

Who Is Binding Your Organization By Accepting "Clickwrap" Terms?

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As more and more business is done electronically, the relevance of online agreements or "clickwraps" is greater than ever. Courts have long recognized the validity and enforceability of clickwraps. A recent decision by a U.S. District Court in Florida focuses on the question of who can effectively bind the organization to the terms of a clickwrap.

National Auto Lenders, Inc. ("NAL") is a lending company based in Florida. NAL purchased several thousand GPS units from various companies including SysLOCATE, Inc, ("Sys"). NAL used Sys' website for tracking purposes when NAL was repossessing a vehicle containing a GPS unit. NAL alleged that it lost \$2,500,000 because of defective GPS units. NAL and Sys began negotiating a settlement but continued doing business together. NAL advised Sys that three NAL executives were solely authorized to enter into agreements on NAL's behalf. During the negotiations, Sys posted a clickwrap agreement on its website with terms including a mediation/arbitration clause and limitations on Sys' liability. The agreement required users to accept the terms in order to use the site. Several months after settlement negotiations began, a NAL employee and a NAL contractor each separately "accepted" the Sys clickwrap in order to use the site.

NAL filed suit against Sys when negotiations broke down. Sys filed a motion to dismiss the lawsuit based on NAL's acceptance of the clickwrap, including the clause requiring that any dispute be taken to arbitration rather than court. NAL responded that the employee and contractor who "accepted" the clickwrap could not bind NAL to its terms because NAL had previously advised Sys that only its three executives were authorized to enter into agreements on NAL's behalf. The court agreed with NAL and denied Sys' motion.

While the facts of this decision are unique, it highlights the importance of being aware of clickwraps that your organization is being presented with in the ordinary course of doing business as well as how and by whom such clickwraps are being accepted. Knowing up front and addressing the issue could prevent an unwelcome surprise after a dispute arises with a vendor or business partner.