are presented to him if he had never read them. The answer to this question will not go beyond the typical analysis of click-wrap license agreement scenario.

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3.1.1 Classifying cloud computing terms and conditions document

It is expected when entering a contractual relationship that both parties will have mutual assent on some terms and conditions. This mutual assent has to be expressed in some way. Looking through contracts related to cloud computing, one can notice that there are different players in cloud computing depending on the type of cloud computing itself. These parties are the “Provider”, the “Service” and the “customer”. The provider is ‘the business organization that offers the cloud service. The service is the particular cloud service offered by the provider in question,’\textsuperscript{36} while the “user” is the end user or customer who uses the cloud computing service for different purposes.

In the case of cloud computing, and similar to any contracts for the supply of services, the contract between both parties; i.e. the provider and the customer will depend on the service being offered and the requirements of the customer.\textsuperscript{37} Despite the fact that some cloud computing service contract can be in special circumstances be negotiated among both parties, most of these contracts can be classified as standard terms contracts. The typical scenario is that the terms and conditions of these contracts are presented to the customer on the basis of “take-it or leave- it” without the opportunity for negotiation. In fact, it is believed that Standardization of contracts works best as an industry-led process.\textsuperscript{38} Customer in the case of standard terms contracts will only have to accept the whole terms and conditions as one package to gain access to the desired

\textsuperscript{37} Ismail, N ‘Cursing the Cloud (or) Controlling the Cloud?’ (2011) 27 Computer Law & Security Review 250, 411.
services. The *provider* usually require the *customer* to tick on certain box in which the *customer* agree to the content of the terms and conditions offers by the *provider*\(^\text{39}\).

### 3.1.2 Problems in Standard Contracts

The problem with the standard term contracts is two fold. The problem of online assent is one,\(^\text{40}\) and the content of the online contracts is another. As has been mentioned earlier, click-wrap license agreement presents a list of terms to the *customer*. These terms and condition vary; some of them are listed in one long document, while others prefer them short. Generally, service *providers* usually vary when forming their terms and conditions, from relatively short to long complex ones. According to a survey done by *Bradshaw et al.*,\(^\text{41}\) the terms and conditions of cloud computing service usually contain:\(^\text{42}\)

- **Terms of service**, where the *provider* usually put in detail the overall terms and conditions regulating the relationship between the *provider* and the *customer*.

- **Service level agreement**, in this document, the *provider* specifies the level of service offered to the *customer* along with special terms regarding compensating

- **Acceptable use**, this usually put for the *customer* what actions are permitted when using the service offered by the *provider* to the *customer*.

- **Privacy policy**, in this document, the *provider* tries to identify what steps are to be taken by the *provider* to use the *customer*’s personal information and how does the *provider* protect these information. Having set out the main sub-headings of cloud computing

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\(^\text{40}\) See 3.2, p .

\(^\text{41}\) Bradshaw, S *et al* (fn 36), 192.

agreement, the following section will highlight the case of assent in the case of cloud computing.
4. ASSENT ON THE CASE OF CLOUD COMPUTING CONTRACTS

There is no one method for electronic contracting, contracts could be formed electronically through the exchange of emails. They could also be formed as a method of web-based contracts. Browse-wrap and click-wrap agreements are examples that could be given on such contracts formed electronically. Click-wrap agreement is common when using the internet, as in some cases the user of the internet is being asked to accept some terms and conditions before being able to access the website, whereas he will not be able access it if he did not accept them.

4.1 Click-Wrap License Agreements

Click-wrap licence agreement is usually presented directly to the user’s personal computer screen. The user is asked in that browser window to assent to certain terms. Some websites might ask the user to scroll down the whole text of the licence before he is allowed to proceed. In some cases the user may be referred to another place where the terms are hosted, with a hyperlink to take the user directly to them. The basis for validating these licences is the ability of courts to reach the conclusion that the user had manifested his assent to the online terms which were presented to him directly or indirectly, by signalling such assent through his actions, for example through loading the required software.

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43 Browse-wrap agreements, these are the most common electronic contracts, as the user of the internet manifest his mutual assent to these terms by using a website, even if he did not read these terms or even know about them.
The problem with click-wrap licences arises from the common practice of internet users. The average user rarely bothers to read the terms and prefers to proceed with his click. The user might also argue that his conduct cannot bind him to terms he did not assent to, and that conduct alone cannot bind him. Website publishers, on the other hand, usually argue that their users are bound by their click. This particular conduct is what is required to manifest assent to their terms before the user can proceed.

4.1.2 Terms of Click-Wrap Licence Agreements

The terms of click-wrap licence in the case of cloud computing contracts are presented directly to the user via hyperlink at the early stages of signing to the service required. Clicking on the “I Accept” icon will mean the user has accepted the terms and conditions. Accepting these terms can potentially affect the legal rights of the customer in question. Since the terms and conditions are presented as part of a standard term contracts it is expected the provider of the service might value their rights rather than protecting the rights of their customers. One of many clauses that providers aim to include in their standard terms click-wrap agreements are clauses related to the limitation on liability clauses. Such clauses as Calloway indicate are “usually buried deep within the cloud provider’s click-wrap agreement.”

Since most cases related to cloud computing focus on issues that arise from the content of click-wrap agreement rather than the assent to these agreements, authors will focus on case law and present relate to click-wrap license in general.

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47 Calloway, T (fn 10), 164.
48 ibid.
4.1.3 Case Law on Click Wrap Agreements

The case of Treiber & Staub, Inc v United Parcel Service\textsuperscript{50} is in fact a direct application of contract law rules. In this case the plaintiff, a jeweller, wanted to return a ring worth $105,000 to the manufacturer using the service provided by the United Parcel Service (UPS). The plaintiff arranged to return the ring using the UPS website. The ring never reached its final destination and the plaintiff sued the defendant for his loss. The court found that Treiber entered into a contractual relationship with UPS to send the ring to its final destination, when he had assented to their online terms. During the process of sending the shipment, Treiber had to click on an icon that he accepts the terms and conditions which are set by UPS and cover the transaction.\textsuperscript{51} One of those terms made it clear that the defendant’s insurance was not intended to cover items exceeding a value of more than $50,000.

Indeed, Treiber clicked on the relevant icon, and arranged for the shipment to be sent. In this case, the court found that the plaintiff had a duty to read before he clicked, and the fact that he did not read those terms did not mean that he was not bound by them.\textsuperscript{52} This is so, especially since Treiber had adequate notice about the value that was covered by the insurance\textsuperscript{53} in addition to the fact that ‘one cannot accept a contract and then renege based on one’s own failure to read it’.\textsuperscript{54} In fact, there is a duty to read on the contractual parties.

The courts, depending on the facts of each case, have often been able to decide that click-wrap licences are valid and could therefore be enforced fully or partly. In doing so they examined the notice given to the user, and whether he was given a chance to read the terms. In

\textsuperscript{50} 474 F.3d 379 (7th Cir. 2007).
\textsuperscript{51} Treiber & Staub, Inc v United Parcel Service 474 F.3d 379 (7th Cir. 2007) 382.
\textsuperscript{53} Treiber & Staub (n 148) 382, 383 & 385.
\textsuperscript{54} ibid 385.
considering the validity of click-wrap licences, courts have usually applied a combination of rules obtained from the general principles of contract law together with case law precedent. For example, in *iLan systems, Inc v NetScout* the court tried to fit the case of click-wrap licences under the provisions of the UCC. It reached the decision that the UCC does not expressly govern software licences, but that courts assume that it could be applied. Courts were able to decide that the contract could be formed by clicking on the icon which indicates assent. This is, in its point of view, for the same reasons that assent was accepted to be implicit in *ProCD*.

One important point relating to the issue of assent in click-wrap licences in general and the case of cloud computing in particular is that the user should have the right to review the content of the terms and then accept or reject them. It is not enough to bring a notice about the existence of terms and conditions to the *customer* if the latter is unable to choose between accepting and rejecting them. Furthermore, a website should allow the user to print and save these terms and be able to refer to them again in the future.

### 4.2 OFT Guidelines

The British Office of Fair Trading has published guidelines on *IT Consumer Contracts Made At A Distance*, however. These provide guidance on how to comply with the Distance

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56 The court was discussing whether the licence will be governed by §2-204 or 2-207, and in so doing it had analysed the case of Step-Saver Data Sys., Inc. v. Wyse Tech 939 F.2d 91 (3d Cir. 1991) and *ProCD v Zeidenberg* 86 F.3d 1447 (7th Cir. 1996).
57 *ProCD v Zeidenberg* 86 F.3d 1447 (7th Cir. 1996).
59 Hereinafter OFT.
Selling and Unfair Terms in Consumer Contracts Regulations. These guidelines make it clear that click-wrap terms should be presented to the user in a complete, clear and readily accessible manner. Furthermore, they emphasize that those terms should comply with the Electronic Commerce (EC Directive) Regulations which require those terms to be provided in a manner that allows the user to store and reproduce them in the future.

The OFT guidelines deal with the situation where the consumer has to declare his assent to online terms by clicking on an *I Accept* icon. The guidelines introduce some tips on how to present those terms to the user in a manner that would defend against any argument set by him that by clicking on that icon he had ‘signed away [his] rights’. These guidelines advise website developers to warn the user to read the terms before he places his order. Furthermore, words which are used in drafting the terms should be easily understood and clearly presented, and it would be helpful if the user was able to enquire about some terms.

Although these guidelines may be helpful, they do not have any legal binding effect. In other words, that they will be used is not guaranteed. This leaves the question of courts deal with click-wrap licences open. However, the current author contends that courts should consider whether the user has sufficient notice about the existence of the online terms. In addition, they should also consider the surrounding circumstances of each case.

It is important to consider and review case law precedent concerning assent in the case of cloud computing contracts. However, since cloud computing is relatively new, limited number of

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61 These guidelines could be considered as unofficial explanation to the Directive on Distance Selling by giving some practical examples that are helpful to bear in mind when doing business at distance including e-contracts.
62 OFT (n 60) 16 [3.12].
63 ibid 17[3.14].
64 ibid 20[3.26].
65 ibid 16[3.27].
66 ibid 16-17 [3.25-3.27].
cases could be found. Most of these case are related to copyright infringement.\(^6^7\) In addition to cases related to unauthorized “scraping” of information from the cloud.\(^6^8\) Courts have also examined cases related to privacy rights\(^6^9\) and personal information of the customer.\(^7^0\) NO cases could be found in relation to mutual assent in cloud computing, therefore case law in relation to click-wrap agreement will be applied in addition to the principles of contract law.

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\(^{68}\) See for example Craigslist, Inc v Naturemarket, Inc 694 F.Supp. 2d 1039(N.D. Cal 2010) and Barclays Capital, Inc v theflyonthewall.com, 700 F.Supp. 2d 310 (S.D.N.Y 2010)

\(^{69}\) See for example City Of Ontario v Quon 130 s.Ct. 2619(2010).

\(^{70}\) See for example Part City Corp. v Superior Court of San Diego County, 86 Cal. Rptr 3d 721 (2008)
5. EU APPROACH TOWARDS REGULATING CLOUD COMPUTING CONTRACTS

The EU approach towards cloud computing is distinctive. Their work towards boosting cloud computing is part of Europe 2020 Strategy. Cloud computing is one of its seven flagship initiatives the Digital Agenda for Europe. According to the European Commission, “[t]he overall aim of the Digital Agenda is to deliver sustainable economic and social benefits from a digital single market based on fast and ultra fast internet and interoperable applications”. In this context, Europe believes that it has an obligation to ‘develop an EU-wide strategy on “cloud computing” notably for government and science’

5.1 EU Legal Framework for Cloud Computing

In 2012 the European commission adopted a strategy for Unleashing the potential of cloud computing in Europe. This new strategy aims to speed up and increase the use of cloud computing across the economy. This strategy covers three broad areas; introducing safe and fair contract terms and conditions, cutting through the jungle of standards, and establishing

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74 European Commission (fn13).
a European cloud partnership.\textsuperscript{76} The EU aims to set a legal framework related to cloud computing. This framework will cover issues related to:

- data protection
- privacy
- laws and other rules that have bearing on the deployment of cloud computing in public and private organization
- in addition to issues that are related to user’s rights. \textsuperscript{77}

After the adopting of the abovementioned strategy the European Commission has set up a working group on safe and fair terms for cloud computing.\textsuperscript{78} This group will work on identifying ‘the best practices for addressing the concerns of consumers and small companies who are often reluctant to purchase cloud computing service because contracts are unclear.’\textsuperscript{79} Introducing a model contract terms for cloud computing can help to facilitate contractual agreements between cloud computing service providers and consumers and small firms. 80 The EU strategy on cloud computing if achieved will introduce ‘better standards, safer contracts and more cloud in the public and private sector.’\textsuperscript{81}

\textsuperscript{76}European Commission (fn13), 10.
\textsuperscript{77}European Commission (fn18) 47.
\textsuperscript{79}ibid.
\textsuperscript{80}ibid.
5.2 EC Directives on Electronic Commerce

The EC ‘Directive on electronic commerce’\textsuperscript{82} lists certain information to be given by service providers clearly, comprehensibly and unambiguously and prior to the order being placed by the recipient of the service. These steps include for example ‘the different technical steps to follow to conclude the contract’\textsuperscript{83} in addition, the Directive assert that the contract terms and general conditions provided to the recipient must be made available in a way that allows him to store and reproduce them\textsuperscript{84} This is believed to give the online user enough time to review the terms before he assents to them. He will also be able to come back to them in the future whenever he needs to check a specific point regarding the work.

Despite the work in promoting cloud computing and boosting the IT industry in this field, nothing could be found regarding assent in the case of cloud computing contracts. Therefore, the traditional contract law terms will be applied. Focusing on introducing standard term contracts by the EU working group, will solve part of the legal problematical issues\textsuperscript{85}. However there is a need to raise the legal awareness among customers on the need to read and understand the terms and conditions of these contracts, rather than typically clicking on the I Accept icon without having read the content of the terms and conditions that stand behind the hyperlink hosting them.

\textsuperscript{83} Art 10(1).
\textsuperscript{84} Art 10(3).
6. CONCLUSION

With the ongoing IT revolution, cloud computing became the phenomena that need some legal attention. Mutual assent in the case off cloud computing contracts rings the bill again, issues that are related to mutual assent in the case of click-wrap agreement are to be addressed again, but this time in the case of standard terms contracts that are formed between the provider of the cloud service and the customer.

There is a real need to regulate how and what contracts are formed and what are the obligations and rights of both service provider and customer. It is essential to bring to the attention of the online user that by clicking on the relevant icon a binding contract will be formed. This will directly mean that failing to read the terms and conditions of the online click-wrap agreement does not lead to the fact the user is not bound. Having said that, and since most of cloud computing contracts are drafted in advance, it is important to bring these terms and conditions to the customer in advance. Introducing these terms and conditions to the customer does not impose a direct obligation on the provider to bring them to the direct attention of the user in a way that allows him to read, save and store these terms and allow him to retain and get back to them in the future if needed.

Another obligation on the provider of these terms and conditions is to bring to the attention of the online user any changes to their terms and conditions in the same way the terms and conditions were presented to him in the first place.
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