

THE
NATIONAL LAW REVIEW

Google's Servers Housed By A Third-Party ISP Qualify As A Regular And Established Place Of Business To Establish Proper Venue In The Eastern District Of Texas

Wednesday, August 15, 2018

In our continued post-*TC Heartland* coverage, Judge Gilstrap in the Eastern District of Texas recently held that venue was proper because Google exercises exclusive control over physical servers implicated by the litigation, as well as the physical space within which the server is located and maintained. The court emphasized that the place where the server is located occupies a physical space, which is more than merely a virtual space or electronic communications from one person to another. In addition to occupying physical space, Google exercises exclusive control over the digital aspects of the third-party that hosts the server.

Google retains more control over the server than under a general lease arrangement. For example, Google requires its third party ISPs to provide "rack space, power, network interfaces, and IP addresses . . . in consultation with Google . . . remote assistance and installation services . . . network access between the Equipment and Host network subscribers . . ." The ISP agreement makes it clear that the ISP does not own the server(s)—Google does. Google's ownership of the server and its contents is absolute, as is Google's control over the server's location upon installation. Accordingly, the server itself and the place where it is physically housed, both independently and together, met the statutory requirement of a "physical place" sufficient to confer proper venue.

[See Judge Gilstrap's order here.](#)

© 1994-2019 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. All Rights Reserved.

Source URL: <https://www.natlawreview.com/article/google-s-servers-housed-third-party-isp-qualify-regular-and-established-place>



Article By [Anthony E. Faillaci](#)
[Andrew H. DeVoogd](#)
[Mintz](#)
[Global IP Matters Blog](#)

[Communications, Media & Internet](#)
[Intellectual Property](#)
[Litigation / Trial Practice](#)
[5th Circuit \(incl. bankruptcy\)](#)
[Texas](#)