

THE INTERNET'S PERVASIVE EFFECT ON COMMERCE: *Can the Courts Keep Up?*

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The “law” struggles as the internet permeates all corners of American life.

Three recent cases illustrate these pervasive effects. “Work from home” brings surprises in the Federal Circuit. Streaming video affects city budgets in the Eighth Circuit and state tax collection in the Ninth Circuit.

In the Federal Circuit decision, a plaintiff had brought a patent infringement action in the Western District of Texas on the basis that the defendant, Monolithic Power, had four employees in Austin working remotely from their homes, and one of the employees had equipment provided by the employer that the employee used to perform his regular work for the employer. In addition, the employer regularly recruited in the Austin metro area. Based on those facts, the district court accepted the plaintiff’s assertion that the venue was proper.

In the two-to-one decision, the dissenter, Judge Lourie, wrote that remote work with the employer’s tools did not meet the statutory standard of a “regular and established place of business.”

The panel’s two prevailing judges wrote that the district court’s ruling “does not involve the type of broad, fundamental, and recurring legal question or usurpation of judicial power that might warrant immediate mandamus review.”

As the internet has empowered many more workers to work remotely, employers may become subject to various claims in remote venues where remote workers live and work.

In the Eighth Circuit matter, Arkansas had enacted a statute allowing video service providers to use public rights of way to deliver services and seek a statewide franchise that would pay local jurisdictions a fee with-

out needing a local license. Ashdown, population 4,261, north of Texarkana, wanted Netflix and Hulu to buy a state license, even though video programming available over the “public Internet” was outside the scope of the statute.

The district court and the Eighth Circuit ruled that the Arkansas statute did not create a right of action by the municipality to require a streamer to buy a state license. The municipality argued, among other things, that because these services required a subscription, their services were not available over the “public internet.” The district court cited the analogy to a car; whether or not the car doors are locked, the highway the car is on remains a public highway.

Similarly, in the Ninth Circuit matter, California sought to collect sales taxes from vendors whose goods were stored in Amazon warehouses in California and sold



through Amazon under a program where Amazon “fulfilled” the order placed with the third-party vendor. After October 2019, Amazon collected California sales tax and remitted it to the state, but previously under California law, the third-party vendor was responsible for paying California sales tax on those sales. California sought payment, and the merchants sought to have federal courts stop California from pursuing those tax payments.

The district court and the Ninth Circuit

decided that federal courts lacked the authority to intervene in California’s attempt to collect California tax. The unanimous Ninth Circuit panel wrote, “The relief the Guild requests would prevent the collection of taxes owed. Therefore, the requested relief would “to some degree stop” the assessment or collection of a state tax, and federal courts lack jurisdiction” under existing federal law.

These three Circuit Court decisions exemplify the impacts of internet-facilitated

business — remote work, streaming video, and out-of-state sales — on established patterns in the law, such as where the venue is appropriate and how taxes get collected. As business leaders and legal decision-makers adopt digitally facilitated ideas, contracts and advice must keep up with a changing world.

¹ In re Monolithic Power Systems, Inc. Case: 2022-153, U.S. Court of Appeals for the Federal Circuit (September 30, 2022)

² City of Ashdown, Arkansas v. Netflix, Inc.; Hulu, LLC, case number 21-3435, U.S. Court of Appeals for the Eighth Circuit (September 20, 2022).

³ Online Merchants Guild v. Maduros, No. 21-16911, 2022 BL 401266 (9th Cir. Nov. 09, 2022)



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