

# The Fog over the Grimpen Mire: Cloud Computing and the Law

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# Cloud Computing: what is it?

- A buzzword
- Remote computing with software accessed online
- See also:
  - Software as a Service
  - Grid computing
  - Web 2.0
  - on-demand computing
  - utility computing
  - Internet service platform
  - ASPs
  - Everything as a Service

# Cloud Computing: examples

- Amazon's Elastic Compute Cloud (infrastructure)
- Google Apps (platform)
- salesforce.com (software)
- Theoretical example: online Easter Egg business
- Real example: NY Times archive

# New York Times, 29 March 1902

<http://www.tinyurl.com/5cve86>

## THE HOUND OF THE BASKERVILLES.

DID IT SLAY SIR CHARLES?

Sherlock Holmes Called Upon to Solve  
the Tragic Mystery.

Weird Indications that the Local Superstition of a Demon Hound that Haunts the Devon Moorland Near Baskerville Hall Has a Basis in Fact — What Seems to be a Print of a Giant Canine Paw Found Near the Spot Where the Head of the House of Baskerville Fell Dead — No Other Clue Known, but Mr. Holmes and His Friend Dr. Watson Are Believed to be Working on Definite Lines — The Legend of Hugo Baskerville

”In the real world national borders, commercial rivalries and political imperatives all come into play, turning the cloud into a miasma as heavy with menace as the fog over the Grimpen Mire that concealed the Hound of the Baskervilles in Arthur Conan Doyle’s story.”

Bill Thompson

Journalist, BBC





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# Breakfast in Paris, dinner in Madrid data in Washington

- No BlackBerries for French government officials
- US Patriot Act, UK Regulation of Investigatory Powers Act
- Data in cloud services has to be **unencrypted** at the point of processing
- Tour & Marketing International, of Spain



Image by Ari Bakker,  
<http://www.flickr.com/photos/aribakker/178822470/>

“GOOGLE AND PARTNERS DO NOT WARRANT THAT (i) GOOGLE SERVICES WILL MEET YOUR REQUIREMENTS, (ii) GOOGLE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS .. WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL .. WILL MEET YOUR EXPECTATIONS...YOU EXPRESSLY UNDERSTAND AND AGREE THAT GOOGLE AND PARTNERS SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES.. RESULTING FROM.. ANY MATTER RELATING TO GOOGLE SERVICES.”

Terms of Service

Google Apps



“We will have no liability to you for any unauthorized access or use, corruption, deletion, destruction or loss of Your Content”

Customer Agreement

Amazon Web Services



“You may not access the Service for purposes of monitoring its availability, performance or functionality”

Master Subscription Agreement

[Salesforce.com](https://www.salesforce.com)



# Software sales vs network outsourcing

- Software licence
  - blanket warranty disclaimer
  - blanket liability disclaimer
- Network outsourcing agreement
  - Service Level Agreement
    - % uptime, data backup intervals, response time, audit + security standards
  - penalty clauses
- Cloud Computing could go either way

“You shall not disclose AWS Confidential Information during the Term or at any time during the three (3) year period following the end of the Term.... AWS Confidential Information includes... the nature, content and existence of any discussions or negotiations between you and us.”

Customer agreement

Amazon Web Services





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# Subcontracting

- Providers of microservices may change hourly
- What if two don't combine properly?
- Who's to blame if there's a fault?
- Who should be paid what?
- Can an unpaid subcontractor keep buyer's data?



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# Who can use which data?

- Customer data
- Account data
- Business data
  - including internal state of applications
- Activity data

“In the event this Agreement is terminated (other than by reason of your breach), salesforce.com will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination.”

Master subscription agreement

Salesforce.com





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# Some entrepreneurial opportunities

- Pick a jurisdiction, any jurisdiction
- Lock-in by cloud infrastructure provider
- Theft/sabotage by vendor's employees
  - or other customers

# More entrepreneurial opportunities

- Exploiting concentration of services and/or data
  - denial of service extortion
  - theft of 1M emails+phone #s from salesforce.com
- Data resale



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# Good news

## Cloud Computing advantages

- For buyers:
  - Only pay for what you use
  - Accessibility, ease of use
  - Hardware flexibility
- For vendors:
  - New markets
  - Advertising support
- For lawyers:
  - £££

**LABS<sup>hp</sup>**

