The Contract Lemurs

Future of Contracts Design Derby

Problem: Empowering Consumers

How do we break down terms of service clickwrap agreements so that consumers can more easily understand and *meaningfully* assent to them?

Solution: The Clickwrap "Wrapper"

A "warning label" for terms of service agreements, analogous to those found on cigarette packages, that provides a brief, easily-understandable breakdown highlighting the most dangerous potential consequences of the contract for consumers.

The Clickwrap "Wrapper"

The solution is a chrome/browser plug-in which generates useful information that consumers can refer to as they review clickwrap agreements. The plug-in displays **(1)** a five-star rating system comparing the clickwrap agreement to similar ones in the industry, **(2)** a synopsis of three of the most consumer-unfriendly provisions, which the consumer can click on for a third-party letter grade and explanatory videos, and **(3)** recent news stories relating to the company's data breaches (if any).

Key Components

The three key components of our solution are:

(1) **Design:** A sleek, consumer-friendly format.
(2) **Technology:** The use of AI and third-party data to generate the information needed for the Clickwrap Wrapper plug-in.
(3) **Legal Framework:** Government actors' creation of a "safe harbor" for companies that adopt the solution to shield them from lawsuits where mutual assent is contested.

Design: Overview of the Wrapper Format

- The wrapper is a chrome/browser extension which consumers can download for free from the Google webpage.
- Once downloaded, the wrapper will be automatically populated and appear as a side-bar next to any TOS agreement page.
- Overview of the contents of the wrapper
  - For each TOS agreement, a **"consumer friendliness" star rating** will appear at the **top of the wrapper**, providing the consumer a quick sense of whether the terms are favorable.
  - Below the star rating, the wrapper will list the **three most "dangerous" provisions**, along with a hyperlink allowing the consumer to (1) compare the provision to those of competitors, and (2) watch a brief explanatory video.
  - At the bottom of the wrapper, **recent news stories** about data breaches will appear.

Design: Concept Art of the Wrapper

See image at end of slides ("Artifact").

Design: Explanation of wrapper design choices

- The **star-rating** at the top makes it immediately obvious how the **TOS Agreement as a whole** rates against TOS in the same industry.
- The choice to use **layperson terms instead of legalese** to describe the three most consumer unfriendly provisions makes it so that consumers clearly understand what those provisions involve.
    - Instead of "arbitration clause," the wrapper would say "can I sue?"
    - Instead of "privacy," the wrapper would say "can they sell my data?" or "can they read my personal messages?"
- The "wrapper" **individualizes to learning preferences**; the consumer can choose either a short, animated video explanation of a term or a written explanation of a term to learn what it means.
- To make sure information doesn't overwhelm consumers, **the wrapper only has three components**: (1) the star rating, (2) the three most unfriendly provisions, and (3) news related to data breaches. **But it links to a website (TOSDR.org) that analyzes <u>all provisions </u>for consumers that would like to learn more and assigns letter grades to those provisions.**

Technology: Using Third-Party Generated Data

- The wrapper will take advantage of letter ratings for provisions in companies' terms of service provided by www.TOSDR.org. While the wrapper will only highlight the three most unfriendly terms, a link to this site will allow consumers to see ratings for *all* provisions in the TOS.
- The aggregate letter grades of all of the agreement's provisions will inform the star-rating system at the top of the wrapper.
- TOSDR.org is a resource for contract provisions that already exists, but our hope is that AI tools can eventually be used to regularly read all public TOS agreements and summarize their provisions for use in tools like the clickwrap wrapper.

Legal Frameworks: Government Safe Harbor

- The third element involves creating a safe harbor for companies that embrace the chrome plug-in browser extension. To access the safe harbor, companies must require consumers to download the clickwrap wrapper and use it (i.e., click on the term summary links) prior to consenting to the terms of service.
- In cases where a company requires consumers to review either video demonstrations or written explanations before clicking the "agree" button, it establishes a presumption of informed consent in the event of a dispute.
- The rationale is to incentivize companies to be receptive to the chrome plug-in.

Anticipated Questions & Answers

- **How will this be funded?**
  - Through grants from federal, state, and local government and direct assistance from consumer protection groups
- **How do we build consumer awareness?**
  - Advertisements (past advertisements for plug-ins have been successful, such as Capital One Shopping)
  - Word of mouth
  - Company encouragement
- **Why should a company encourage the use of the Wrapper?**
  - The safe harbour of presumption of informed consent is a large motivation for a company
  - Additionally, the company's reputation could be improved by giving consumers more information

Artifact