

Case Briefing Assignment – March 7th, 2018

Case Name: Specht v. Netscape Communications

Case No #: 306 F.3d 17 (2nd Cir. 2002)

Plaintiff (Appellees): Christopher SPECHT, John Gibson, Michael Fagan, Sean Kelly, Mark Gruber, and Sherry Weindorf, individually and on behalf of all others similarly situated.

Defendant (Appellants): Netscape Communications Corporation

Date: October 01, 2002

Judges: McLaughlin, Level, and Sotomayor.

United States Court of Appeals, Second Circuit.

Facts:

The Defender, Netscape develops various software for its users, to be used over the Internet. Netscape Communicator and SmartDownload were two of those. SmartDownload takes the help of Communicator to download files from the Internet without affecting the behavior of itself and other simultaneous running programs. SmartDownload used to create a unique identification key, which they used to store in user's hard drive in cookie file. The cookie saved on the user's computer was used by the Communicator for establishing the future connections between the user and the server in case of downloads. The plaintiff claims that the eavesdropping on the information of user is a violation of Electronics Communications Privacy Act and Computer Fraud and Abuse Act. Plaintiff also claimed that for downloading the Communicator, they were prompted to read and agree the license terms first, post the agreement by the user, the user was allowed to download the communicator. On the other hand, SmartDownload had the license terms mentioned below the download button. Also, according to the license, all disputes were to be taken care by arbitration in the Santa Clara County, California.

Issue:

If the user has not explicitly accepted the license terms due to the improper placement of the licence on the website, should he be held for the arbitration clause of the license?

Decision:

No

Rationale:

The court identified that any contract developed between two parties is considered as valid, only if, there is an agreement between two parties. Due to the improper placement of the license text on the web page, the plaintiff can be unaware of the license agreement in this case.

Holding:

In such situation mentioned above, the plaintiff would not have been aware about the existence of any license and thus it shows the inability of defendant to provide a reasonable notice of licensed terms.

Opinion:

I believe that the decision taken by the court was correct, as a person cannot be held liable for any license, which he is unaware of. Also, there could have been many other cases in the future where people/organizations/communities were found in utilizing similar conditions mentioned in this case for their own profit.