

E-Commerce Law Update

The Internet Law Group 

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Website User Agreements

Is yours up to par?

This month's review includes two rulings concerning the enforceability of website user agreements and a case in which a user agreement is the basis of the lawsuit against the publisher of an online forum.



1. Enforceability of User Agreements

A. In *Snap-On Business Solutions v. O'Neil* (N. Dist. Ohio Case No. 5:09-CV-1547, pp. 18-22), the court rejects claim that "browsewrap"—i.e., terms that a website user is not required to click to accept, but that are posted on a site and say they bind all users—do not bind consumers accessing website as a matter of law. [Read More >](#)

B. In *Shell v. American Family Rights Association* (N. Dist. Colo. Case No. 1:09-cv-00309-MSK-KMT, pp. 25-26), the court refuses to enforce the forum selection clause in the contract based solely upon the user's act of viewing the statement on the site stating that "[a]nyone visiting this site consents to jurisdiction and venue remaining in El Paso County, Colorado." [Read More >](#)

2. User Agreement as Basis of Claim Against Online Forum. In *Strickland-Saffold v. Plain Dealer Publishing Co.* (Cuhayoga Cty, Ohio Case No. CV 10 723512), plaintiffs who posted anonymously allege that defendant disclosed their identity in violation of posted privacy policy. [Read More >](#)

Remedies When Your Company is Disparaged Online

Immunity and forced disclosure of anonymous speakers

The flip-side of *Strickland-Saffold*, above, is *Collins v. Purdue* (N. Dist. Ind. Case No. 04:09-cv-00012-APR, pp. 28-32), in which the court relies upon statutory immunity to dismiss a claim for damages against a website owner premised on defamatory third-party posts. [Read More >](#) Though typically immune from damages claims, in a number of states an internet service provider may be compelled to disclose the identity of an anonymous sender of a libelous email. In a case in which the email did not rise to the level of defamation, however, the Supreme Court of New York held that the defendant (Google) could not be compelled to disclose the emailer's identity to plaintiff Sandals Resorts Int'l Ltd. [Read More >](#)



Can a Lawsuit Against Your Company Be Prosecuted in a Foreign State?

An enforceable forum selection clause can provide invaluable protection.

In all three cases covered below the defendants argued that their internet-related contacts were insufficient to support jurisdiction in the forum. In two of the three the court agreed: neither an invitation to contact the company contained in a website ([Read More >](#)), nor a single sale of an allegedly infringing product to plaintiff's attorney in the state ([Read More >](#)) were deemed sufficiently purposeful contacts to confer jurisdiction on the court. By contrast, repeated sales (6 in total) to consumers in the state created an "inference of intentionality" to forge relationships there, thus establishing personal jurisdiction over the non-resident defendant. [Read More >](#)

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