

## Online contracts: Click & bind effect

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The buying and selling of goods and services online has become routine practice. The effectiveness of e-commerce is based on electronic contracts that were born out of a need for speed, convenience and efficiency. It is quite common for two persons residing at different locations to conclude a contract in electronic form in seconds without them meeting. In view of the advantages that e-contracts offer, many countries have enacted laws to recognize them.

The Indian Contract Act, 1872, governs enforceability of contracts executed in India. Further, to support the enforceability of e-contracts, the Information Technology (IT) Act, 2000, has been enacted to resolve peculiar issues that arise in the formation and authentication of e-contracts.

The following e-contracts are executed by internet users: (a) Contracts through e-mail come into existence when offer and acceptance is exchanged over an e-mail. (b) Executing forms on web portals leads to formation of a contract when a seller offers goods or services through a web portal and the consumer places an order by completing and transmitting the order form. (c) Shrink wrap contracts are either licence agreements or a contract whose terms and conditions can only be read and accepted by the consumer after opening the product. (d) Click wrap contracts mostly form part of the installation process of software packages and usually are of two types: (i) type and click where the user must type "I accept" or other specified words in an on-screen box and then click a "Submit" or similar button. This displays acceptance of the terms of the contract; (ii) icon clicking where the user must click on an "OK" or "I agree" button on a dialog box or pop-up window or indicate his

rejection by clicking "Cancel" or closing the window.

In the present business environment, all of the above forms are used regularly on a day-to-day basis. An e-contract must fulfil the requirements of a valid contract under the act. In other words, there must be (a) offer and acceptance; (b) lawful consideration; (c) free consent of parties competent to contract; (d) certainty and possibility of performance; and (e) reasonable terms that are enforceable. Courts have consistently held that a contract which tends to impose unreasonable conditions on a user is invalid.

Under the UNICTRAL Model Law on Electronic Commerce (1996) an offer and acceptance validly expressed by data messages which include information generated, sent, received or stored by electronic, optical or similar means has been given statutory recognition.

In India the Contract Act sets out the key constituents of a valid contract, while the IT Act lays down a roadmap for ensuring enforceability of e-contracts. The question arises – what is the binding nature of online agreements? What happens if a company provides a contract on its website, and an individual who wants to join that organization completes the agreement details and clicks an "I accept" button as his/her agreement to be bound by the terms. Will such "acceptance" be considered binding? Or, would the individual be required, in addition to clicking "I accept," to submit a hard executed copy of the agreement with original signature?

A contract is created as soon as the clicking is done, if the contents of the terms and conditions of the agreement and the manner of accepting them are communicated in a clear and conspicuous manner along with the fact that clicking the "I accept" icon

creates legally binding obligations on the person who clicks it. Of course, this assumes that communication to the other party is instantaneous. An electronic record is attributed to the originator who sends any electronic message (a) if it was sent by the originator himself; (b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or (c) by an information system programmed by or on behalf of the originator to operate automatically. So there would be no need to simultaneously execute and sign a hard copy.

Section 12(1) of the IT Act provides that where the originator has not agreed with the addressee that the acknowledgment of receipt of an electronic record be given in a particular form or method, an acknowledgment may be given by the addressee either in an automated form or otherwise. The section also provides that any conduct of the addressee is also sufficient to indicate to the originator that the electronic record has been received.

Further, section 13(3) of the IT Act addresses the issue of time and place of dispatch and receipt of an electronic record. It provides that unless specifically agreed between the originator and the addressee, an electronic record is deemed to be dispatched and received at the place where the originator and the addressee have their place of business.

Agreements executed electronically by using the "I accept" feature are legally enforceable provided the other legal requisites for a valid contract are present. They are valid contracts and one can be made liable for the terms and conditions laid down there.

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