

ONLINE AGREEMENTS TOPICS

- I. Assent in Online Agreements - Clickwrap vs. Browsewrap
 - i. *Hancock v. Am. Tel. & Tel. Co.*, 701 F.3d 1248, 1257 (10th Cir. 2012) – Clickwrap agreements generally upheld; valid clickwrap agreement where user presented with entire agreement and then must affirmatively manifest assent to terms by clicking “I acknowledge” and “I agree” buttons.
 - ii. *Sgouros v. TransUnion Corp.*, Case No. 15-1371 (7th Cir., Mar. 25, 2016) – No assent where clickwrap agreement only partially visible and no requirement that consumer view entire agreement.
 - iii. *Long v. Provide Commerce, Inc.*, 200 Cal. App. 4th 855 (2016) – Arbitration provision in Term of Use available via hyperlink at bottom of website was not binding as it did not require any assent from customer visiting website.
- II. Transfer of Copyright
 - a. *Metropolitan Regional Info. Sys., Inc. v. Am. Home Realty Network, Inc.*, Case No. 12-2102 (4th Cir.) – Finding that TOU containing copyright assignment provision and requiring consumer to click button to assent satisfied writing and signature requirements.
- III. Recurring Payments
 - a. Statutes and Regulations
 - i. State Statutes governing automatic renewal (i.e. Fla. Stat. § 501.165).
 - ii. FTC Act (15 USC § 45) governing deceptive acts or practices affecting commerce.
 - iii. Restore Online Shopper’s Confidence Act (“ROSCA”) (15 USC § 8404) governing requirements for negative option marketing.
 - b. *Herman v. SeaWorld Parks & Entertainment Inc.*, Case No. 8:14-cv-03028 (M.D. Fla., Dec. 3, 2014) – Class action asserting that SeaWorld breached contract by automatically charging for renewal without any right to do so.
 - c. *FTC v. DirectTV*, Case No. 3:15-cv-01129 (N.D. Cal., Mar. 11, 2015) – FTC sued alleging violation of FTC Act and ROSCA by failing to adequately disclose that consumers will automatically be enrolled in negative option continuity plan.