

Website terms and conditions apply even without clicking, says court

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The Court of Rotterdam has ruled that a user may still be bound by a website's terms and conditions even if the user has not accepted them before entering the site.

Dutch company Netwise operates a website containing a register of e-mail addresses, which can be consulted without charge. Although a button labelled 'general terms and conditions' is situated on the site's home page, it is not necessary to click on this button in order to proceed to the rest of the site. Among other things, the terms and conditions prohibit (i) sending spam to e-mail addresses extracted from the register, and (ii) harvesting large numbers of addresses.

Computer hardware company NTS harvested and sent spam to e-mail addresses taken from the register. Netwise claimed that NTS had acted unlawfully, violating the website's terms and conditions. NTS argued it had never accepted the conditions prior to accessing the website and register.

The court ruled that in this case, it was not necessary for NTS to physically click on a button to accept the terms and conditions - they applied nevertheless. As a professional user of the website, NTS should have known that (i) the button was designed to make it clear that the terms apply to all users of the site, and (ii) owners of websites and similar registers do not generally approve of the use of their data for harvesting and/or spamming purposes. The court felt that NTS should have foreseen that such use would be prohibited by Netwise.

The court found NTS in violation of the terms and conditions, and ordered it to stop using the e-mail addresses in its possession and harvesting Netwise's e-mail addresses in the future.

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