



Ayana Legal

THE BUZZ

Vol 02-07

Monthly Newsletter By Team Ayana Legal

Validity of e-contracts in India

In India, Section 10A of the Information Technology Act, 2000 discusses the validity of e-contracts and states that -

"Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of electronic records, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose."

The IT Act also discusses the validity of electronic signatures under Section 3 and 3A by stating that -

"any subscriber may authenticate an electronic record by affixing his digital signature."

CLICK-WRAP CONTRACTS



A clickwrap contract is an online agreement that users agree to by clicking a button or checking a box that usually says "I agree."

Difference Between Click-wrap and Standard Contract

The part where clickwrap contracts deviate from a standard contract is with respect to the bargaining power between parties, the signature/assent to contract and the meeting of minds. The act of signing via an electronic signature is replaced with the act of clicking the 'I Agree' box.

Clickwraps are unilateral contracts. The terms and conditions are already laid down ready to accept. Either one agrees, or does not. If one chooses not to agree then one is denied access to such platforms and services.

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Web-Wrap Agreements

Web-wrap agreements refer to e-contracts including within it's purview click-wrap agreements.

Shrink-Wrap Agreements

Shrink-wrap agreements are one packaged with a product. Essentially it is the plastic covering across a particular product, the removal of the plastic to use the product signifies the assent of the purchaser to the terms of use of the product.

Browse-Wrap Agreements

Browse-wrap contracts can be understood as a subset of clickwrap agreements. These can usually be identified as "by signing up I agree to the terms of use" clauses; they usually do not have an 'I agree' button as in click-wrap agreements.

Thank You

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Decisions on the validity of Click-wrap

Ticketmaster Corps v. Ticket.com, [2000 U.S. Dist. LEXIS 4553.]

While dealing with web wrap agreement, court held that "it cannot be said that merely putting terms and conditions 'on the website' creates a contract with anyone using the website."

Pollstar v. Gigmania Ltd. [170 F Supp. 2d (E.D. Cal. 2000).]

The terms of the agreement were written 'in small grey print on a grey background on the home page' without underlining as is the general practice to show a hyperlink. Court acknowledged that such terms may not be visible. However, the court did not pronounce the agreement to be unenforceable.

Specht vs Netscape Comms. Corp {306 F.3d 17 (2d Cir. 2002)}

In this case the court held that the clickwrap contract was not valid stating that "Where consumers are urged to download free software at the immediate click of a button, a reference to the existence of license terms on a submerged screen is not sufficient to place consumers on inquiry or constructive notice of those terms." United States Court of Appeal for the Second Circuit held "The terms and conditions are not visible to the user for them to even agree upon them and by any means it cannot be said that user agreed to such terms and conditions as there is no requirement of affirmative consent'. It was further held that "reasonably conspicuous notice of the existence of contract terms and unambiguous manifestation of assent to those terms by consumers are essential if electronic bargaining is to have integrity and credibility."