I saw you clicking agree before reading the terms and conditions

I ALSO LIKE TO LIVE DANGEROUSLY
By placing an order via this Web site on the first day of the fourth month of the year 2010 Anno Domini, you agree to grant Us a non-transferable option to claim, for now and forever more, your immortal soul. Should We wish to exercise this option, you agree to surrender your immortal soul, and any claim you may have on it, within 5 (five) working days of receiving written notification from gamestation.co.uk or one of its duly authorised minions [...]

7,500 Online Shoppers Unknowingly Sold Their Souls

Published April 15, 2010 - Fox News
The signing-without-reading problem

Eurobarometer Special 447 on online platforms, 2016

• Thinking about the terms and conditions on online platforms, which of the following best describes your situation?
The signing-without-reading problem

Study on consumer’s attitudes toward online Terms and Conditions (European Commission 2016)

Buying online, less than one person in 10 reads some of the Terms & Conditions when it is voluntary to open them.
The reading-without-understanding problem

**Why Privacy Policies Are So Inscrutable**

The agreements of the 50 most popular websites in America are composed of 145,641 words. This is why.

**Half of online Americans don’t know what a privacy policy is**

BY AARON SMITH | 5 COMMENTS

What is a privacy policy?

When Pew Research Center asked about this on a recent survey measuring public
The effects of the phenomenon

Does it really matter? Yes.

26.6% of consumers surveyed in the Netherlands and Poland had problems with purchases online and offline because they did not know the terms and conditions well enough.

Study on consumers attitudes toward online Terms and Conditions (European Commission 2016)
We don’t read the terms because we don’t care about our rights (e.g. privacy paradox) or because they are too long, too opaque, and non-negotiable?
The better the quality of the Terms, the more users will read them.

Study on consumers’ attitudes toward online Terms and Conditions (European Commission 2016)

<table>
<thead>
<tr>
<th>Language and length</th>
<th>Time indication</th>
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<tbody>
<tr>
<td>Complicated Language</td>
<td>&quot;It takes 5 minutes to read our T&amp;Cs&quot;</td>
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<tr>
<td>Simple Language</td>
<td>No indication of time</td>
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<tr>
<td>Longer Text</td>
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<td>Shorter Text</td>
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- 10.5% Read parts of the Terms & Conditions
- 26.5% Read parts of the Terms & Conditions
- 19.8% Read parts of the Terms & Conditions
- 9.4% Read parts of the Terms & Conditions
Why the Terms are so bad?

- Usually copied and pasted from the US versions
- Lawyers who draft them will try to save the client from any potential lawsuit, liability, etc.
- Imbalance of power + mass transactions = non negotiation
- Social engineering
Social engineering: “Don’t make me think!”

Social engineering: the online experience must be designed in such a way that the user goes on “autopilot” mode.

The first principle in designing websites is usability, which has been described with the worrying slogan “don’t make me think” (Krug 2005)
The Internet of Platforms

An empirical research on private ordering and consumer protection in the sharing economy

Guido Noto La Diega and Rossana Ducato
Geneva Internet L@w Research Colloquium - 23 June 2017
The team

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External advisor

Supervisors

Professor Alain Strowel
UCLouvain and USL-B

Professor Sari Depreeuw
USL-B
To read or not to read
Why consumers do not read the boilerplate?

- **Where** is the contract? (Radin 2013)
- Consumers suffer from various forms and degrees of illiteracy and innumeracy (Radin 2013; Busch 2016)
- **Lengthy mandatory disclosures** seems to be ineffective in a context where consumers derive information from icons, pictures, experience from other peers (OECD 2016)
- The activity of reading is extremely **time-consuming** and essentially useless since it is impossible to negotiate with the strongest party (Elshout, Elsen et al. 2016)
- Consumers **do not care** about contracts (Ben-Shahar 2009, Plaut and Bartlett 2011)
The sharing economy

...and the IoP
• Communication on Online Platforms and the Digital Single Market (2016)
• Communication on the Mid-Term Review on the implementation of the Digital Single Market Strategy (2017)

“a lack of transparency as to how [the platforms] use the information they acquire, their strong bargaining power compared to that of their clients, which may be reflected in their terms and conditions”

(Commission, 2015)
THE “LEGALS” MAZE

• Platforms are filling the gaps left behind by legislation in an inconsistent way
  • The lack of transparency and fairness is epitomized in the “legals”

• the private ordering imposed by platforms through a bundle of ToS, privacy policy, end user license agreements, norms of the community, copyright policy, user generated content policy, non discrimination policy, promotion terms and conditions, guidelines for law enforcement, guidelines for third party data request, patent purchase program, unsolicited idea submissions policy, firearms prohibition policy, zero tolerance policy, service animal policy, app permissions, other……….
The research hypothesis

• Consumers accept the legals **without reading** them, not because they do not care about their rights, but because the platforms are not transparent

• the opacity of legals, coupled with an intricate corporate structure and a complex supply chain, renders **impossible for the consumers to find, read and understand** them
An example

• 50 legals
• 92,171 words
• Approximate reading time: 10 hours and 20 minutes
• 9 permissions required for the app
• Complex company structure
  • “Accepting the User T&C, one is contracting with four companies, Uber London, Uber Britannia, Uber B.V., and Uber NIR. They are controlled by Uber Technologies, Inc., which does not appear in the contract. Most of the T&C, however, refers to a non-existent company called Uber UK, which shall mean each of Uber London, Uber Britannia, and Uber NIR. In a lawsuit, who would be the defendant?” (Noto La Diega, 2016)
SEARCH. SOLVE. ESCAPE.
The Awareness by design approach

- Using **technology, law, and behavioural sciences** to empower the user

- **B.aware app**: a tool for making users aware of risks, rights, and obligations

- The **PoP** (Platform on Platforms): a tool for sharing the user’s experience
A “- by design” taxonomy

- Article 25, GDPR
- The 7 Foundational Principles (Cavoukian)
- Thaler and Sunstein
- Structural nudging
- Informational nudging (Floridi)
- To embed social values throughout the design process (Friedman)

The architecture shapes only the information about the actual options available, relying on human intelligence and explicit interests as the pragmatic motivation for action (Floridi).
The app will **check** the legals and alert the consumer about any peculiar condition
- In particular, unenforceable and unfair terms

The app will **rate** the “legal quality” of the T&C, privacy policy, etc.

The app will be **user-centered**
- Lack of empirical data on consumers’ preferences (Helberg, 2013)
LABELLING
(Becher and Unger-Aviram, 2010)

RATING
(Ben-Shahar, 2009)
The methodology
An empirical and comparative study

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<thead>
<tr>
<th>Object of the analysis</th>
<th>Sectors</th>
<th>Countries</th>
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<td>Legal and</td>
<td>Belgium</td>
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Thanks for your attention!

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rossana.ducato@uclouvain.be