
Terms and Conditions of Use on Web Sites Should Be Prominently Displayed

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A recent federal court decision emphasized the need for web sites to prominently display their terms and conditions of use. Failure to do so may result in those terms not being enforceable against users of those web sites. The case, [Ticketmaster Corp. v. Tickets.com](#) (U.S. District Court, C.D. Cal., Mar. 27, 2000) primarily involved the practice of "deep-linking" to a page deep inside another web site, bypassing that site's home page. The deep-linking aspects of that case were previously discussed in our [June 7, 2000 Internet Alert](#).

Ticketmaster operates a web site on which it offers tickets to various entertainment events. That site contains event pages providing details on individual events. Tickets.com operates a competing online ticket business. The Tickets.com site also provides information as to where users can purchase tickets which Tickets.com does not sell. This information includes deep links to the event pages on Ticketmaster's web site.

Ticketmaster sued Tickets.com, alleging that Tickets.com violated Ticketmaster's terms and conditions, which prohibited others from deep linking. The court dismissed this claim after finding, among other things, that a contract was not created simply by use of a web site, given the way in which Ticketmaster's terms and conditions were displayed on its web site. The judge ruled that the terms and conditions of use, located at the bottom

of the web site's home page and at no other place on the site, did not create a binding contract. Users were not required to assent to the terms, or even read them. However, the judge left open the possibility that Ticketmaster might be able to prove that Tickets.com knew or should have known about those terms and conditions of use, thus creating a binding contract.

Ticketmaster has since placed the link to its terms and conditions on top of its home page, so that it will be the first thing users see when visiting the web site. It is not clear, however, that prominently displaying terms and conditions of use will be enough to bind users to those terms. To ensure that they are enforceable, web site operators should consider converting their terms and conditions into "click-through" agreements. Click-through agreements are online legal terms requiring the clicking of an "I accept" button before information can be accessed or goods ordered. Click-through agreements were discussed at our [March 22, 2000 Internet Alert](#).

Essentially, with click-through agreements, the web site operator can demonstrate that the user accepted the agreement; otherwise, the user would not have been able to use the web site in order to engage in any of these activities.

Non-clickable terms and conditions of use may still be useful in order to put users on notice of certain facts -- ownership of copyrights and trademarks; notices required to qualify for safe harbors under the Digital Millennium Copyright Act (see our [April 11, 2000 Internet Alert](#)); references to data privacy policies; and notices that links are not endorsements of third parties or their products. However, in order to disclaim implied warranties, limit direct damages, exclude indirect damages, choose a governing law or dispute resolution mechanism, or, as in the Ticketmaster case, limit permitted uses of a web site, a click-through agreement is much more likely to be enforced.