

# PUBLICATION

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## New York's High Court Finds Broad Jurisdiction Over Out-of-State Actors

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Out-of-state actors should be cautious when using or working with intellectual property owned by a party in New York. The New York Court of Appeals, New York's highest court, ruled in March that any improper use by a party outside of the state could give rise to a lawsuit in the state of New York – even without "reasonably" apparent effects on commerce in the state of New York.

In the case, the New York Court of Appeals adopted a broad interpretation of its state's long-arm jurisdiction statute to find that an Oregon-based business could be sued by a New York copyright holder for posting copies of copyrighted books on its "online library." A long-arm statute is the state law that determines what out-of-state individuals/entities can be sued in the courts of that particular state. The reach of the law usually depends on those individuals/entities having certain minimum contacts with the state, as is required under the principle of due process.

The Court of Appeals ruled that the kinds of harm associated with online infringement are inherently different than those for offline infringement. Whereas offline infringement results in more focused effects at the location of infringement, the uploading of copyrighted works to the Internet makes those works available anywhere with an Internet connection, which therefore makes the specific location of infringement less relevant to jurisdictional analysis. Because the effects of the harm in online infringement are so dispersed and lost sales cannot be correlated to specific geographic locations, the harm must also be felt where the copyright owner resides. So despite the fact that there were no "reasonably" apparent effects on commerce within New York, the court found that the defendant could be brought in front of a judge in New York.

While this decision is only binding for courts applying and interpreting New York law, New York courts have long been at the forefront of shaping legal interpretation – particularly regarding copyright law. Even more significantly, this case points to copyright holders' expanding options in the Internet age to seek protection from courts in multiple jurisdictions.

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*Penguin Group (USA) Inc. v. American Buddha, N.Y., No. 7, 3/24/11*

### Facts

American Buddha, an Oregon-based business with its primary offices in Arizona, was sued by Penguin Group (USA) for posting copies of four copyrighted books on the American Buddha "online library" for viewing by its 50,000 members. The Court of Appeals was asked to rule in response to a certified question from the 2nd U.S. Circuit Court of Appeals to determine the reach of New York's long-arm statute, CPLR § 302(a)(3)(ii), which provides jurisdiction over non-domiciliaries who commit tortious acts outside the state that result in injuries within New York.

### Issue

The New York Court of Appeals had to determine whether one factor of its established five-prong test – an injury to a person or property in New York – was satisfied in the case of tortious copyright infringement committed outside New York when there were no "reasonably" apparent effects on commerce in New York.

### **Analysis**

The New York Court of Appeals ruled that the kinds of harm associated with online infringement are inherently different than those for offline infringement. Whereas offline infringement results in more focused effects at the location of infringement, the uploading of copyrighted works to the Internet makes those works available anywhere with an Internet connection, which therefore makes the specific location of infringement less relevant to jurisdictional analysis. Because the effects of the harm in online infringement are so dispersed and lost sales cannot be correlated to specific geographic locations, the harm must be felt where the copyright owner resides. The court found this position to be in accord with the protections offered copyright owners in the Copyright Act, itself. 17 U.S.C. § 106. Moreover, the court sought to downplay the effect of the ruling by pointing out that the long-arm statute is not enough to meet personal jurisdiction standards and that due process minimum contacts would still need to be satisfied for New York courts to have personal jurisdiction over foreign defendants.

### **Holding**

The injury to a person or property element of the long-arm statute analysis is satisfied in this case where the defendant is accused of online copyright infringement.