

Think Twice Before Hitting Send, You Could be Agreeing to a Contract

by Donald Scarinci

Emails have replaced letter writing as the preferred way to conduct day to day business transactions. Conducting business over email saves both time and money. However, in some, cases, you could literally be signing up for more than you bargained.

Many business people do not realize that [email exchanges can lead to a legally binding contract](#). It doesn't matter if you didn't technically sign the email or failed to use contract terms like "offer" and "agree." Courts across the country have found that a series of messages can still meet the requirements of an enforceable contract.

In order for a contract to be enforceable, there must be a valid offer and acceptance, supported by consideration. If one party proposes different terms in the email, the offer is considered rejected, and the contract formation process begins anew. The parties must also intend to be contractually bound. While intent need not be explicitly expressed in the email correspondence, it just must be clear that the parties were planning to agree on a contract.

[St. Louis Union Station Holdings, Inc. v. The Discovery Channel Store, Inc.](#) provides an excellent example of how this all plays out in real life. The case involved settlement negotiations between Union Station and the Discovery Channel, after the latter breached its lease. During the course of negotiations, the following email exchange took place between Union Station's general manager, Byron Marshall, and Tom Davidson, a real estate professional representing Discovery Channel:

[From Marshall to Davidson]:

I am aware that you have had conversations with both my colleague, John Fee as well as our attorney, Michael Wolff representing St. Louis Union Station regarding the lease termination of Discovery Channel Store, and thus after most recently speaking with our ownership, our owner will agree to counter your previous offers with \$220,000.00.

[From Davidson to Marshall]:

Your lease termination counteroffer of \$220,000 "all inclusive and as is condition" is accepted for Discovery Channel St. Louis Union Station. Kindly prepare the lease termination agreement and e-mail it to me for processing and review by Discovery.

When the Discovery Channel sought to enforce the terms of the agreement, Union Station argued that the emails did not constitute an enforceable agreement. It argued in that there was no offer and acceptance and no meeting of the minds. The court disagreed, finding "the email exchange between Marshall and Davidson provided clear and convincing evidence of the existence of an agreement to settle Union Station's lawsuit for money damages."

With this in mind, business professionals should consider [using a disclaimer when negotiating through e-mail](#). The disclaimer should make it clear that a separate written contract must be executed in order for the deal to be enforceable.