“Clickwrap” agreements are where a purchaser agrees to the terms of a contract by clicking on a dialogue box on screen.  This is often seen when installing software, when downloading from the Internet or when purchasing on-line.  Many of us have “assented” to such agreements while rushing through an installation or purchase without slowing down to read the many pages of legal language to which we are agreeing.

 Courts generally uphold the validity of such “acceptances”, even if the person clicking didn’t actually read the agreement.   However, under limited circumstances (just as is the case with all contracts) the effects of unfair or harsh terms within clickwrap agreements can be avoided.   Such limited circumstances include when the terms are so unexpected and so shocking as to be “unconscionable”, when enforcing the terms in question would be a violation of public policy or when a forum selection clause is unfair.  If you are interested in reading a 2007 law review article on this subject, I have attached a pdf version of a Berkely Technology Law Journal article discussing this very issue.

 Please answer the following questions regarding this issue:

 A.  How many times do you think you have clicked to accept an agreement?  What percentage of this time do you think you have actually read the terms of the agreement?  If that same agreement were on paper, would you be more or less likely to actually read the terms?  Why?

 B. Do you think it is likely that some terms might seem unexpected and unfair to consumers but that these terms would probably be upheld in court?  Would some consumers be intimidated by the cost of going to court to prove that terms are unenforceable?

 C. Which specific types of terms do you believe have been most frequently found to be unenforceable by courts (i.e. NOT valid)?  Or what is most important (or interesting) to you about this issue? Please feel free to quote from the attached law review article or attach your own article or case.