



**GDAŃSK UNIVERSITY  
OF TECHNOLOGY**

## Selected unusual provisions in the EULA

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- A legal contract between the software developer and the end user.
- Grants the user the right to use the software under specific terms.
- Often displayed during installation or first launch.
- Typically non-negotiable ("take-it-or-leave-it")[1].

Aspect	EULA	Terms of Service (ToS) / Terms & Conditions (T&C)
Scope	Focused on <b>software usage rights</b>	Broader: website, service, and platform rules
Target	Individual <b>software users</b>	Website/app users, consumers, community members
Binding	Usually shown during installation	Often on websites (agreed via use)

Table: Comparison between EULA and Terms of Service[2]

- Too long and full of legal jargon.
- Presented during moments when users are eager to proceed (e.g., install).
- Click-through agreements make it easy to skip reading.
- Psychological: “Everyone else accepts, so I do too.”[3]

### Interesting fact

A study by Carnegie Mellon University estimated that reading all the privacy policies encountered annually would take the average user 76 workdays[4].

# | Why are EULAs Rarely Read?



## Commonly told Lies

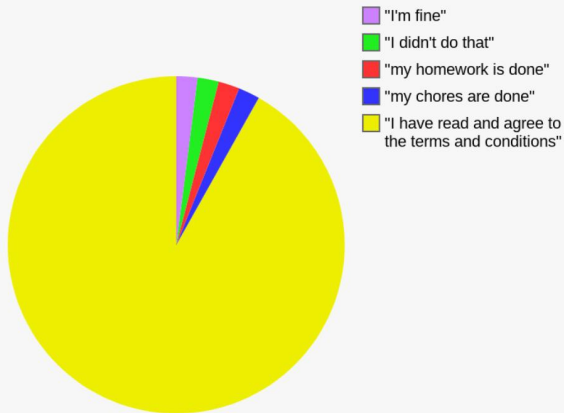




Figure: AWS Lumberyard logo [5]



Figure: AWS Lumberyard [6]



*"The terms state that Lumberyard is not to be used with **drones, medical equipment, nuclear facilities, manned spacecraft or live military combat** in normal times, but have a special exception.*

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*"Clause 57.10 of the AWS terms of service states: "This restriction will not apply in the event of the occurrence (certified by the United States Centers for Disease Control or successor body) of a **widespread viral infection transmitted via bites or contact with bodily fluids that causes human corpses to reanimate and seek to consume living human flesh, blood, brain or nerve tissue** and is likely to result in the fall of organised civilisation."*

— Amazon AWS EULA, 2016 [7]



UK video-game retailer *Gamestation*,  
1 April 2010 (April Fools' Day):

- Added an “*Immortal Soul Clause*” to the online Terms&Conditions, claiming legal ownership of each buyer’s soul.
- Experiment highlighting how rarely people read EULAs/T&Cs.
- **Results**
  - **7,500** transactions that day
  - **88%** accepted without noticing
  - **12%** spotted the clause and received a £5 gift voucher
- Gamestation emailed all buyers, *releasing* their souls and urging them to read future contracts.



Figure: Gamestation email [8]



- In 2005, PC Pitstop added a hidden clause in its EULA:  
*"If you're reading this and contact us, you may receive money."*
- Over **3,000 downloads** later, only **1 person** noticed—and won **\$1,000**.
- Purpose: Show that users rarely read EULAs.

*Proof: Even with an incentive, almost no one reads license agreements.[9]*

Tumblr humanizes legal content — a reminder that *Terms of Service don't have to be soulless*.

You have to be at least 13 years old to use Tumblr. We're serious: it's a hard rule, based on U.S. federal and state legislation. "But I'm, like, 12.9 years old!" you plead. Nope, sorry. If you're younger than 13, don't use Tumblr. Ask your parents for a Playstation 4, or try books.

- **Confusion or Impersonation.** Don't do things that would cause confusion between you or your blog and a person or company, like registering a deliberately confusing URL. Don't impersonate anyone. While you're free to ridicule, parody, or marvel at the alien beauty of Benedict Cumberbatch, you can't pretend to actually be Benedict Cumberbatch.

[Report confusion or impersonation](#)





Tumblr humanizes legal content — a reminder that *Terms of Service don't have to be soulless*[10].

- **Username/URL Abuse or Squatting.** Tumblr's usernames/URLs are meant for the use and enjoyment of all of our users. Don't squat, hoard, amass, accumulate, accrue, stockpile, rack up, buy, trade, sell, launder, invest in, ingest, get drunk on, cyber with, grope, or jealously guard Tumblr usernames/URLs.

Reblogs, Likes, and Replies are a matter of public record, so if you're truly ashamed of your desires it's best to keep them to yourself. But why? Be proud of who you are. You're beautiful. We're looking you in the eyes and telling you how beautiful you are.



*"You also agree that you will not use these products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of **missiles**, or **nuclear, chemical or biological weapons**."*

— Apple iTunes EULA, 2007 [11]



- Reaffirms U.S. export-control rules: U.S. technology may not be employed in weapons of mass destruction programmes or their delivery systems.
- Places the responsibility on the end—user to ensure compliance with the *Export Administration Regulations* and related legislation.
- Signals Apple's intent to distance ordinary consumer software from potential dual—use or military applications.



- **Regulatory Compliance** — blanket language satisfies U.S. export-control requirements.
- **Risk Mitigation** — reduces liability should the software be diverted to a sanctioned programme.
- **Industry Standard** — similar clauses appear in Adobe, Microsoft and Google EULAs to streamline export due—diligence.



*ANY DISPUTES BETWEEN YOU AND US, EXCEPT DISPUTES RESOLVED IN SMALL CLAIMS COURT OR RELATING TO THE OWNERSHIP OR ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS, ARE SUBJECT TO A CLASS ACTION WAIVER AND MUST BE RESOLVED BY INDIVIDUAL BINDING ARBITRATION.*

*— Disney Terms of Use, §8, May 24 2024*





- **Universal reach** — Applies to *all* Disney entities and disputes, including personal injury and wrongful death.
- **Private forum** — Jury and class-action rights are waived; claims proceed in individual arbitration.
- **Opt-out window** — Users have 30 days to opt out, but few are aware of the provision.



- Widower Jeffrey Piccolo sued after his wife died from an allergic reaction at Disney Springs (Oct 2023).
- Disney's August 2024 motion sought dismissal or arbitration, citing Piccolo's 2019 Disney+ sign-up.
- Following public backlash and legal scrutiny, Disney withdrew the motion a week later. [12]



- **Cost Control** — Arbitration is faster and less expensive than jury trials.
- **Risk Containment** — Eliminates class actions and caps unpredictable punitive damages.
- **Industry Standard** — Netflix, Amazon, and other platforms use similar clauses to streamline dispute resolution.

- Purple added a fake clause to its WiFi Terms: **1,000 hours of community service**.
- Tasks included:
  - Cleaning toilets at festivals
  - Hugging stray animals
  - Scraping gum off streets
- Over **22,000 users accepted**; only **1 person** noticed.

*Goal: Show how blindly users click “I Agree.”*



22,000 People willingly agree to community service in return for free WiFi

- Experiment raised awareness of careless digital consent.
- Inspired changes:
  - Privacy policy shortened from 1,600 to 260 words.
  - Clearer data usage explanations.
  - Launch of a user-controlled Profile Portal [13].



- In June 2014, researchers set up public Wi-Fi hotspots in London.
- Users had to accept T&Cs to get access.
- One clause (the “Herod Clause”) stated:  
*“You agree to assign your first born child to us for the duration of eternity.”*
- **6 people accepted the terms** without noticing.
- Clause was later removed — the children were “returned.”



- Experiment run by the Cyber Security Research Institute and F-Secure.
- Goal: Raise awareness of careless public Wi-Fi use.
- Highlights two key issues:
  - **Blind acceptance** of legal agreements.
  - **Lack of awareness** about security risks in public networks[14].



- **Adhesion Contracts** – EULAs are take-it-or-leave-it; enforceability hinges on notice and assent.
- **Surprising Terms Rule** – Unusual or onerous terms must be conspicuous; otherwise they risk invalidation (see *Tilden Rent-A-Car v. Clendenning* (1978) and *Specht v. Netscape* (2002)).
- **Unconscionability / Unfair Terms** – U.S. courts apply the “shock-the-conscience” test; the EU relies on Directive 93/13/EEC on Unfair Terms in Consumer Contracts.
- **Public-Policy Limits** – Clauses that waive fundamental rights (e.g., personal-injury liability) or contravene mandatory law are void.





- *ProCD v. Zeidenberg* (7th Cir. 1996) – Shrink-wrap license upheld where consumer could return the product.
- *Nguyen v. Barnes & Noble* (9th Cir. 2014) – Browse-wrap failed: a passive link was insufficient for assent.
- *VKI v. Amazon EU* (CJEU 2016) – Foreign-law clauses may be unfair if not individually negotiated.
- Scholars highlight a “*duty to draft clearly*” (see Kim 2018) and advocate plain-language summaries such as the TL;DR Act 2022 proposal.



- **Information Imbalance** – Empirical study finds fewer than 0.2 % of shoppers open EULAs (Bakos et al., 2014).
- **No Real Negotiation** – Consumers lack bargaining power; firms have inserted “immortal soul” or “zombie apocalypse” clauses without challenge.
- **Autonomy vs. Paternalism** – Is “click I AGREE” genuine consent when crucial stakes are obscured?
- **Fairness Heuristics** – Transparency, salience and meaningful opt-outs can help restore contractual balance (see Loeb & Loeb 2022 for design suggestions).



1. Novel clauses survive only with clear notice and if not unconscionable.
2. Courts increasingly scrutinise browse-wrap and surprise terms; UX designers must build explicit assent flows.
3. Ethical drafting demands plain language, proportionality, and respect for consumer autonomy.



Thank you for attention!

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