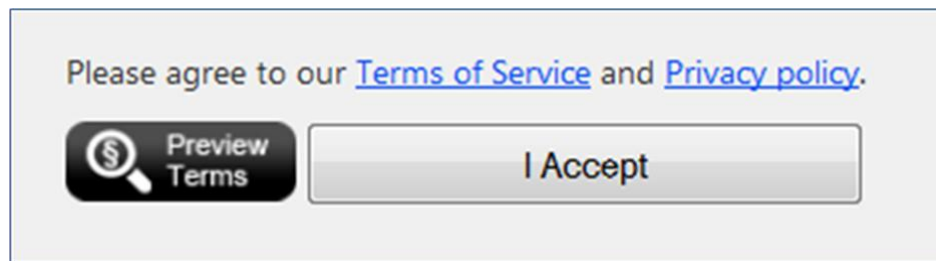# PREVIEWING ONLINE TERMS AND CONDITIONS

COMMONTERMS ALPHA PROPOSAL

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Illustration: The preview button

Abstract

The CommonTerms project is trying to find a solution to the problem of non-accessible online Terms & Conditions.

If you want to be a part of the online world you must accept the terms – but almost nobody reads them, because they are usually lengthy, boring and hard to understand.

In this report we describe the problem and outline a proposal for a solution: An accessible format for *previewing* terms, which we will try to standardize. We also present our analysis of 22 existing online agreements and a summary of what other related projects have done and are doing to solve the problem.

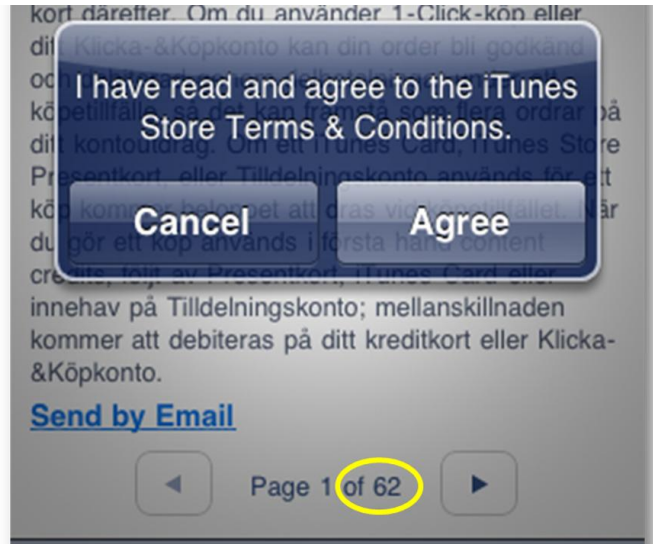# Contents

Background

Almost nobody reads online Terms and Conditions!

This should be intuitively apparent to most observers, and it has been confirmed by e.g. the FTC[1] and the EU[2].

Terms & Conditions covering tens of pages of fine print is very common.

(iTunes is no worse than most other services.)

The Terms are usually not by far as accessible as the online services they apply to.

This is a problem.

Why is this a problem?

"I have read and agree to the terms and conditions" is the "biggest lie on the Internet" according to countless[3] tweets and blog posts.

If you do not think that lying is problematic, how about the following consequences:

Users get exploited

> Most agreements have been formulated only by providers, and therefore not protecting the interest of users. Providers can keep writing whatever they like in the agreements as long as nobody reads them. Even if terms *are* fair, some users will regret having signed the agreement because they were expecting something else.

Users get excluded

> Some users who do not want to accept an agreement they cannot understand or do not have the time to read will stay away from great services, thus reducing market size and contributing to the *digital divide.*

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[1] Federal Trade Commission, see for example http://www.info-law.com/nobodyreads.html

[2] According to https://plus.google.com/113117251731252114390/posts/UjXrKcayV1n

[3] See, for example http://www.twingly.com/search?q=lie+agree+terms&sort=published&content=microblog

Limiting value

Some users, not knowing the terms, will be restrictive in their use, and only get limited benefit from the services. How fun would a social network be if you didn't trust it with some personal data?

Wasting time

Some users spend a lot of time actually reading the agreements, and service providers spend time writing for almost nobody.

Lessening competition

Websites and other online services should be able to compete with great terms and agreements, but today that's hard because nobody has a clue what they agree to.

Eroding respect for contracts

Some users may become less respectful of agreements in general, having ignored so many of them.

The Swedish Consumer Agency (Konsumentverket) reports[4] that many people do file complaints after having agreed to things they did not known they had agreed to, so the problem is *real* and not just a curiosity.

CommonTerms wants to contribute to a solution!

Our approach

CommonTerms started in 2010 with an intention to solve the problem of non-accessible online legal texts in a way similar to how Creative Commons made different copyright licenses accessible.

We thought[5] that by analyzing existing agreements, we could identify the most *common terms*, and then create icons to symbolize them.

So we downloaded the Terms of Service from a little more than 20 popular websites of different kinds and we categorized every single term found in those documents.
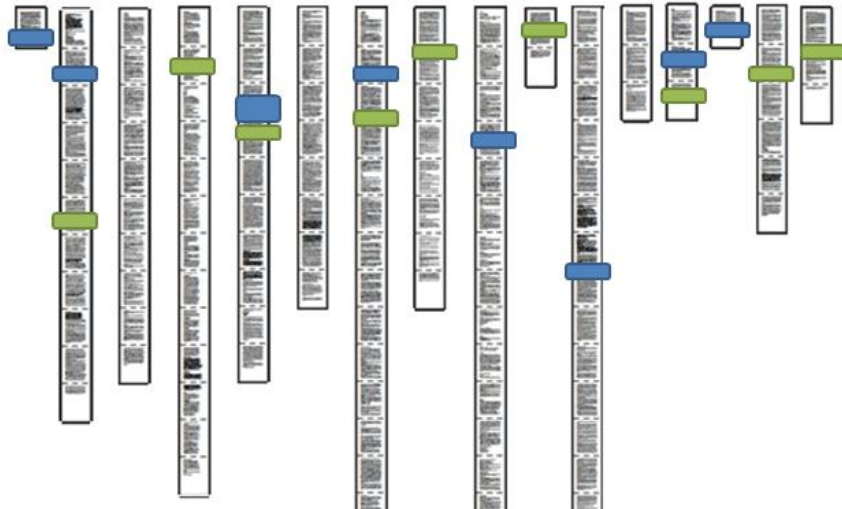
Two terms appearing in several agreements have been identified and color marked.

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[4] Email from lawyer Elin Häggeborn

[5] http://p.lannero.com/cats/

More details can be found in the section *Common terms in existing agreements*, below.

Indeed, there were some commonalities between the agreements. We even created a few draft icons:

Early draft of icons for two common terms.

But in just 22 documents we found more than 450 *different* terms. Making 450+ icons would not be practical, especially given their often quite abstract nature.

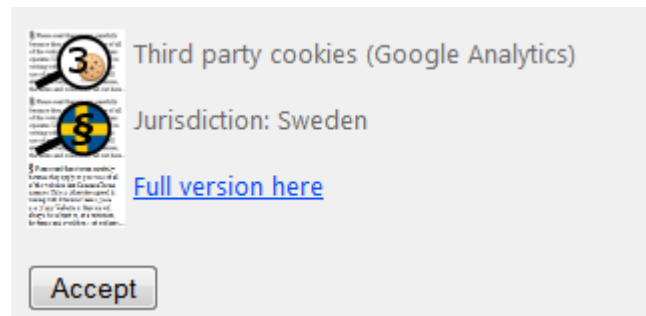However, representatives from Creative Commons have been very encouraging, and almost everybody we've discussed the issue with seems to recognize the problem and welcome a solution, so despite having found such diversity in the studied agreements, we did not abort the project.

At first we were not aware of any other projects doing similar things, except of course, Creative Commons. However, in parallel with our investigations of existing agreements, we also made efforts to find related work and get in touch with other projects - whether active or abandoned - with similar goals.

Related work

During our research, we found several other projects with similar goals.

Most of them focus on privacy, while CommonTerms tries to address accessibility of all kinds of terms and conditions online, but the problem is the same.

Icons and graphics

The following projects have presented icons and other graphics to summarize important terms.

Privacy Icons

http://www.azarask.in/blog/post/privacy-icons/

Started by Aza Raskin while he was working for Mozilla, this project has done a great job drafting icons to describe a select set of privacy parameters.

Two examples of Mozilla Privacy Icons

Being a Mozilla project, there's a chance that the icons may be presented in a dedicated browser panel rather than on a webpage somewhere on a website. We very much like the effort, which has a high quality and involved great people, but the alpha proposal still has a number of drawbacks (e.g. complex icons, red/green colors to indicate good/bad policies - Who would put a red color on their site?). CommonTerms wants to build on the many valuable findings from Mozilla Privacy Icons. Last known activity: December 2010.

Privacy commons

http://www.privacycommons.org

Draft icons by Aaron Helton described for example Who owns User Generated Content: User, Provider company or Shared ownership. Last known activity: February 2009

Khula project

http://www.khulaproject.com/

Started by Tyler Baird. Producing easy-to-read hand-made Privacy Policies. Clear and nice graphics. Last known activity: september 2011.

Know privacy

http://www.knowprivacy.org

Report from a project by students at the UC Berkely School of Information in 2009. Drafted icons describing how user data is being collected and shared.

Netzpolitik

Matthias Mehldau created a large set of icons answering the questions "What data is collected", "How is my data handled", "For what purpose" and "For how long". Last known activity: 2007

European privacy open space

http://www.privacyos.eu

EU project proposed the idea of cc-like icons but no icons as far as I know. Last known activity: 2009

Privacy Icons (for email)

http://privicons.org/

This project has proposed a set of icons for email privacy. Ryan Calo, Max Senges and a few others are mentioned on the project website. Last known activity: November 2011.

Clearware

http://www.clearware.org

Clearware proposed a rather extensive set of icons to summarize common terms found in End User License Agreements (EULAs). Last known activity: 2006

Privacy labels

http://cups.cs.cmu.edu/privacyLabel/

Researchers from by CyLab Usable Privacy and Security Laboratory (CUPS) at Carnegie Mellon University proposed and evaluated a standardized table format for the presentation of privacy information, inspired by "Nutrition labels".

information we collect	ways we use your information				information sharing	
	to provide service and maintain site	marketing	telemarketing	profiling	other companies	public forums
contact information	■	opt in		■	opt out	
cookies	■			■		
demographic information	■	opt in		■	opt out	
financial information						
health information						
preferences	■					
purchasing information	■	opt in		■	opt out	
social security number & gov't ID						
your activity on this site	■	opt in		■	opt out	
your location						

Example table from the Privacy Label project

Their research papers provide many valuable insights. Last known activity: 2010

Internet Governance Forum

http://identityproject.lse.ac.uk/mary.pdf

In 2006, Mary Rundle from Harvard University gave a presentation at the IGF meeting, proposing a small set of draft icons to symbolize how user data might be treated by online service providers.

Accessible text

The following projects have approached the problem mainly by trying to make the text of the agreement shorter or clearer, or both.

I agree to

http://www.iagreeto.org
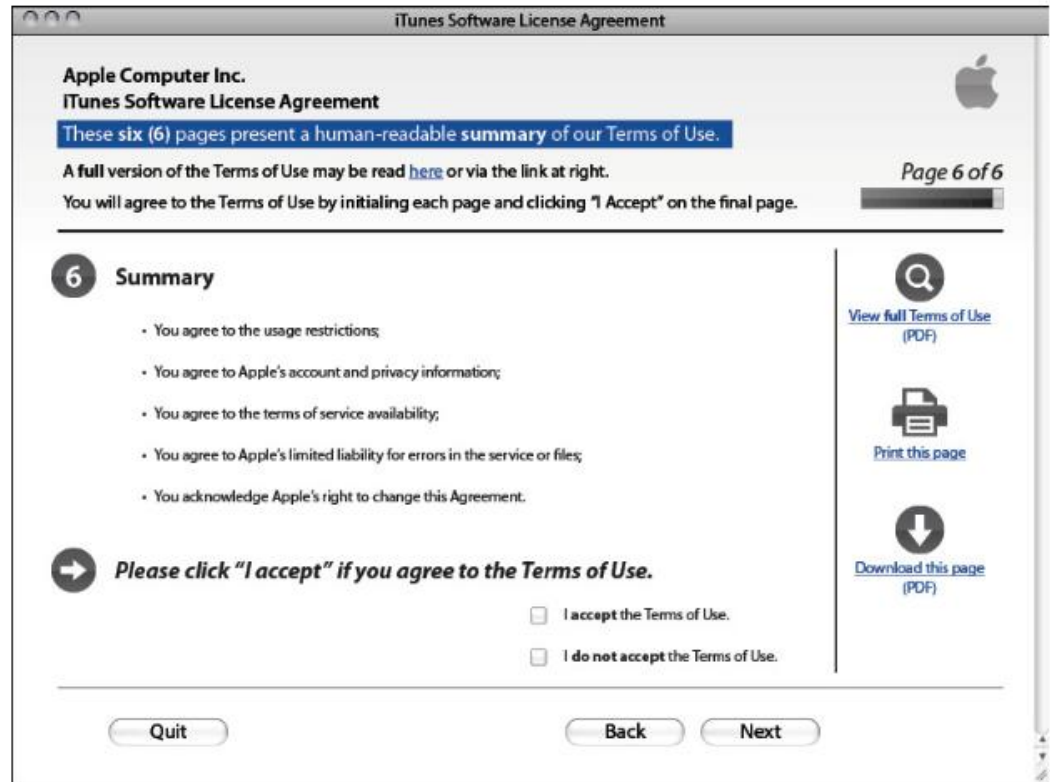
Six easy-to-read screens instead of 62 screens of legalese…

Re-design of Apple iTunes Terms of Service by Gregg Bernstein, providing great inspiration for anybody trying to simplify and make online contracts more accessible. Last known activity: September 2011.

Google

http://www.google.com/intl/en/policies/

Multiple Terms documents will be (March 1, 2012) consolidated into one, and made simpler and shorter by removal of redundant information.

Facebook

http://www.facebook.com/about/privacy/

Simplified versions of agreements can be written in everyday language instead of legalese.

OwnTerms

http://ownterms.pbworks.com/w/page/6985495/FrontPage

OwnTerms is a proposal by Tom Scott to provide CC-licensed boilerplate Terms of Service documents (and other contracts). Last known activity: 2009

Lex publica

http://lexpubli.ca/

Company intending to adopt the OSS model to legal documents: provide the legal code (CC licensed contract document templates) for free but selling consulting. Last known activity: January 2010.

Portability Policy

http://portabilitypolicy.org/generator.html

Part of DataPortability.org, this side-project aimed to create a standard format to describe the data portability policy of an online service. They even produced a form-based tool to create such a policy. While we think this is a step in the right direction, it still looks a bit too complex, and portability, after all, is just one of many aspects, so we think this effort should become a part of something more holistic.

Other ways to make terms more accessible

TRUSTe

http://www.truste.com

Trust mark by TRUSTe.

TRUSTe is a certification for websites whose Privacy policies adhere to some basic quality requirements defined by TRUSTe. A few thousand websites, including well known sites such as Facebook and E-bay have been TRUSTe certified. This is a useful way for websites to provide a very simple summary of their privacy policy. But it does not communicate specific details of the terms – you can have the certification or not have it.

Iubenda

http://www.iubenda.com

Italian company offering a simple tool to create easy-to-understand Terms of Service documents. Last known activity: December 2011

PrivacyChoice

http://www.privacychoice.org

Among many other privacy related tools and services, PrivacyChoice offers a tool - Policymaker - which can be used to easily generate an accessible privacy policy for mobile applications. Founded by Jim Brock. Last known activity: December 2011

TOSback

http://www.tosback.org

EFF project tracking changes to TOS documents for popular online services.

Scode

http://worldmodscode.wordpress.com/2011/12/04/solving-the-eula-problem

A proposal somewhat similar to CommonTerms but applied to EULAs. The idea here is not to make icons or a standardized table, but instead a large database of clauses. In fact, the database Scode describes has been partially built by CommonTerms. Blog post written December 2011.

Docracy

http://www.docracy.com

Winner of a Techcrunch hackathon[6], May 2011, this startup aims to become a "GitHub for legal documents". By open sourcing legal documents, highlighting changes and tracking

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[6] http://techcrunch.com/2011/05/22/hackathon-winner-docracy-is-a-github-for-legal-documents/

how many times each document has been re-used, Docracy could help signatories in making the decision whether to trust a document or not.

C|net

http://www.cnet.com/8301-30976_1-20068778-10348864.html

Perhaps the message can come across if the agreements are dramatized by professional artists?

Zynga

http://www.insidesocialgames.com/2011/07/07/zynga-launches-privacyville-a-gamification-version-of-its-privacy-policies/

Screen dump from PrivacyVille

The gaming company has produced a *gamification* of their privacy policies. Finding privacy answers in "PrivacyVille" will give you credits in the ordinary game.

Other comments on the problem

The following is a selection of people who have commented on the problem of non-accessible Terms and Conditions, without really trying to solve the problem. Many of them use humor and give great illustrations of the problem.

TED Talks

Alan Siegel: Let's simplify legal jargon

http://www.ted.com/talks/alan_siegel_let_s_simplify_legal_jargon.html

Sandra Fisher-Martins: The right to understand

http://www.ted.com/talks/sandra-fisher-martins-the-right-to-understand.html

IDG

http://www.idg.se/2.1085/1.421563/eula---avtalen-ingen-laser

Swedish newspaper article claiming that one company – PC Pitstop - wrote in their EULA that the user would get a financial reward just by contacting the company and notify them that they read the clause. Only 1 out of 3000 users did this – and got a $1000 reward.

The first truly honest privacy policy

http://www.itworld.com/print/129778

By being brutally frank and honest instead of complex, Dan Tynan thinks privacy policies could become more widely read and understood. Humor.

The small print project

http://reasonableagreement.org

Printed T-shirts with bogus agreements on them, protesting against bad EULAs etc. Andy Sternberg started the project after an idea by Cory Doctorow and Steve Simitzis. Last known activity: 2007.

Failblog

http://work.failblog.org/2011/08/15/job-fails-it-may-be-a-lie-but-its-hardly-a-secret/

Artistic comment on the "Biggest lie on the internet" ("I have read and agree…")

South Park

http://www.southparkstudios.com/full-episodes/s15e01-humancentipad (from USA)
http://www.southparkstudios.se/full-episodes/s15e01-humancentipad (from Sweden)

The comic series made an episode called the "HumancentiPad", in which a user has to suffer extensively because of having signed an agreement permitting just about anything. Be warned, it is a strong illustration.

SVT Kobra

http://svt.se/2.166237/1.2569424/prg_6

TV show (in Swedish) discussing the "I accept generation". Among other things the TV show said that one company has written in their Terms that by accepting the terms "you give us your soul".

Conclusions from studying related work

- Many groups of people think that terms and conditions online (especially privacy policies) need to become more accessible.

- No project has yet proposed a solution which has then been universally adopted.

- Most projects have been abandoned after a while, probably because the task is non-trivial and they have not had the financial resources needed.

- Lots of experiences have been made that we can and should learn from.

- No project has encountered problems which we deem to be too big to solve.

Common terms in existing agreements

As previously stated, we have studied 22 online agreements in detail, in order to find out what terms are common.

Selection of agreements

We would have liked to include *Privacy policies* and possibly *EULAs* as well, but resources were not unlimited, and some great work on privacy policies had already been done by others. So we focused on "Terms of Service" documents.

We wanted a representative selection of websites, and in order to make such a selection we started with statistics[7] over *what activities people do most* on the internet. Then we used Google AdPlanner[8] to find out *what websites are popular for those activities*. Lastly we manually complemented the list of websites with a few sites that will not individually reach the top tier in AdPlanner but whose category is very important. For example, almost everybody will use some small local website, but no small local website will ever be one of the most popular websites, globally. Another important example: Websites from new startups are not (yet) on the global top ten list, but this is the moment when early adopters join, journalists evaluate and people have to take their Terms into consideration.

Having done the selection we could visit the websites, copy their Terms of Service documents, and see what they contained.

The tool

Our first idea was to annotate the agreements with an existing annotation tool, and we evaluated a few such tools. Unfortunately, it was not easy to find one where documents could be marked up, and every markup could be linked with one or more issues, and one or more solutions. Furthermore, we wanted to be able to sort issues by frequency, number of solutions et cetera, so in the end we created our own tool, based on an SQL database and a web application.
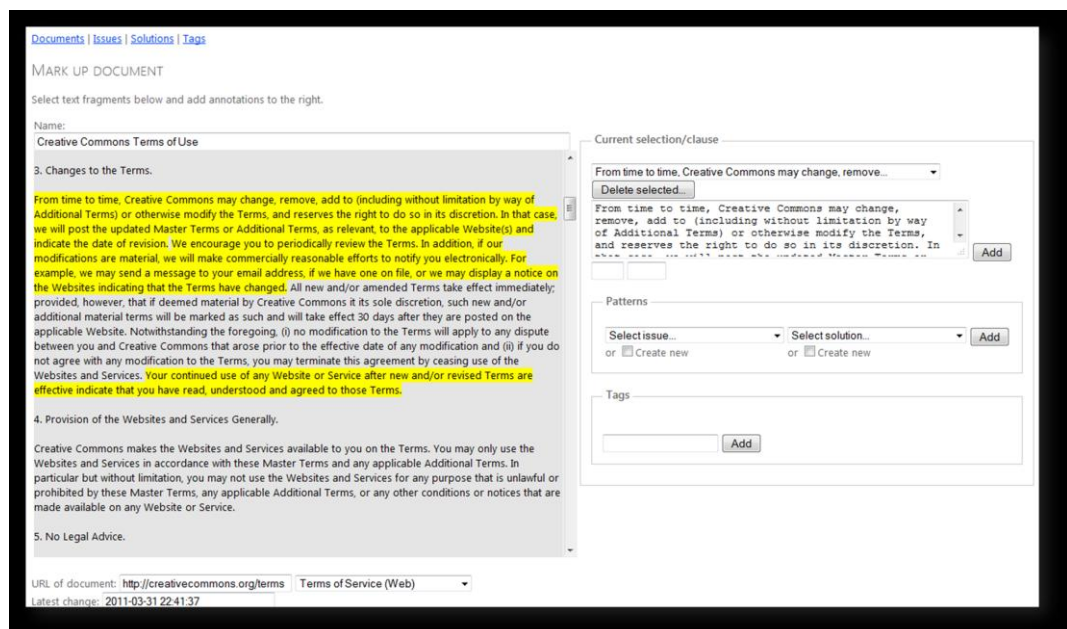
This is what the tool looks like.

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[7] Privatpersoners användning av Internet 2010, report from Statistics Sweden

[8] *www.google.com/**adplanner**/*

To the left, a copy of the document to be analyzed appears. When doing the analysis, you select a paragraph/clause in the document. It turns yellow and is copied to the top box on the right hand side. You can then select from dropdown lists what pattern (combination of issue and solution) or patterns the selected paragraph expresses.

Select a matching "issue" from a hierarchy in the database.

Then select a matching solution from the database, if there is one.

When there's no suitable existing pattern, the user can add one

Having the data stored in an sql database makes it quite easy to find out how many patterns were found in a single document, how many times a single pattern appears across all analyzed documents, how many different solutions there are to a specific issue, and so on.

Name	Occurrences	Solutions	Branch size			
Relation to other contract	37	11	53	Show	Delete	2 children
Consequences of Violations	20	6	26	Show	Delete	4 children
Jurisdiction	11	6	11	Show	Delete	
Change of Terms	10	2	37	Show	Delete	6 children
Severability	8	1	8	Show	Delete	
Transfer by user	4	3	4	Show	Delete	
Limitation of Licence	3	1	3	Show	Delete	

Screenshot from the database. Here, we look at some figures for the part of the hierarchy we call "About the contract".

The tool is online, but password protected. It would not be very hard to add a moderation feature, so that further analysis work could be crowdsourced.

The analysis

For every document you have to perform this analysis for every paragraph. This took a lot of time, and it was not always easy. Some paragraphs are difficult to understand, and some are rather complex. Since the database, just after 20 agreements, became quite big, we had to arrange the issues in a hierarchy (or it would have been very hard to navigate). But creating a hierarchy of legal issues is not trivial, especially since we only had limited access to experienced lawyers.

Name	Occurrences	Solutions	Branch size			
Content	2	1	227	Show	Delete	7 children
Provider behaviour	1	1	18	Show	Delete	5 children
The agreement	0	0	248	Show	Delete	22 children
User behaviour	0	0	119	Show	Delete	9 children
Warranties and limitation of Liabilities	0	0	64	Show	Delete	7 children
Service	0	0	82	Show	Delete	13 children

☑ Show hierarchy   New Issue…

The top level of the hierarchy.

Result

We will not publish the entire database publicly, since some of the agreements may be protected by copyright, but you can see all the patterns on the project website (http://www.commonterms.com/Commonterms.aspx)

Common issues

Surprisingly few paragraphs contained references to other paragraphs in the same agreement, but it is very common to reference other documents.

In fact, the most common issues were:

1. Relation to other contract
2. Banned content
3. Reuse of content
4. Consequences of violations
5. How does the user accept the agreement?
6. Definition of part
7. Limitation of liability
8. Acceptable use
9. Availability of service
10. Responsibility for user content
11. Notification of changed terms
12. Conflicting terms
13. Licensing of user generated content
14. Warranty
15. Jurisdiction
16. User termination of agreement

It is also possible to compare the different branches of the hierarchy. The biggest branches were.

1. About the agreement
2. Content
3. User behavior
4. User generated content
5. Service
6. Warranties and limitation of liabilities
7. Activation and Termination of agreement
8. Relation to other contract
9. Sold product
10. Change of Terms
11. Banned content

12. Interaction via software

13. Acceptable use

If you compare them *by number of different solutions* instead, the top list contains:

1. Provider termination of agreement

2. Limitation of liability

3. Requirements on connected applications

4. Definition of part

5. User termination of agreement

6. Conflicting terms

Common solutions

Out of approximately 450 found specific patterns (issue:solution combinations) the following were the most common:

- Service availability: No guarantee

- Relation to other contract: Other contract has detailed terms

- Change of Terms: At provider's discretion

- Banned content: Copyright infringement

- Licensing of user generated content: Provider and affiliates get permission to use

- Risk: Use at users own risk

- Outbound links: Provider takes no responsibility

- How does the user accept the agreement?: By using the service

- Acceptable use: Applicable law

- Severability: Other terms still valid

Conclusions from studying existing agreements

This study was not performed in an academic setting but in a consultancy company aiming to make a reasonably accurate survey of common terms in existing Terms of Service agreements. We have tried to be systematic, but there may remain errors in our results.

That said, let us make the following remarks:

- If we were to study more agreements, the number of patterns would rise significantly. There will probably be more than 1000 patterns after 50 documents, and if we include an equal number of Privacy policies probably around 2000.

- There are many commonalities, but also differences. For example, "free to the user" agreements seem to differ substantially from the agreements of paid services.

- Not all terms that are common are really that significant to a user. "Other contract has detailed terms", for example, should only be displayed in a summary if that other contract is well known (eg. TRUSTe requirements for certified sites). Otherwise, the contents of the referenced document itself should be analyzed and all highly relevant patterns displayed.

- Some common terms, such as "Banned content: Copyright infringement" and "Outbound links: Provider takes no responsibility" and "Acceptable use: Applicable law" are so self evident that there's no reason at all to even consider them for inclusion in a preview.

- Provider disclaimers such as "Service availability: No guarantee" abound, and users should probably expect them In the ad-supported free-to-user services. In paid services though, where the provider does give a guarantee, the guarantee may be relevant to communicate in a preview.

Ideally, more than 22 documents ought to be analyzed before we can make statistically safe conclusions. We have a good tool for this. Can you find the time or money?
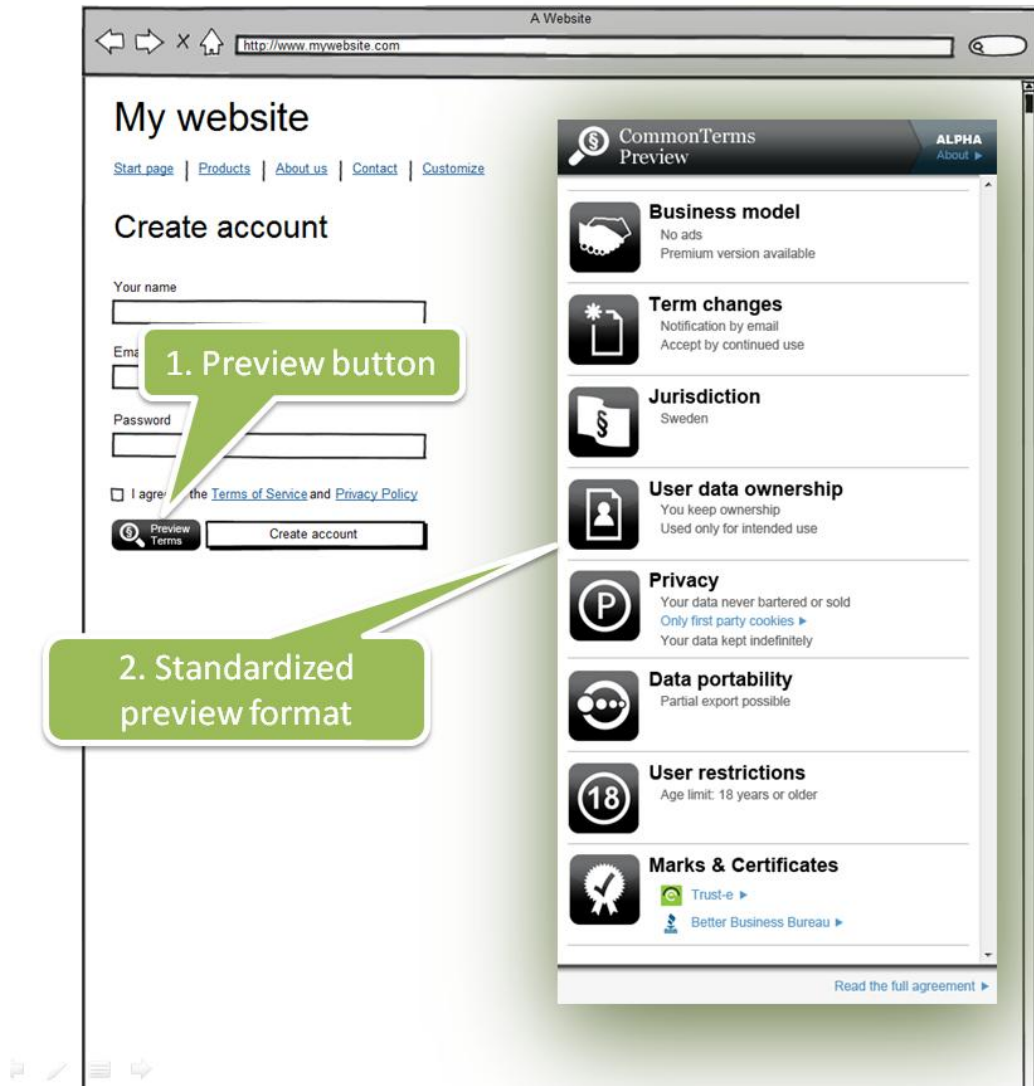
Draft (alpha) proposal

A format for *previewing* terms should be standardized.

It could look something like this:

Visual appearance of our draft proposal.

The idea is that a website owner (or possibly a mobile app provider) could put a button labeled "Preview terms" by the side of the "I accept"/"Create account"/"Install app" action.

Users wanting to get an overview of what they are about to accept can click the button and be presented with a standardized summary of the most important aspects of the agreements (There is often one "Privacy policy" and one "Terms of Service" document. Sometimes there are even more documents, referenced from within one of them.). If the preview contains well known icons, topics and brief formulations, in a well known order, that should make it rather easy for the user to get the essence.

Standardize selection and ordering of topics

The CMU Privacy Label project showed[9] that a standardized selection, ordering and presentation of privacy terms can significantly enhance accessibility. We believe this conclusion applies to terms in general, and not only privacy policies.

Based on our research we have made a preliminary selection of eight topics/sections:

1. Business model
2. Term changes
3. Jurisdiction
4. User data ownership
5. Privacy
6. Data portability
7. User restrictions
8. Marks and Certifications

This list is a *work in progress*, scheduled to be refined.

Standardize icons for each topic

In order for users to more easily be able to locate the relevant topics, a set of icons representing each topic has been developed.

Our first icons

In contrast with the Privacy Label approach from CMU, where only ordering and terminology is specified, we think icons should be added, or at least further evaluated.

There are often a greater number of terms that need to be presented than can be shown on a single (possibly mobile) screen, so scrolling may be necessary. If you have to scroll,

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[9] http://www.cylab.cmu.edu/research/techreports/2009/tr_cylab09014.html

the relative position will not always be apparent. Therefore an extra navigational aid, such as recognizable icons, should make it easier to browse the preview.

Of course, any icons used should harmonize as much as possible with existing conventions. As you can see above, we have a few different suggestions for some of the icons. For privacy, the encircled P (Privacy3.png) has the advantage of harmonizing with Mozilla Privacy Icons[10], but Privacy1 or Privacy2 may be more intuitive. Similarly, the Data-Portability.png icon harmonizes with the icon proposed by DataPortability.org, and the Age-Limit.png harmonizes with what can be seen in many computer games.

Further work will have to tell what icons to use.

Standardize brief labels for common terms

Originally, we thought icons could be created for all of the most common terms. After our initial study, we think the diversity, complexity and changing nature of online terms make brief textual labels more practical.

Again, we plan to use existing formulations wherever possible.

Standardize legal text defining each label

Just as with Creative commons, every *human readable* icon or text label should have a corresponding *lawyer readable* textual definition, easily reachable by http.

Standardize translations

One of the great values of standardization is that translations can be provided in many languages.

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[10] http://www.azarask.in/blog/post/privacy-icons/

The terms of one online service could be rendered in another language than the original agreement, providing greater accessibility not only to non-lawyers but also to people with a different native language.

Allow visibly identifiable non-standard terms

It will not be possible to standardize everything.

Providers of online services must be able to put anything in their agreements and generally should not be forced to stay only with standardized labels and topics. Such an inflexible system would probably be despised by many.

Yet, users should be able to easily see who uses mostly common terms and who uses their own terms.

Therefore, we propose that providers be able to put whatever terms they want in the preview. But non-standard entries should also be visually distinguishable from standardized ones.

It remains to be determined how non-standard terms should be presented. Perhaps a separate topic/section can hold them all, or they can put under any topic but with a special mark.

Allow visibly identifiable special profiles

Online services - and their Terms & Conditions - can be grouped in different ways: E-commerce sites share a lot more with one another than Social Networking Sites, for example.

We think the basic CommonTerms profile should standardize terms that are reasonably common in all kinds of online services, but that special groups should be able to make their own profiles.
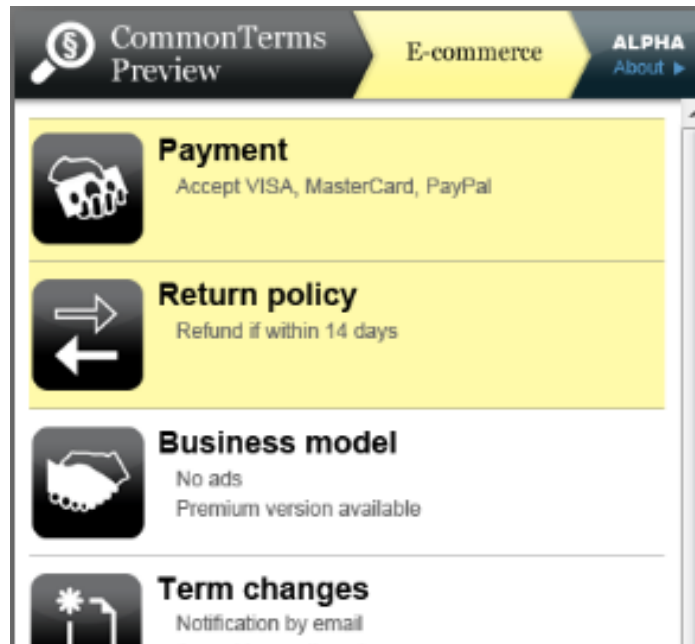
Special profile for e-commerce

Exactly what profiles will be needed, and how they are to be created, remains to be discussed.

Preview creation by filling out a form

The most natural way to create a terms preview for your website will probably be to fill out a form.

Such a form could offer all standardized topics and terms, and allow you to enter your own non-standard terms using free-text input.

The form will probably output an XML file and/or HTML snippet which you can easily copy to your website.

Several companies and organizations could host such forms. Standardization should focus on the semantics, not the form user interface.

Two examples of similar forms (for Privacy policy generation) come from Iubenda [11]and PrivacyChoice[12].

Machine readable representation

When you fill out a form to generate your terms preview, you get the option of saving a machine readable representation of the term preview.

Benefits of having a machine readable version include:

- The machine readable version, together with standardized legal definitions of all selected terms, could be used to auto generate customized boilerplate agreements, saving much time for anyone wanting to construct their first ToS or Privacy Policy.

- Search engines could better filter out results from websites whose terms do not match the user preferences, saving time for the user.

- Web browsers could display term preview in designated browser panel, much like they do today display a website's certificates, encryption status etc. Making the terms even more accessible.

- Terms could be rendered effectively by assistive technology (eg. speech reader software).

- Terms accepted by the user can be collected by the user's browser, making it possible for user to automatically track future changes of accepted terms, for example.

- A machine readable version separated from the human readable web pages could, if it contains information about the cookies used on the site, provide a solution to the EU Cookie law (a law requiring websites to ask visitors for permission before using cookies). Web browsers could pre-fetch the policy file of a website and compare it with user preferences (or present the user with a question if no matching preference is found) before even requesting any webpage. This is probably not a likely development, but theoretically possible.

- If a machine readable format is designed wisely, all term preview files could contribute to the growing semantic web of linked open data.

A designated server location for the publication of the machine readable version should be standardized (compare with eg. /robots.txt). The P3P project [13] did some of the above. P3P is generally not considered a success, but we do not think the problem was that data could be read by machines, but rather that it was not easy to read by humans.

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[11] http://www.iubenda.com/

[12] http://www.privacychoice.org/resources/policymaker

[13] http://www.w3.org/P3P

Q&A

This area, like many others, is like a fractal – the closer you look at a problem, the more answers you find, but also the more new and refined questions you find!

Questions with a preliminary answer

Is this a *real* problem?

Yes.

The number of projects started with the intention of making online terms and conditions (especially privacy policies) more accessible indicates that there is widespread recognition of the problem. In fact, the most common reaction we get when telling people about CommonTerms is that indeed they feel (a little bit) bad about checking the "I have read…" checkbox. And the Swedish Consumer Agency has said that many people complain to them after having agreed to things they did not expect.

Has anybody else solved the problem?

No.

The most widespread solution we have found, so far, is TRUSTe. They have certified the Privacy policy of some 3000 websites, and put their seal on those sites. That seal, of course, can be seen as a very compact summary of one important aspect (privacy) of the Terms & Conditions of those websites. However, it says nothing about other aspects of their terms, and not everybody may have the same privacy requirements that TRUSTe has.

Who should provide the preview?

Initially, we think previews should be provided by the owner of the website or service (i.e. the same person or organization who publishes the full agreement). If somebody else publishes the preview, why should the user put any trust in the preview?

Later on (if CommonTerms becomes commonplace), there may be other ways:

- A certification agency with a large trust capital (such as TRUSTe) could produce a CommonTerms preview and sign it.

- A preview could be crowdsourced. If a significant number of users read the policy documents of some website and produce a CommonTerms preview of it – then the collective might be enough for others to trust it.

These three options can live side-by-side if they are clearly marked. A self-declared preview could have gold star, a certified preview could have a silver star and a crowdsourced preview could have bronze star, just to give an example.

It is quite possible to design an infrastructure for Terms previews that does not require for the site owner to contribute. A third party could provide a preview that references a specific URL, and the preview could be rendered in a browser plug-in, for example. We have not yet evaluated that option. It has the obvious drawback that a preview could be generated which does not make a good summary of what the author of a contract had intended.

Can long agreements be eliminated?

No.

Everybody should have the freedom to formulate agreements according to their own needs! Including providers of online services. We cannot expect that the agreements can all become easy to read and browse. Some issues are complex, and need to be taken care of with fine print.

Most agreements can become more clear and concise, though, with some effort!

Can we make icons to summarize *all* terms?

No.

With 450+ different terms in just 22 examined documents, it seems unreasonable to create icons for all possible terms.

What kinds of legal documents can be previewed?

We focus primarily on Terms of Service, Privacy policies and Terms of Use documents applicable to websites and mobile apps.

As soon as we have the resources, other terms in online services (eg. E-commerce purchase terms) will be considered for inclusion in the CommonTerms. They will need their own profiles (set of topics and terms).

For the time being we have no ambition to cover agreements of other types (eg. End User License Agreements, Non Disclosure Agreements…)

Should the preview be shown by default, or just a "preview button"?

This choice should be up to the site owner.

For some sites it might make sense to display the full preview alongside with the button "I accept", but for most it will more likely be reasonable to display the button "Preview terms" and display the full preview when the user clicks the button.

Should CommonTerms have international scope?

Yes.

People use online services from across the globe. For sure, the internet is somewhat segmented. The dominant service providers in the western world are not dominant in all parts of the world, and not all parts of the internet can be reached from all countries, but www still means *World-wide* web. With our Swedish background, we could have decided to start with a national scope. That could have facilitated some things, but we did not. Swedes spend a large part of their online time with services developed in other countries.
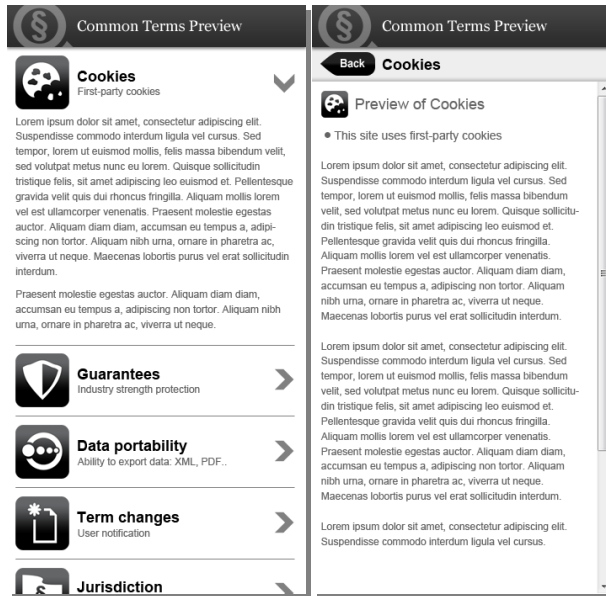
How should the lawyer readable version be presented?

Link to definitions on the CommonTerms website.

In earlier drafts, we allowed it to be expanded within the preview:

Two different drafts where the lawyer readable definition of a term is displayed.

However, since every term in the preview will correspond to one or several paragraphs in the agreement being previewed, it may become confusing if the CommonTerms definition of the term is displayed inside the preview. It is probably better to provide a link to a definition on the CommonTerms website (compare this to how Creative Commons licenses usually link to a legal definition page on the CreativeCommons webpage). That way it is going to be rather obvious that the text is from CommonTerms and not from the agreement being previewed.

Still open questions

Design issues

- How many sections should be in the preview?

- Should a multi-level hierarchical structure be used?

- What sections should be in the preview?

- What ordering should be used?

- What orientation should the default preview use?

  Terms & Conditions can be very extensive, and therefore screen real estate should be used wisely in order to be able to present information the way that gives best overview. Desktop screens usually allow more screen surface if a "landscape orientation" is used, while mobile devices (right now) are more commonly used in "portrait mode". But we also think that it would be good if the format is consistent between devices.
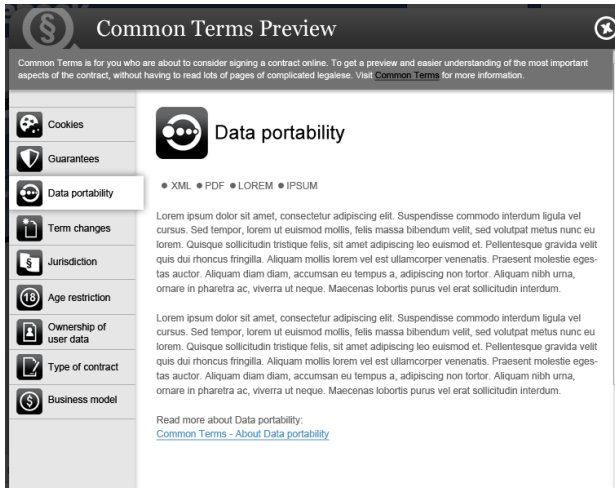
Draft making use of more screen width.

Policy issues

- To what degree should a CommonTerms preview be normative?

  Can a contract contain any terms whatsoever (even illegal terms and internally inconsistent terms) and still have a CommonTerms preview – or should the very existence of a CommonTerms preview signify some minimal quality of the agreement being previewed?

- Should the preview classify agreements?

  It could be valuable to indicate in the preview whether a legal document is based on an industry standard document or not, whether it has been negotiated between provider and user representatives or whether it was unilaterally formulated. However, adding complexity will also make it harder to use and harder to standardize.

Administrative issues

- How should we try to standardize CommonTerms?

  We are considering submitting a proposal to the W3C.

- What licenses should apply to CommonTerms specifications and symbols?

  See the "Licensing" section below.

Challenges

We have identified the following challenges that may need to be confronted if the CommonTerms proposal is going to make a real impact:

- **Complexity**. It is sometimes hard to summarize complex and heterogeneous legal terms.

- **Choosing the right words**: Formulations of standard terms will need to be checked and re-checked by people from several different cultures in order to be correctly understood by as many as possible.

- **Resistance**. Status Quo may be the best situation for some companies. For example, some companies may benefit from unfair contracts, and therefore they do not want to make contracts easier to read and to compare. Another example: Legal firms who benefit from writing complex legal documents for startup

companies could be threatened by a system proposing simplification and standardization.

- **Endurance**. As most other related projects seem to have been abandoned, we believe it can be a challenge to obtain enough funding and stability to be able to run this project long enough to overcome all obstacles.

- **Cooperation**. Given the many challenges, we think that cooperation between many people working in the same direction is necessary. We need to communicate, coordinate and learn from each other. Sometimes, geographic distance, cultural differences and competition can make cooperation difficult. CommonTerms financing is not based on patents or copyright or market share (but donations) so at least we do not have financial incentives not to cooperate.

- **Relative importance**. Many people agree that online agreements are not being read, and that this is a problem. But most of them still consider this a relatively minor problem. How can we gather enough support if most people think that other causes (eg. file sharing) are even more important?

- **Cross discipline**. It would probably be impossible for a usability expert alone to solve the problem of non-accessible Terms & Conditions, because there are so many legal concerns. Similarly, it would be very hard for a lawyer alone to solve it, because there are so many usability concerns. It is quite possible that the best solution to some accessibility issues is a legal solution, and the best solution to some legal problems is a creative graphic design.

We will need both skills (legal, technical, communicative, cooperative, cultural, design, administrative…) and finances to tackle all of the above. Fortunately, we already have a network of people who can provide guidance, and right now we're setting up an "advisory board" to help even more.

Success factors

We think the following mechanisms can be used to help make the proposed preview format widely adopted:

- Competition between providers

- Official status through a standardization body

- Semi-official standardization (consultant marking schemes etc.)

- Recommendations from user groups

- Recommendations from authorities

- Piggyback on standard templates for websites, plug-ins, skins…

- Use the enthusiasm of early adapters

- Positive research evaluations

- Increased e-commerce sales

- Media coverage

Future work

We believe that a significant change of how websites present their Terms and Conditions will not happen overnight[14]. Our ambition is to stay around until the goal has been reached.

Currently (january 2012) our plans include:

1. Cooperate with other groups with similar goals and ambitions! (Always)
2. Make usability studies with user representatives (Spring 2012)
3. Meet with website owners to get their feedback (Spring 2012)
4. Produce a beta version based on feedback (Summer 2012)
5. Produce a reference preview generation tool (Q3 2012)
6. Deploy the beta in live settings. - (Q3 2012)
7. Public presentations
8. Submit proposal to standardization track
9. Seek renewed funding and establish long-term administrative platform
10. Keep improving. (Always)

This project poses a large number of questions – see the Q&A section above! Some of these could be answered by further research (scientific or applied). Please contact us if you would like to contribute.

We are currently investigating possible standardizations tracks so that an open standardization process can commence.

Licensing

The CommonTerms project has been greatly inspired by, and received valuable encouragement from the Creative Commons[15] project. Consequently, this report is published under the CC-BY-ND license[16], which means that you can re-publish un-modified parts of it for free and without asking us first (even for commercial purposes) provided that you give attribution to CommonTerms. Please make a link to *http://www.commonterms.net* if possible.

In the future we may release our work under some even more generous license, but for the time being we use the ND (No Derivatives) clause in order to avoid confusion[17]. Of course you are very welcome to create your own icons, layouts and definitions, but if you want to contribute to the CommonTerms framework please contact us, so we can try to keep the framework consequent.

Acknowledgements

The project is a result of a session on "sustainable web development" by Pär Lannerö and Thomas Bjelkeman at the Sweden Social Web Camp[18], in August 2010.

CommonTerms graphics have been developed by Lars-Erik Jakobsson, Mia Kolmodin and Pär Lannerö.

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[14] For a comparison, Creative Commons has been around for a decade or so. It is now quite well known, but still not understood by and used by everybody.

[15] http://creativecommons.org

[16] http://creativecommons.org/licenses/by-nd/3.0/

[17] Similarly, Creative Commons' own icons are not CC-licensed

[18] http://www.swedensocialwebcamp.se/

Daniel Westman, cyberlaw researcher at Stockholm University, has been the primary advisor on legal matters, and Gregg Bernstein, graphic design teacher at Georgia State University, has been of great help not only with regards to design.

Many others who contributed to CommonTerms can be found on the project website at www.commonterms.net/About.aspx.

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