

ALERT

Ninth Circuit Privacy Ruling Could Be Used to Expand Potential Forums for E-Commerce Lawsuits

April 25, 2025

On Monday, April 21, 2025, the U.S. Court of Appeals for the Ninth Circuit, sitting *en banc*, issued an opinion in *Briskin v. Shopify, Inc.*, ___ F.4th __ (9th Cir. Apr. 21, 2025), that plaintiffs will cite to attempt to expand where e-commerce platforms can be subject to courts' specific personal jurisdiction, particularly in privacy-related cases in that Circuit. In an outlier opinion, the court departed from courts' historical reluctance to broadly find personal jurisdiction in cases involving products and/or services offered nationwide, particularly in scenarios where at-issue products or services only "enter" a jurisdiction as the result of a consumer's unilateral actions.

Relevant Background

The plaintiff in *Briskin* (a California resident) brought several state law privacy-related claims in a federal trial court in California against the e-commerce platform Shopify, Inc. (a Canadian corporation headquartered in Canada) and two of its American subsidiaries (both incorporated in Delaware, with principal places of business in New York and Delaware, respectively). The plaintiff alleged that when he used his mobile phone browser to purchase athletic wear from an online storefront, he unknowingly provided certain private data to Shopify, "an e-commerce platform that facilitates online sales for merchants." According to the plaintiff, when he checked out of his transaction, the company – which he alleged knew the plaintiff was located in California – not only validated his payment, but also "installed tracking cookies onto his device." Those cookies then allegedly tracked and stored personal information such as his geolocation data, his browser's identity, his IP address, and the

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location of the transaction itself. The plaintiff claimed that the platform then shared that information with merchants using the platform as well as third parties.

The district court granted Shopify's motion to dismiss the case for lack of personal jurisdiction, which a three-judge Ninth Circuit panel affirmed. The basis for those decisions was that the company, which operates a nationwide payment processing platform, did not expressly aim its suit-related conduct at California. In other words, consistent with the weight of relevant jurisprudence around the country, the three-judge panel held that "[w]hen a company operates a nationally available e-commerce payment platform *and is indifferent to the location of end-users*, the extraction and retention of consumer data, without more, does not subject the defendant to specific jurisdiction in the forum where the online purchase was made." The *en banc* panel of the Ninth Circuit disagreed and reversed.

Ninth Circuit's Analysis

In deciding that the federal trial court in California *did* have specific personal jurisdiction over Shopify, the Ninth Circuit issued three primary determinations.

First, it found that "Shopify purposefully directed its wrongful conduct toward California." (cleaned up). The court emphasized that the company "expressly aimed its conduct at California through its extraction, maintenance, and commercial distribution of ... California consumers' personal data." Key to this analysis, the Ninth Circuit explained that "express aiming" sufficient to support a finding of purposeful direction at California *does not* require "differential targeting," i.e., conduct focused on a particular forum. That is, it does not matter that the company "operates nationwide and ... is agnostic as to the location" of consumers. Instead, the court held "that an interactive platform expressly aims its wrongful conduct toward a forum state when its contacts are its own choice and not random, isolated, or fortuitous" – "even if that platform cultivates a 'nationwide audience for commercial gain.'"

Second, the court found that the plaintiff's claims arose from or related to Shopify's California conduct. The court noted that the plaintiff's claims *arose from* Shopify's contact with the plaintiff's mobile phone, "which Shopify allegedly knew was in California," and the plaintiff's claims *related to* Shopify's California contacts because he "allege[d] the kind of injury that would tend to be caused by Shopify's contacts with California merchants and consumers."

Third, the Ninth Circuit found that it is reasonable to exercise specific personal jurisdiction over Shopify under the circumstances. In supporting this conclusion, it explained that the company had purposefully directed its business activities toward California and that it had not raised any other issues that might suggest personal jurisdiction would be *unreasonable*. In so holding, the court acknowledged but dismissed concerns that its finding "could lead to specific jurisdiction in all 50 states," stating that while that may be true, it is not unfair. Likewise, the court dismissed the company's argument that the availability of other potential forums mattered – declaring that the availability of those other forums did not render jurisdiction in California unfair.

Takeaways

The Ninth Circuit's specific personal jurisdiction analysis in *Briskin* could have serious implications for e-commerce platforms operating within the United States, particularly those that may potentially reach consumers within the Ninth Circuit. Pursuant to the court's reasoning, an e-commerce platform may subject itself to personal jurisdiction simply by making its services available to consumers in a particular location, even if that location is not a focus of the platform. Critically, as the court acknowledged, this could subject e-commerce platforms to lawsuits *across the country* regardless of where they are incorporated and/or headquartered.

In determining how to conduct their regular business operations, e-commerce platforms (and other online entities) should be mindful of this decision, and consider whether they have arguments to distinguish its holding if they face litigation. Additionally, it is worth noting that *Briskin* only has precedential value within the Ninth Circuit. While plaintiffs elsewhere may cite that opinion in litigating personal jurisdiction in the context of online businesses, the Ninth Circuit's decision is presently at odds with the weight of well-established law in other jurisdictions. Courts elsewhere thus may choose to disregard or distinguish its analysis and conclusions.

Wiley has a deep bench of litigators and regulatory lawyers highly skilled in helping clients navigate complex legal issues like those examined in *Briskin*. For more information on this article or Wiley's Litigation Practice or Privacy, Cyber & Data Governance Practice, please contact one of the authors.