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CLICKWRAP AGREEMENTS AND WHY YOUR WEBSITE NEEDS THEM

Your company's terms and policies are important to you. So what is the best way to share them with your website's users, and how can you make sure they're enforceable? In our current digital age, the use of clickwrap agreements is becoming widespread, and courts are increasingly upholding them as the most effective way to bind website users to a company's terms.

What is a Clickwrap Agreement?

A "clickwrap" agreement is a prompt that requires a website user to affirmatively "accept" a company's policies and terms. This prompt often appears when a user first opens the website, registers for an account, or makes a purchase at checkout, providing a link to each policy and term and requiring that the user check an "accept" box before they can proceed.

But clickwrap agreements are not the only way companies try to bind their customers and website users: (i) "browsewrap" agreements are posted generally on a website, either requiring a user to simply browse through the agreement or simply making it available for review and (ii) "shrinkwrap" agreements require no customer action at all, accompanying a product (and presented to a customer for the first time) only after a purchase has been made.

Why Should I Use Clickwrap Agreements?

Courts have repeatedly upheld clickwrap agreements as effective in binding users to companies' terms. This is because, unlike both browsewrap and shrinkwrap agreements, a clickwrap agreement presents website users with the clear opportunity to read each term and knowingly and affirmatively accept them. In contrast, browsewrap and shrinkwrap agreements provide no evidence that a user knows what he is agreeing to. The customer's click of the "accept" button functions the same as an electronic signature, and provides evidence that the customer not only read the terms but chose to proceed according to them.

Clickwrap agreements are also the easiest way to support the enforceability of your company's terms without impairing the customer's website experience. They can be used on apps, software licenses, and other digital platforms, as well as websites. And because customers show their assent through the click of a mouse, you can keep an electronic record of each customer who has agreed to the terms.

But clickwrap agreements are not foolproof: courts have repeatedly held that clickwrap agreements must be conspicuous, easy to access, and reasonably easy for the average customer to

understand. If your clickwrap agreements fail to meet these standards, you may not be able to enforce them against your customers.

JAH Can Help

Your company's terms and conditions serve an important part of your company's business. However, if you are not careful in how you share these terms with your customers, they may not be enforceable. The experienced **corporate attorneys** at JAH are here to counsel you through every step.

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