

HAZY TERMS IN THE CLOUD

A short study of the terms and conditions
of cloud storage services

By the Norwegian Consumer
Council

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1 Introduction

The Norwegian Consumer Council has investigated the Terms of Services and Privacy Policies of 7 B2C cloud storage services in a study that was published on January 31st 2014. The study should be highly relevant to the Commission's work on Cloud Computing Contracts as it includes some of the most widely used cloud storage services and several services with other distinguishing features.

The services were selected based on market share and unique features:

- **Dropbox**, the most widely used cloud storage provider in Norway
- **Google Drive**, one of the most widely used services globally
- **Apple iCloud**, one of the most widely used services globally
- **Microsoft SkyDrive** (now OneDrive), one of the most widely used services globally
- **Jottacloud**, a Norway-based provider widely used in Norway
- **SugarSync**, a major service operating independently from other corporations
- **SpiderOak**, one of the largest providers with relevant distinguishing features including "zero-knowledge" client-side encryption and focus on consumer privacy (similar providers include Wuala, Mozy, Bitcasa, Mega)

Other significant providers that were considered, such as Amazon Cloud Drive, Ubuntu One, Box.com, Mega, Wuala and CloudMe, were not included as they have a negligible presence in Norway and/or few distinguishing features relevant to the study.

The study was conducted by analysing the Terms of Services, Privacy Policies, the FAQ-sites of each company and respective blogs.

We purposely kept this study short, as we did not want to replicate the length of the Terms of Conditions, but we are happy to share more of our background material and further considerations, if this is of interest.


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2 Content ownership and protection against data loss

	 Dropbox	 SkyDrive.	 iCloud	 Google Drive	 Jottacloud	 SPIDEROAK	 SugarSync
You retain ownership of uploaded content	✓	✓	✓	✓	✓	✓	✓
The service can not use your content for other purposes than storage	✓	✗	✓	✗	✓	✓	✓
Guarantees that your content is safe from data loss	✗	✗	✗	✗	✗	✗	✗

2.1 Ownership of uploaded content

The Consumer Council has looked at two aspects of ownership:

- Who holds the copyright to the uploaded files, and
- Is the license granted to the service unreasonably broad.

It is a common concern among consumers that they lose ownership of uploaded files when storing them in the cloud. However, **none of the services in the Consumer Council's study claim ownership to the user's uploaded data.** In fact, Dropbox, Apple iCloud, Microsoft SkyDrive and Google Drive state this unequivocally:

You retain full ownership to your stuff. We don't claim any ownership to any of it. These Terms do not grant us any rights to your stuff or intellectual property except for the limited rights that are needed to run the Services [...]
– Dropbox Terms of Service

You retain ownership of any intellectual property rights that you hold in that content. In short, what belongs to you stays yours.
– Google Terms of Service

Jottacloud, SpiderOak or SugarSync make no mention of this issue. The Consumer Council would prefer all services to state this explicitly; however, retention of consumer ownership is implied in all 3 services:

- Jottacloud states that “[t]he Service allows the User to share, send and exchange digital content with other people. The User must have all necessary rights to distribute this digital content”.
- SpiderOak has an encryption scheme where only the user can decrypt the data, making it impossible for SpiderOak to see any of the user's content. This is explained thoroughly in the section titled “Data Protection and Encryption” in SpiderOak's Service Agreement.
- SugarSync requests a license to “use, copy, transmit, distribute, store and cache” the files, prefacing this request with the following sentence: “In order to make the Service available to you, we need your permission to sync and store your Files”.



2.2 Use of content for other purposes than storage

The second aspect of file ownership is licensing the consumer's files. The license determines what the service is allowed to do with the consumer's files, and should be limited solely to the permissions needed to run the service. While the Consumer Council did not do a legal analysis of each license, we did investigate whether the files could be used for other purposes than just providing the storage service.

Two services were found to have overly broad licenses: Google Drive, and, to a lesser extent, Microsoft SkyDrive. As the terms of service of these two services apply to a variety of services in addition to online storage, the license also extends to those services. **This means that any information submitted in a Google Drive document can be used by any of the other Google services.**

We have formerly criticised Google for its decision to “combine data from all of your services... into a single profile without user consent and without any meaningful opportunity for users to opt-out.”¹ The French Data Protection Authority agreed with this criticism when it fined Google for its combined terms on 8th of January this year, stating that: “it permits itself to combine all the data it collects about its users across all of its services without any legal basis”.²

There are several other provisions in the Google license that are overly broad:

When you upload or otherwise submit content to our Services, you give Google (and those we work with) a worldwide licence [Emphasis added]

The highlighted text effectively means that Google is able to sub-license content to other companies. Sub-licensable licenses open up the possibility to very broad content usage by the service provider, and should never be included in an online hosting service unless the right is very well defined and limited.

Another problematic provision in Google's terms is the provision that “*this licence continues even if you stop using our Services*”. While this was likely not written with Google Drive in mind, it still applies to the service. These issues should be addressed by having a separate contract specific to Google Drive, in addition to the main Google ToS, that narrows the scope of the license.

SugarSync's license is a good example of an adequately limited license:

[You] hereby grant to SugarSync a license: (i) to use, copy, transmit, distribute, store and cache Files that you choose to sync and/or store; and (ii) to copy, transmit, publish, and distribute to others the Files as you designate, whether through the sharing or public linking features of the Service, in each case solely to provide the Service to you. [Emphasis added]

2.3 Guarantees that your content is safe from data loss

None of the services guarantee a certain amount of uptime, that the service is available or that the consumer's content is safe from data loss. The nature of digital storage makes such a promise

¹ <http://www.consumersinternational.org/media/920323/tacd%20google%20letter.pdf>

² <http://www.cnil.fr/english/news-and-events/news/article/the-cnils-sanctions-committee-issues-a-150-000-EUR-monetary-penalty-to-google-inc/>









impossible, and **consumers should be aware of the risks associated with any kind of digital storage and have adequate backups regardless of whether they use cloud storage**. However, it is worrying that the services don't promise any kind of compensation in case of data loss and disclaim any responsibility.

In addition, it is problematic that many cloud storage services often advertise themselves as very safe and may lead consumers to believe that they do not need to worry about backups, using language such as:

- "Protect your files with SkyDrive"
- "iCloud helps give you peace of mind."
- "Even if your phone goes for a swim, your files are safely stored & up to date. Upload files from your Android phone or tablet to sync them with your other devices & keep them safe in Drive."
- "Even if your phone goes for a swim, your stuff is always safe in Dropbox and can be restored in a snap."
- Dropbox: "Safe and secure"

3 Amendment of the terms, account termination

	 Dropbox	 SkyDrive	 iCloud	 Google Drive	 Jottacloud	 SPIDEROAK	 SugarSync
Can not terminate your account without reason	✗	✗	✗	✗	✓	✓	✗
Can only change the terms after giving you notice	?*	✓	✗	✓	?**	✓	✓
Terms are governed by Norwegian or EU law	✗	✓	✓	✗	✓	✗	✗

* Dropbox only gives notice "if the revision, in [their] sole discretion, is material"

** The service's terms are unclear

3.1 The service can only terminate your account with valid reason

Dropbox, SugarSync and Apple iCloud can terminate a user's account without any reason or notice, using wording such as:

Free Account may be terminated, by SugarSync at any time at its sole discretion without notice or liability to you.

– SugarSync Service Terms of Use

SugarSync may terminate your Paid Account or your Group Account (i) effective as of the end of the then-current Subscription Period for any reason or no reason and without liability to you; and (ii) without cause during the Subscription Period provided that SugarSync returns a pro rata portion of the Subscription Fee to the party who has paid for the account.

– SugarSync Service Terms of Use



Though we'd much rather you stay, you can stop using our Services any time. We reserve the right to suspend or end the Services at any time, with or without cause, and with or without notice. For example, we may suspend or terminate your use if you are not complying with these Terms, or use the Services in any way that would cause us legal liability or disrupt others' use of the Services. [Emphasis added]

– Dropbox Terms of Service

This kind of one-sided provision has a lack of proportionality between the service provider and the consumer. If the consumer's account is terminated, the consumer is left without any rights at all.

However, some of the studied services can **only close accounts with a valid reason**, such as violation of the terms of service, and the Consumer Council is of the opinion that this should be the standard in all cloud computing contracts. SpiderOak had the best terms in this category, promising to give notice and giving the consumer the ability to respond to the decision:

If, in using the SpiderOak Plus service you are deemed to have violated the policies set forth above in this Agreement, SpiderOak reserves the right to freeze your account immediately, and shall provide you with written notice via email of your violation so that you may respond to such determination within thirty (30) days. If no response is received by SpiderOak within thirty (30) days of sending you notice of the violation, SpiderOak reserves the right to cancel your membership. Upon deciding to cancel your membership pursuant to this Section, SpiderOak shall provide you with written notice via email of such cancellation and shall continue to store your Selected Data for a period of sixty (60) days from the date notice of cancellation is sent, after which time your Selected Data shall be purged from the system.

A common practice among many free services, including cloud storage, is that **free accounts expire when inactive**. When an account expires, all content is deleted and the account may also be deleted. Dropbox and SugarSync delete inactive accounts after 90 days, iCloud after 180 days, SkyDrive after 270 days and Jottacloud after 1 year. While it is reasonable that unused accounts are deactivated, it is possible that 90 days is too short.

3.2 Notice period before changing the terms

There are significant variations in this category. Some services may provide notice upon changing the terms, while others will give advance notice. The means of providing notice varied between providers, with only some of them stating that they may use email (all of them open up to the possibility of using other means).

Microsoft and Google provide advance notice with a set timeframe. Microsoft gives at least 30 days advance notice, while Google gives at least 14 days notice. SugarSync and Jotta also give advance notice, and new terms come into effect upon renewal of the subscription period. Dropbox and SpiderOak give notice, but new terms can come into effect immediately upon giving notice. The only service that makes no promise about giving users notice is Apple, with the statement that “Apple may provide you with notices”:



Apple may provide you with notices regarding the Service, including changes to this Agreement, by email to your iCloud email address (and/or other alternate email address associated with your Account if provided), by regular mail, or by postings on our website and/or the Service.

The best terms in this area are the Microsoft Services Agreement, which in addition to having the longest notice period (30 days), is also the only one that limits Microsoft's right to change the terms:

We'll inform you if we intend to change this agreement. We may change the terms of this agreement if: (i) it is necessary due to applicable law, including, but not limited to, a change of such law; (ii) it is necessary due to an advice and/or order based on applicable law; (iii) the equivalence ratio between service and consideration is disordered; (iv) it is necessary from a technical point of view; (v) it is necessary to ensure the operation of the services; or (vi) the terms will be changed to the advantage of the user. We'll inform you of the intended change before it takes effect, either through the user interface, in an email message, or through other reasonable means. We'll provide you the opportunity to cancel the services at least 30 days before the change becomes effective.

3.3 Terms are governed by Norwegian or EU law

Cloud services are, by their nature, global services, which introduce new challenges with regards to legal compliance. All services in the Consumer Council's study, except Jottacloud, are based in the United States. However, Microsoft, Apple and Google also market their services in Norwegian and other EU languages towards Norwegian and EU consumers.

Dropbox, SpiderOak and SugarSync do not have any marketing in Norwegian and are English-language services for Norwegian users. They require that any disputes must be resolved in an American court. **Although Google is marketed towards Norwegian consumers, it also requires that disputes are resolved in California.**

Microsoft SkyDrive and Apple iCloud let local EU/EEA laws govern consumer issues, while Jottacloud is governed exclusively by Norwegian law.



4 Privacy

	 Dropbox	 SkyDrive	 iCloud	 Google Drive	 Jottacloud	 SPIDEROAK	 SugarSync
You can delete your account	✓	✓	✓	✓	✓	✓	✓
Stored data is deleted after termination	?*	?*	?*	?*	✓	✓	✓
Tells you about law enforcement requests	✓	✗	✗	?**	✗	✓	✗
Will not look at the content of your files	✓	✗	✗	✗	✓	✓	?***

* Dropbox, SkyDrive, iCloud and Google Drive do not state how long it takes to delete files

** Google gives notice "when appropriate", which is less of a commitment than other services

*** SugarSync makes no statement about this in their terms or elsewhere on their site

4.1 Users can delete their own account

It should always be possible for consumers to terminate their relationship with a service provider. This is especially important if a consumer is concerned about private data being abused. Even if the service has good privacy policies, service providers can be susceptible to data breaches. Therefore, it is important that consumers can terminate their accounts if they stop using a service.

All services in the Consumer Council's study let users delete their accounts. However, it is a common practice to not offer such a feature.³

4.2 Stored data is deleted after account termination

It is a reasonable expectation that all stored files and personal data will be deleted when an account is deleted. Indeed, all the services in the study state that this data will eventually be deleted. However, only Jottacloud, SpiderOak and SugarSync provide any information about how long it takes to delete information, and even then, the information is incomplete. For example, SugarSync does not state how long it takes to delete personal information, only files:

Your files and photos may be stored for up to 90 days after you have deleted them from your account or after your account has been terminated.
– SugarSync Privacy Policy

Only Jottacloud gives any time frame for both personal data ("User data") and stored files ("User's data"). It is to be noted that in Jottacloud's case, this information is not listed in the Privacy Policy, but in the Terms of Use.

For Free Accounts and Paid Accounts, Jotta reserves the right to store User data for up to 90 days after the User account has been Terminated.

³ <http://www.accountkiller.com/en/Blacklist>



[...]

The User's data will be deleted immediately on termination of accounts. If the User Cancels his Subscription we will delete the User's data immediately after the subscription period has ended.

– Jottacloud Terms of Use

Dropbox, Microsoft SkyDrive, Apple iCloud and Google Drive all state in one way or another that data is eventually deleted, but do not give a specific time frame:

You may terminate your Account and/or stop using the Service at any time.

[...]

In addition, after a period of time, Apple will delete information and data stored in or as a part of your account(s). [Emphasis added]

– Apple iCloud Terms and Conditions

You may terminate the services at any time and for any reason. [...] However, please note that while content you've deleted or that is associated with a closed account may not be accessible to you, it may still remain on our systems for a period of time. [Emphasis added]

– Microsoft Services Agreement

We will keep your data only as long as you ask us to keep it.

– Google Drive privacy policy FAQ⁴

We are aware that there are internal guidelines in some of these services with regard to data deletion time frames. **We see no reason that these timelines should not be public, to give more predictability to the consumers.**

4.3 Informing users about law enforcement requests

This aspect has become more relevant during the last year. From a privacy perspective it is important that users know about data requests from authorities. This gives users a chance to defend themselves against overreaching law enforcement requests. The Electronic Frontier Foundation publishes a yearly report, *Who Has Your Back?*, where they state that “[p]romising to give notice should be an easy commitment to make — the company doesn't have to take a side, it merely has to pass on important information to the user. And companies don't have to give notice if the law or a court order prohibits it”.

While Dropbox, Google and SpiderOak have published law enforcement guidelines that state that they may notice the user, only SpiderOak has included this in their Privacy Policy. Microsoft also publishes a transparency report,⁵ and has informed us that it is a conscious decision to not notify users as they fear it might interfere with criminal investigations.

⁴ https://support.google.com/drive/answer/2733115?hl=en&ref_topic=2428743

⁵ <https://www.microsoft.com/about/corporatecitizenship/en-us/reporting/transparency/>



4.4 Who has access to the content of your files

This is separated into two different aspects: Whether the service employee has access to the user's files, and what kind of automated data mining is performed on the user's files. While some services, such as Dropbox⁶ and Jottacloud,⁷ explicitly mention that employees are prohibited from viewing customer data, we would like to see all services make this clear.

However, some services are clear that they can look at the content of your files with no explicit limitation:

Microsoft reserves the right, at its sole discretion, and without any obligation to do so, to review and remove user-created services and content at will and without notice, and delete content and accounts. [Emphasis added]

– Microsoft Code of Conduct, part of the Services Agreement

For example it is reasonable that services scan documents for malware or illicit pictures of child abuse, such as Microsoft's PhotoDNA,⁸ or that documents are opened to generate document previews (as is the case with Dropbox). However, the quoted statement also opens up the possibility of employees reviewing user content, which was unlikely to be the intent. Terms should be much clearer as to what is being done with the user's files so that the consumer is in a better position to make well-informed choices.

Some cloud services are designed specifically to make content impossible to open for the service provider, as is the case with SpiderOak. When using SpiderOak, encryption and decryption of the user's data is done on the user's computer using the user's password, making it technically impossible for SpiderOak to open files without the user's consent. However, this also creates several limitations, most notably that the user loses access to all data if the password is lost.

While this design is not a solution for most cloud services, we would like services to be clearer as to what they do (and do not do) with the user's data. For example, Jottacloud has a privacy guarantee, which includes the following statements:

- *We will not monitor what you store on Jottacloud*
 - *Our employees will not open, access or read your files without your written consent*
- Jottacloud Privacy Guarantee⁹

While this "privacy guarantee" is commendable, we would like to see more of this kind of information in the services' privacy policies, as it is likely already part of many companies' internal guidelines.

⁶ "Employees are prohibited from viewing the content of files" <https://www.dropbox.com/help/27/en>

⁷ "Our employees will not open, access or read your files" <http://www.jottacloud.com/its-your-stuff-guaranteed/>

⁸ <https://www.microsoft.com/en-us/news/presskits/photodna/>

⁹ <http://www.jottacloud.com/its-your-stuff-guaranteed/>



5 Readability of the terms of service

An aspect of the terms that was not formally studied, but still deserves a mention, is the readability of the terms. Google and Dropbox had short contracts with relatively plain language. Although Microsoft's terms were among the longest in the study, they use a surprisingly simple language in an easy to understand question/answer format, making them the easiest terms to analyse. Apple iCloud, on the other hand, has technical legal language and no text formatting, making them the hardest terms to read.

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