

Contract Email Services to Google/Microsoft

CAUT Council
November 26, 2011



Outsourcing to Google/Microsoft Problems

Outsourcing to Google or Microsoft exposes academic staff to two dangers:

- application of American law
- provisions in the Google contract



Application of US Law

All your email -- content, transaction data, attachments and all linked information -- become subject to American law with its especially troubling provisions brought in through the *USA Patriot Act* following 9/11 and other subsequent legislation.



Application of US Law

U.S. law ... confers express statutory authority for prospective content surveillance of law-abiding faculty members, with neither probable cause, nor a warrant, nor any suspicion of criminality.



Application of US Law

- U.S. laws can compel disclosure of email information for foreign-intelligence purposes even when the affected faculty member is not suspected of involvement in terrorism or any other criminal activity.
- Under U.S. laws, an investigation requiring disclosure of email information can be based on the faculty member's political viewpoint, religious activity, or exercise of academic freedom.



The Contract--Privacy

“Information you provide – When you sign up for a [Google Account](#), we ask you for [personal information](#). We may combine the information you submit under your account with information from other Google services or third parties in order to provide you with a better experience and to improve the quality of our services...”

Google Privacy Policy

<http://www.google.com/privacy/privacy-policy.html>



“Personal Information”

“‘Personal information’ is information that you provide to us which personally identifies you, such as your name, email address or billing information, or other data which can be reasonably linked to such information by Google.”

<http://www.google.com/intl/en/privacy/faq.html#toc-terms-personal-info>



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The Contract—Academic Freedom

“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;
- *to use the Services, or a component of the Services, in a manner not authorized by Google*

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



The Contract— Intellectual Property

“7.1 ... 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



The Contract—“Governing Law”

“14.10 **Governing Law.** This Agreement is governed by California law, excluding that state’s choice of law rules. FOR ANY DISPUTE RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA. [emphasis in original]

The Google Apps for Education Agreement

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



The Contract - Liability

“Limitation of Liability. IN NO EVENT WILL GOOGLE OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST DATA, LOST PROFITS, LOST REVENUE OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY AND NEGLIGENCE), AND WHETHER OR NOT SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN. IN NO EVENT SHALL GOOGLE'S AND/OR ITS LICENSORS LIABILITY FOR ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED ONE THOUSAND US DOLLARS (\$1000). THE SERVICE IS PROVIDED WITHOUT CHARGE AND THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS REPRESENT A REASONABLE ALLOCATION OF RISK UNDER THIS AGREEMENT.”



The Contract—Fees

“3.2 **Service Term.** The initial term for the Service is four years...

“3.4 **No Fees.** Google may charge a fee for the Services after the initial term, and may charge a fee for new functionality or optional enhancements that may be added by Google to the Service. Google may also offer a premium version of the Services for a fee. Prior to Google charging Customer as stated in this section, Google and Customer will negotiate either a new agreement or an amendment to this Agreement.

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 primary jobs of pursuing knowledge in a way that protects their rights and academic freedom.



References

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- Neil Robinson et al, *The Cloud: Understanding the Security, Privacy and Trust Challenges*. Rand Corporation. 2011.
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