union des consommateurs

1960 - 2010

Canadian Perspectives on Cloud Computing and Consumers

Executive summary
June 2011

Information is becoming more and more virtual. People can now use applications online instead of installing them on their computers. They can also save documents on servers in third countries, and access them anywhere in the world. All of these functionalities are called cloud computing applications. Certain cloud computing services are currently major players on the Internet. Social networks such as *Facebook*, online messaging services such as *Hotmail*, *Gmail*, *Yahoo!Mail*, photo storage services such as *Flickr,* used by a great number of consumers, are in fact cloud computing applications. One of the advantages of these solutions is the possibility of accessing them any time, or almost, thanks to wireless telecommunication networks. Online messaging services are so popular that many consumers only use this type of messaging rather than the one offered to them by their Internet access provider.

After reviewing the pros and cons of this new way that companies offer their services, our research examines the contractual relationship between consumers and cloud computing service providers. First we focus on the legal characterization of those contracts. They are of course written by (of for) the companies offering cloud computing services and are intended to protect those companies' interests to the maximum extent.

In Canada, certain laws have been adopted to protect consumers. Can those laws apply, in the cloud, to those various cloud computing service contracts? If so, do the terms and conditions of those contracts fully comply with Canadian legal provisions to protect consumers?

Cloud computing services notably enable consumers to create documents, save and share drawings, photos, etc., which in some cases are creations under the Copyright Act. In such cases, the works are protected and the copyright holder benefits from certain rights with regard to his works. How do the rights with respect to the use of those works, as provided for in the Copyright Act, apply to the use of cloud computing applications?

Does personal information have the same legal protection in the cloud as on firm ground? Many cloud applications, given that they are free of charge, need their users' personal information to function or even survive. Accordingly, cloud computing users allow the service provider to collect and use their personal information. This study therefore examines cloud computing services in the light of privacy laws.

6226, rue Saint-Hubert, Montréal (Québec) Canada H2S 2M2
T : 514 521 6820 | Sans frais : 1 888 521 6820 | F : 514 521 0736
union@consommateur.qc.ca | www.consommateur.qc.ca/union

Our study includes an extensive legal analysis of cloud computing contracts. This analysis of various clauses common to cloud computing services enables us to assess their validity under civil law, common law, consumer protection laws, the Copyright Act and privacy laws.

Some of the clauses of the cloud computing contracts examined are shown to violate consumer protection laws or common law principles. Some of the copyright clauses are excessive and vague. Some cloud computing contracts do not comply with Privacy Act principles.

Our research also focuses on the approaches and solutions adopted by certain foreign jurisdictions to address some of the issues raised by cloud computing.

In addition to a few recommendations inciting merchants to improve their practices, Union des consommateurs recommends legislative amendments that could solve many of the problems identified, mainly with respect to privacy and consumer protection.

French version available.

Union des consommateurs has received funding from Industry Canada's Contributions Program for Non-profit Consumer and Voluntary Organizations. The views expressed in this document are not necessarily those of Industry Canada or of the Government of Canada.