ADA TITLE III · NEXUS DOCTRINE · PUBLIC ACCOMMODATION · CLICKWRAP · FIRST SALE DOCTRINE · DIGITAL OWNERSHIP · LICENSED NOT SOLD · CONSUMER CONTRACTS

The Manufactured Line

How nexus doctrine and clickwrap enforceability deny the disabled and the consumer from opposite directions

The disabled plaintiff loses because the physical place is absent. The consumer loses because the physical object is present but powerless. One boundary, run in opposite directions, delivers the same party to defeat. The line is not a fact courts find. It is a lever parties pull.

Travis Gilly · Real Safety AI Foundation

Gilly, T. (2026). The Manufactured Line: How Nexus Doctrine and Clickwrap Enforceability Deny the Disabled and the Consumer From Opposite Directions. Working draft, June 2026 (v2).

In one field its absence denies. In the other its presence fails to protect.

THE DISABLED PLAINTIFF

The service lives online. No physical place, no coverage.

In the nexus circuits, a screen reader user has a Title III claim only if the inaccessible website tethers to a place a body could enter. The absence of the physical is fatal.

THE CONSUMER

The disc is in hand. Licensed, not sold, so the terms govern.

The buyer holds the box, owns the plastic, and is told the copy was never his. The presence of the physical is not enough to protect the person who paid.

Whichever way the line is drawn, the resolution lands on the same side. **The firm prevails in both.**

Sources Gilly, The Manufactured Line, sec. I, Introduction.

NOT LAG. CAPTURE.

A lever looks like it is telling you what a thing is. It is actually telling you who wins.

Lag predicts random error. Courts fitting old categories to new facts would sometimes over include and sometimes under include, favoring each side by turns. This pattern is not random. It is directional, and the tell is directionality under inversion.

The neutral analogue behaves differently. The written versus oral contract line favors whoever the writing happens to favor; no party has captured it. When presence and absence of one trait both favor the same party, the line tracks the party, not the trait.

Sources Gilly, The Manufactured Line, sec. II, The Boundary as Doctrine, Not as Description.

Denied by the Absence of a Place

Title III, the nexus doctrine, and the circuit split over what counts as a public accommodation

Gilly, T. (2026). The Manufactured Line. Working draft, June 2026 (v2), sec. III.

The physical place assumption is not compelled by the text. It is imported into it.

42 U.S.C. §12181(7)

Twelve categories of private entities, each closed by an "other" clause. A bakery, grocery store, or other sales establishment. A museum, library, or other place of public display. A travel service or insurance office among service establishments.

The recurring noun is "place." But the listed service establishments include businesses that in 1990 routinely operated by telephone and mail, with no customer ever entering an office. Congress had already contemplated commerce that does not require a body in a room.

Sources 42 U.S.C. §12182(a); 42 U.S.C. §12181(7)(E), (H), (F); Gilly, sec. III.A.

Two camps, one hinge: the place.

THE NEXUS CAMP

9th · Weyer, then Robles v. Domino's: the website is covered because its inaccessibility impeded access to physical franchises. Tied to a store, covered; tied to nothing physical, not.

5th · Magee v. Coca-Cola: glass front vending machines are not "sales establishments"; not spaces individuals enter.

3rd · Ford v. Schering-Plough: a connection to an actual physical place is demanded.

11th · Gil v. Winn-Dixie: websites are never public accommodations; vacated as moot, a signal rather than a holding.

THE FUNCTION CAMP

1st · Carparts: Title III reaches entities in the categories whether or not they operate through physical places; a contrary reading defeats the statute's purpose.

7th · Doe v. Mutual of Omaha: Judge Posner's dicta puts the operator of "a store, hotel, or website" at the statute's core, physical or electronic.

Sources Weyer, 198 F.3d 1104; Robles, 913 F.3d 898; Magee, 833 F.3d 530; Ford, 145 F.3d 601; Gil, 993 F.3d 1266, vacated as moot, 21 F.4th 775; Carparts, 37 F.3d 12; Doe, 179 F.3d 557. Gilly, sec. III.B.

The more completely a business sheds the physical, the less protection its disabled users receive.

A purely online retailer

No storefront to tether to. The claim dissolves at the threshold.

A streaming service, no theater

Captioning claims run into the same missing place.

A bank with no branch

Harder to reach in law precisely because it cannot be reached in person.

> *A screen reader confronts an inaccessible checkout page whether or not there is a store behind it. Yet the doctrine makes the store behind the page the condition of the remedy.*

Sources Gilly, The Manufactured Line, sec. III.C, What the Boundary Does Here.

Denied by the Presence of a License

From shrinkwrap to clickwrap to licensed-not-sold, with the video game as the paradigm

Gilly, T. (2026). The Manufactured Line. Working draft, June 2026 (v2), sec. IV.

The doctrine matured into a notice-and-assent test. The premise underneath was never revisited.

ProCD v. Zeidenberg · 7th	Terms inside the box, disclosed at first use, bind the buyer who could review and return. The terms ride along with the object.
Specht v. Netscape · 2d	No enforcement of arbitration terms behind a submerged hyperlink; a reasonable user would not know she was assenting.
Nguyen v. Barnes & Noble · 9th	Browsewrap unenforceable for want of conspicuous notice.
Meyer v. Uber · 2d	Clickwrap upheld: reasonably conspicuous notice, unambiguous manifestation of assent. Where notice is adequate, courts enforce.

What was never revisited: that adequately presented terms govern the buyer's relationship *to a thing the buyer paid for and holds.*

Sources ProCD, 86 F.3d 1447; Specht, 306 F.3d 17; Nguyen, 763 F.3d 1171; Meyer, 868 F.3d 66. Gilly, sec. IV.A.

Vernor's three factors are not exotic. They are ordinary, and that is the point.

A LICENSEE, NOT AN OWNER, WHERE THE LICENSE:

1. Specifies that the user is granted a license
2. Significantly restricts the user's ability to transfer
3. Imposes notable use restrictions

Every mass market license does all three. The test is satisfied by the standard form itself.

WHAT THE LICENSEE LOSES

The first sale doctrine (§109): no reselling, no lending. The essential step defense (§117(a)): no statutory right to run what she possesses. **She holds the disc, owns the plastic, and does not own the copy in the sense the Copyright Act rewards.**

Sources Vernor, 621 F.3d 1102, 1107, 1111; 17 U.S.C. §§109(a), (d), 117(a); Perzanowski & Hoofnagle, 165 U. Pa. L. Rev. 315 (2017). Gilly, sec. IV.B.

The player is bound by the terms, and the terms, not the disc, define what the player may do.

DAVIDSON & ASSOCS. V. JUNG · 8TH

An emulator that circumvented the authentication handshake violated the anti-circumvention provisions and the governing agreement.

MDY INDUS. V. BLIZZARD · 9TH

Breach of a license covenant is infringement only with a nexus to an exclusive right; otherwise it sounds in contract. The limit that marks the terrain.

DOUGLAS V. TALK AMERICA · 9TH

No binding amendment posted without notice; one cannot assent to a change one has no reason to know about.

COMB V. PAYPAL · N.D. CAL.

A unilaterally amendable arbitration clause held unconscionable; the reasoning turned on absence of meaningful choice.

> These are limits at the margin. Within the structure, the promise embodied in the physical object is contingent on terms the seller may revise, and the remedy for a revision the buyer dislikes is *to stop using the thing he bought.*

Sources Davidson, 422 F.3d 630; MDY, 629 F.3d 928; Douglas, 495 F.3d 1062; Comb, 218 F. Supp. 2d 1165; Mezei & Harkai, 5 Interactive Ent. L. Rev. 1 (2022). Gilly, sec. IV.C.

The object is physical, present, paid for. The law routes around it.

The disc is real,	→ *but the copy is licensed.*
The box is owned,	→ *but the terms govern.*
The purchase happened,	→ *but the terms may change.*

At each step a digital instrument, the license, overrides the physical thing in the buyer's hands. The presence of the physical is treated as beside the point.

Sources Gilly, The Manufactured Line, sec. IV.D; Perzanowski & Schultz, The End of Ownership (2016).

The Symmetry, and Its Two Asymmetries

The threshold moves. What stays fixed is which side of it the person ends up on.

Gilly, T. (2026). The Manufactured Line. Working draft, June 2026 (v2), secs. V–VI.

The threshold moves. The person's side of it does not.

DISABILITY LAW

The protective threshold is set **at the physical place**, which the digital plaintiff lacks.

CONSUMER LAW

The protective threshold is set **above the physical object**, which the consumer has but which is declared insufficient.

> *A natural boundary would not resolve this uniformly. This one is drawn, in each field, at the location that denies the weaker party.*

Sources Gilly, The Manufactured Line, sec. V, The Symmetry, and Its Two Asymmetries.

THE OUTRAGE ASYMMETRY

The tractor draws fury. The game draws a shrug.

Software-locked repair of a farmer's machine, a carmaker's subscription-gated feature: immediate, broad objection, framed as ownership. A publisher conditioning a purchased game on amendable terms: dismissed as the complaint of gamers. The practice is the same. The volume of protest tracks the perceived seriousness of the owner, not the character of the act.

THE DOCTRINAL ASYMMETRY

Different levers, one result.

The disabled lose through a doctrine of coverage: the nexus requirement reads them out of the statute when their harm is digital. The consumer loses through contract and copyright: licensed-not-sold reads his ownership down to a license. In each field, the person who can least afford to lose the protection is the person the boundary removes it from.

Two fields that never cite each other, deploying the same distinction to the same directional effect. That is a property of the distinction itself.

Sources Gilly, secs. V.A–B; Zhu & Cho, 73 Aslib J. Info. Mgmt. 904 (2021).

"These are different bodies of law."

The disconnection is the evidence, not the flaw. Two fields sharing no doctrine, statute, or litigants deploy the same distinction to the same directional effect. The comparison does not assume a link. It discovers that the link is the line.

"The line has legitimate functions."

Grant both local rationales, textual tether and copyright incentives. Legitimate local functions do not explain the global pattern. The objection defends each use in isolation and leaves untouched that the uses, taken together, run one way.

"The cases are not uniform."

True, and the counterexamples matter: they show courts can refuse to let the boundary decide. That is a reason for optimism about the remedy, not a refutation. The pattern is a center of gravity; resistance is consistent with the pull.

Sources Gilly, The Manufactured Line, sec. VI, Objections and Responses.

A distinction that resolves directionally across unrelated fields has forfeited the presumption of neutrality.

The remedy is modest: before a court rests a decision on the physical and digital line, it should say what work the line is doing and why that work is legitimate here, rather than treating the line as self-executing. Most of the boundary's power comes from being treated as obvious. **Naming it as a lever is the first step toward asking who is pulling it, and for whom.**

Sources Gilly, The Manufactured Line, sec. VII, Conclusion.

Table of Authorities · Cases

All authorities as cited in Gilly, T. (2026), The Manufactured Line, Working draft, June 2026 (v2). Citations verbatim from the Article's footnotes.

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