

Are End-User Agreements for Tangible Products on the Horizon?

By Christopher Barnett

Recently, Google received substantial press related to the [Terms of Service](#) associated with its new “Google Glass” product offering. For the uninitiated, Google Glass is a \$1,500 fashion-challenged eyeglass frame that incorporates a tiny, electronic display screen, visible only to the wearer, beaming texts, search results, maps, and assorted other digital content straight to that wearer’s right eyeball. Google is convinced that it is the next New Thing, so much so that the Terms of Service all eager, early Glass adopters must accept incorporate what may be the next New Thing in tangible product sales – restrictive covenants.

Those terms state:

You must be 18 years or older, a resident of the United States, and authorized by Google as part of the Glass Explorer program in order to purchase or use Glass Explorer Edition. Unless otherwise authorized by Google, you may only purchase one Device, and you may not resell, loan, transfer, or give your Device to any other person. If you resell, loan, transfer, or give your device to any other person without Google’s authorization, Google reserves the right to deactivate the Device, and neither you nor the unauthorized person using the Device will be entitled to any refund, product support, or product warranty.

Consider that for a minute. You just handed Google \$1,500 for the privilege of wearing severely goofy-looking eyewear, and if you let your friend try it out – and if Google finds out you did that – your goofy-looking eyewear becomes an awkward paperweight. With no refund or other compensation on its way.

Business and individuals need to start being increasingly wary of the contents of end-user terms that seem to be attached to all manner of services and (now) products acquired in the digital age. While restrictions associated with software licenses are now commonplace and generally [enforceable](#) in court, end user agreements associated with consumer products are somewhat novel. While the extent to which they too can be enforced remains to be seen, it is clear that manufacturers are implementing innovations in their legal relationships with customers almost as fast as they are implementing innovations in their products, and many of those innovations can carry with them significant sources of risk.



About the author Christopher Barnett:

Christopher represents clients in a variety of business, intellectual property and IT-related contexts, with matters involving trademark registration and enforcement, software and licensing disputes and litigation, and mergers, divestments and service transactions. Christopher’s practice includes substantial attention to concerns faced by media & technology companies and to disputes involving new media, especially the fast-evolving content on the Internet.

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