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“Click Wrap” Agreements – Your website’s “Terms of Use” are actually important

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Designing a website is difficult. Not only does your content have to be up to date and relevant, but the design must be good enough to keep the user engaged. The last thing you want to do is put up barriers to users accessing your site. An often necessary barrier is to require users to agree to terms and conditions before accessing your website (a “Click-wrap Agreement”). The risks associated with merely having a tiny link at the bottom of your page marked “Legal Stuff” (a “Browse-wrap Agreement”) might be suitable for some sites. However, if you are offering services, opinions people might rely on, or products you are selling, a “Click-wrap Agreement” is absolutely necessary. Copying and pasting another website’s terms of use is only inviting problems. Your Click-wrap Agreement should be specific to your website.

A website’s terms and conditions of use are only enforceable if the user makes an affirmative assent to be bound by the terms. This most often achieved by making a user click an “I agree” box prior to accessing the website or paying for services.

Once the user clicks “I agree”, acknowledging (1) that they have read and understand the terms and (2) they agree to be bound by the terms, a contract between you and the user is formed. You can rely on those terms to govern your legal relationship with the user.

Careful consideration should be given to what goes into your website’s terms of use. Reflect on the type of website you are offering. Do you collect user’s personal information? Are users submitting content to your site? Are you providing information and services a user will rely on? Are you an e-commerce site offering goods for sale? Do you rely on third parties to deliver good or facilitate payments for goods and services? Do you have trademarks, logos, and other intellectual property that needs protecting? Do you have third party content or intellectual property of others, licensed or not, that a user will have access to?

Sorting out who owns what and what liabilities you may be exposed to because of the type of services you offer must be determined before allowing users on to your site. If you are setting up a website for your business, please contact us to help ensure that your liabilities are minimized and your business is protected.

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