

High Speed Adult Content is “Purposefully Directed”

Will Co. Ltd. v. Lee, 2022 WL 3906205 (9th Cir. Aug. 31, 2022)

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Pointing to domain registration, hosting services, website compliance terms, and U.S. based users of a Hong Kong company’s internet business, the Ninth Circuit reversed dismissal of a Japanese company’s copyright suit for a lack of personal jurisdiction. This precedential decision provides guidance regarding what constitutes sufficient jurisdictional contacts to establish that a defendant “expressly aimed” and foreseeably anticipated suit in the forum under the federal long-arm statute. The case was remanded for analysis of fair play and substantial justice under FED. R. CIV. P. 4(k).

Will Co., Ltd. (“Will Co.”) is a Japanese adult entertainment company that exclusively provides access to its U.S. copyright registered videos via a single website. Will Co. sent take-down notices under the Digital Millennium Copyright Act (“DMCA”) to a website providing Will Co.’s content. When the content was not removed, Will Co. filed suit, identifying after limited discovery the site’s corporate owner and director (collectively, “Defendants”). The District Court granted Defendants’ motion to dismiss, finding that operation of the site was indistinguishable from facts in *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201 (9th Cir. 2020), as the website was not “expressly aimed” at the U.S. and significant harm did not exist where only 4.6% of site viewers were in the U.S.

The Ninth Circuit reviewed the lower court’s due process analysis, which required that *International Shoe*’s minimum contacts and fair play and substantial justice were met. This required Will Co. to show Defendants “purposefully directed” activities to the forum, relatedness of the suit to the contacts, and reasonableness. For the first prong the Ninth Circuit applied the *Calder* Effects Test and asked whether factors of an intentional act, expressly aimed at the forum and causing likely harm, supported purposeful direction. Domain name and privacy service purchases, the Ninth Circuit found, were intentional acts. Although a closer question, and noting passive sites alone are insufficient, the Court found Defendants also “expressly aimed” their site to the U.S. by analogizing these facts to *Mavrix Photo Inc. v. Brand Techs., Inc.*, 647 F.3d 1218 (9th Cir. 2011) and distinguishing *AMA*. Like the California-related stories and ads in *Mavrix* that showed the website was meant to appeal to and profit from consumers in the relevant forum, the Defendants here profited from an advertising structure that evidenced an intent to cultivate a U.S. audience. Hosting content in Utah and use of a network that sped up U.S. content delivery, the Court said, showed intent to appeal to U.S. consumers as well as web page compliance guarantees and English terms limited to the U.S. Although just 4.6% of site views were in the U.S., the Ninth Circuit determined the 1.3 million visits showed sufficient harm was foreseeable where Defendants were aware of profits from U.S. viewers of content.