

Do Consumers Read Terms of Service Agreements When Installing Software? A Two- Study Empirical Analysis

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ABSTRACT

An important issue in all transactions is the details of the agreement between the parties. This is particularly important in on-line transactions where consumers bind themselves to the detailed terms and conditions without reading them. This paper examines this from two perspectives. The first study reports what respondents self-report they do in terms of amount of time and amount of Terms of Service (TOS) agreements they read. The second study report actual observations of respondents as they "installed" software. The results show most respondents read very little of TOS agreements and the amount of time spent is less than one minute, making it impossible to actually read much of agreements that average over 6,000 words. The primary reasons for not reading TOS agreements are the length of the contract and the perceived cost vs. benefit of reading it, not the font size or legal language. Managerial and public policy implications are examined.

Introduction

An important issue in all transactions is the "details" of the agreement between the parties. This is particularly true given the "unequal" bargaining position between an unsophisticated consumer and a marketer. This situation is particularly acute in on-line transactions where the terms of the agreement, usually called a "Terms of Service" (TOS), often contain hundreds of lines of text. The consumer is given the opportunity to "read" all the terms. However, they can also skip the TOS by simply clicking on an "Agree" or "End" link, which takes them to the next "step" in the installation or purchase process. Importantly, by clicking on the "Agree" link, consumers bind themselves to terms and conditions of which they know nothing, and free the seller of liability for almost everything.

The questions, therefore, are: 1) how often do consumers say they read any or all of the TOS agreement by scrolling through the numerous pages, 2) how much time do they say they spend reading the TOS agreements, 3) is there any relationship between the time spent reading the TOS agreement and the perceived risk of damage (i.e., infection or compromise) to their computer or other software on their computer from the software they are downloading and 4) is there is any relationship between the length of time consumers say they spend reading TOS agreements and the amount of time they actually spend reading them?

This paper answers these questions through two surveys. First, a sample of consumers who had downloaded software from the internet was surveyed using an on-line survey platform. Survey questions included perceived risk of installing the software on their computer and who the respondents believe would be responsible for damage to their computer or software. Second, a sample of consumers was observed while downloading software in a simulation study using a mall-intercept methodology. The simulation protocol included estimates of the amount of time the respondents say they spend reading TOS agreements and observation of actual time spent reading the TOS agreement during installation of the software.

Prior Research

While the Courts have been very involved in disputes related to contracts, particularly where fraud or deception is involved and the perpetrator seeks to use the terms of a detailed contract as a basis of avoiding

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liability, there has been very little research in the business and/or marketing literature regarding consumer behavior with either print or on-line contracts. Moreover, what research has been done has, for the most part, focused on consumers and written Standard Form Contracts (SFC's), as opposed to TOS agreements in an on-line environment.

Written Contracts: A number of authors have examined consumers' experiences with Standard Form Contracts (SCF's). SFC's are used by firms as a way of reducing the transaction costs by simplifying and shortening the negotiation process. Thus, to avoid excessive transaction costs, sellers prepare pre-printed contract forms and allow potential customers little time to read, much less contest contract terms (Becher and Unger-Aviram 2010). The consequence of these "take-it-or leave it" contracts (called adhesion contracts) is that consumers sign contracts which provide the seller with significant rights, often to the detriment of the buyer.

Other authors argue that the reasons why consumers don't read contracts is because the contract forms are: user un-friendly, font sizes are small, clauses within sentences are long and filled with legalese, and the important terms and conditions are buried in the middle of the document, making them difficult to identify, much less understand. (Stark and Choplin 2009) and the perceived "cost" of reading a contract is higher than the anticipated "benefits" from reading because they see themselves as "risk free" relative to any negative impacts of a contract term or condition (Hillman and Rachlinski 2002).

Three empirical studies have tested these theories relative to written contracts. The first asked a sample of 142 graduate students to consider one of four business scenarios: renting a car, a bank transaction, a receipt to be signed for laundry services, a registration contract for a nursery school (Becher and Unger-Aviram 2010). The authors measured whether the respondents would: read the entire contract, skim the contract, sign the contract without reading it but read it later, or sign the contract without ever reading it. The authors found that, in three of the scenarios (car rental, bank transaction, and laundry services) the percentage of respondents not reading the contract was between 92% (bank transaction) and 75% (laundry services), with many of the remainder saying they would skim it. On the other hand, only 24% of respondents would not read the registration contract for the nursery school, with 76% saying they would read it through. The authors suggest that the basis for these differences is that the nursery school contract involves the physical and mental wellbeing of a dependent child.

The second study of consumers' likelihood of reading a contract was by the same authors (Becher and Unger-Aviram 2010). In this study the authors sought to determine which factors are likely to influence the extent to which the respondents would read a rental-car contract. A rental-car contract was selected because these are the most cited contracts consumers don't read since the consumer is expected to sign it while standing at the rental-car counter, often with other harried travelers waiting (Eisenberg 1995). The authors found that, Ex Ante (before signing), the factors most strongly influencing consumers' decision to read (or not read) the contracts were: cost of the transaction, length of the contract, and the perceived lack of an opportunity to change the terms of the SFC. They also found that the least important factors were: contract density, font size, and legal language. On the other hand, after there was a problem (i.e., Ex Post), the most important factors influencing consumers' intent to read the contract were: cost of the transaction, opportunity to learn things about the transaction, and the opportunity to change the contract terms. They also found that contract density, font size, and legal language were significantly less important determinants as to whether to read a contract Ex Post, as it was Ex Ante.

Stark and Choplin (2009) conducted a series of studies of consumers' experiences reading written contracts. In the first study, the authors conducted a simulation study where undergraduate students were presented with a three-page consent form seeking their agreement to be subjects in a psychological research study. The subjects were invited to read the contract, which included language stating that the contract was not in the students' best interests. The authors found that 86.2% of the respondents did not even look at the bogus consent form before signing, while 10.3% looked at it only briefly, and 2.3% skimmed it to get a vague idea what it was about. Importantly, the average time spent on the bogus consent form before signing was less than 2 seconds. When asked why they had signed without reading, the student-respondents primary reasons were that the contract was long, it was boring, they wanted to get on with their day (i.e., a cost/benefit trade-off), and the presumption that all contracts are the same.

The second study by Stark and Choplin (2009) involved two samples, a public sample of consumers in the Chicago area and a sample of first-year law students. Each group was asked the extent to which they self-

report reading contracts: car rental contracts, terms enclosed in a package delivered to them, and terms of use when software is downloaded. The authors found that, for rental car agreements, 44.3% of the public sample and 43.2% of the law school sample did not read any of the terms of the contract, with almost half of the remaining public sample and 78.6% of the remaining law student sample admitting they did not read all the terms of the agreements. In the case of the package delivered to the home, 62% of the public sample and 71.3% of the law student sample said they did not read the terms of the contract, with most of the remaining respondents in both samples indicating that had read some, but not all of the terms of the agreements included in the package. According to the authors, "the situation is no better when it comes to reading the terms of use for software downloaded from the internet." They found that 29.7% of the law students and 23.8% of the public sample reported reading the terms of use agreements, but only 5.3% of the law students and 4.6% of the public sample reporting reading all the terms.

When respondents were asked reasons why they don't read contracts, or read all of them, important factors were: expectations that salespersons verbal recommendations would be consistent with the terms of the sales agreements they were asked to sign, the user-unfriendly features of contracts such as length and language used, the time it would take to read the contract (i.e., the cost) relative to the perceived benefits from knowing all the terms, and the low perceived risk of being defrauded.

Computer Software Terms of Service Agreements: Terms of Service (TOS) agreements for software are called "clickware" or "clickwrap" agreements since they are "agreements that appear on the user's screen to which they must click "I Agree" to proceed" (Wise 2001). These agreements are distinguished from "shrinkwrap" agreements which are printed on the outside of the software box or included with the packing material in the box, and from "linkwrap" agreements, where the user manifests his/her assent merely by using the software or internet site (Wise 2001). The focus here is "clickwrap" agreements which are considered binding on users because the users "manifest their assent to the agreement by clicking an "I Agree" button after being presented with an opportunity to view the terms of the service agreement" (Hotmail Corporation v. Van\$ Money Pie 1998).

Three studies have examined consumers' experiences with computer software. Bakos et al (2009) tracked the internet behavior of 45,000 households with respect to browsing online software companies to determine the extent to which potential buyers access end-user license agreements. They found that "only one or two out of every thousand retail software shoppers choose to access the license agreements," and of those few who do, they spend too little time to have read more than a small portion of the text of the agreements.

One study specifically examined "clickwrap" agreements. The study compared readability of 2003 and 2008 freeware license agreements (Hayden and Prichard 2008). The authors defined "readability" as the "ease with which a document can be read and understood." They compared the readability of 91 freeware programs frequently downloaded in 2003 with 100 freeware programs frequently downloaded in 2008. They found freeware agreements were significantly longer in 2008 than in 2003, with an average length of agreements in 2003 of 5003 words, compared to 6,656 words in 2008. They also found that "anywhere from 55% to 97% of the 2003 agreements studied were either difficult or very difficult to read" and that "anywhere from 61% to 97% of the (2008) agreements were categorized as either difficult or very difficult" to read. Finally the authors found that the average readability grade level score for both 2003 and 2008 agreements were between 11.76 years (i.e., high school senior) and 14.5 years (2nd year college). They conclude that "...since the average reading ability in the United States is estimated at the 7th grade level ... only between 1% and 11% of the agreements would be easily read and comprehended by the general population." (Bakos et al 2009).

Hypotheses:

1. The majority of consumers read less than half of TOS Agreements.
2. Amount of time spent reading contract is directly proportional to perceived risk of damage to other software on computer.
3. The actual amount of time actually spent reading TOS is inconsistent with claimed amount of TOS agreement generally read.
4. Primary reasons for not reading TOS agreements are length of contract and formatting factors such as density of agreement, type/font size, and terms/legalese.

Two empirical studies were undertaken to test these hypotheses: an online survey of consumers' claimed reading of TOS agreements and a mall-intercept observation of actual time spent reading TOS agreements while installing computer software.

Methodology

Study 1. The first study was an on-line survey of 151 consumers age 21 or older who had installed software on their home computer in the prior two months. The sample was drawn from an on-line panel of individuals who have agreed to participate in surveys on a periodic basis. Respondents were first screened to determine that they install software on their home computers and how frequently. They were then asked the likelihood that software they were installing would infect or compromise other software on their computer and, if the software did infect/compromise other software, who would be responsible for the damage, i.e., the software company or themselves. They were then asked how much of the agreement they generally read, and reasons they don't read any or more of the agreements.

Respondents who could recall seeing a "Terms of Service" or "Terms of Use" agreement screen/window on the last software they had installed on their home computers (n=101) were asked what options were available to them with the TOS screen/window and which option they selected. They were then asked how long, in seconds and/or minutes they spent reading the TOS agreement and reasons why they didn't read any or more of the agreement when installing their last software on their computer.

Study 2. In order to assess consumers' actual experiences installing software, Study 2 was a simulation whereby consumers "installed" software from the internet in a mall-intercept environment. The research protocol captured their behavior, expectations, and perceptions as they installed and after they installed the software.

A sample of 160 individuals who are in the target market for business-communications software were surveyed in shopping malls in four geographically diverse US locations. Prospective respondents who had been qualified in the mall were asked to assume they were installing the software on their home computer from the internet and were asked to go through the process of installing it on the computer before them. The software employed in Study 2 was a totally new product from a new company. Thus, there is no likelihood of prior experience with either the company or its software affecting the outcomes observed during the simulation.

Once the respondent began the installation process, the researcher observed and recorded the amount of time the respondent spent at selected set-up screens, including the "Terms of Service Agreement" screens, and recorded the action taken by the respondent at the selected screens.

Findings

Study 1. 82% of the respondents install software on their computer at least occasionally. Twenty seven percent (27%) of respondents believed it is "likely" or "very likely" that the software they last installed on their computer would infect or compromise other software on their computer, while the majority (52%) were ambivalent and 21% believed it was "unlikely," "very unlikely," or "not at all likely" to impact other software. Ninety percent of the respondents (90%) reported that the software did not infect or compromise any other software they had on their computer. However, 38% of respondents felt that any damage that did or might occur would be totally the software company's responsibility and a similar percent (38%) indicated that they felt that some of the responsibility would be the company's and some would be theirs. Only 21% felt the user would be totally their responsibility. This is noteworthy since a clause in almost all TOS agreements specifies that the software company has no liability for any negative impact of their software on any other software on the computer.

Respondents were asked how much of TOS agreements they generally read when installing software on their computers. As noted in Table 1, 27% said they read "All" or "Almost all" of the statements and 43% in total said they read "more than half" of the agreement, while 33% indicated they read "Very Little" or "None" of the TOS agreements. However, when asked which option they had selected when the TOS agreement screen first appeared the last time they installed software, 83% indicated they selected the

“Agree/Accept” option, with an additional 2% saying “Skip to End.” Thus, 85% of the respondents selected an option that eliminated the opportunity to read the TOS agreement before agreeing to it.

Table 1: How Much of Terms of Service Agreement *Say* Generally Read

	Number	Percent	
All	12	8%	} } 27%
Almost all	29	19%	
More than half	24	16%	
Half	18	12%	} } 43%
Less than half	18	12%	
Very little	29	19%	} } 45%
None	21	14%	
	151	100%	

Importantly, as noted in Table 2, a quarter of the respondents (26%), spent six seconds or less reading the agreement and 61% spent 30 seconds or less reading an agreement that, on average, is 6,656 long and written at a second-year year college level (Hayden and Prichard 2008).

Table 2: Time *Say* Spent Reading Terms of Service Agreement

	Number	Percent	
Less than 3 seconds	11	11%	} } 26%
3-6 seconds	14	15%	
7-15 seconds	16	16%	
16-30 seconds	18	19%	
31-60 seconds	14	15%	} } 61%*
More than one minute	14	15%	
More than two minutes	8	8%	} } 23%*
	96	100%	

* $\alpha=.10$

Respondents were then asked which factors, if any were reasons why they didn’t read any or more of the TOS agreement. Consistent with Stark and Choplin (2009), the length of the contract was a primary reason respondents said they didn’t read any or more of the TOS contracts when installing their last software. As noted

Table 3: Reasons Not Read Any/More of Terms of Service Agreement

	Number*	Percent
Length of the contract**	58	60%
Assumption other software contracts are the same	47	48%
Type of language used (legal wording/terms)	35	36%
Density of the print	23	24%
Size of the type (font)	19	20%
Inability to change terms of contract	4	4%
Opportunity to learn about transaction	4	4%
Monetary value of contract	3	3%
Other	12	12%

*Multiple responses accepted; **Order of responses randomized

in Table 3, the results are consistent with what Becher and Unger-Aviram (2010) found for consumer reviewing written contracts for rental cars, namely that type of font, density of print, and legalese used in the agreement were less important reasons for not reading TOS agreements when installing software.

Study 2. Respondents in the simulation study (Study 2) were first asked how likely it is that the software they were about to install would harm or infect their computer or other software on it. Ten percent (10%) of respondents said it was “likely” or “very likely” to occur. Importantly, however, 63.1% of respondents said that the company (not themselves) would be responsible for any damage, with only 26.9% saying it would be their responsibility (not the company’s).

Respondents then “installed” the software on the computer and their actions timed and recorded. When they reached the TOS screen, the installation presented the respondents with three options: “Agree,” “Next,” and “Read.” The “Agree” option took them to the next phase of the installation process, without the option of going back to the TOS. The “Next” and “Read” options took the respondents to the second page of the 15-page TOS. 58.7% of respondents selected Agree (i.e., agreeing to the TOS without reading any of it), while 41.3% clicked “Next” or “Read.”

Respondents who clicked “Next” or “Read” were then timed to measure the amount of time they spent reading the TOS before clicking the “Accept/Agree” option which was always present below the TOS screen. As noted in Table 4, 27.2% of the 66 respondents who chose to read at least some of the TOS agreement (n = 18) spent less than thirty seconds reading the agreement and 40.9% (n=27) spent less than one minute reading the TOS agreement, which was approximately 6,000 words long. Thus, combining the 94 respondent in the simulation who clicked “Accept/Agree” without reading any of the agreement with the 18 respondents who spent less than 30 seconds reading it, a total of 112 respondents (70.0% of the total sample) spent 30 seconds or less reading the 6,000-word agreement.

Table 4: Time *Actually* Spent Reading Terms of Service Agreement

	Number	Percent	
0 – 9 Seconds	7	10.6%	} 27.2% } 40.9%*
10 – 30 Seconds	11	16.6%	
31 – 1 Minute	9	13.7%	
1 – 2 Minutes	11	16.3%	} 22.4% } 58.8%* } 36.4%
2 – 3 Minutes	4	6.1%	
3 – 5 Minutes	15	22.7%	
Over 5 Minutes	9	13.7%	
	66	100%	

The verbatim comments that respondents made when deciding to “agree/accept” (i.e., not read any of the TOS) or while reading the TOS were also recorded. Approximately 50% (n=81) made comments. As noted in Table 5, the most frequent explanation for not reading any or much of the TOS agreement were content reasons, i.e., that it was boring or tedious, or that “they were all the same” (n=29),

Table 5: Reason for Not Reading Any/More of the Terms of Service Agreement

Boring; Tedious; All the same	29	35.8%*
Content: too long, wordy, legalese	22	27.2%
Format: small print, screen size	14	17.3%*
Know what’s in it; Don’t need to read	12	14.8%
Other	4	4.9%
	81	

*ns

or that it was too long and wordy (n=22). Also, consistent with prior research, formatting issues (font size, etc.) were less important factors in the decision to read or how much of the TOS to read.

Respondents were then asked general questions regarding their experience with TOS agreements. As noted in Table 6, slightly more than a quarter of

Table 6: Amount of TOS Generally Read and Amount Understood

	Amount of TOS Read		Amount of TOS Understood	
All	19 (15.3%)	} 27.4%	36 (33.6%)	} 65.4%
Almost All	15 (12.1%)		34 (31.8%)	
More than Half	13 (10.5%)		17 (15.9%)	
Half		} 37.9%*	1 (0.9%)	} 1.3%**
Less than Half	26 (21.0%)		7 (6.5%)	
Very Little	34 (27.4%)	} 41.1%*	12 (11.2%)	} 11.2%**
None	17 (13.7%)			

*ns; **α = .001

respondents (27.4%) say they read “all” or “almost all” of the agreements, while significantly more (41.1%) admit they read “very little” or “none” of it. Importantly, a significant percentage of respondents (65.4%) say they understand “all” or “almost all” of the TOS even though the study showed that had actually read little or none of it.

Discussion

Hypothesis 1. The results of Study 1 show (Table 1) that 45% of respondents claim to read “less than half” of the TOS agreement and there is no significant difference between the percent saying they read “more than half” of the agreement (37.9%) and those who say they read “very little” or “none” of the TOS agreements (41.1%). Therefore, based on respondents claimed time spent reading the TOS agreement, Hypothesis 1 must be rejected. However, if one accepts the fact that the average Terms of Service agreement is 6,656 words long and written at a 12th grade level or higher, that the average reading rate for American adults is 250 to 300 words per minute (Bakos et al 2009) and the fact that 61% of respondents spent 30 seconds or less reading the TOS agreement when installing their last software (Table3), then one must conclude that consumers do not read very much of the Terms of Service agreements and accept Hypothesis 1.

Hypothesis 2. As noted above, 27% of respondents in Study 1 indicated there was some chance (i.e., likely or very likely) the software they recently installed could have infected or compromised other software on their computer, whereas 21% it was not at all likely or unlikely that the software would damage other software. On the other hand, a significantly (α=.001) lower percent (10%) said there was a risk (i.e., likely or very likely) when installing the software in the simulation in Study 2. This difference more than likely reflects familiarity with the particular, well-known software used in the simulation. However, there is no significant difference in the amount of the TOS agreement read and the perceived likelihood of damage to the computer or other software. Also, there is no significant difference in the time spent reading the TOS agreement when installing the last software or when installing the software in the simulation and the perceived likelihood of damage to other software on the computer. Therefore, Hypothesis 2 that the amount of time reading TOS agreements is proportional to the perceived risk of the software to other software on the computer is not accepted.

Hypothesis 3. A comparison of the claimed amount of TOS agreements respondents generally read (Table 1) and the amount of time respondents claim to spend reading the TOS agreement on their most recent software installation (Table 3) in Study 1 shows significant variances. For example, 43% of respondents in Study 1 said they read “more than half” of Terms of Service agreements, yet a significantly higher percent of respondents (61%) spend 30 seconds or less reading agreements that are, on average, 6,650 words long. Therefore, one can only conclude that the time spent (as determined by claimed minutes spent) is not consistent with the amount of the TOS respondents claim to read.

These conclusions are confirmed with Study 2 where 58.7% of respondents in the software installation simulation clicked the “Agree” option (i.e., without reading any of the TOS) and 27.2% of those who clicked “Next” to read the TOS spent less than 30 seconds reading the 6,000 word agreement. As a result, a total of 75.6% of respondents in the simulation spent less than one minute reading the TOS. Therefore, Hypothesis 3 is accepted.

Hypothesis 4. As noted above, Stark and Coplin (2009) identified user-unfriendly features such as length of the contract and the legalese language used and the low perceived risk being defrauded as reasons for not reading a Standard Form Contract while Becher and Unger-Aviram (2009) found that issues related to the format of the contract (i.e., density of print, size of type/font, and legalese) were not significant reasons for reading Standard Form Contracts. The results of the two studies that “length of the contract” or that it is “too long, too wordy,” consistent with Stark and Coplin’s findings, are important factors in a decision to read or not read a Terms of Service agreement. Also, consistent with Becher and Unger-Aviram’s findings, other issues related to the format of the agreement, namely density of the print, size of the type/font, and terms/legalese in the contract were less important than the perception that all software “Terms of Service” contracts are the same. Moreover, respondents’ comments during the software installation simulation (Study 2) confirm the Study 1 findings. As noted in Table 7, 63% of respondents said the reason they didn’t read the TOS, or read very little of it, was because it was “boring, tedious, too long, or too wordy.” Also, consistent with prior research, format issues (font, screen size) were less important factors. Therefore, Hypothesis 4 is supported as to length of contract as a reason for not reading, but not supported as to other formatting factors of the agreement (e.g., density, print size, or legalese).

Conclusion & Implications

The empirical studies reported here confirm with a sample of consumers who had recently installed software on their home computer and a sample of consumers who installed software in a simulation study what other studies have found with student samples reviewing written contracts, namely that few consumers read Standard Form or TOS agreements when installing software. It also shows that when asked a general question about how much of an agreement they read, the responses indicate that a substantial percentage say they read more than half of the agreement. However, when asked basically the same question in terms of time, the self-report data show they can’t possibly read more than a few lines. Additionally, when observed actually installing software in the simulation study, 75% of respondents didn’t read any of the TOS or spent less than one minute reading the document, thus confirming the basic premise that consumers don’t read TOS agreements. The data also show that the “motivation” for not reading the TOS agreements, consistent with prior research, is the length of the agreement, not the small font or legal terms. Also, the study shows that perceived risk of “damage” to other software on the respondents’ computers is not a motivating factor in consumers’ decision to read, or not read, the TOS agreement.

The study confirms the generally accepted belief that consumers don’t read contracts. The study also potentially exposes companies to increased liability for failure to provide adequate notice of important terms and conditions associated with their software products when they bind consumers to “take-it-or-leave-it” TOS adherence contracts that they “know” consumers don’t read. This is particularly true at a time when policy makers at agencies such as the FTC and the Consumer Financial Protection Bureau (CFPB) are writing Rules requiring clear disclosures of important terms in credit and mortgage contracts. Thus, the question is, what can managers do to avoid or limit their exposure to liability?

One option that seems to come from results that show how little of TOS agreements consumers actually read is for software manufacturers to identify the issues that “really matter,” i.e., those that managers know account for 95-99% of disputes, and highlight them in the first lines of the TOS. For example, issues such as: a) “the manufacturer is not liable for damage to the computer caused by the software,” b) “the manufacturer’s liability for defective software is limited to replacement of the software,” and c) “the manufacturer is not liable for unauthorized use of the software” could be highlighted in user-friendly language in the initial TOS screen, which most respondents say they “at least look at” before clicking the “agree” or “end” button. The important consequence would be that the software buyer is informed about the key limitations and the manufacturer is insulated from a charge they “hid” key disclosures in the middle of a long, user-unfriendly small-print TOS agreement, which they “know” would never be read.

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