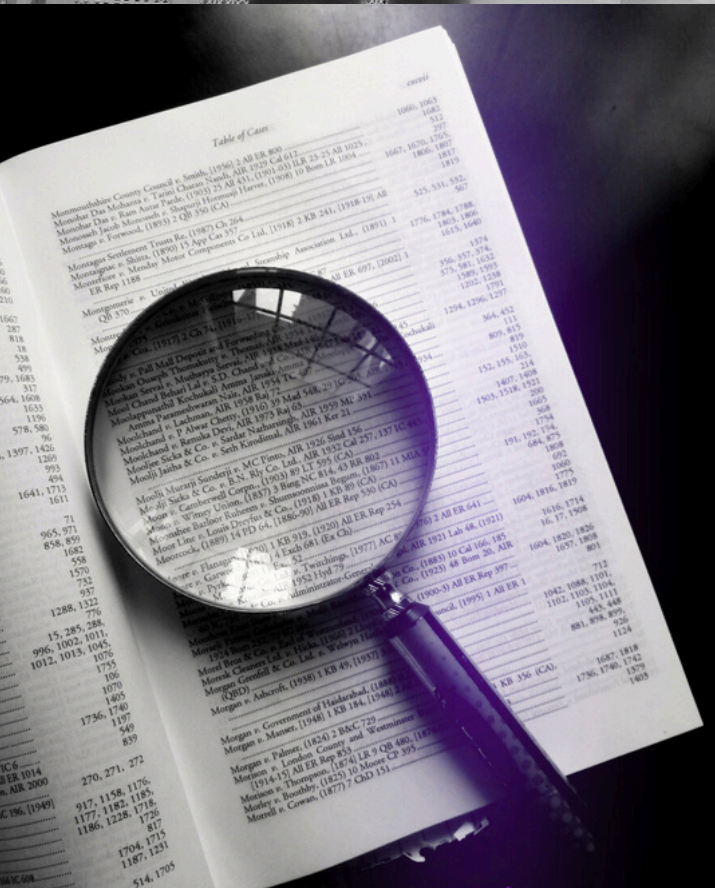




LEGAL EDGE

# SIGNED BY SILENCE?

ENFORCEABILITY OF EMAIL  
CONTRACTS & **DEEMED CONSENT**



In an age where bookings are made over emails and confirmations are sometimes just... silence, photographers often find themselves navigating uncharted legal terrain. You send your terms—rates, usage rights, cancellations, copyright policies—via email and ask the client to reply in agreement. They don't. But they go ahead with the shoot. Is that a binding contract?

The answer, across India, the UK, and the US, lies in the concept of acceptance by conduct and the legal status of electronic contracts.

## CLIENT SILENCE = CONSENT?

In law, silence alone usually doesn't amount to acceptance. But if it's followed by conduct that implies agreement—like showing up for the shoot, paying a deposit, or using the images—it can be legally interpreted as acceptance by conduct.

This principle holds in India, the UK, and the US. Let's break it down.



PHOTOGRAPHS: VIVEK VERMA

## WHAT MAKES AN EMAIL LEGALLY BINDING?

A valid contract requires three basic elements in all jurisdictions:

- An offer (your email outlining terms);
- Acceptance (ideally, the client replies with a "yes"), and
- Consideration (payment or something of value).

If all three are met—even digitally—you have a legally binding contract. But what if acceptance is not explicit?

### INDIA: ACCEPTANCE BY CONDUCT & ELECTRONIC EVIDENCE

Under the Indian Contract Act, 1872, Section 8 states:

*"Performance of the conditions of a proposal... is an acceptance of the proposal."*

So, if a client receives your terms and proceeds with the photoshoot or payment, that action may amount to acceptance—even without a written reply.

India's Information Technology Act, 2000 and Evidence Act, 1872 make digital contracts and emails admissible, provided a digital evidence certificate is produced.

### UK: EMAILS & IMPLIED ACCEPTANCE

UK contract law recognises contracts formed by email and accepted through conduct. The Electronic Communications Act 2000 affirms that electronic communications can create binding obligations.

So, if your client acts on your terms—books, pays, or participates—it's likely enforceable, even without an explicit "yes."

### USA: ELECTRONIC AGREEMENTS

In the US, contracts made electronically are valid under the Uniform Electronic Transactions Act (UETA) and E-SIGN Act.

These laws state:

- A contract cannot be denied legal effect just because it is digital.
- Email can serve as valid acceptance, especially if followed by performance.

In the US, the objective theory of contracts applies—courts assess what a reasonable person would interpret from the actions, not just the words.





## WHAT PHOTOGRAPHERS SHOULD PRACTICALLY DO

Even with strong legal backing, best practices make your case bulletproof:

### BE EXPLICIT

Mention that proceeding with your services implies agreement. E.g., "By going ahead with the shoot as scheduled, you agree to the terms outlined here."

### USE PROFESSIONAL EMAIL TRAILS

Keep all discussions in one thread. Avoid WhatsApp for official terms.

### GET A READ RECEIPT OR FOLLOW UP

Even if the client doesn't reply, your reminder adds weight to your case.

### PRESERVE EVIDENCE

Backup your sent email with timestamps. In India, be ready with a Section 65B certificate for court admissibility.

## COMMON SCENARIOS WHERE TERMS ARE DEEMED **ACCEPTED**

- Client attends the photoshoot after receiving your terms.
- Partial or full payment is made without contesting your conditions.
- Delivered images are used without any dispute raised.
- The client sends someone else on their behalf after receiving your email.

These scenarios strongly support the notion of implied consent.





## LEGAL CHECKLIST FOR EMAIL CONTRACTS – PHOTOGRAPHY SERVICES

### A FINAL WORD OF CAUTION

While deemed acceptance by conduct is recognized, don't rely on it as your primary method of securing agreement. Silence is safer when paired with performance—but clarity is still essential.

### TURN EMAILS INTO CONTRACTS

As a photographer, your art deserves protection. So does your time and effort. In the legal world, emails are not just casual conversations—they're potential contracts. When structured correctly and backed by client action, even an unanswered email can carry legal force.

The key? Make your terms clear, document the interaction, and understand that conduct—sometimes louder than words—can seal the deal.

### DISCLAIMER

THE INFORMATION PROVIDED IS FOR GENERAL INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE. NO ATTORNEY-CLIENT RELATIONSHIP IS CREATED BY THIS COMMUNICATION. FOR ADVICE REGARDING YOUR SPECIFIC SITUATION, PLEASE CONSULT A QUALIFIED LEGAL PROFESSIONAL.



# 01

## SUBJECT LINE

Use something clear like: "Photography Services: Terms & Confirmation"

# 02

## LIST THESE TERMS CLEARLY

Fees & payment schedule; Cancellation & rescheduling policy; Deliverables & timelines; Copyright and usage rights, and Late payment or breach consequences.

# 03

## USE THE CONSENT CLAUSE

Insert the clause at the end to make it clear that proceeding implies agreement.

# 04

## REQUEST CONFIRMATION

Ask for a written reply ("Please confirm by replying to this email").

## LEGAL CHECKLIST FOR EMAIL CONTRACTS – PHOTOGRAPHY SERVICES



We have prepared a short clause that you can copy-paste into your emails:

*"By proceeding with the scheduled photography session, making any payment, or otherwise engaging my services after receiving this email, you confirm your acceptance of the terms and conditions outlined herein. If you have any questions or require modifications, please reply before the session date."*

05

### FOLLOW UP IF NO REPLY

Send a polite reminder to nudge them into confirming or at least noting that the session is proceeding.

06

### RETAIN ALL COMMUNICATION

Keep the email thread intact—don't delete or break it into separate conversations.

07

### USE PROFESSIONAL EMAIL

Always send contractual terms via email for admissibility and documentation.

08

### DOCUMENT CLIENT'S CONDUCT

Retain proof of payments, attendance at shoot, use of images, etc., as evidence of acceptance by conduct.

