

## No Office, No Problem: Canadian Courts Assert Jurisdiction Over U.S. Companies for Intellectual Property Infringement

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A recent Ontario decision confirms that U.S. companies can be sued in Canada for infringement of Canadian intellectual property, even when servers, employees, and corporate headquarters are located outside the country. If a company's services or products impact Canadian intellectual property or Canadian users, then Canadian courts may assert jurisdiction. The decision shows that Canadian courts are increasingly ready to hold foreign companies accountable for activity that impacts Canadian rights and interests.

### **Lawsuit Background**

In *Toronto Star Newspapers Limited v. OpenAI Inc.*, 2025 ONSC 6217, a group of Canadian news organizations—including the Toronto Star, Globe and Mail, CBC/Radio-Canada—sued OpenAI for allegedly scraping and reproducing copyrighted Canadian news content, among other things. OpenAI moved to dismiss the action on jurisdictional grounds. First, it argued the Ontario court lacked subject matter jurisdiction because the alleged infringing acts occurred outside Canada. Next, it argued the court lacked personal jurisdiction over foreign OpenAI entities that were not domiciled or headquartered in Ontario.

The Court rejected both arguments and held that OpenAI would have to fight the lawsuit on the merits in the Canadian courts.

**Subject Matter Jurisdiction:** The Court found that whether Canadian copyright law applies to certain extraterritorial activities is a merits question and not a jurisdictional bar. The Court also found that when a plaintiff alleges foreign conduct caused harm in Canada, it is sufficient to ground jurisdiction at the pleading stage.

**Personal Jurisdiction:** The court found a “real and substantial connection” to Ontario based on how OpenAI's services affected Canadian rights and markets, including:

- Canadian plaintiffs claimed that their Canadian intellectual property was harmed;
- The allegedly infringed content originated, was published, and generated revenue within Canada;
- OpenAI's services were available and allegedly used by users in Canada;
- The legal claims included alleged violations of website terms governed by Canadian law.

The Court underscored that operating an internet-based business does not shield foreign companies from Canadian jurisdiction when local rights are affected.

### **A Growing Willingness to Hold U.S. Companies Accountable in Canada**

The ruling builds on recent cases in Canada that emphasize liability under Canadian law cannot be avoided merely because a company has no physical presence or operations in Canada. For example, in *Munchkin, Inc v Angelcare Canada Inc*, 2024 FCA 156, the Federal Court of Appeal squarely rejected the argument that a U.S. parent company could avoid liability for patent infringement simply because it had no physical presence, offices, or employees in Canada.

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“A person cannot avoid liability for infringement by setting itself up outside Canada, and then making arrangements from there that result in infringement of a patent in Canada.” [i]

Together, *Munchkin v. Angelcare* and *Toronto Star v. OpenAI* reflect a consistent judicial message: companies cannot avoid Canadian IP liability by structuring operations abroad when the effects are felt in Canada.

### **Key Takeaways**

- Canadian courts may hear intellectual property infringement claims even where alleged infringing activity occurs outside Canada.
- Operating foreign servers or maintaining U.S. headquarters will not, by itself, defeat Canadian jurisdiction.
- Companies offering AI, SaaS, or content-driven services should evaluate Canadian intellectual property exposure early—particularly where training data, content use, or website terms implicate Canadian rights.

If you have questions about how this decision may affect your business, particularly with respect to, cross-border data use or Canadian intellectual property exposure, please contact your Miller Canfield attorney or the authors of this alert.

[i] *Munchkin, Inc. v. Angelcare Canada Inc.*, 2024 FCA 156, at para 72