

Web Site Story 4 - Nationwide Internet Jurisdiction Is Not Ended By Blue Note Case

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It is now ancient wisdom (two years is ancient in internet terms) that hosting a Web site subjects you to jurisdiction nationwide on claims relating to the Web site. One of the few decisions that declined out-of-state jurisdiction over distant Web sites was *Bensusan Restaurant Corporation v. King*, 937 F. Supp. 295 (S.D.N.Y. 1996).

The District Court's dismissal of the complaint in *Bensusan* for lack of New York jurisdiction was affirmed by the Court of Appeals for the Second Circuit on September 10, 1997. What is important about this affirmance is that it does not create a genuine split of opinion on the issue of out-of-state Web site jurisdiction.

Two features of the *Bensusan* case limit its significance. First, the facts of the case. Second, the law under which the jurisdiction question was decided.

The Facts of the Blue Note Case

Bensusan is commonly called the Blue Note case because it involves two jazz clubs, each called "The Blue Note." Plaintiff was the famous Blue Note club in Greenwich Village, New York City. Defendant was described in the Court's opinion as a small cabaret in Columbia, Missouri, featuring live entertainment (it described itself as "mid-Missouri's finest live entertainment venue").

The Missouri Blue Note established a Web site. Its Web site was limited in its functions. It contained some informative text about the Missouri Blue Note and posted monthly calendars of future events and the (Missouri) telephone number of its box office. It also contained language expressly distinguishing itself from the New York Blue Note. Originally, the Missouri Web site had a hyperlink to the plaintiff's Web site, which was removed upon the objection of the New York Blue Note. Significantly, orders for tickets could not be placed through the Web site; the Web site served solely an informational function.

The Law Applied

The Second Circuit's decision refusing jurisdiction was based solely on New York statutory law, not upon United States constitutional law. The Second Circuit expressly did not reach the issue of whether New York jurisdiction over the Missouri Blue Note would have been constitutional. The Court decided only that New York's long-arm statute 2 did not extend New York jurisdiction to the case.

The facts of the case and the law applied mean that the Blue Note decision covers only Web sites performing solely an informational function and not directly offering anything for sale, and that the decision may be without significance outside of New York.

Jurisdictional Analysis

The significance, if any, of the Blue Note decision for the rest of the United States depends upon how closely the New York long-arm statute approaches the constitutional limit of personal jurisdiction. New York's long-arm statute provides for jurisdiction, *inter alia*, over any non-domiciliary who, in person or through an agent, (1) commits a tortious act within the state, or (2) commits a tortious act outside of the state causing injury to a person or property in the state, if the tortfeasor (i) regularly engages in or solicits business in New York or derives substantial revenue from New York, or (ii) should reasonably expect the consequences in New York of the tort and derives substantial revenue from interstate or international commerce.

New York courts have held that this statute "comes well within the constitutional limitations." See *Singer v. Walker*, 21 A.D.2d 285, 292, 250 N.Y.S.2d 216, 223 (1st Dep't 1964), *aff'd*, 15 N.Y.2d 443, 261 N.Y.S.2d 8 (1965). In fact, the statute was not intended to extend New York jurisdiction to the constitutional limit. *American Eutectic Welding Alloys Sales Co. v. Dytron Alloys Corp.*, 439 F.2d 428 (2d Cir. 1971) ("the legislature did not

intend to extend the jurisdiction of the New York courts to the outer reaches of constitutional power."'). New York's refusal of jurisdiction in any given case does not, therefore, mean that other states would not or could not constitutionally exercise jurisdiction in a case with the same facts. And, indeed, other states have exercised jurisdiction in Internet cases with facts similar to the Blue Note case.

The Inset Case

In *Inset Sys., Inc. v. Instruction Set, Inc.*, 937 F. Supp. 161 (D. Conn. 1996), the court exercised jurisdiction over a Web site owner whose server was in Massachusetts. The claim there, as in the Blue Note case, was that defendant infringed plaintiff's trademark by its Web site domain name: "inset.com". Defendant "advertised" its products on its Web site. There was no indication in the opinion that defendant's Web site did anything interactive with visitors or did anything other than post information about defendant. The Court also noted that defendant had a toll-free "800" number (we may infer that it was posted on the Web site, but the opinion does not say). The Blue Note Web site posted defendant's box office telephone number, although that number was a local, non-800 number.

The *Inset* Court found that Connecticut could constitutionally assert jurisdiction over the Massachusetts Web site host. According to the *Inset* Court, "advertising via the Internet" both satisfied the Connecticut long-arm statute covering solicitation of business in-state and the constitutional minimum contacts standard.

Whether all states or federal circuits would follow *Inset* on the constitutional issue, it is clear that the Blue Note case is no indication that the trend towards nationwide jurisdiction over Web sites and claims arising out of them is slowing.

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1.) "The Blue Note, Columbia, Missouri should not be confused in any way, shape, or form with Blue Note Records or the jazz club, Blue Note, located in New York."

2.) N.Y. Civ. Prac. Law & Rules § 302.

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