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Issue 1

*Recent Updates and Impacts on Association Law*

2007

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### ASSOCIATION WEBSITE PROVIDERS: BEWARE!

By  
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Community associations with community-based websites should be aware of a recent case decided by the federal Ninth Circuit Court of Appeals, *Douglas v. Talk America, Inc.* (2007 DJDAR 11087). Pursuant to this case, an internet service provider may not change the terms of service by merely posting the revised contract on the website without otherwise notifying users of the change. Accordingly, for community associations that offer internet services to their members via a user agreement (or other document setting forth the terms of use), be advised that any changes to the terms of use will not be effective unless and until members receive notice that the terms of use have changed. Simply posting the new or revised terms of use on the website is insufficient.

In *Douglas v. Talk America, Inc.*, Talk America changed its terms of service and posted the revised contract on its website but never notified its users that the terms of the contract had changed. The only way its users would know of the new terms is if they visited the website and examined the contract for possible changes. The court held that the revised terms were merely an offer that was not binding unless accepted by the user and that an offer cannot be lawfully accepted unless the offeree knows of the offer's existence. The court also noted that even if the user's continued use of the service could be considered assent to the new terms, such assent can only be inferred after the user receives proper notice of the proposed changes.

In light of the court's decision in this case, if an association with a community-based website changes the website's terms of use, the association will need to give notice to its members of the changed terms in order for the new terms to be enforceable. Even if an association's user agreement provides that by logging onto the internet service, the user agrees to the terms of the agreement, as may be amended from time to time, a change in terms will not be enforceable unless and until notice of the changed terms is given to the users.

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As a practical matter, if there is a change in the terms of use, then a notice should be posted on the association's website, notifying users of the change in terms when they sign on to the service. To remove any doubt that users may not have received the notice, users should not be able to log on to the service unless and until they expressly "accept/agree to" the new terms.

If you have any questions regarding this case or how it impacts your association's website, please contact our office.

Published by

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