Browsewrap Agreement Held Unenforceable – Website Designers Take Note

In *Nghiem v Dick's Sporting Goods, Inc.*, the Central District of California held browsewrap terms to be unenforceable because the hyperlink to the terms was "sandwiched" between two links near the bottom of the third column of links in a website footer, write **Jeffrey Neuburger** and **Daryn A. Grossman** in Proskauer Rose LLP's **New Media and Technology Law Blog**.

"Website developers – and their lawyers – should take note of this case, part of an emerging trend of judicial scrutiny over how browsewrap terms are presented," they explain. "Courts have, in many instances, refused to enforce browsewraps due to a finding of a lack of user notice and assent. In this case, the most recent example of a court's specific analysis of website design, a court suggests that what has become a fairly standard approach to browsewrap presentment fails to achieve the intended purpose."

The authors discuss that case in detail, as well as some other browsewrap cases.

"These recent cases should prompt companies to reexamine electronic contracting practices to ensure that consumers are offered notice sufficient to understand that use of a website will constitute agreement to the terms," according to the article.

Read the article.