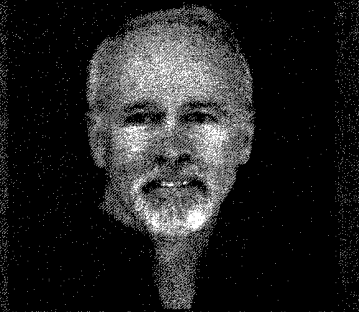




Lisa Miller

is a trial lawyer in California and New York, litigating matters in state, federal, and administrative settings. She can be reached at Lisa@LMillerconsulting.com or (818) 802-1709 cell/text.



Timothy A. Lambirth

is a partner in the law firm of Marcin Lambirth, with expertise in complex civil and commercial litigation, bank operations, real estate fraud and lender liability. He can be reached at (818) 305-2800, TAL@marcin.com, or by visiting www.marcin.com.

Here, There, and Everywhere

9th Circuit Clarifies Jurisdictional Reach in Internet Cases

By Timothy A. Lambirth and Lisa Miller

LAW SCHOOL JURISDICTION 101: GENERAL VS. SPECIFIC JURISDICTION

Where there is no federal statute which authorizes personal jurisdiction, the court applies the law of the state in which the court sits. Personal jurisdiction based on state long-arm statutes (jurisdiction not based on presence within the state) falls into two categories:

- General jurisdiction
- Specific jurisdiction

General jurisdiction exists when an out-of-state party has continuous, systematic, and extensive dealings with the state in which the court sits. (The court has personal jurisdiction over any dispute involving the party when it has general jurisdiction over a party.)

In the Internet context, this is the case when a company advertises and sells so many products for such a long time within a state that it is subject to personal jurisdiction for any claim against it. This is so even when the claim involves activity that occurred only outside the state (ignoring venue issues).

Specific jurisdiction is related to the power a particular court may have to hear a particular case. Specific jurisdiction exists when the defendant has had “minimum contacts” within the specific geographic area. Specific jurisdiction may be triggered when the issues arise from those minimum contacts. This is the case whether the defendant, either an individual or a business, resides or does all of his business there.

The minimum contacts analysis is involved when the defendant has enough contact with the forum state for it to be fair for the court to exercise power over him in the context of the dispute. This can be the case when the defendant has had a small, but substantially significant, amount of activity in the area in which the lawsuit is filed, and the case involves a dispute surrounding that specific activity.

THE NINTH CIRCUIT SPEAKS: JURISDICTIONAL ISSUES AND INTERNET ACTIVITY

In two unrelated cases, the same appellate panel considered these issues. The court revived the lawsuits, both of which had been dismissed for lack of personal jurisdiction over out-of-state companies.

The first case, *Mavrix Photo v. Brand Technologies*, 647 F.3d 1218 (9th Cir. 2011), centered on a company, Mavrix Photo Inc., a Florida corporation with its principal place of business in Miami. Mavrix licenses and sells candid photos of celebrities (e.g., “Lindsay Lohan Stays Sexy and Sober”). Mavrix maintains a Los Angeles office, employs Los Angeles-based photographers, has a registered agent for service of process in the forum state, and pays fees to the California Franchise Tax Board.

Mavrix asserted that Brand Technologies Inc., an Ohio corporation, posted to its website a number of Mavrix's copyright-protected images. Mavrix sought an injunction barring Brand from disseminating the photos, actual and statutory damages. The District Court denied Mavrix's motion for jurisdictional discovery and granted Brand's motion to dismiss.

In Mavrix the Ninth Circuit held that general jurisdiction was lacking over the nonresident defendant in the case. The defendant had no offices or staff in the forum state, was not registered to do business in the state, had no registered agent for service of process, and paid no state taxes.

The plaintiff had argued that the defendant allowed third parties to advertise jobs, hotels, and vacations in the forum state on the defendant's Web site; sold or allowed others to sell tickets to events in the forum state on its Web site; employed a firm in the forum state to design this Web site; had business relationships with a national news organization, an Internet advertising agency, and a wireless provider located in the forum state; and maintained a "highly interactive" Web site.

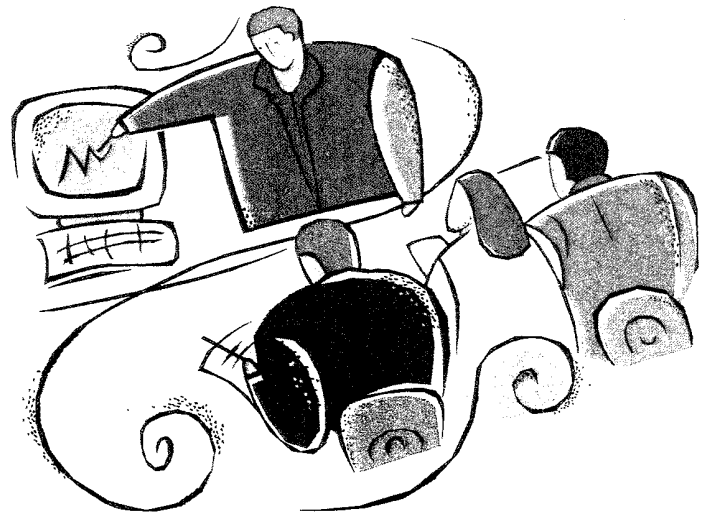
The court held that these contacts, considered collectively, were insufficient to justify exercise of general jurisdiction within the forum state.

However, the defendant used the plaintiff's copyrighted photos in its marketing push. This effort was part of its exploitation of the forum state's market for its own commercial ends. The court held that the defendant committed an intentional act through this use.

The court found that this intentional act was "expressly aimed at the forum state." This was held to be sufficient to establish specific jurisdiction.

In another case decided by the same court (indeed the very same panel) at the same time, *CollegeSource v. AcademyOne*, 653 F.3d 1066 (9th Cir. 2011), the court elaborated on its view of jurisdictional challenges.

In *CollegeSource*, the court was unable to find general jurisdiction under the factual circumstances.



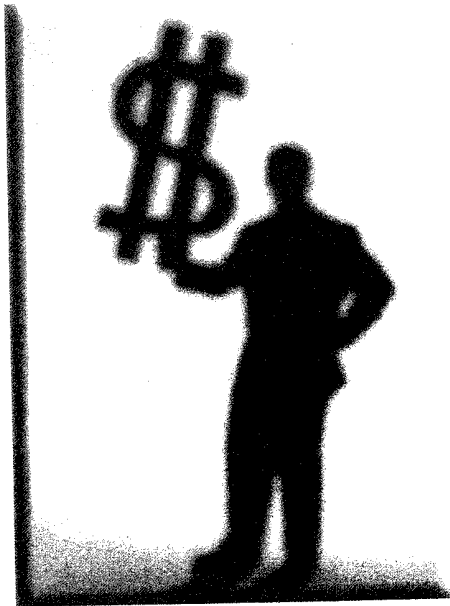
CollegeSource, a California corporation, and *AcademyOne*, of Pennsylvania, are competitors in the market to assist students and educational institutions with the college transfer process. *CollegeSource* asserted that it owns a digital collection of 44,000 course catalogs from 3,000 colleges and universities dating back to 1993. The company accused *AcademyOne* of illegally reproducing 680 catalogs from this collection on its website.

Despite the plaintiffs allegation of misappropriation of a forum state resident's intellectual property, the court found that this did not support general jurisdiction. The court held that the nonresident defendant had no offices or staff in the forum state, was not registered to do business in the state, had no registered agent for service of process, and paid no state taxes.

After jurisdictional discovery, the District Court granted *AcademyOne's* motion to dismiss *CollegeSource's* complaint for lack of personal jurisdiction.

The court held that the misappropriation was not a "continuous and systematic" forum activity. Instead, the defendants did a few things for a short time. Marketing to forum residents, which does not amount to substantial and continuous commerce with the forum state, does not trigger general jurisdiction.

Despite the plaintiffs allegation of misappropriation of a forum state resident's intellectual property, the court found that this did not support general jurisdiction.



THE BIG MONEY LESSON...

The fact that a particular case involves allegations based upon internet activity does not change the analysis of jurisdiction.

General jurisdiction exists when an out-of-state party has continuous, systematic, and extensive dealings with the state in which the court sits.

For a court to find specific jurisdiction, the non-resident defendant must purposefully direct his or her activities or consummate some transaction with the forum or resident thereof; or perform some act by which s/he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one that arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

When Internet activities are alleged to form the basis of contacts sufficient to allow the court to exercise jurisdiction, the analysis is the same.

Where general jurisdiction doesn't exist and where a plaintiff can show that the actions by the "foreign" defendant intentionally targeted the plaintiff by theft of intellectual property or other misconduct, the court is more likely to find specific jurisdiction. *And this could cost the client BIG MONEY.*

The court found that the defendant's business interactions with 300 California registered users and two paid subscribers (the defendant asserted that it realized no profit from these relationships) did not amount to the needed substantial "volume" and "economic impact" for general jurisdiction. "Many of the features on which Mavrix relies to show zippo interactivity—commenting, receiving email newsletters, voting in polls, uploading user-generated content—are standard attributes of many websites. Such features require a minimal amount of engineering expense and effort on the part of a site's owner and do not signal a non-resident defendant's intent to "sit down and make itself at home" in the forum by cultivating deep, persistent ties with forum residents."

But the court found that specific jurisdiction was justified. The court held that AcademyOne "committed intentional acts by downloading CollegeSource's catalogs, republishing them on its own websites, and obtaining course descriptions from those catalogs," and that these acts were targeted at California, where CollegeSource was based.

The court held that the defendant had sufficient "minimum contacts" with the forum state arising out of, or related to, its actions in misappropriating plaintiff's catalogs and course descriptions. Based on this activity, the court found a basis for specific jurisdiction.

Because CollegeSource and AcademyOne were direct competitors in a relatively small industry, AcademyOne's assertion that it was unaware of CollegeSource's California place of business...is implausible, to say the least, according to the court.

The court noted that the defendant committed intentional acts by downloading and using the plaintiff's work product, the defendant individually targeted the plaintiff, and the harm to the plaintiff's business occurred in California.