
WEBSITE HOSTING CONTRACT

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Abstract: *A web hosting contract is one of the most important types of electronic contract, as it governs the relationship between the web hosting contractor and the user. The web hosting contractor undertakes storage of data and information for clients and provides the technical means to enable them to access this storage online. In this case, the web hosting provider acts as a neutral intermediary in the transmission of information, without being responsible for its content, although it is responsible for any breach of the contract, or the hosting of illegal content. Consequently, it acts as a lessor for a space on the network. Due to the lack of any legal framework governing this relationship in either Egypt or Iraq, this type of contracts raises many legal questions. The study concludes with some recommendations for further studies.*

Keywords: *Web hosting contract, Internet, Hosting contractor, Internet user, Data and information, Online storage*

I. INTRODUCTION

The internet is now an important way of concluding contracts and conducting financial transactions, but at the same time it carries risks to moral values, the rights and security of individuals and society, and the abuse of the personal rights of others. For this reason, there is an urgent need to confront these risks and make changes, requiring a rapid development in the treatment of legal texts of internet service providers. The increased need for internet services has led to the emergence of new patterns of relationships and legal ties, and the consequent emergence of special legal problems regarding these relationships. One such is the relationship between the web hosting contractor and user based on a website hosting contract, through which data and information storage is carried out. This is an indefinite modern contract and as yet Egyptian and Iraqi legislators have not regulated it with special provisions.

The web hosting contractor is the second intermediary link on the internet, as it is responsible for storing data and information for its clients and providing them with the technical means to enable them to access this stock. In this case, the contractor is a neutral intermediary in the transmission of information, and while it is not responsible for its content, it is responsible for contract breaches or hosting illegal information. Consequently, it acts as a lessor for a space on the network.

In the absence of a special legal framework governing the relationship between the web hosting contractor and user, the web hosting contract is the subject of many legal questions, such as those related to its definition, distinctive characteristics, parties or legal nature, to the rights and obligations of the parties, and the determination of contractual responsibility for the undertaker. Hence, it is important to determine the responsibility of the harbour operator for illegal electronic content, in particular, and its role in connecting the user to the network.

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The importance of this study, therefore, stems from the fact that the Egyptian and Iraqi legislations have not regulated web hosting contracts. This is in contrast to the Bahraini and Omani legislation on electronic transactions, which are more advanced than other Arab legislations on trade and electronic transactions, as they separate from other legislations regulating the responsibility of internet service providers. In the absence of any legal text, the identification of the provisions of the web hosting contract becomes an absolute necessity. In this regard, the aim of this study is to identify web hosting contracts in terms of what the contract is, its composition, and its effects.

Accordingly, the study was divided into parts: in the first, the nature of the web hosting contract is considered, alongside its legal nature and distinction from other contracts; in the second, we focus on the elements of the web hosting contract, and its effects.

II. WEB HOSTING CONTRACTS

Definition of a Web Hosting Contract

A web hosting contract can be defined as a service contract, in which the web hosting contractor is obligated to place at the disposal of the user some of the capabilities of its electronic devices, to use them in achieving its interests, by allowing the user to have an electronic address. Thereby, space is allocated on the hard disk of the contractor's computer, and the caller on the internet, which gives the freedom to dispose of the information on the site, in return for a fee.¹

As for the web hosting contractor, this is a natural or juridical person responsible for storing and preserving data and information for clients. The contractor provides technical and informational means that allow access to these data and information, in exchange for an agreed-upon financial amount.² This is defined by Article 14 of the European Directive on Electronic Commerce and Article 2(1–6) of the French Digital Economy Act of 2004, issued on June 21, 2004. The consolidated version of April 24, 2018, is a model for the laws that regulate the responsibility of internet service providers. In the text, the hosting operator is referred to as: "Every natural or legal person places, even without charge, at the disposal of the public via the Internet, storing texts, pictures, sound and messages, whatever their nature, which is provided by the beneficiary of these services". In the Iraqi and Egyptian legislation, there is no definition of the web hosting contractor, because the legislation lacks a law regulating the work of internet service providers.

Characteristics of a Hosting Contract

A web hosting contract is distinguished from other contracts by a set of characteristics which will now be presented. The first characteristic is that it is an innominate contract, or a special type contract, as the legislator has not dealt with it in a specific name or issued

¹ NASSER, A.-M. Civil liability for internet mediators. *Al-Qadisiyah Journal of Law and Political*. 2009, Vol. 2, No. 2, p. 241.

² EL-GAMMAL, S. *Contracting via Modern Communication Technologies*. Cairo: Arab Renaissance House, 2007, p. 305.

a specific law to organise it. Second, it is a consensual contract, as it is sufficient to hold it with the consensus of the parties, without the need for being in writing or any other formality. Third, it is binding on both parties, as each is bound by obligations corresponding to those of the other. This was confirmed by the French Court of Cassation on May 10, 2012.³ The fourth characteristic is that it is an e-commerce contract, because e-commerce includes every economic activity by a person done remotely by electronic means, to supply goods or services. E-commerce services include the supply of information online, and hosting information.⁴

The fifth characteristic is continuous implementation, because the matter requires the continuous presence of information without interruption. The sixth characteristic concerns adherence contracts (standard form contracts), in which the information supplier adheres to the conditions laid down by the web hosting contractor and accepts no amendment. Both electronic communication contracts and electronic commerce contracts are deemed compliance contracts, as confirmed by the French judiciary, which stated that electronic communication contracts are not completely free will as there is no economic independence.

Finally, a web hosting contract is a compensatory contract, in which each party receives an interview and compensation for what is given. The web hosting contractor stores the information and broadcasts it on the site, so that it is available to the public upon entering the site. In return, the information supplier or site owner undertakes to pay the agreed subscription. Sometimes the web hosting contractor provides the hosting service free of charge, but this does not negate the status of compensation, and the contract is not a donation contract. This is due to the presence of a fee obtained by the contractor and the site owner, who is compelled to place advertisements on the site for financial compensation. Many sites offer to host other websites or create free sites in exchange for advertising, for example, Google AdSense.⁵

The Legal Nature of Hosting Contracts and Differences from Other Contracts

The relationship between the user and the web hosting contractor is a contractual relationship, because it is an information hosting contract. However, adopting this contract is extremely difficult not only due to the privacy surrounding its conclusion, but also because the web hosting contract must be distinguished from other contracts. To consider this issue, we first look at the legal nature of the web hosting contract, before distinguishing this contract from others.

The Legal Nature of the Web Hosting Contract

Unravelling the legal nature of the web hosting contract is key to identifying the obligations incurred by the parties thereof, in addition to the fact that the responsibility of the

³ Cass.com, 10 May 2012. N: 11-15110. In: *Légifrance* [online]. [2020-04-12]. Available at: <<https://www.legifrance.gouv.fr>>.

⁴ BRUGUIERE, J. *L'exécution du contrat électronique, Le contrat électronique*. Paris: LGDJ, 2005, p. 71.

⁵ In: *Djelfa, Wikipedia* [online]. [2021-08-30]. Available at: <www.djelfa.info>, <www.nizcosopt.com>, <en.wikipedia.org/wiki>.

web hosting contractor is closely related to its legal nature. Given the lack of regulation governing hosting contracts, perhaps due to its relatively new emergence, it is therefore an innominate contract. This has prompted jurists to try to correlate it with a nominate contract, in order to subject the innominate contract to the legal provisions of a nominate one. This has resulted in two differing jurisprudential perspectives.

Web Hosting Contracts as Work by the Job Contracts

One jurisprudential opinion states that a web hosting contract is work by the job, as it is combined with a work by the job contract. Although both types are indeed work contracts, the web hosting contractor performs work to complete a specific job which, in this case, is to host information on the hard disk of their computer, provide technical tools and devices, and configure these on the customer's personal computer. This meets the needs of the customer in exchange for a fee to which the user is committed.⁶ The purpose of the contract is not to rent out the hardware, but rather to cover the work performed or service provided to the consumer, and as such the hardware is only the means of carrying out the work or service.⁷ While the two types of contract are similar, there is no sub-ordinate relationship between the web hosting contractor and the user.

Web Hosting Contracts as a Lease Contract

Another jurisprudential opinion argues that the web hosting contract is a lease of items, because the web hosting contractor allows the user of the information network to utilise certain capabilities of its devices during the specified contract term, so that the user can download, store, publish, display, and distribute information, text, images and videos on the internet, in exchange for a pre-determined fee. The user then returns the hardware to the web hosting contractor upon expiration of the contract, when ownership of the hard disk space returns to the web hosting contractor. In this way, the contract is characterised as a lease, since the purpose is to enable the user to use the leased space.⁸ Also, services provided by the web hosting contractor, such as the commitment to provide technical assistance to network users and the provision of e-mail, represent a commitment sub-ordinated to its essential commitment to leasing hard disk space, without which the service cannot be used.

III. CONCLUSION

We propose that a web hosting contract can be characterised as a lease contract, as the provisions of the latter can be applied to the former. The services provided by the web hosting contractor are the subject of the contract, as the contractor neither intends nor

⁶ NASSIF, E. *Electronic Contracts in Comparative Law*. Lebanon: Al-Halabi Human Rights Publications, 2009, p. 50.

⁷ BADR, O. *Consumer Protection in Electronic Contracting*. Alexandria: New University House, 2005, p. 124.

⁸ CAPLAIN, P. Le contrat d'hébergement de site web. In: *Juriscom.net* [online]. [2020-06-12]. Available at: <<https://www.juriscom.net>>, Le TOURNEAU, P. H. *Contracts informatiques et électroniques*. Paris: Dalloz, 2012, p. 371. See also: MANSOUR, M. *Electronic Responsibility*. Alexandria: New University House, 2009, p. 23.

desires to transfer all the rights concerning its hard disk space to the subscriber; rather, they aim to enable the latter to use it in exchange for a specific fee. This is consistent with the concept of the lease contract, as it is a contract by virtue of which the lessor is obliged to enable the lessee to use a specific item for a known term against a pre-determined fee.

Distinguishing Web Hosting Contracts from Similar Contracts

In order to refine our definition of a web hosting contract, we must distinguish it from other contracts which resemble or differ from it in certain ways. Among these are internet access and information supply contracts.

Web Hosting v. Internet Access Contracts

Internet access contracts can be defined as, “The contract whereby the internet access contractor undertakes to technically allow the user access to the network; by furnishing the means that allow access. This should be met by the user’s commitment to pay the subscription fee to access the network”.⁹ In this regard, the web hosting contract is similar to the internet access contract in some aspects. Most important is that both contracts are electronic and concluded remotely, as the parties do not physically convene, are located in different places, and the will is expressed online.¹⁰ Also, the contracts are binding on both parties, as there are obligations on each. In the scope of a hosting contract, the contractor becomes obliged to allocate to the customer a space on the hard disk in exchange for an amount of money committed by the customer. As for internet access contracts, the obligation that lies on the access port provider is the furnishing of the technical means which allow the user access to the network, again against a pre-determined amount of money.¹¹

Despite their similarity, there are some differences between each contract type in terms of the main contractual commitment. As noted, the main obligation of the provider is the provision of technical means, the most important of which is the communication program connecting the computer with the network.¹² However, the main commitment in a web hosting contract is for the contractor to allocate a portion of the technical capabilities of their devices in exchange for money.¹³ The contracts also differ in terms of their legal characterisation, as an internet access contract is characterised as work by the job contract, because the main contractual obligation is the service that the access port provider performs for the customer against a fee committed to by the latter to the provider.¹⁴ In contrast, web hosting contracts are lease contracts, in view of the main subject, which is to rent space on the web hosting contractor’s hard disk, in exchange for a fee.

⁹ NASSER, A.-M. *supra* note 1, p. 231.

¹⁰ DUDIN, B. *The Legal Framework of the Contract Concluded via the Internet*. Jordan: Dar Al-Thaqafa for Publishing and Distribution, 2009, p. 73.

¹¹ FARAH, A. The legal system of internet service providers. *Al-Manara Magazine*, 2007, Vol. 13, No. 9, pp. 329–330.

¹² ABDEL-MAJID, E. *The Impact of Scientific Progress on the Contract –Contract Formation/Contract Verification*. Baghdad: Nassif, 2007, p. 31, pp. 47–48.

¹³ DUDIN, B. *supra* note 10, p. 77.

¹⁴ AL-SAAD, J. *Problems of Contracting Online*. Baghdad: Al-Sanhouri Library, 2008, p. 36.

Web Hosting vs. Information Supply Contracts

An information supply contract is defined as, “A contract whereby a person is obliged to provide other mediators with the information and data transmitted on the website, [and] it is he who determines the content of what is broadcast on the site, and the data determined by this resource, maybe in the form of written texts, pictures or musical pieces, or an advertised trademark”.¹⁵ This text clarifies that the two contracts are similar in terms of being electronic and binding on both parties, in addition to being both compensatory and commercial contracts.

Despite these similarities, the web hosting contract differs in several ways. In the contract for the supply of information, the information resource is responsible for the content of the information transmitted over the internet; however, this responsibility is negated if it proves that it does not know the content of this information and that it immediately stops publishing upon knowledge of its illegality. This is due to the fact that the information supplier has an obligation to monitor the content of the information and examine it to verify its legality before publishing.¹⁶ As for the scope of the web hosting contract, the contractor is essentially not responsible for the content of the information stored except in two cases: the failure to implement the order issued to compel them to prevent access to the content; and, if a subscriber believes there is illegal content — or that the content would harm the subscriber’s rights — and the contractor fails to take the necessary measures to prevent the broadcast of the content, despite being warned.¹⁷ The two contracts also differ in terms of legal conditioning, as the contract for the supply of information is adopted as a contract for the sale of a service for a fee, while a web hosting contract is characterised as a lease.¹⁸

IV. THE COMPOSITION OF A WEB HOSTING CONTRACT AND ITS EFFECTS

The pillars of the web hosting contract do not differ in essence from the pillars of contracts in general, and so the consent of both parties is required for it to be legally valid and productive. Moreover, it must have a subject to its ruling, and a valid and legitimate reason. In relation to these points, we shall now address consent, the subject, and the cause in regard to web hosting contracts.

Consent

Consent is the cornerstone of a contract, and it is constituted by two matching wills. In order to produce a legal effect, consent must be rendered by a legally competent person and be free from defects that could potentially corrupt consent. Therefore, the conditions

¹⁵ EL-HEGAZY, A.-F. *E-Commerce and its Legal Protection*. Alexandria: Dar Al-Fikr Al-Jami’a, 2007, p. 83.

¹⁶ HASSAN, M. Contract for the supply of information via the Internet. *Law Journal Al-Mustansiriya University*. 2011, Vol. 4, No. 13-14, p. 220.

¹⁷ SYED, A. *Responsibility of Internet Service Providers for Illegal Electronic Content*. Cairo: Arab Renaissance House, 2010, p. 17.

¹⁸ HASSAN, M., *supra* note 16, p. 222.

related to consent are the requirements of its convention, in addition to other conditions for the integrity of consent, known as the conditions of the validity of consent; these two concepts will now be explained.

Conditions for the Convention of Consent

The constitution of mutual consent requires two matching wills recognised by law, and expressed in a congruent manner; that is, the will of the proposer, and the consent of the seconder. These two wills are expressed as proposal and acceptance. A proposal is generally defined as an unequivocal expression of will. It is issued by a person who addresses the other party in the contract, offering the latter the possibility of contracting, according to certain conditions. If the proposal is accepted, the contract is convened. In electronic contracts, such as web hosting contracts, a proposal is defined in the European Directive for Consumer Protection as, “Every remote communication that includes all the necessary elements of contracting, allowing the seconder (offeree) to accept the contracting directly”. The proposal must be unequivocal and irrevocable, and must also be specific enough to contain an adequate and clear definition of the contract to be concluded and the elements of its convention.¹⁹ The proposal or offer in web hosting contracts is rendered by the web hosting contractor and usually addressed to the public through various advertising methods, the most important of which is via the offerer’s website. These offers are made final and unmodifiable, and include all data. This makes the offer complete and negative of ignorance, and therefore it would be automatically convened if met with acceptance.²⁰

Regarding acceptance, when the person to whom the offer is addressed makes an expression of their will by accepting the proposal, the contract is convened. Acceptance must be rendered in response to an offer corresponsive thereto in all aspects. Therefore, mutual consent is present in web hosting contracts, and thus the convention of the contract is a factor of the congruent wills of both the user and contractor to the essence of the contract and all its elements. The expression of will online is embedded in the term ‘expression in writing’, which is not writing on paper as in traditional contracts, but rather an expression of will which is recorded in electronic form and then sent via the access port supplier. In turn, the supplier delivers the information to the addressee, and then this writing can be read by the counter party (the web hosting contractor) after decoding the machine language, represented by electronic or electrical pulses to the human language. Such a representation is not fully satisfactory as an ‘expression in writing’ if it is not possible to refer to it later, i.e. it must be stored in the computer memory in the form of data messages.²¹

Conditions for the Validity of Consent

For the hosting contract to be valid, consent must be issued by a person with full eligibility, who is free from the defects. The validity of the agreement requires clarification of

¹⁹ AL-KHASHROOM, A. E-Commerce Contracts via the Internet. In: *Proceedings of the Conference on Legal and Security Aspects of E-Operations of the Dubai Police Academy*. Dubai: 2003.

²⁰ In: *Netmasr* [online]. [2020-06-01]. Available at: <<https://www.netmasr.com>>.

²¹ ABDEL-MAJID, E., *supra* note 12, pp. 37–38.

the eligibility of the parties to the contract and the defects of consent. Firstly, the legal competence of the contracting parties concerns the person issuing the legal action. Regarding the eligibility of the web hosting contractor, their work is a commercial for-profit business, and therefore it is necessary to have the commercial capacity necessary to conclude the contract, whether they are a natural or legal person.

It is worth noting that the Iraqi Trade Law does not specify the eligibility of the merchant.²² Nevertheless, general rules in Iraqi Civil Law state that a natural person must be eighteen years of age at least, with an exception for a person who reaches the age of fifteen and who is authorised to engage in trade by a guardian, and with a licence from the competent court. Therefore, whoever meets the above criteria can enter into a web hosting contract. However, if the web hosting contractor is a juridical person, their competence is subject to the provisions incorporated in the document of its establishment, and if these criteria make the contractor legally competent with regard to embarking on the contract, then the contractor is permitted to conclude the web hosting contract. As for the user, the web hosting contract is a netting contract which the contractor takes into consideration for what they give, and, therefore, if the user is of an adult age, they can conclude the web hosting contract; if they are not, then the contract with the web hosting contractor is subject to the approval of the guardian. If they are not eligible, then the contract is void, whether the guardian authorises them or not.²³

Secondly, regarding the concept of defects of consent, the expression of consent must be rendered free from the defects of will, which are mistake, coercion, deceit, and obscene injustice and exploitation. These defects are of great importance due to the imbalance of knowledge parity between the contractors, which can lead to the consumer (the user) being under the penalty of one of them. Since a web hosting contract is shrouded in a lack of knowledge, and the user especially needs experience in the contract, the chance of the user falling into error is more likely than the web hosting contractor. A mistake in the web hosting contract and defects of will can be conceived in the capacity of the contractor, if it is a matter of consideration and the mistake is in the location of the contract. It is a condition of this mistake that it can be adhered to, that it be substantial, and that the other contractor knows about it or it is easy to know about it.²⁴

The defect of will termed coercion appears at first glance to be inconceivable in that there will be coercion within the scope of the web hosting contract, because it is concluded from a distance. However, when checking and searching it is clear that coercion can sometimes occur in a web hosting contract due to economic need, as the user is forced to conclude a contract because of their economic need for hosting. As such, it is conceivable that coercion may be due to monopoly and the user is forced to contract on unfair terms, under the influence of a threat to their interests due to the lack of an alternative.²⁵

²² SHAWWAT, H. *The Legal System for a Hotel Stay Contract*. Babylon: University of Babylon Master's Thesis, College of Law, 2012. p. 40.

²³ AL-HAKIM, A. M. *Al-Wajeez in Explaining Theory of Commitment in Iraqi Civil Law—Sources of Commitment*. Cairo: Al Atik for Printing and Publishing, 2010, p. 116.

²⁴ MUSA, H. *Information Delivery Contract*. Baghdad: Al-Nahrain University, College of Law, Master's Thesis, 2008. p. 114.

²⁵ NASSIF, E. *supra* note 6, pp. 134–135.

As for deception with obscene injustice, in the scope of the web hosting contract this is clear in misleading advertisements on the internet which have the intention of persuading the user to conclude a contract under certain conditions.²⁶ With regard to exploitation, in some cases, the web hosting contractor may take advantage of the need, recklessness, passion or lack of experience of the user, and the economic balance in the contract is disturbed, especially since many users of such contracts do not have sufficient experience. The contractor can thus exploit inexperienced users by offering unfair contracts.²⁷

The Subject

The subject of a contract concerns the matter to which the contract is returned, and its effect is proven in the contract, as well as the place in the web hosting contract, which is represented by the hosting service from the contractor, and the price from the user. Therefore, it is obligatory in the web store — the hosting and price service — that it be present or possible to be present, that it be appointed or subject to appointment, and that it be legitimate in the sense that it does not violate public order and morals.

The subject of the web hosting contract is to do the job of storing the information on a hard disk and uploading it to the server, so that it appears on the website for everyone who enters the site. It is an activity that fulfils the conditions in terms of the possibility of being present, specific, and legitimate. It is subject to the law regulating communications, and every natural person or corporate entity providing a telecommunications service must obtain a licence to do so from the Telecommunications Regulatory Authority.²⁸

Cause

The cause is the motivation for the contract and not just the final purpose, and it is stipulated that this be legitimate. A legitimate reason is one not prohibited by law, or which violates public order and morals, because if the obligation had no reason or was contrary to public order, the contract would be void. The cause of the web hosting contract is the desire of an internet service provider to host sites in exchange for money, which is a legitimate desire; it is also the desire of the requesting parties or information suppliers to store and publish their information on websites, which is a legitimate desire as long as the legal norms have been adhered to, whether for service providers or information suppliers.

The Effects of the Web Hosting Contract

A web hosting contract is binding on both sides, as it arranges corresponding obligations for both the web hosting contractor and the user, as the obligations of each party to

²⁶ MUHAMMAD, A., AL-BASIT. *Concluding the Contract via the Internet*. Beirut: Al-Halabi Human Rights Publications, 2010, pp. 237–238.

²⁷ HASHEM, H. *Privacy of Contracting Through Modern Communications*. Baghdad: Al-Nahrain University, College of Law, Ph.D. Thesis, 2010, p. 23.

²⁸ MUHAMMAD, A. AL-BASIT. *supra* note 26, p. 252.

the contract represent the rights of the other party. The basic principle is that the web hosting contractor is not responsible, as a general rule, for the content of the services or information that it provides to the participants because it plays a technical role, but, as an exception, its contractual responsibility is fulfilled when it violates one of the terms of the web hosting contract. In the next section, we deal with the obligations of the web hosting contractor and the employee, respectively, and the contractual responsibilities of the web hosting contractor.

Obligations of the Web Hosting Contractor

The nature of the service provided by the host makes it the closest and most able to know the content of any information or activity circulating across the internet, without using other internet service providers. As a result, the web hosting contract sets obligations for the contractor, which are clarified below.

Commitment to Monitoring Electronic Content

Given the great importance of the information circulated over the internet, especially its moral and economic value, it is necessary to secure and protect this information by controlling its circulation so that it does not deviate from the legal framework prescribed for it. Although, as we have seen, the web hosting contractor is generally obliged to provide storage and access to information to the user, and the technical means to enter the internet,²⁹ oversight by the contractor has nothing to do with the information, its content, or the topic of exchanged messages on the internet. The contractor's role is neutral, and therefore they have no knowledge of the content of the messages, or the nature of the information provided.³⁰

In theory, the contractor can reveal certain actions taken by an internet user, including: when and which sites were visited, searches, dialogues, emails, purchases, and subscriptions.³¹ Accordingly, the contractor must take the necessary measures to prevent the transmission of unlawful information that appears to be illegitimate. This includes manifestations of illegality which are an assault on the sanctity of private life, or where the content is related to crimes against humanity, war crimes, incitement of hatred, or child pornography.³² In this regard, the contractor must establish a system to filter illegal information so that it is not transferred and stored, at the request of the judicial authority, to ensure a balance between intellectual property rights and other rights and fundamental freedoms (freedom of expression and freedom of information). This was confirmed by the European Union's Judicial Court (CJUE) in its decision dated February 16, 2012, on filtering hosting services.³³ The filtering system requires that the contractor impose some control over the information or the so-called commitment to monitoring, by taking appropriate measures

²⁹ SYED, A., *supra* note 17, p. 92.

³⁰ MANSOUR, M. *supra* note 8, p. 210.

³¹ EL-HEGAZY, ABDEL-FATTAH. *The Crimes Created in the Field of Communication Technology*. Alexandria: Monshaat Al-Maaref, 2011, p. 92.

³² FERAL-SCHUHL, CH. *Cyberdroit*. Paris : Dalloz, 6 édition, 2010, No. 114.34 et 114.12, p. 803.

³³ See: Resolution No. 11/12, February 16, 2012 for CJUE. In: *Next Impact* [online]. [2020-05-25]. Available at: <<https://www.pcinpact.com>>.

in the event that they are warned of the illegality of the content, whether by the judiciary or others harmed by the illegality of the content.³⁴

Some legislations, such as American law, may make an exception for service providers, to enable them to monitor subscribers to their services by knowing what these subscribers are doing in the activity of interfering with others' devices, or storing materials that violate the law. in Article (18) of the Law Protecting private life in the field of American electronic communications.

Obligation to Provide Hosting and Data Protection Services

The commitment of the web hosting contractor to provide the hosting service is one of their most important obligations to the user during the agreed period, so that the latter can access the service as agreed in the contract without hindrance. The hosting service is defined as the activity practised by a natural or legal person responsible for storing websites and web pages on their computer, directly and permanently, for a fee. The host puts at the disposal of their clients the technical and informational means to broadcast information on the internet. Two of these means are the allocation of a space on the hard disk, and the provision of a special program for contacting the host, and modifying the stored information.³⁵

The commitment of the web hosting contractor to provide the service is an obligation to achieve a result, which is to deliver the user to the host service. The contractor cannot waive the responsibility unless it proves that there is an external reason which prevented the achievement of the result.³⁶ It is also the responsibility of the contractor to request data that identifies the customer's identity, without disclosing it unless necessary — this is an exception to the principle of protecting personal data and information in the field of communications.³⁷

Commitment to Inform

The importance of the commitment to inform arises due to the knowledge disparity between the two parties: one is a professional — the web hosting contractor — who has sufficient knowledge of the details of the service they provide, and of which the user is ignorant. The contract is thus concluded while the user is ignorant of the important aspects of the contract.³⁸ In this way, the contractor possesses essential information about both the hosting service and the contract that the parties seek to conclude. In contrast, the user does not know about it so that the user's satisfaction is correct.³⁹ Moreover, the contractor is also obliged to inform site owners (those seeking hosting) of the need to respect international

³⁴ FARAH, A. *supra* note 11, p. 334.

³⁵ Article 14 of the European Directive on E-Commerce No. 31 of 2000, and Article 2(1–6) of the French Law on Trust in the Digital Economy.

³⁶ ABDEL-SADIQ, M. *Voice Information Service and the Obligations Resulting from It*. Cairo: Arab Renaissance House, 2015, p. 36.

³⁷ T.com Paris, ref., 20. 3. 2002, Sergus, Expertises 2002, p. 27.

³⁸ ABDEL-SADIQ, M., *supra* note 36, p. 79.

³⁹ ABDUL-SALAM, S. *Commitment to Disclosure in Contracts*. Cairo: Arab Renaissance House, 2009, p. 10.

laws, agreements, applicable regulations, customs, and the established rules of conduct in this field, such as not to attack others and to respect intellectual property rights.⁴⁰

User Obligations

The hosting contract also sets obligations for the user, clarified below.

The User's Obligation to Pay Fees

The commitment of the user to pay for the hosting service is one of the main obligations imposed by the web hosting contract, as they are obliged to pay an agreed price which varies according to the disk space occupied; this fee usually includes all the services offered by the contractor related to the hosting.⁴¹ As for the method of payment, this can be physically outside the scope of the internet (the traditional method) and does not need to be discussed, due to the lack of any privacy and has been dealt with in all contracts. Alternatively, payment can be made electronically, in one of the following way:

Credit card, which is an electronic remote payment method that gives its holder a secret code used in the process of paying, transferring or withdrawing money over the internet.

Electronic money, defined as a class of electronic payment system that tries to contain the benefits of regular payment, as this method permits payment via the Internet, and therefore the user opens two accounts in his/her name in a particular bank, one in the regular currency and the other in the electronic currency. An amount of money is then transferred electronically from the regular account to the electronic account; once the web hosting contract is contracted, the user pays the price electronically and the merchant verifies the validity of the money and has the option to either leave it in the electronic account, or transfer it through the bank to regular currency.⁴²

Whenever the payment and manner of payment is agreed upon, the user is committed to doing so according to the agreed time, otherwise the contractor has the right to stop the information transmission.⁴³

Obligation to Provide Personal Data

This requires the user to respond to the service provider's request to provide data proving identity and so the eligibility of the contract. Article 6(3) of the French Law of Trust on the Digital Economy obligates everyone who deals with the internet to introduce themselves, whether are a natural or legal person, by publishing identification data of the name, address, or management centre.⁴⁴

The conclusion of the internet service subscription contract requires the subscriber to provide personal information and nominal data to the service provider directly or indirectly

⁴⁰ CAPLAIN, P., *supra* note 8, p. 29; FARAH, A., *supra* note 11, p. 334.

⁴¹ AL-ROUMI, M. *Online Contracting*. Cairo: University Press, 2014, p. 127.

⁴² SARHAN, A. Al-Wafa Payment. *Proceedings of the e-Banking Conference between Sharia and Law*. United Arab Emirates University, 2003, p. 283.

⁴³ CAPLAIN, P., *supra* note 8, pp. 26–28; TOURNEAU, P. H., *supra* note 8, p. 373.

⁴⁴ FERL-SCHUHL. *supra* note 32, p. 825.

before and during the conclusion of the contract. Either the subscriber has personal responsibility for the data and documents contained in the contract, or the service provider requests that the user complete the contract, and undertakes to validate the accuracy and integrity of the data and documents. The subscriber is solely responsible in the event that it is found that these are incorrect.⁴⁵ The user must also not provide incorrect, misleading or fraudulent information; otherwise, the service provider has the right to cancel the subscription contract without notifying the subscriber. In light of the foregoing, the user must cooperate with the contractor for hosting and provide information that facilitates the process of implementing the contract, as required and agreed upon between the two parties.

Compliance with the Purpose of the Contract

When using the hosting service, the user must employ the technical means provided by the contractor in a legitimate and ethical manner, and not for unlawful, unnatural or doubtful purposes. They must also abide by the etiquette in use, and derive from this a wide range of obligations, for example, not to capture, store or publish any material that violates public morals and ethics.⁴⁶ The user must respect the laws and regulations in force, and in international agreements, not to attack others and respect intellectual property rights.⁴⁷

The user must also cooperate with the hosting contractor to preserve and protect the information system from harm to networks from viruses and issues, or exchange information to ensure the regular performance of the service.

Contractual Responsibility for the Web Hosting Contractor

The principle behind contractual responsibility is that the web hosting contractor is not responsible, as a general rule, for the content of the services or information provided to subscribers. It is not able to delete or modify any information, as it is a neutral intermediary in the transfer of information and not responsible for the content. Its activity remains outside the content of the sites.⁴⁸ However, as an exception, its contractual responsibility is fulfilled if it violates one of the terms of the web hosting contract, such as the commitment to provide the technical means of communication which enable the clients to obtain data and information from the internet.⁴⁹

Moreover, the web hosting contractor, whether he is a natural or legal person, whether the provider of the service in return or for free, is not responsible for the unlawful content contained in the data and information, except in two cases: the failure to implement an order to prevent access to this content, and if the subscriber estimates the existence of unlawful content which could harm their rights, and the contractor does not take the necessary measures to prevent the broadcast of this content, despite the warning.⁵⁰

⁴⁵ MANSOUR, M., *supra* note 8, p. 115.

⁴⁶ SHUHAIB, A. Civil liability resulting from the assault on the right to mobile photo. *Law Journal, Al-Mustansiriya University*. 2012, Vol. 4, No. 19, p. 105.

⁴⁷ CAPLAIN, P., *supra* note 8, p. 29; Farah, *supra* note 12, p. 334.

⁴⁸ EL-GAMMAL, S., *supra* note 2, p. 306.

⁴⁹ NASSIF, E., *supra* note 26, p. 266.

⁵⁰ SYED, A., *supra* note 17, p. 17.

The responsibility of the web hosting contractor is also established if it exceeds its role as a host and exercises the role of information producer or supplier. According to the provisions of Article 14 of European Directive No. 31/8/2000 related to electronic commerce, the contractor is responsible for the content of the information or data it provides to the subscribers. The Paris Court of Appeal went to that, it decided that the hosting contractor if its practice of its work through a website for him is represented in arbitration in the information and services that he provides to the subscribers, as if he puts at its disposal on this site, some messages or pictures on its face. The character of the Commons, which loses its special nature, Fico In this case, he has gone beyond being a mediator in the transmission of information and data, and therefore is responsible for damages to subscribers or suppliers of information, and is also responsible for damages to others.⁵¹

The French judiciary held that the hosting contractor is committed to respecting the personal rights of others, and is responsible for unlawful information on the sites they host. This was established in a case brought by the wife of an important person to the hosting contractor, because dozens of personal images of her were published without her consent via the internet. This constitutes an assault on her right to the images, and despite the fact that the web hosting contractor's payment is limited to providing a space on the site, to store information with the knowledge of the publisher, the website owner was deemed responsible for the content of the site. The court issued a ruling on the responsibility of the web hosting contractor and obligated him to pay compensation to those affected by the publication of the images on the site that he was hosting. The court also established a ruling that the hosting contractor is committed to respecting the rights of others, and that they have the ability to examine the sites that they host. Moreover, they must take all necessary precautions to stop illegal data, and are not exempt from liability unless they can prove that they have fulfilled all their obligations, especially those related to respecting the personal rights of others.

V. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

First, in the absence of the legal regulation of a web hosting contract in most Arab countries, especially in Egypt and Iraq, and the lack of a legislative definition, it can be defined as: 'A service contract in which the web hosting contractor is obliged to place at the disposal of the user some of the capabilities of its electronic devices, to use them to achieve their interests, by allowing the user to have an electronic address, and thus allocating space for them on the hard disk of their computer, which is connected to the internet, allowing the user the freedom to dispose of the information on the site, for a fee'.

Second, the web hosting contract is distinguished by several important characteristics: it is consensual, ongoing, electronic and commercial, because it is concluded remotely by electronic means. The contract is binding on both sides, and also a form of compliance and netting contract. Third, characterising the website hosting contract as a lease contract

⁵¹ NASSIF, E., *supra* note 6, p. 267.

is the most appropriate adjustment in our opinion, given that the most essential element in the contractual relationship is the rental of hard disk space connected to the internet, for the benefit of the user for an amount of money, because the hosting operator is the lessor for a space on the network.

Fourth, the only way to express will in a web hosting contract via the internet is in writing; the expression of will is recorded electronically in a computer's memory. This information is sent through the entry port supplier, who delivers the information to the addressee, and then the expression of will can be read by the second party (the web hosting contractor), after it has been transferred from machine language. It must be possible to view the expression of will at a later date.

Fifth, the web hosting contractor is obligated to provide the user during the agreed period with access to the service, as agreed in the contract, without hindrance. It is also the responsibility of the contractor to request data that identifies the customer, and to keep this confidential unless compelled otherwise.

Sixth, payment for the hosting service is a major obligation of the user, and may be made traditionally or electronically. Seventh, originally, the responsibility of the web hosting contractor is limited to providing the technical means of accessing the information and disposing of it for a certain period. In this case, the contractor is a neutral intermediary in the transfer of information, without being responsible for its content. However, in the event of breaching one of the terms of the subscription contract between themselves and their clients, or breaching one of the terms of the supply contract with the information producer, the hosting contractor will also be sued if he hosts illegal information.

Recommendations

Egyptian and Iraqi legislators need to keep pace with the rapid developments in electronic transactions, and so the enactment of legislation on web hosting contracts is a necessity. This could be through an internet law, or an e-commerce law that includes the organisation of web hosting contracts; in this way, each party knows their rights and obligations. We call on the legislator to issue special legislation regulating the work of internet service providers, including website hosting services, to consider certain factors, including:

Recent French legislation dealing with the issue of the work of internet service providers in a detailed and particularly accurate way, and comparative law in other countries on such transactions, to benefit from their expertise and experiences in this field in general;

The empowerment of specialised agencies in this field, including the Ministry of Information and Communications, and those who specialise in law, finance and economics;

The incorporation of special provisions to ensure the confidentiality of the user's stored data and information, which should not be monitored or disclosed except for legal and security reasons, and with a judicial decision;

The regulation of contracts relating to the hosting of websites, such that many conditions of compliance are removed by the agencies concerned with the regulation of communications, and rights are given to the hosting service beneficiaries to ensure they have the legitimate right to a good service at a lower price. This requires the activation of competition rules to benefit the consumer;

The education of internet users and creation of a sense of responsibility in them concerning the process of choosing information on the internet; the necessity to follow the rules of correct behaviour in the virtual world, including respecting the rights of others, not violating intellectual property rights, and giving service providers real and legitimate information which ensures that applicable laws and regulations are respected;

The legislation in this field allowing recourse to lawsuits or requests to stop the illegal transmission of electronic content, and that the procedures followed to withdraw such content or prevent access by subscribers are precisely defined.