



Information Technology Services

Information and Cybersecurity Awareness

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Read the fine print

Think before you click, like or share'

In recent years, the internet has transformed the commercial landscape and redefined the way we do business. The movement away from traditional paper and ink has led to the electronification of *everything*, including the conclusion of contracts. Online shopping, signing up for Uber and creating a Facebook profile have all become possible by clicking on the familiar 'I have read and understand the terms and conditions' button.



Accepting terms and conditions

We have all been guilty of mechanically accepting terms and conditions online without bothering to read them. The question that then arises is: **Are you bound to those terms that you never read, but accepted anyway?**

Under common law, parties will normally be held to the terms of the contract they have signed, even though they might not have read the terms.

Types of electronic contracts

The Electronic Communications and Transactions Act 25/2002 (CTA), which came into force on 30 August 2002, does away with the question of whether an online agreement can be viewed as a contract.

These contracts are referred to as 'clickwrap contracts' and are usually enforceable. Other common electronic contracts include 'scrollwrap contracts', which require the user to scroll through the terms and conditions before clicking on 'I agree'. 'Browsewrap contracts' are concluded where the user agrees to terms simply by using a website and the terms are available through hyperlinked text at the bottom of the screen.

'Sign-in-wrap contracts' usually consists of a sign-in screen that requests a username and password to be filled in, and contains text that states that by clicking on 'sign-in' the user agrees to the terms and conditions. Although many of these agreements have not been tested by the South African courts, the Act expressly recognises them and provides guidelines to aid in determining their enforceability.

A small hyperlink that is hidden in an unexpected corner of the website's page will, for example, not meet the requirements and in such circumstances a user's assent to the terms cannot be inferred.

Read before you accept

Although much uncertainty still exists regarding online terms and conditions and their enforceability, internet users would be well advised to view an 'I accept the terms and conditions' button in the same light as signing a lease agreement. You want to know what you are getting yourself into before you sign and should know exactly what you are agreeing to before you click.

SEE MORE

[Blindly Accepting Terms and Conditions? - Computerphile \(YouTube\)](#)

READ MORE

[Why Should You Always Read The Terms And Conditions Carefully?](#)