

Advanced Contract Formation in the Digital Age

Learn how to navigate “clickwrap” agreements, the linked terms, and other digital transactions, while on the journey to contract formation. Plus, Is your technical competence sufficient? And how do you deal with vendors who won’t employ counsel?

Harold Federow and
Michael Standard

34th Annual Technology Law Conference

Austin, Texas
May 26-28, 2021

1

1

Your Speakers:



Harold Federow
Contract Vendor & IP Manager
Port of Seattle



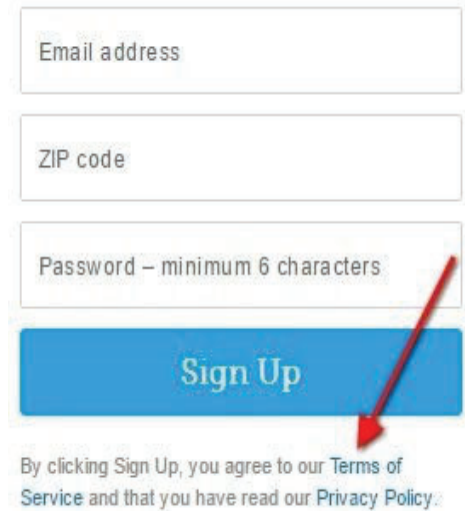
Michael Standard
VP Consumer Digital and Privacy Legal
GSK Consumer Healthcare

2

2

Clickwrap and Browsewrap

- **Clickwrap:** requires consumer to take action/manifest assent
- **Browsewrap:** no action required by consumer
 - Consumer use of site constitutes acceptance of terms
- Clickwrap is preferred method of consent
 - Generally enforceable



Email address

ZIP code

Password - minimum 6 characters

Sign Up

By clicking Sign Up, you agree to our Terms of Service and that you have read our Privacy Policy.

3

3

Clickwrap

- Why Clickwrap is preferred
 - Case law examples:
 - Specht v. Netscape Communications
 - Feldman v. Google, Inc.
 - Vitacost.com, Inc. v. James McCants
 - Meyer v. Uber Technologies

4

4

Sprecht v. Netscape

- 306 F. 3d 17 (2d. Circuit 2002)
- Download plug-in to Netscape
- Possible to download plug-in without ever knowing there was a license agreement
- Therefore not enforceable

5

5

Feldman v. Google

- 513 F. Supp. 2d 229 (E.D. PA 2007)
- Lawyer using AdWords
- Possible to see Agreement before signing up
- Had to click “I agree to terms and conditions to sign up”

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Advanced Contract Formation in the Digital Age

Also available as part of the eCourse

[2021 Technology Law eConference](#)

First appeared as part of the conference materials for the

34th Annual Technology Law Conference session

"Advanced Contract Formation in the Digital Age"