Big Data, Databases and ”Ownership” Rights in the Cloud: A New Contractual Framework

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論 文 内 容 の 要 旨

Two of the most important developments of this new century are the emergence of cloud computing and big data. However, the uncertainties surrounding the failure of cloud service providers to clearly assert "ownership" rights of data and databases during cloud computing transactions and big data services have been perceived as imposing legal risks and transaction costs. This is also slowing down the capacity of the Internet market to thrive. "Click-through" agreements drafted on a "take it or leave it" basis govern the current state of the art and they do not allow much room for negotiation. The novel contribution of this thesis proffers a new contractual model advocating the extension of the negotiation capabilities of cloud customers, enabling thus an automated and machine-readable framework, orchestrated by a "cloud broker". Cloud computing and big data are constantly evolving and transforming into new paradigms where cloud brokers are predicted to play a vital role as "innovation intermediaries" adding extra value to the entire life cycle. This will alleviate the legal uncertainties in the society by means of embedding legal requirements into the user interface and related computer systems or its "code". This work situates the theories of law and economics and behavioral law and economics in the context of cloud computing and takes database rights and "ownership" rights of data as canonical examples to represent the problem of collecting, outsourcing and sharing data and databases at the global scale. It does this by highlighting the legal constraints concerning "ownership" rights of data and databases, and proposes to find a solution outside the boundaries and limitations of the law. By allowing cloud brokers to establish themself in the market as entities coordinating and actively engaging in the negotiation of Service Level Agreements (SLAs), individual customers and Small Medium-sized Enterprises (SMEs) could efficiently and effortlessly choose a cloud provider that best suits their needs. This approach, that I call "Plan-like Architectures", pursuits to create a more trustworthy cloud computing environment and yield radical new results for the development of the cloud computing and big data market.