

U.S. Court of Appeals for the Ninth Circuit Once Again Weighs in On When Website Operators Are Subject to Personal Jurisdiction

Since the advent of e-commerce, courts have had to confront the question of what activities are sufficient to subject an out-of-state website operator to the forum court's jurisdiction. Courts have generally agreed that simply hosting a website that is accessible in the forum is not sufficient to give rise to personal jurisdiction, and the question they have grappled with has been what else is needed.

In *Briskin v. Shopify, Inc.*,¹ an *en banc* panel of the Ninth Circuit Court of Appeals reversed a panel's decision from a year earlier and found that not much was required. Specifically, the Court found that knowingly placing a "cookie"—a digital location tracking device—on the plaintiff's computer located in the forum state was sufficient. In doing so, the Ninth Circuit has both deviated from other circuits, which have required a more stringent connection between the defendant's activities and the forum, and expressly overruled prior Ninth Circuit decisions that had required a showing that a defendant had targeted the forum more than other forums—otherwise known as differential targeting—before an out-of-state defendant could be subject to jurisdiction.

The decision raises questions about what other types of activities may be sufficient to establish personal jurisdiction over out-of-state website operators and diverges from other federal courts of appeals, creating an issue that may soon be ripe for the United States Supreme Court to step in and provide much needed guidance.

Background: Personal Jurisdiction Over Website Operators

Typically, to exercise personal jurisdiction over out-of-state defendants, courts must establish general or specific jurisdiction.² To establish specific personal jurisdiction, there must be a "relationship among the defendant, the forum, and the litigation" that arises out of or relates to contacts that the "defendant *himself* creates with the forum."³ Contacts created merely by interacting with residents of the forum are insufficient.⁴


In determining when an out-of-state defendant can be subject to jurisdiction based simply on their operation of a website, courts have reached differing results. Courts generally agree that simply hosting a passive website that is

¹ 135 F.4th 739 (9th Cir. 2025).

² General jurisdiction over out-of-state defendants requires "affiliations with the State [that] are so 'continuous and systematic' as to render [the out-of-state defendant] essentially at home in the forum State." See *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014). Courts may also exercise jurisdiction by consent. See *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 138 (2023) ("[A]n out-of-state corporation that has consented to in-state suits in order to do business in the forum is susceptible to suit there." (quoting *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. & Mill. Co.*, 243 U.S. 93 (1917))).

³ *Walden v. Fiore*, 571 U.S. 277, 284 (2014).

⁴ *Id.* at 286 ("Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State.").



accessible nationwide is not sufficient, on its own, to give rise to personal jurisdiction over the website operators in every state.⁵ Courts, however, disagree on what additional activities are required to give rise to personal jurisdiction.

For example, the Second and Seventh Circuits have held that hosting an interactive website and shipping a product into a forum can confer jurisdiction over the website operator in the forum with regard to the product sold.⁶ The Fifth and Eighth Circuits have found that the sale of a single product in the forum is insufficient to subject the out-of-state defendant to jurisdiction in the forum even for claims that relate to the sale of the product.⁷ The Fourth Circuit has found that an out-of-state website operator can be sued in a forum in which its website is frequently accessed.⁸

In the Ninth Circuit, courts apply a three-part test to determine if the defendant had “minimum contacts” to warrant the exercise of specific jurisdiction: (1) the non-resident defendant must either “purposefully direct his activities” toward the forum or “purposefully avail[] himself of the privilege of conducting activities in the forum;” (2) “the claim must be one which 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.”⁹

To determine whether a defendant purposefully directed its activities into the forum (particularly in the absence of physical contact), the Ninth Circuit employs the effects test articulated in *Calder v. Jones*.¹⁰ The effects test requires a showing that the defendant “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.”¹¹

Before *Briskin*, courts in the Ninth Circuit had found that to establish jurisdiction over an out-of-state website operator there needed to be a showing that the website operator purposefully directed its activities to the forum state.¹² For example, the Ninth Circuit has found that a website operator did not expressly aim its activities at the forum—and thus was not subject to jurisdiction—when it re-posted copyrighted videos on a website where 80% of the users were international, reasoning that the website did not maintain a specific focus to the United States.¹³ In another case, the Ninth Circuit clarified that the “something more” necessary to establish “express aiming” was satisfied where an interactive website knowingly sold infringing products and caused the infringing products to be delivered to forum residents.¹⁴

⁵ See, e.g., *Admar International, Inc. v. Eastrock, L.L.C.*, 18 F.4th 783, 787–88 (5th Cir. 2021) (collecting cases).

⁶ See *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 165, 171–72 (2d Cir. 2010); *NBA Props., Inc. v. HANWJH*, 46 F.4th 614, 624–25, 627 (7th Cir. 2022).

⁷ See, e.g., *Admar International, Inc.*, 18 F.4th at 787–88, 788 n.1 (suggesting that the isolated sale of a single product to a forum resident would be insufficient to support the exercise of jurisdiction when the defendant did not solicit business through targeted advertising); *Brothers and Sisters in Christ, LLC v. Zazzle, Inc.*, 42 F.4th 948, 953 (8th Cir. 2022) (holding that a delivery of a single tee shirt was not sufficient to establish jurisdiction in Missouri).

⁸ See *UMG Recordings, Inc., v. Kurbanov*, 963 F.3d 344, 353 (4th Cir. 2020).

⁹ See *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

¹⁰ 465 U.S. 783 (1984).

¹¹ *Schwarzenegger*, 374 F.3d at 803.

¹² *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997).

¹³ See *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1210–12 (9th Cir. 2020).

¹⁴ *Herbal Brands, Inc. v. Photoplaza, Inc.*, 72 F.4th 1085, 1091–94 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 693 (2024).

Briskin v. Shopify Background

In June 2019, Brandon Briskin, a resident of California, purchased athletic wear from a California-based retailer called IABMFG, which uses Shopify's services to operate its online store.¹⁵ Shopify is a Canadian based online platform that facilitates online transactions between third-party merchants and customers. Besides providing the infrastructure to process payments, Shopify also ships the product to the consumer.¹⁶ Briskin alleged that Shopify installed location tracking software, also known as "cookies," on his device that collected his personally identifying information, including his geolocation, without his consent and which Shopify later sold to third parties.¹⁷

In August 2021, Briskin brought a putative class action in the U.S. District Court for the Northern District of California, alleging that Shopify collected and sold personal information without consent in violation of various privacy-related torts and California unfair competition laws.¹⁸ The district court granted Shopify's motion to dismiss, finding that (1) the complaint failed to meet the pleading requirements under Federal Rules of Civil Procedure 8(a)(2), and (2) the court lacked specific personal jurisdiction over Shopify.¹⁹

Briskin appealed, and in November 2023, a three judge panel from the Ninth Circuit affirmed the district court's dismissal.²⁰ The Ninth Circuit held that it lacked specific personal jurisdiction over Shopify, since Shopify collected and stored user data indiscriminately, without regard to the user's location. As such, the court found that Shopify did not "expressly aim" its activities at California and dismissed for lack of personal jurisdiction.²¹

Briskin filed a petition for rehearing *en banc*, which the Ninth Circuit granted.

The Ninth Circuit's *En Banc* Decision

In a 10-1 decision, the Ninth Circuit reversed, finding that Shopify's contacts with California were sufficient to confer specific personal jurisdiction over Shopify. In doing so, the Ninth Circuit made several key holdings that significantly altered the test for establishing jurisdiction over out-of-state website operators in the Ninth Circuit.

Specifically, the Court (1) overturned a prior line of case law—specifically *AMA Multimedia*²² and its progeny—requiring differential or forum-specific targeting in the internet context to establish personal jurisdiction; (2) clarified that internet jurisdiction should be evaluated under the same standard by which traditional, physical contacts are evaluated; and (3) clarified that the "something more" needed to satisfy express aiming does not require much more than knowingly placing a "cookie" on a device in the forum.

In reaching its conclusion, the Ninth Circuit surveyed its prior decisions addressing the internet context.²³ The court noted that, while it found no personal jurisdiction where a defendant merely maintained a "passive website" that is accessible in the forum state, it has found personal jurisdiction satisfied where there is "something more" to indicate

¹⁵ *Briskin*, 135 F.4th at 746–47.

¹⁶ *Id.* at 747.

¹⁷ *Id.* at 747–48.

¹⁸ *Id.* at 748–49.


¹⁹ *Id.* at 749.

²⁰ *Id.* See also *Briskin v. Shopify, Inc.*, 87 F.4th 404, 409 (9th Cir. 2023), *vacated*, 101 F.4th 706 (9th Cir. 2024). The three judge panel did not address the Rule 8 issue, finding it was unnecessary to do so.

²¹ *Briskin*, 87 F.4th at 422.

²² *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201 (9th Cir. 2020).

²³ *Briskin*, 135 F.4th at 752.



that the defendant purposefully directed, or expressly aimed, its activities into the forum state.²⁴ For example, the court found that hijacking a domain name of a corporation based in the forum state, running targeted advertising directed at the forum, appealing to and profiting from an audience in the forum, or causing a product to be delivered into the forum “constituted the ‘something more’ that would subject [a] defendant to specific personal jurisdiction.”²⁵

Applying these principles to the current case, the Ninth Circuit found that Shopify expressly aimed its conduct towards California by (1) installing a location tracking software on California users’ devices and (2) collecting and using California users’ personal identifying information while knowing that the consumer was in California.²⁶ The court analogized Shopify’s conduct to physical trespass into a California home by deceptive means to obtain a Californian’s personal information from physical files in their home.²⁷

In so holding, the Ninth Circuit rejected the argument that express aiming requires a “forum-specific focus” or “differential targeting,” thereby overturning *AMA Multimedia* and its progeny, which held to the contrary.²⁸ Relying on Supreme Court precedent rejecting the argument that “because a nationwide company is everywhere, it is jurisdictionally nowhere,”²⁹ the Ninth Circuit found that a defendant’s conduct would be considered “expressly aim[ed]” as long as the defendant’s activities are intentionally directed toward a forum state (i.e. by its “own choice” and not by “random, isolated, or fortuitous” contacts), even if they are equally directed at other forums as well.³⁰

The Ninth Circuit then found that Shopify’s conduct satisfied the remaining two requirements for specific jurisdiction: (1) that Briskin’s claims “ar[is]e out of” and “relate[d] to” Shopify’s contacts with Briskin’s device—namely Shopify’s installation of location tracking software and collection of personal data—which Shopify knew was in California³¹ and (2) that exercising jurisdiction in California would not be unfair to Shopify.³²

Lastly, the Ninth Circuit overturned the district court’s ruling that the complaint should be dismissed under Federal Rule of Civil Procedure 8(a)(2) on grounds that it was collectively pled and held that the complaint was sufficiently pled to give the Shopify entities fair notice of the claims against them.³³

Judge Collins concurred, writing separately to indicate that he found personal jurisdiction “readily satisfied” in this case due to Shopify’s alleged tortious conduct that occurred *in* California that satisfies the minimum contacts necessary to confer jurisdiction.³⁴ Judge Collins also noted that, while he agrees with the majority’s overruling of the differential targeting standard, the majority did “not go far enough” and should have done away with the standard requiring “something more” in the internet context—a standard that he finds “unhelpful and confusing.”³⁵

²⁴ *Id.*

²⁵ *Id.* at 752–55 (citing *Panavision International, L.P. v. Toeppen*, 141 F.3d 1316 (9th Cir. 1998); *Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007 (9th Cir. 2002); *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1230 (9th Cir. 2011); *Herbal Brands, Inc.*, 72 F.4th at 1094).

²⁶ *Id.* at 756.

²⁷ *Id.*

²⁸ *Id.* at 757.

²⁹ *Id.* (citing *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 355, 363 (2021)).

³⁰ *Id.* at 758.

³¹ *Id.* at 760.

³² *Id.* at 761.

³³ *Id.* at 762.

³⁴ *Id.* at 765.

³⁵ *Id.* at 767–68.

Judge Bumatay also concurred, writing separately to provide historical support for the majority's overruling of the differential targeting rule for personal jurisdiction.³⁶

In a dissenting opinion, Judge Callahan stated that her "reading of Supreme Court precedent precludes the majority's expansive view of specific personal jurisdiction in this case."³⁷ Judge Callahan cautioned that the majority's decision finding express aiming based on the location of Briskin's device, "departs from the longstanding principle that jurisdiction turns on the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there."³⁸

Implications

The Ninth Circuit's *en banc* decision in *Briskin v. Shopify* is the latest to grapple with the level of conduct that is necessary to establish personal jurisdiction over out-of-state website operators. Given the diverging approaches among the federal courts of appeal, the issue is developing into one that is ripe for Supreme Court review.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Joel Kurtzberg (Partner) at 212.701.3120 or jkurtzberg@cahill.com; Adam Mintz (Counsel) at 212.701.3981 or amintz@cahill.com; Chana Tauber (Associate) at 212.701.3520 or ctauber@cahill.com; or email publications@cahill.com.

³⁶ *Id.* at 768–73.

³⁷ *Id.* at 773.

³⁸ *Id.* at 774.