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NAVIGATING THE DIGITAL CONTRACT MAZE: HOW AI CAN GUIDE USERS TO INFORMED DECISIONS

Abstract

This article delves into the complexities surrounding the Terms of Use agreements on social networking sites, illustrating how users often unknowingly agree to legally binding contracts without comprehending the full scope of their contents. It highlights the legal enforceability of these agreements, despite their complexity and the challenges they pose to user understanding and informed consent. The discussion advocates for greater transparency and accessibility in these documents, suggesting that advancements in artificial intelligence (AI) and machine readability could play a crucial role in demystifying legal jargon and enhancing user comprehension. By leveraging AI for clearer, more interactive explanations of terms, the article calls for a digital landscape where informed consent becomes a foundational principle, thereby fostering a more transparent, fair, and user-friendly online environment.

Keywords: AI, Terms of Use, contracts, machine readability, transparency

1. Introduction

In the contemporary digital landscape, the act of registering on social networking sites has become a routine yet crucial part of engaging with the online world. The internet and new forms of social media have radically changed the structure and ways of social communication (Szűts and Gerencsér 2020: 41; Balázs 2023). As users hurriedly click through to accept the terms of use, a significant number do so without a comprehensive understanding of the agreements they are entering into. Almost all online platforms operate under specific terms of use, which essentially serve as the legal backbone of these digital environments. These terms delineate the code of conduct expected from users, outlining permissible and prohibited actions within the platform, and clarify the legal relationship between the user and the service provider. Typically, the act of registering on these sites involves the user's tacit agreement to these conditions, executed through actions as simple as ticking a checkbox on a registration form or clicking an acceptance icon. More subtly, this agreement is often considered binding the moment a user begins to engage with the platform's services, thus initiating a formal legal relationship between the individual and the platform's operator. This

relationship imbues both parties with specific rights and obligations. The majority of users, however, are unaware that their interactions with these platforms amount to entering into a legally binding contract, virtually equivalent in force to traditional contracts signed with ink and paper. The act of a user clicking “I agree” to accept the terms of a contract – often referred to as a “clickwrap” agreement (Papp 2017: 189) – has consistently been upheld by courts as a form of enforceable contract. The legality and enforceability of clickwrap licenses have been examined and affirmed by judicial bodies, establishing a precedent that the mere act of clicking to agree constitutes a legitimate form of consent to the terms outlined within the agreement. This form of assent, although perhaps less direct than traditional methods of signing a contract, is nonetheless recognized as a valid expression of agreement to the contractual terms presented. This notion of blanket assent – whereby a user agrees to a set of terms and conditions en masse through a single action – still constitutes a form of agreement under the law. (Lemley 2006: 466). The terms of service agreements, often lengthy and complex, are a core component of this framework. The terms often include clauses that waive users’ rights while simultaneously bestowing enforceable rights upon the service providers, rights that can even be upheld in court. As such, there is a pressing need for these documents to be made more accessible and understandable to the average user. Ensuring clarity and fairness in these agreements is not just a matter of legal compliance; it is essential for maintaining trust and transparency (Park 2013: 905).

2. Understanding the complexity of the terms

Navigating the complex terrain of online platform Terms of Use presents a formidable challenge for the average user. One could convincingly argue that the obligation of reading and comprehending the terms of use falls squarely on the users. When users fail to thoroughly review these agreements, it is reasonable to hold them accountable for consenting to conditions that may not be entirely clear to them. While it appears that users are presented with options, in reality, their choice is often reduced to a binary decision: accept the terms as they are or forego the service altogether. This ‘take-it-or-leave-it’ scenario is further compounded by findings from research indicating that users, even when directly faced with the details, consent to having their messages reviewed by the service provider (Perry 2016: 54). This widespread acquiescence to the terms of service is not solely due to their inevitable acceptance as a condition of use. Another significant factor contributing

to this phenomenon is the complexity, opacity, and incomprehensibility of these terms. These documents, often lengthy and laden with legal jargon, are designed more with compliance and protection of the platform in mind rather than clarity or accessibility for users. The expectation for users to read, comprehend, and consent to extensive and complex legal documents before accessing a platform's services is both unrealistic and impractical, often leading to acceptance without true understanding. It is very difficult for users, especially those not in the habit of meticulously reviewing legal documents, to stay informed about changes and their potential impact. The result is a significant disconnect between the platforms and their users, with the latter frequently left in the dark about their rights, obligations, and the full scope of how their data is used. This erode the foundational principle of informed consent, crucial for maintaining ethical standards and adhering to legal statutes designed to protect consumers.

In a study focused on analyzing the Terms of Service for YouTube, Facebook, and Twitter, findings highlighted a distinct contrast. Unlike the content moderation guidelines, and privacy or data policies, which are tailored documents reflecting the unique attributes of each platform, the Terms of Service were found to be fundamentally boilerplate. This suggests that, contrary to the bespoke nature of other policy documents designed to cater to the specific operational and ethical nuances of each site, the Terms of Service adhere to a more standardized format, lacking customization across the platforms: "not meant to be read, still less to be understood." (Karanicolas 2021: 21) Another fundamental issue lies in how companies, including various platforms, have capitalized on the widespread lack of consumer literacy and the inevitable fatigue stemming from the relentless flood of lengthy and obscure agreements. This exploitation allows them to embed provisions that consumers would not naturally associate with the key terms of their transactions. Such practices undermine fundamental principles of consumer protection, as they sneak in terms that subvert the rights and expectations of the consumer under the guise of legal and necessary formalities (Karanicolas 2021: 25).

3. The importance of transparency

Legally mandated transparency could play a crucial role in addressing the issues surrounding the comprehension of terms of use on online platforms. By requiring service providers to present their terms in clear, straightforward language and to structure these documents in a user-friendly manner, users

would be better equipped to understand their rights and obligations (Arató 2022; Arató and Balázs 2022). This could include the use of plain language summaries, clear headings, and the highlighting of key terms related to data privacy, content ownership, and dispute resolution. Furthermore, transparency mandates could enforce the disclosure of critical information in an accessible format, ensuring that users are fully informed about how their data will be used, shared, and protected. Such legal requirements would not only facilitate informed consent but also foster trust between users and service providers, by demonstrating a commitment to fairness and user empowerment in the digital environment.

Benedikt Schmitz and Charlotte Pavillon categorize transparency into two distinct kinds: formal transparency and substantive transparency. Formal transparency refers to the accessibility and clarity of the contract's presentation, such as its layout and the comprehensibility of its language. On the other hand, substantive transparency delves deeper, focusing on whether the consumer, upon reading the contract, can grasp the essence and implications of its content. This type of transparency assesses the contract's understandability, ensuring that the consumer not only reads but also comprehends the terms, their rights, and obligations under the agreement, thereby achieving a genuine understanding of the contract's substance (Schmitz and Pavillon 2020: 191). Also, according to Loos, the mandate for transparency encompasses at least three distinct dimensions. First, the manner in which information is displayed is imperative. It must be laid out in a manner ensuring it cannot be overlooked by the consumer prior to, or at the moment of, contract agreement. This ensures that crucial details are directly in the consumer's line of sight, eliminating any possibility of missing out on key facts. Second, the clarity and understandability of the information are crucial. The wording of the information must be such that it facilitates easy comprehension by the consumer, presenting the information in straightforward, accessible language that allows the consumer to grasp the essence of what is being communicated without undue effort. Finally, the linguistic accessibility of the information is paramount. The information must be provided in a language or dialect that the consumer is proficient in. This principle guarantees that language barriers do not hinder the consumer's understanding of the information, ensuring that they can fully comprehend the details of what they are agreeing to. By adhering to these principles, the transparency requirement aims to safeguard consumers, ensuring that they are fully informed and able to make decisions based on a clear understanding of the terms and conditions they are entering into (Loss 2017: 54).

4. EU Laws on transparency

The Directive on Unfair Contract Terms, under Article 5, mandates that “in the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail” (Directive 93/13/EEC). This is not unprecedented in law (Arató 2023). In various instances, the Court of Justice of the European Union has clarified the concept of “plain intelligible language.” It is crucial to highlight that a key consideration for the Court is to ascertain whether the mandate for plain and intelligible language is upheld, even in scenarios where this requirement has not been explicitly transcribed into national legislation. This determination underscores the importance of ensuring that contractual terms are accessible and understandable to consumers, irrespective of the specificities of national legal frameworks (Case C-26/13). In another case, the Court emphasized the importance of consumers having the opportunity to thoroughly review all terms and their implications in the General Business Conditions (GBC) (Case C-472/10). Assessing the fairness of a term under Article 3 hinges on whether consumers can predict changes made by a seller or supplier to the GBC, especially regarding service fees, based on transparent and understandable criteria. In another case it also stated that is really important that consumers are able to foresee the charges that they might incur in their contracts (Case C-92/11). The transparency requirement for contractual terms, outlined in Article 4(2) and Article 5 of Directive 93/13, goes beyond just making them grammatically clear. This directive recognizes that consumers often find themselves at a disadvantage compared to sellers or suppliers, especially in terms of knowledge. Therefore, the directive demands that contractual terms be written in simple, clear language to ensure transparency. This requirement is meant to be interpreted broadly, acknowledging the consumer’s need for clear understanding to bridge the knowledge gap (Case C-125/18).

The directive demands that terms must be clear and simple enough for consumers to not only read and understand the language but also grasp how the terms work and the major financial impacts these could have on them (Joined Cases C-776/19 and C-782/19). Because it is a directive, there are many different interpretations in national laws, some Member States, like Germany, permit contracts to be executed in a foreign language if agreed upon in that language. Conversely, other Member States, such as France, stipulate that contracts made with individuals residing in their territory must be written in the official language(s) of that Member State (Loos 2017: 59).

Speaking of another major piece of EU legislation in this area, Article 14 of the Digital Services Act (DSA) focuses on ensuring the clarity and understandability of Terms of Use for providers of intermediary services. It mandates that these providers must clearly outline any restrictions related to the use of their services, including content moderation practices, algorithmic decisions, human review processes, and internal complaint handling procedures, in their terms and conditions. This information must be presented in clear, plain, and user-friendly language, and be easily accessible and available in a machine-readable format. Additionally, any significant changes to the terms and conditions must be communicated to the service recipients. For services primarily aimed at or used by minors, the terms must be explained in a way that is understandable to them. The DSA also requires that these terms and enforcement actions are applied diligently, objectively, and proportionately, taking into account the rights and interests of all parties, including fundamental freedoms and rights. For very large online platforms and search engines, the DSA goes a step further by requiring a concise summary of terms and conditions, including remedies and redress mechanisms, in clear language. Moreover, these platforms must publish their terms and conditions in the official languages of all Member States where they offer services, ensuring broader accessibility and understanding.

Also brought to life by the DSA, the Digital Services Terms and Conditions Database is an important step forward in making online terms and conditions more transparent and understandable for users. Hosted on a specialized platform, it offers a straightforward way for people to access and review the terms of service for various EU digital services, including updates and previous versions. The creation of this database tackles the common problem of complex and frequently changing online terms, which often confuse consumers about their rights and obligations. By providing these documents in a machine-readable format, the database not only makes it easier for users to access this information but also ensures that online platforms meet legal standards for clear and comprehensive contracts. The key feature of the database is its machine-readability, which simplifies the analysis and understanding of these often complex documents. This functionality could lead to the development of tools that help users better grasp the terms of use on online platforms, making the digital environment more user-friendly and transparent (URL1).

The introduction of these legal requirements and the revision of terms to improve transparency are significant steps toward demystifying the legal language that underpins the digital contracts encountered by users daily, but in

itself they are not enough. The easy availability of terms and conditions, along with their presentation in simpler language, are indeed essential and should be viewed as the absolute basic requirements for platforms. However, these aspects merely scratch the surface of what is needed to ensure transparency and user-friendliness in the digital space. Also, empirical research into the readability of legal text indicates that it remains inaccessible to a significant portion of the population, proving to be very difficult or even incomprehensible for many citizens, so the adoption of plain language, while beneficial, does not substantially change this situation (Curtotti and McCreath 2013: 5).

5. AI to the rescue?

While AI holds the potential for misuse on the internet, such as disseminating fake news or deepfake content (Gosztonyi and Lendvai 2023), the emergence of machine readability requirements and Artificial Intelligence (AI) is promising to bridge the gap between the convoluted legal texts and the average user's comprehension. Machine readability converts documents into formats effortlessly processed by computers, setting the stage for AI to analyze and understand this information. This fusion of technologies, when applied to terms of use and similar legal documents, can drastically enhance user understanding and interaction (Call and Wang and Weng 2023). AI has the potential to demystify these documents, fostering a more transparent, accessible, and user-friendly approach to understanding the rules, rights, and responsibilities associated with social media use. AI tools, utilizing natural language processing, can sift through these documents, highlight essential details, and present them in a straightforward, concise manner. AI systems can translate complex legal jargon into plain language, making the content more accessible to people without a legal background and can aid in analyzing reports, enhancing data utility and identifying discrepancies (Bauguess 2018). This not only helps users better understand the agreements they are entering into but also empowers them to make more informed decisions about their online behavior. AI-driven visualization tools can also play a crucial role in enhancing understanding. By converting text into infographics, timelines, or flowcharts, AI can help users grasp complex concepts at a glance. Visual representations of how data is collected, used, and shared, for instance, can make abstract privacy concerns more tangible and comprehensible.

AI's ability to tailor the presentation of terms based on a user's profile and previous platform interactions adds another layer of personalization. For example, content creators on a social media site might see terms related

to copyright and monetization emphasized, ensuring users are aware of conditions most relevant to their activities. Interactive AI tools represent another innovative approach. Chatbots and virtual assistants, powered by AI, can offer on-demand explanations of specific terms or sections. Users can ask questions in natural language and receive instant clarifications, making the process of navigating terms and conditions more engaging and less daunting. This interactivity not only aids comprehension but also helps users feel more confident about their rights and obligations.

Furthermore, AI can monitor changes to terms and conditions over time, alerting users to updates and summarizing the implications of these changes. Given the dynamic nature of social media platforms and privacy regulations, keeping users informed in real-time can significantly enhance transparency and trust. Leveraging this technology benefits service providers as well, since presenting terms and conditions correctly can preempt legal disputes stemming from their inadequate representation (URL2).

While AI lacks a legal background, rendering it incapable of delivering unerring interpretations of legal documents, this limitation is mitigated by several factors. First, technological advancements are continually enhancing the efficiency of legal text analysis. Second, the application of AI in analyzing other legal documents, such as judgments, is gaining traction (Eliot 2021: 3). Most crucially, legal mandates for transparency and clarity are effectively pre-adapting legal content for AI analysis, significantly diminishing the likelihood of errors. This proactive alignment between legal standards and AI capabilities ensures a progressively reliable interpretation of legal documents. Of course, simplicity in reading does not always translate to simplicity in comprehension. A study in this field suggests that poor readability, as measured by the usual formulas used, does not serve as a reliable measure for lack of understandability (Schmitz and Pavillon 2020: 199). A qualitative study in this matter concluded, that although a small fraction of participants raised privacy concerns, the overwhelming majority commended the convenience of quick-join clickwrap options for allowing them to skip over the notices. The issue isn't merely that users find privacy and Terms of Service policies dull or irrelevant; rather, it's that individuals turn to social networking sites with specific goals in mind, such as connecting with friends and family online, along with leveraging other features provided by the platforms (Obaraand and Oeldorf-Hirsch 2020: 142).

Another very important aspect to be evaluated is that traditional views on standard-form contracts falter when applied to social networking sites. Typically, these provisions are based on the belief that users logically

decide to accept these contracts or terms of use. They also assume that a competitive market leads companies to create fair terms, with the idea that competition promotes fairness and reasonableness. Yet, social networks operate differently. The way people decide to join a social network and accept its terms of use often lacks full rationality. Additionally, the concept of a competitive market doesn't fit well with social networks, which tend to move towards monopolistic control rather than offering a variety of choices. This tendency towards monopoly limits the ability of market forces to naturally ensure the fairness of terms through competition. Therefore, the unique aspects of social networks – like the irrationality of consumer decisions and the lack of competitive pressures – indicate that the traditional reliance on legal assumptions and market dynamics for ensuring fair terms of use might be flawed (Chiu 2011: 167–8).

6. Conclusion

In conclusion, the challenge of navigating and understanding the Terms of Use on social networking platforms is a significant issue, with users frequently binding themselves to complex legal agreements without true awareness. This situation underscores the urgent need for clearer, more accessible terms that empower users to make informed decisions. The potential of Artificial Intelligence and machine readability in transforming these dense legal texts into understandable, user-friendly formats represents a promising step forward. By embracing these technologies, we can move towards a digital ecosystem where transparency, fairness, and informed consent are not merely ideals, but realities. Achieving this will require concerted efforts from platform providers, legal experts, and policymakers to ensure that the digital space is as welcoming and safe as it is vast and uncharted.

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