
Out-of-State Web Site Operator May Be Sued in State Where Harm Is Alleged

2001-12-18

A California appellate court has exercised personal jurisdiction over an out-of-state web site operator because he allegedly used his web site to intentionally injure California businesses. Without having personal jurisdiction over a party, a court cannot hear or consider a case against that party. In the *Pavlovich* case, the court concluded that the defendant can be forced to defend a lawsuit in California because he knew or should have known that California companies would be harmed by his Indiana-based web site, which marketed computer programs designed to defeat a copy protection system used to protect copyrighted motion pictures on DVDs. DVD Copy Control Association, Inc. sued the defendant in California, claiming that by making the computer programs available on his web site the defendant intentionally injured the movie industry. Although another California court recently declined to temporarily block the posting of such computer programs on a web site (see our [November 27, 2001 Internet Alert](#)), an injured party still can sue for damages and seek a permanent injunction to shut down such postings.

The defendant argued that the California court did not have personal jurisdiction over him because he did not have a "physical and personal" presence in California. The court disagreed, finding that he expressly aimed his Internet activities at California. The court reasoned that the defendant

knew or should have known that California is the center of the motion picture industry, and that facilitating illegal copying of DVDs would harm California companies.

In its ruling, the court applied traditional rules regarding personal jurisdiction, but with a twist that courts sometimes employ in cases where tort claims are raised. Rather than look at whether Mr. Pavlovich purposefully availed himself of the benefits of doing business in California (the focus of a recent case discussed in our [September 7, 2001 Internet Alert](#)), the court focused on whether the defendant's alleged actions were intentional, whether the defendant expressly aimed those actions at California, and whether the alleged harm resulting from the defendant's actions would be suffered in California. Because the court found the answers to these questions to be "yes", the court concluded that jurisdiction was proper.

The decision in *Panavision International, L.P. v Toeppen*, provides another example of this type of analysis, in the context of claims for trademark dilution.

Susan Hanmer Farina

susan.farina@haledorr.com

Mark Matuschak

mark.matuschak@haledorr.com

Authors



**Mark G.
Matuschak**

PARTNER

✉ mark.matuschak@wilmerhale.com

📞 +1 617 526 6559

