

Impossible Consent

Generative Search, Browsewrap, and the Rights-Information Harm to Cognitively Disabled Users

When a system delivers wrong information about a person's legal rights and then disclaims liability by pointing to terms the person could not have read, the manufactured agreement fails against exactly the population the harm reaches.

THE EVENT THIS PAPER IS ABOUT

You search for the law that protects you. The top result gives you an authoritative answer that is wrong, with a citation that *confirms the error instead of correcting it.*

Not a lost sale. A **right unasserted.**

A **wrongful denial accepted.**

A **deadline misjudged.**

A person searches for the law that protects them and receives an authoritative wrong answer, with a citation that confirms the error.

This harm is categorically distinct from commercial deception. The injury is not a wasted purchase. It is a right unasserted, a wrongful denial accepted, a deadline misjudged. The mechanism that defeats the last line of defense is **counterfeit verifiability**: the citation that is supposed to let a careful reader check the claim instead confirms the false claim.

THE SEQUENCE

Authoritative wrong answer at the top of the page. Citation that appears to confirm it. User with cognitive disability acts on the answer.

WHO BEARS IT

People with neurodevelopmental conditions, intellectual and developmental disabilities, and cognitive decline. Least able to evaluate the answer independently. Most exposed to acting on it.

The claim: a distinct harm category, not yet recognized in the literature on generative search.

Least able to evaluate the answer. Most exposed to acting on it. And the population the right was written to serve.

Neurodevelopmental conditions

The independent re-evaluation the system assumes is the very capacity in question.

Intellectual & developmental disability

An authoritative, cited answer is the hardest kind to second-guess, and the most likely to be acted on.

Cognitive decline

Exactly the users for whom a confident wrong answer most often becomes a final one.

COMMERCIAL DECEPTION

Costs a sale or a few dollars. The buyer can discover the error, and the market has an incentive to correct it.

RIGHTS-INFORMATION HARM

Costs a legal right. The person never learns the answer was wrong, so no correction ever arrives. There is no market for it.

The last line of defense against a wrong answer is to check the source. Counterfeit verifiability corrupts that defense by making the source appear to confirm the error.

Step 1 • Wrong answer

The system delivers a false statement about the user's legal rights with the confidence register of an authoritative answer.

Step 2 • False citation

The citation provided to support the answer appears to confirm it rather than correct it. The verification channel is counterfeit.

Step 3 • Compounded error

The user with cognitive disability who checks the citation receives a second confirmation of the same error. The normal route to correction is closed.

Impossible Consent

Agreement imputed to a person through a channel that the nature of their disability makes it impossible to satisfy.

The provider disclaims liability by pointing to terms the user accepted by searching. For cognitively disabled users, browsewrap assent is not merely weak, it is structurally unattainable. And the liability disclaimers rest entirely on that assent.

The constructive notice standard imputes consent to people who cannot give it. A standard that does this is not measuring agreement. It is dispensing with it.

Courts require notice and a realistic opportunity to review for browsewrap to bind. The Restatement (Second) of Contracts renders contracts voidable where mental illness or defect prevents meaningful assent. The capacity to satisfy the channel through which terms are presented is absent for this population, and the liability caps, warranty disclaimers, and dispute-resolution clauses rest entirely on that imputed assent.

General search (logged-out)

No clickwrap, no arbitration clause, no terms governing the search interaction at all. The browsewrap claim is weakest here.

Signed-in / account-based

Browsewrap terms exist but fail the constructive notice standard for cognitively disabled users who could not have navigated, read, or understood them through the only channel offered.

The provider's defenses fail precisely against the population the harm reaches.

Even the weakest enforceable assent requires notice and a real chance to refuse. The search user is given neither.

Clickwrap

Active click to agree after notice. The strongest form, routinely enforced.

Browsewrap

Terms merely posted; assent imputed from use. The weakest, and the hardest to enforce.

The minimum courts require

Reasonable notice and a realistic opportunity to see and reject. Absent for the logged-out user.

— THE CORE MOVE

A standard that imputes consent to people who cannot give it is not measuring agreement. *It is dispensing with it.*

Constructive notice imputes agreement from the ability to navigate the channel, see the notice, and decline. For this population, that channel is precisely what the disability impairs. The consent is not weak. It is unattainable.

WHAT IS CLEARED**The consent-based defenses.**

The liability cap, the warranty disclaimers, and any arbitration and class waiver, each rests on the user's assent. For cognitively disabled users on these facts, assent is impossible, the capacity to give it is absent, and for general search no arbitration clause governs the conduct at all. The defensive scaffolding does not stand against the population the harm reaches.

WHAT REMAINS OPEN**The affirmative cause of action.**

Clearing a defense is not stating a claim. The substantive theory under which a provider owes a duty regarding the accuracy of generated statements about a person's legal rights is unsettled. State unfair and deceptive practices statutes, negligence theory, and disability-access theories aimed at the inaccessible consent channel are candidate vehicles. Each faces real obstacles.

01

Affirmative, accessible assent

Terms that bind a user, and any that limit a provider's liability, must require real assent, not imputed assent.

02

A duty of care for rights information

Providers delivering consequential legal information owe reasonable care in its accuracy and in the integrity of the citations.

03

Fix constructive notice

Its blindness to disability is a defect to be corrected, not a convenience to be preserved.

— THREE INTERVENTIONS

These follow without requiring the full argument to be accepted.

01. Terms meant to bind a user, and certainly any that limit a provider's liability for harm, should require affirmative and accessible assent rather than imputed assent, so that a person who cannot navigate the channel is not bound by it.
02. A provider that delivers consequential information about legal rights to the public should bear a duty of reasonable care in the accuracy of that information and in the integrity of the citations that purport to support it, so that the verification handle is not counterfeit.
03. The constructive-notice standard's blindness to disability should be treated as a defect to be corrected rather than a convenience to be preserved, because a standard that imputes consent to people who cannot give it is not measuring agreement.

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