

What It Means To You

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The State v. The Internet—Who Wins?

E-commerce weaves a world wide web of legal land mines for companies, whether or not they actually do business via the Internet. With sporadic case law available to provide guidance in legal disputes, companies conducting Internet commerce that fail to protect themselves from the “long arm of the law” may find themselves standing in a far away courtroom in another state defending against litigation.

One facet of law being tested by the omnipresent web is “personal jurisdiction”—legalese for whether you will be required to travel perhaps thousands of miles to a state where you’ve never been before to defend against a lawsuit filed by people to whom you’ve never spoken. Add to that the expense of flying your witnesses cross-country and dealing with attorneys in another state and you quickly see that there’s a lot at stake.

A state where you’ve never been decides whether it has “personal jurisdiction” over you by evaluating what you’ve done that would make you subject to their laws. For example, a beverage distributor that regularly ships goods into all 50 states will usually have to defend a lawsuit in any state where someone files suit. By contrast, a New York resident who eats in a California restaurant and becomes ill would likely not be able to sue the restaurant in a New York court. But, what about a California website operator that posts information saying, “When you’re in London, visit our Super-Duper Hotel. We own and operate it and guarantee that everything will be terrific.” A Vermont resident makes reservations by calling the hotel, then receives a confirmation via the website. The person goes to the hotel, gets food poisoning, and spends his entire vacation in a London hospital. Can that person make the California corporation come to Vermont to defend a personal injury suit, or does the injured traveler have to go to California? The answer depends on the way the

website works and how it interacts with the person who logs on. Generally, the more the website does for the person who logs on (confirming availability, making reservations, accepting credit card payments), the more likely the website business will be subject to the “personal jurisdiction” of the state where the consumer lives.

Clearly, Internet commerce does not fit easily into the traditional parameters of law due to the wide spectrum of how business is done. At one end is the interactive website that sells products or services, regularly entering into contracts with people in any or all 50 states. At the other end of the spectrum is a passive website which simply posts information available to anyone who logs on.

Establishing personal jurisdiction is like having homecourt advantage. The company that loses homecourt not only has to face flying witnesses to another state and hiring far away attorneys, but there is also the risk that you’ll be subject to judicial prejudices as “out of towners.” People from California, and especially Southern California, are particularly vulnerable. If you have an office with a Beverly Hills zip code, get your checkbook out. Chances are it’s going to be a bad day.

More importantly, trying a case in another state means your business is now subject to different laws than those under which it normally operates. Specifically regarding trade secrets, states differ regarding what they will let you protect, who they let you protect it against, and how much protection they will give you. Especially when the Internet is involved, it is important for a company to evaluate the risks of Internet commerce and the susceptibility of exposing your organization to the “long arm” of personal jurisdiction in a distant state. Bottom line in any dispute: seek counsel before the other guy goes “jurisdiction shopping” and chooses the scenario that’s best for him and worst for you.

DID YOU KNOW

A recent California Supreme Court case tested the boundaries of personal jurisdiction when an Indiana website operator, who posted information on how to illegally record DVDs, was sued by a California company created to police DVD decryption technology. Though anyone surfing the web who came across the Indiana website would have access to the information, the California company, which accessed the information in California, tried to have the case heard in the California court system. The court ruled there was insufficient evidence that the web operator expressly aimed his information at California residents or that he had specific knowledge his actions would adversely impact the California company which owned the DVD encryption software. Thus, the case could not be tried in California state court, and the company lost a chance to protect its trade secret in the California court system. Had the California company filed suit against the website operator in Indiana, it may have been able to obtain an injunction that removed the information from the website. But, the company would have to take its chances trying the case in another state court that might not be as sympathetic to the uniquely California DVD industry.

Salmas Law Group

1880 Century Park East, Suite 420
Los Angeles, CA 90067
Tel. 310.556.0721 Fax 310.788.8923
info@salmas-law.com