

# INTERNET CONTRACTS

Formation of online contracts in  
the Italian legislation and case law

## Formation of Internet contracts

- Legal requirements for a contract made by means of the Internet are the same as for any other contract.
- Key requirement:  
Communication of an offer and of an acceptance of that offer (Art. 1326 civil code).



## **Formation of Internet contracts**

- General rule: freedom of contracts (contracts may be formed by oral or written agreements and may be implied from the conduct of the parties).
- Art. 13, Legislative Decree n. 70/2003 (implementation of Directive 2000/31/EC): when the recipient of the service places his order through the internet, the law of contract is implemented.

## **Formation of Internet contracts**

- Internet contracts: unlike other commercial transactions, there may not be a paper document executed by the parties.
- Different kind of Internet contracts:
  - A) The formation takes place online but goods or services are delivered or performed through other channels;
  - B) Both the formation and the performance take place entirely online (software download, access to databases).

## Online offer

- An offer transmitted through the Internet generally is:  
*published on a web site*  
A) offer to the public (art. 1336 civil code);  
B) invitation to treat (the customer becomes the offeror).
- *sent by e-mail to specific recipient*

## Timing of acceptance

- *General rule:*  
A contract is formed when the acceptance is communicated to the offeror (art. 1326 civil code).
- Any change made by the offeree terminates the original offer and results in a counter-offer.

## Timing of acceptance

- *Particular rules for online contracts:*
  - A) the acceptance is communicated when it is sent to the electronic address of the offeror (Art. 14, Presidential Decree 445/2000);
  - B) the order and the acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them (Art. 13, Legislative Decree n. 70/2003)

## Timing of acceptance

- To form an online contract
  - A) *Through web sites:*

The acceptance must reach the server containing the web site;
  - B) *Through e-mail:*

The acceptance must reach the server containing the e-mail box.

## **“Point and click” contracts**

- Online contracts are generally formed by clicking on a particular button (e.g.: “I accept”) placed immediately after the terms and conditions.

### **Sample clause**

*“Before you click on the Accept button at the end of this document, carefully read the terms and conditions of this Agreement.*

*By clicking on the Accept button, you are consenting to be bound by and are becoming a party to this Agreement.”*

## **“Point and click” contracts**

- Art. 1341 civil code: general provisions in pre-formulated standard contracts which cause a significant imbalance in the parties' rights and obligations arising under the contract, (limits of liability for damages, withdrawal from the contract, exceptions to jurisdiction, etc... ) have effect only if the weaker party approves them in written form.

## **“Point and click” contracts**

- Case law  
Justice of Peace of Partanna, Decision n. 15/2002
- Alfa purchased, among other goods, a portable computer through Beta website.
- The computer was paid but not delivered.
- Unanswered invitations to perform the obligation.
- Alfa brought a suit against Beta to the Justice of Peace of Partanna (the place where the order should have been executed).

## **“Point and click” contracts**

- Beta entered a jurisdictional plea assuming that Alfa is bound to the terms and conditions accepted online, which set the jurisdiction of the Tribunal of Monza.

## **“Point and click” contracts**

JUSTICE OF PEACE OF PARTANNA

OR

TRIBUNAL OF MONZA?

## **“Point and click” contracts**

- The Justice of Peace of Partanna stated that Beta should have provided two buttons at the end of the terms and conditions:
  - The first one for the formation of the contract;
  - The second one for the acceptance of the onerous provisions.

## **“Point and click” contracts**

- Doctrine: only electronic signature has the same effects of handwritten signature. As a consequence, onerous provisions included in online agreements may be approved only through electronic signature.
- Clicking the “I agree” button after the onerous provisions does not constitute acceptance of the offeror’s terms and conditions.
- Precontractual bad faith if the customer refuses to sign the terms and conditions accepted online.

**Thank you for your attention!**

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