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Cyber Squabbles: Where Do You Sue?

If you want to sue a Web-based business, you'll need to know where to file the lawsuit.

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What happens when you have a beef over an item or service purchased online? Your local state court -- where traditional power usually stops at the state line -- simply may not have the power to make a binding ruling over an online seller based in another state hundreds of miles away.

Personal Jurisdiction: The Basics

No matter what the subject, a court will not hear your case unless it has personal jurisdiction over all the parties involved. Having personal jurisdiction means that the court has the Constitutional right (legal power) to make a binding decision over the person doing the suing (the plaintiff) and the person being sued (the defendant).

Usually it's no problem to assert jurisdiction in a local court over a defendant who resides or operates a business in your state. That's because state and federal courts always have personal jurisdiction over state residents. But when the defendant's principal residence or place of business is not in the state where the lawsuit is filed (often called the "forum state"), you can haul the defendant into court only there if there is a meaningful connection or contact between the defendant and the state where the suit is filed.

In the world of the Internet, what this amounts to is that if the cyber bad guy you want to sue doesn't live in or operate a business in your state, owns no property there, and there are no other meaningful connections with that state, it means that it's unlikely that a local court will have personal jurisdiction or power over that person. But as we discuss below, there's more than one way to get personal jurisdiction.

Minimum Contacts

One way a court can claim personal jurisdiction is known as "minimum contacts," which refers to the fact that a business or person with sufficient contacts with a particular state can be dragged into court there even though they don't live in that state or base their business there. Usually, any substantial presence in the state will justify personal jurisdiction -- for example, if a business regularly solicits business in the state, derives substantial revenue from goods or services sold in the state, or engages in some other persistent course of conduct there.

EXAMPLES

A Pennsylvania court was able to obtain personal jurisdiction over a California Internet service provider that had 3,000 Pennsylvania subscribers. The act of processing the Pennsylvania applications and assigning passwords was sufficient to demonstrate the minimum contacts needed for personal jurisdiction. *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa 1997).

A Texas court gained personal jurisdiction over an out-of-state online gambling enterprise because the gambling operation entered into contracts with Texas residents to play online gambling games, sent emails to the Texas residents, and sent winnings to Texas residents. *Thompson v. Handa-Lopez, Inc.*, 998 F. Supp. 738 (W.D. Tex. 1998).

The concept of "minimum contacts" can get tricky when it involves the Internet. Courts. Legal scholars are of the opinion that it is unfair to make every website owner subject to personal jurisdiction in every state simply because the site is viewable there. Similarly, sites that merely post information without making sales, called "passive sites," are unlikely to incur personal jurisdiction except in the state where their owner resides or does other business.

EXAMPLE

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A Minnesota website did not sell its nutrition products directly over the Web, but instead directed consumers to email the company's distributors. When a Texas company sued in Texas for patent infringement, the site was considered passive, with insufficient contacts to Texas to give the court personal jurisdiction over the defendant.

However, sites over which credit card sales or other active business is conducted, called "interactive sites," are more likely to satisfy the minimum contacts requirement.

EXAMPLE

A California man running a website called "nfltoday.com" earned revenue from his website through advertising, specifically through the sale of sports betting ads. The site was generating substantial income through interstate commerce and was disrupting marketing efforts by the National Football League in New York. When the NFL sued for trademark infringement (both parties were using the trademark "NFL" for football-related services), a court determined that the site was not passive and had sufficient contacts with New York.

Causing an Injury Within the State

An Internet business can be subject to jurisdiction for purposefully causing an injury in the state. If someone uses the Internet to cause an injury in one state, the person causing the damage may be hauled into court in the state where the injury occurred. In cases where the connection between the activity and the injury is not completely clear, courts also look for evidence that the activity was "purposefully directed" at the resident of the forum state or that the person causing the injury had contacts with the state.

EXAMPLES

In one case, a New Mexico software company sent defamatory email and made defamatory Web postings about an Arizona company. An Arizona court claimed personal jurisdiction because the defamatory statements were intentionally aimed at an Arizona business and caused an injury (defamation) within the state. *EDIAS Software Intern. v. BASIS Intern., Ltd.* 947 F. Supp. 412 (D. Ariz. 1996).

In another incident, Matt Drudge of The Drudge Report, a news and gossip website, made allegedly defamatory statements about a Washington, D.C. resident on the Drudge Report website. Although Drudge lives and writes his column in California, a court ruled that he was subject to personal jurisdiction in the District of Columbia because the injury occurred in the District of Columbia and Drudge had the following contacts with the state: Drudge personally emailed his column to a list of District of Columbia email addresses; Drudge solicited contributions and collected money from District of Columbia residents; Drudge traveled to the District of Columbia twice to promote his column; and D.C. residents systematically supplied Drudge with the fodder for his business -- news and gossip. *Blumenthal v. Drudge*, 992 F. Supp. 44 (D. DC 1998).

"Gotcha" Jurisdiction

A court can obtain personal jurisdiction over an out-of-state defendant who visits the state provided that, during the visit, the defendant is properly served with a summons and complaint (the documents that provide notice of the lawsuit). Also known as "gotcha" jurisdiction, this method of acquiring personal jurisdiction is somewhat similar to playing tag.

EXAMPLE

Sam, a Nevada disc jockey who operates a rock memorabilia site, defrauded Alice, a resident of Buffalo, New York. She learns that Sam is visiting New York City for an Internet convention, so she hires a process server who hands Sam the summons and complaint while he is standing at his sales booth at the convention.

Consent

A court can obtain personal jurisdiction if both parties consent to it. For example, a defendant may consent to the court's jurisdiction by filing a response to the lawsuit with that court. As a condition of incorporating or doing business in the state, a company is often required to consent, in advance, to personal jurisdiction in the state and to provide the secretary of state with an agent to accept service of process.

Along these same lines, you may grant consent by signing a contract that has a provision requiring you to agree in advance to the personal jurisdiction of a state. For example, a California website developer may sign an agreement with a New York company that contains a clause stating: "The parties consent to the exclusive jurisdiction of the federal and state courts located in Nassau County, New York, in any action arising out of or relating to this agreement. The parties waive any other venue to which either party might be entitled by domicile or otherwise." Just two states --

Montana and Idaho -- refuse to recognize such clauses.

You might unknowingly grant such consent to jurisdiction when transacting business at a website or when purchasing software. Many sites and software manufacturers insert jurisdiction provisions in a "click-through" or "click-wrap" agreement -- the terms that a customer accepts by clicking "I accept" or "I agree" when placing an order or installing software.

What If a Cyberspace Merchant Sues You?

The rule that you can be sued in a remote state if you have certain minimum contacts with it applies to a shopper or Web user just as it does for businesses. But courts have ruled that if your only contact with an out-of-state online catalog company is an occasional purchase, that by itself is not enough to permit the catalog company to drag you to the distant state's court. For example, a company based in Florida operated an airline reservation website. When a New York user defaulted on an airline ticket purchase, the company sued the user in Florida. A court ruled that the user's only contact with Florida was this one electronic purchase, which was not enough to establish personal jurisdiction in Florida. In short, if the Florida company wanted to sue the New York resident, they would have to do it in New York. *Pres-Kap, Inc.v. Sys. One, Direct Access*, 636 So.2d 1351 (Fla. App. 1994), review denied, 645 So.2d 455 (Fla. Sup. Ct. 1994).

Suggestions for E-Commerce

Because obtaining personal jurisdiction over out-of-state individuals and businesses can be difficult, and collecting a winning judgment may be even tougher, here are some practical suggestions for dealing with e-businesses:

- Use credit cards for purchases whenever possible. For purchases over \$50 that you make within your home state, credit card companies have a dispute resolution procedure that bypasses litigation -- and pesky personal jurisdiction problems. Check the back of your credit card statement for information about your card company's policies.
- Investigate the other party before taking legal action to see if facts justify suing in your state. For example, check with your state's secretary of state to determine if the company is licensed to do business in the state and check to see if the business has a physical presence in your state, as would be true if it operates a warehouse, store, or office. If so, it will be easy to establish personal jurisdiction. If your investigating shows few contacts, it may not be worth pursuing the matter in your state.
- If you enter into significant contracts with out-of-state companies, try to avoid contract provisions that require you to waive personal jurisdiction in your state or require that you submit yourself to jurisdiction in a distant state.
- If your dispute is substantial (more than \$25,000) and personal jurisdiction is unclear, consider hiring a lawyer and filing a lawsuit in the cyber-defendant's home state. It may prove more efficient than battling over jurisdiction and later attempting to collect an out-of-state judgment.

You can read more about going to court in the [Go to Court or Mediate](#) area of Nolo's website.

For More Information

To learn more about jurisdiction, read [Represent Yourself in Court: How to Prepare & Try a Winning Case](#), by Paul Bergman and Sara Berman (Nolo), Nolo's guide to preparing and presenting a winning civil court case.

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