

## Can You Be Sued in Virginia Just Because You Use AOL?

SEPTEMBER 8, 1999

Federal and state courts in Virginia have split over whether customers of America OnLine ("AOL"), which is based in Virginia, can be sued in Virginia merely because they post content through AOL's main server.

In *Bochan v. LaFontaine*, a federal judge for the United States District Court for the Eastern District of Virginia recently held that a citizen of Texas, who had no business or personal contacts with Virginia other than his AOL account, can be sued in Virginia for posting allegedly defamatory content to a Usenet newsgroup that was first routed through AOL's main server. Both the plaintiff and AOL's main server are located in Virginia. The Court held that Virginia jurisdiction was proper under Virginia's Long-Arm Statute.

In *Orie-Melvin v. John Doe*, however, a Virginia state court held that it did not have jurisdiction over a defendant whose only contact with Virginia appeared to be that he posted allegedly defamatory content through AOL's main server. The plaintiff in *Orie-Melvin*, a Pennsylvania state court judge who claimed the anonymous defendant libeled her on a Web site, brought her action in Loudoun County, Virginia because AOL is based there. The plaintiff unsuccessfully sought a subpoena to compel AOL to reveal the identity of the defendant.

Arguably, the *Bochan* case runs counter to many Internet jurisdiction cases which generally examine the extent of a defendant's Internet activity in a particular state before finding jurisdiction. *Bochan* thus suggests that the location of an Internet service provider or a server can be a determining factor in finding jurisdiction. The *Orie-Melvin* case, however, held otherwise. Although the holdings of these two cases might be reconciled on the basis that the *Bochan* plaintiff was a citizen of Virginia while the *Orie-Melvin* plaintiff was not, the law on this issue will remain unsettled until higher courts have had the opportunity to issue more definitive opinions.

Jeffrey C. Morgan

jeffrey.morgan@haledorr.com