

Disney wrongful death legal case exposes potential pitfalls of automatically clicking 'I agree'

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Disney has [U-turned](#) on a bid to dismiss a wrongful death lawsuit in the US by relying on the terms of service for a simple streaming trial.

The suit was filed by a man whose wife allegedly died after experiencing an allergic reaction at Disney World in Florida. In the case, Disney lawyers had planned to invoke the terms of service that the man agreed to when signing up for a Disney+ free trial, which mentioned that users agree to settle any disputes with the company out of court via arbitration.

It appears the U-turn came after a public backlash, rather than a flaw in the [legal case](#). So could a similar thing ever happen in future, where a term in a sign-up contract extends to the use of other services by the same company? At face value, this is quite an old problem, as contract lawyers have been debating exclusion of liability for centuries.

However, there is something new in this classic "old" contract law problem, as this case highlights a growing phenomenon: the increasing embeddedness of certain companies, particularly [tech giants](#), across multiple sectors of the economy.

As consumers, we often click "I agree" to online contracts and user agreements without a second thought, but these seemingly innocuous actions may have far-reaching consequences beyond the service we're signing up for.

Are we inadvertently signing away our legal protections in exchange for digital conveniences? And if so, how can we protect ourselves in this new landscape?

[Public policy studies](#) have warned that the ownership of digital infrastructure and platforms has made big tech companies capable of reshaping the policy landscape and establishing themselves as key actors in the policy process.

This cross-sector influence raises critical questions about consumer rights and corporate responsibility. The Disney case is not an isolated

incident. As tech companies have grown exponentially, we're seeing more instances where agreements in one sphere affect rights in another.

Consider the recent [integration](#) of OpenAI's ChatGPT into Apple products. A user experimenting on their iPhone with ChatGPT for fun might unknowingly [waive their right to sue](#) OpenAI for data breaches caused by this integration. Generative AI models have often faced [attacks](#) resulting in the leaking of private information, with ChatGPT more specifically having [apparently](#) been the target of attackers.

At the time of the integration, [OpenAI](#) said that "privacy protections are built in when accessing ChatGPT within Siri and Writing Tools—requests are not stored by OpenAI, and users' IP addresses are obscured. Users can also choose to connect their ChatGPT account, which means their data preferences will apply under ChatGPT's policies." But even when considering this privacy-by-design approach, data breaches are always possible and redacted or obscured information may be reverse-engineered to reveal personal information.

Microsoft is another prime example of a company with influence over a massive number of economy sectors, acting as a major [cloud provider](#), [AI developer](#), [office software creator](#) and [video gaming powerhouse](#). Do the terms we agree on one service define all the other service contracts? If the answer is yes, is this fair?

What about the law?

Legislators, on both sides of the Atlantic, cannot be blamed for inertia. With such initiatives as the European Union [Digital Services package](#), they have sought to address power asymmetries and protect consumers for the digital age.

Courts and regulators have also recently started showing their teeth

against big tech companies. A [federal judge](#) in the US [ruled](#) that Google has built an illegal monopoly by breaking anti-trust law.

In Europe, the Dutch Data Protection Authority [found](#) that scraping the internet for training generative AI models such as GPT-4 will almost always be illegal. And the European Data Protection Board [delivered](#) a quite demanding opinion on the use of "[consent or pay](#)" models implemented by large online platforms such as Meta.

Yet, at its heart, the legal framework is still underpinned by a prevalent myth: the presumption that parties are fully aware of and understand the terms they're agreeing to, making unrealistic assumptions for the bargaining power of individual consumers.

The Court of Justice of the European Union recently [held](#) that even companies with a [dominant position](#), like Meta in the social network market, can, in principle, receive freely informed consent from their consumers.

However, a significant amount of [research](#) shows that consumers systematically ignore terms of service, as the complexity and length of most terms of service agreements make it virtually impossible for the average consumer to fully comprehend their implications.

Especially in the case of dominant companies like Meta, the "[take it or leave it](#)" nature of these agreements leaves consumers with little choice but to accept if they wish to use the service, which is often the only way of socialization, human connection or even gaining employment for many people.

So what can consumers do? While the situation may seem daunting, consumers are not entirely powerless. Here are specific actions you can take to protect your rights in the digital landscape:

1. Read before you click

Most users are unlikely to experience anything as extreme as the Disney case. Nonetheless, it is still a good idea to be on top of what we are agreeing to when we tick the box. Although time-consuming, understanding key points in terms of service can prevent surprises later. Focus on sections related to data usage, dispute resolution, and cross-platform implications. Use tools like [ToS:DR](#) (Terms of Service; Didn't Read) to get summaries of complex agreements.

2. Learn from and engage with consumer advocacy groups

Organizations like the [Electronic Frontier Foundation](#), [Consumer Reports](#), and [Which?](#) are fighting for digital rights. Consider donating, volunteering, or amplifying their messages on social media.

3. Be selective and educate yourself

Carefully consider which services are truly necessary and limit your digital footprint. Before signing up for a new service, ask yourself if the benefits outweigh the potential risks to your privacy and legal rights. Lastly, stay informed about digital rights issues through reputable tech news sources and educational resources provided by digital rights organizations.

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