

little choice but to participate in online commerce only to be accosted by these unfriendly terms.⁵ Professor Wais

¹⁴ but she calls for more research on

Assuming the nature of wrap contracts requires a new solution, Kim proposes in part a legal presumption of the unconscionability of online wrap contracts.²² The presumption can be rebutted by showing that the legislature or a regulatory agency approved the suspect term or that alternative terms were available.²³ But some of the commentators worry about legislative involvement. For example, Professor Tussey points out

transfer of lawful digital copies if the transferor destroys his original copy
²⁴ Professor Waisman points out that legislative bodies may be captured by industry so that legislation will only reinforce the enforcement of unfair terms.²⁵ In addition, Waisman points out that alternative terms may not be accessible to consumers and suggests that alternative terms.²⁶

and do not address the reasons for the bargaining disadvantages of consumers.²⁷

28

Professor Kim also believes that courts should enforce crook, shield, and sword terms only if the consumer clicks I agree next to each such term.²⁹

³⁰ Tussey also questions whether judicial reform is even possible. Tussey remarks that established through a now lengthy series of case precedents. The courts
³¹

wrap contracts. *Id.* at 242. Ghosh adds that the wrap contract problem is a matter of scale, rather than a new kind of transaction. *Id.*

22. KIM, *supra* note 1, at 208. She considers wrap contracts a coercive contracting form if the consumer is required to accept the form. *Id.* Kim also sets forth a duty to draft reasonably. *Id.* at 186-92.

23. *Id.* at 208. Among others, Waisman, *supra* note 4, at 298, comments on this solution.

24. Tussey, *supra* note 10, at 292. Further, Tussey writes: Unfortunately, legislative avenues look forbidding given the influence on legislatures of lobbyists for the very same corporate drafters who profit most from wrap contracts. *Id.* at 294-95.

25. Waisman, *supra* note 4, at 305-06.

26.

Some of the contributors present solutions of their own. Professor activism to assess reputational costs on overreaching businesses.³² He scate personal information of its users through the use of contract authorizations. Ghosh

³³ This approach echoes one of the

which incentivizes vendors to make their terms easily accessible on the Internet.³⁴ Watchdog groups could then access the terms and publicize public opinion to defeat oppressive terms.³⁵ Professor Stuart also sees the value of

³⁶ *c" rtkqtkö* solutions suggested by other

³⁷ But such approaches obviously raise significant issues of their own, including the method and costs of implementing the proposals and whether they would succeed.

In conclusion, the various perspectives and proposals in this symposium are well-

interested.

32. Ghosh, *supra* note 17, at 250.

33. *Id.*

34. See PRINCIPLES OF THE LAW: SOFTWARE CONTRACTS § 2.02 (2009).

35. *Id.*; see Annalee Newitz, *Dangerous Terms: A User's Guide to EULAs*, ELEC. FRONTIER FOUND. (Feb. 2005), <http://www.eff.org/wp/dangerous-terms-users-guide-eulas>.

36. Stuart, *supra* note 10, at 265.

37. Barnhizer, *supra* note 7, at 227 (discussing Ian Ayres).