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Authors:

[Blake N. Humphrey](#)

[Jared M. Tully](#)

[Alex J. Zurbuch](#)

Clicking Has Consequences: Fourth Circuit Rules Streaming Service's Arbitration Clause in Website Registration Is Enforceable

Proponents of arbitration received a victory in federal court this past Tuesday when the U.S. Court of Appeals for the Fourth Circuit issued its published decision in *Dhruva v. CuriosityStream, Inc.* Reversing the judgment of the U.S. District Court for the District of Maryland, the majority in *Dhruva* held that plaintiffs Rohan Dhruva and Joshua Stern, both residents of California, agreed to arbitrate disputes with the defendant, CuriosityStream, Inc., when Dhruva and Stern registered for service to watch videos on the company's website.

In the underlying proceedings, the District Court denied CuriosityStream's motion to compel arbitration. The District Court explained that "[t]he layout of the relevant screen on CuriosityStream's website" gave users "adequate notice of the Terms of Use" through the website's orange hyperlink "on an uncluttered background, close to the payment tabs that the customer ha[d] to fill out and the button that the customer ha[d] to click." But the District Court determined that Dhruva and Stern were not given "clear notice that by clicking the 'Sign up now' button, they were expressing agreement to CuriosityStream's Terms of Use," which included the arbitration agreement. Accordingly, the District Court concluded that Dhruva and Stern's claims against CuriosityStream were not subject to arbitration under the Federal Arbitration Act (FAA). An appeal to the Fourth Circuit followed.

In a 2-1 published decision, the Fourth Circuit reversed the District Court's arbitration ruling, concluding that the claims asserted by Dhruva and Stern against CuriosityStream must be resolved through arbitration. Writing for the majority, Judge Toby J. Heytens explained Dhruva and Stern received "reasonable notice" that registering for CuriosityStream's service constituted assent to the website's terms of use, which included an arbitration clause. Relying

on Fourth Circuit precedent, the majority explained that CuriosityStream's website gave users reasonable notice that there was a "contract on offer." More specifically, the panel majority reasoned that by clicking the "Sign up now" button, the plaintiffs manifested assent to the terms of use, including the arbitration clause, as the website clearly indicated that registering would signify agreement. In other words, "CuriosityStream's website 'provided clear and reasonably conspicuous notice that there [were] contract terms available by scrolling down or clicking a hyperlink'—the very situation where courts generally conclude that 'the user is on reasonable notice of those terms.'"

Further, the majority explained that the "design and content of" CuriosityStream's website "would have 'put a reasonably prudent user on notice of' the 'terms' of CuriosityStream's contractual offer." To that end, the majority rejected Dhruva and Stern's argument that CuriosityStream's website's "design and wording provided insufficient guidance that completing the subscriptions process would constitute assent to the proposed contract." Finally, the majority ruled that Dhruva and Stern "manifested assent to the terms of use (and thus the arbitration clause) by registering with a covered website," insofar as Dhruva and Stern clicking "Sign up now" constituted "unambiguous manifestation of assent" because CuriosityStream "expressly advised [them] that 'registering with the site signifies that [they] agree to the[] terms of use.'"

In a dissenting opinion, Judge J. Harvie Wilkinson III parted ways with the majority decision, reasoning instead that the notice provided by CuriosityStream to Dhruva and Stern was not clear and conspicuous enough to constitute an offer that required acceptance. To that end, the dissent expressed serious concern that the panel majority's decision undermines the requirement for clear and conspicuous notice in contract formation, potentially leading to increased litigation and placing the burden of avoiding confusion on consumers. Finally, Judge Wilkinson suggested that CuriosityStream, as the website owner, could have easily provided clearer notice by explicitly stating that subscribing constituted agreement to the terms of use and thus the arbitration clause.

Key Takeaways

- The *Dhruva* decision underscores the importance of clear and conspicuous notice in the formation of arbitration agreements and reaffirms the FAA's role in the context of arbitration.
- However, Judge Wilkinson's dissenting opinion serves as a reminder of the ongoing debate over consumer protection and the need for transparency in contractual agreements.
- This decision will likely influence future cases in the Fourth Circuit involving arbitration agreements, particularly those concerning the adequacy of notice and consumer assent.

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