

# PERSONAL JURISDICTION AND THE INTERNET

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## I. INTRODUCTION

Technology often forces changes in society.<sup>1</sup> The law is no exception. As technology—aimed at creating a cheaper, more effective means of travel and

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1. The United States Congress, Office of Technology Assessment, in describing the current technological advancements, stated that, "[l]ike the printing press, the new information technologies also affect society. They are changing the way people work and conduct their business; how they interact and relate to one another; the way they learn, create and process information, and their need and expectations." OFFICE OF TECHNOLOGY ASSESSMENT, OTA-CIT-302, *INTELLECTUAL PROPERTY RIGHTS IN AN AGE OF ELECTRONICS AND INNOVATIONS* 32 (1986), reprinted in STEPHEN SAXBY, *THE AGE OF INFORMATION* 1 (1990). In the Communications Decency Act of 1996, Congress stated that "the rapidly developing array of Internet and other interactive computer services . . . represent an extraordinary advance in the availability of educational and informational resources to our citizens." 47 U.S.C. § 230(a)(1) (Supp. II 1996).

communication—has evolved, the courts have been forced to modernize the idea of personal jurisdiction so that individual state courts can proceed with lawsuits against out-of-state residents.<sup>2</sup>

Current technological advances require further revision of personal jurisdiction standards. With the advent and widespread acceptance of the Internet, computer users are now able to communicate with people throughout the world in a matter of seconds.<sup>3</sup> In 1981, there were only a few hundred computers linked to the Internet.<sup>4</sup> By 1997, that number had increased to fifteen thousand host computers<sup>5</sup> and between thirty to sixty million Internet users.<sup>6</sup> The latter figure is expected to reach two hundred million users by 1999.<sup>7</sup>

As one may expect, given the Internet's ability to generate revenue, businesses are turning to the web in greater numbers.<sup>8</sup> By the end of the decade, Internet commerce is expected to generate two hundred billion dollars per year.<sup>9</sup> With operation at such an immense level, litigation will undoubtedly occur. A uniform system for determining which forums will have personal jurisdiction over the defendant must be developed.

This Note analyzes the differing approaches offered by legal writers and those used by courts in determining whether a court may exercise personal jurisdiction over a person or company where such contacts with the forum state occurred via the Internet. The purpose of the Note is to determine whether a common rule exists so that persons will be able to conduct their business with some degree of foreseeability

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2. See, e.g., *International Shoe Co. v. Washington*, 326 U.S. 310, 313-14 (1945) (recognizing that modern business practices allow corporate entities to distribute goods and services through interstate commerce); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295-99 (1980) (discussing the use of the automobile and interstate travel); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-80 (1985) (finding that modern communication and transportation allowed for the control of a franchise by its nonresident parent company, satisfying the minimum contacts requirement).

3. ED KROL, *THE WHOLE INTERNET USER'S GUIDE & CATALOG* 2 (1992).

4. *ACLU v. Reno*, 929 F. Supp. 824, 831 (E.D. Pa. 1996), *aff'd* 521 U.S. 844 (1997).

5. Ethan Horwitz et al., *International Disputes in Cyberspace on the Rise*, 217 N.Y. L.J. 80, Apr. 28, 1997, at S2.

6. JILL H. ELLSWORTH & MATTHEW V. ELLSWORTH, *MARKETING ON THE INTERNET* 5 (2d ed. 1997). Given the nature of the Internet, it may be impossible to determine precisely how many users at any given moment are connected to it. *ACLU v. Reno*, 929 F. Supp. at 831.

7. *ACLU v. Reno*, 929 F. Supp. at 831.

8. See Dennis F. Hernandez & David May, *Is Mere Internet Presence Sufficient State Contact?*, L.A. DAILY J., July 15, 1996, at 5 (reporting that the Internet is a cheap and effective medium for advertising to the world); Martin Moore, *The Future of the Internet*, in *THE INTERNET UNLEASHED* 33, 34-35 (1994) (stating that many businesses are able to use the Internet as a source to sell and advertise their products).

9. Jonathan T. Cain, *Internet Commerce Extends the Long Arm of the Law*, WASH. TECH., Feb. 20, 1997, at 20. This figure will equate to about 20% of total sales. *Id.*

as to whether they will be subject to personal jurisdiction in foreign forums.

Part II explains the evolution of modern personal jurisdiction doctrine. This Part also briefly describes the mechanics of the Internet. Part III examines and compares several recent cases dealing with the issue of personal jurisdiction and the Internet to determine whether a common rule exists. Part IV examines several solutions to this issue proposed by legal scholars.<sup>10</sup>

## II. BACKGROUND

### A. History and Evolution of Personal Jurisdiction

#### 1. *The Pennoyer and International Shoe Cases*

The doctrine of personal jurisdiction determines whether a forum state may exercise judgment over nonresident persons or companies.<sup>11</sup> This protection is grounded in the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.<sup>12</sup>

The evolution began in 1877 with *Pennoyer v. Neff*.<sup>13</sup> In *Pennoyer*, the United States Supreme Court held that when a person's underlying claim is in personam, the presiding court cannot replace or substitute quasi in rem proceedings for physical presence.<sup>14</sup> The Court reasoned that a person must have consented to the type of jurisdiction asserted; physical presence within the forum state is necessary for per-

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10. For discussions and cases involving other legal issues connected with the Internet, see *United States v. Baker*, 890 F. Supp. 1375 (E.D. Mich. 1995) (involving obscenity and sexual harassment over the Internet); *Playboy Enters., Inc. v. Frena*, 839 F. Supp. 1552 (M.D. Fla. 1993) (involving copyright infringement on the Internet); *Cubby, Inc. v. CompuServe, Inc.*, 776 F. Supp. 135 (S.D.N.Y. 1991) (judging whether CompuServe made defamatory comments through an online newsletter); Gene Barton, *Taking a Byte Out of Crime: E-Mail Harassment and the Inefficacy of Existing Law*, 70 WASH. L. REV. 465 (1995); Robert A. Cinque, *Making Cyberspace Safe for Copyright: The Protection of Electronic Works in a Protocol to the Berne Convention*, 18 FORDHAM INT'L L.J. 1258 (1995); David J. Conner, *Cubby v. CompuServe, Defamation Law on the Electronic Frontier*, 2 GEO. MASON INDEP. L. REV. 227 (1993); Albert Gidari, *Privilege and Confidentiality in Cyberspace*, 13 COMPUTER LAW. 1 (1996); Kenneth D. Salomon & Michael J. Pierce, *Copyright Law and the Information Superhighway*, 96 EDUC. L. REP. 315 (1995); Michael D. Scott, *Advertising in Cyberspace: Business and Legal Considerations*, 12 COMPUTER LAW. 1 (1995).

11. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) (discussing whether an Oklahoma court could exercise personal jurisdiction over nonresident defendants).

12. *Id.* at 291 ("The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a nonresident defendant."). The Fifth Amendment states that no person shall be "deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V.

13. *Pennoyer v. Neff*, 95 U.S. 714 (1877), overruled in part by *Shaffer v. Heitner*, 433 U.S. 186 (1977).

14. *Id.* at 726-28.

sonal jurisdiction to exist in that state's courts.<sup>15</sup> While the *Pennoyer* holding was feasible in an era when most people did not frequently travel between states and conducted business face-to-face, the advent of new technology later forced the Supreme Court to enlarge this holding.<sup>16</sup>

The expansion of this doctrine began in 1945 with *International Shoe Co. v. Washington*.<sup>17</sup> The Court in *International Shoe* held that a court could exercise jurisdiction over a defendant, even if the defendant was not physically present in that state, so long as the defendant created "minimum contacts" with that state.<sup>18</sup> The Court reasoned that if a nonresident enjoys "the privilege of conducting activities within a state [such as] the benefits and protection of the laws of that state [t]he exercise of that privilege may give rise to obligations . . . so far as those obligations arise out of or are connected with the activities within the state."<sup>19</sup> The Court concluded that in order to subject a nonresident to personal jurisdiction, "due process requires only that . . . he have certain minimum contacts with [the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"<sup>20</sup>

## 2. *Division into Specific and General Jurisdiction*

After *International Shoe*, lower courts were split as to whether contacts unrelated to the lawsuit could be used to determine whether minimum contacts existed.<sup>21</sup> In 1984, the Supreme Court resolved this dispute forming two distinct types of jurisdiction: specific and general.<sup>22</sup> In *Helicopteros Nacionales de Columbia v. Hall*,<sup>23</sup> a helicopter carrying four American citizens crashed in Peru.<sup>24</sup> The representatives and survivors of the deceased brought a civil wrongful death action against Helicopteros Nacionales de Columbia, a Colombian corporation, in a

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15. *Id.* at 733-34.

16. *See supra* note 1 and accompanying text.

17. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

18. *Id.* at 319-20.

19. *Id.* at 319.

20. *Id.* at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)); *see McDonald v. Mabee*, 243 U.S. 90, 91 (1917).

21. *Compare Jetco Elec. Indus. v. Gardiner*, 473 F.2d 1228, 1234 (5th Cir. 1973) (holding that numerous contacts unrelated to the lawsuit were sufficient to meet the minimum contacts test), *with Washington Scientific Indus. v. Polan Indus., Inc.*, 302 F. Supp. 1354, 1358 (D. Minn. 1969) (holding that contacts unrelated to the lawsuit with the forum state were not sufficient to meet the minimum contacts test).

22. *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 414-15 & 414 nn.8-9 (1984).

23. *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408 (1984).

24. *Id.* at 410.

Texas court.<sup>25</sup>

In the analysis of the case, the Court developed the two different approaches to obtaining personal jurisdiction.<sup>26</sup> Specific jurisdiction was defined as litigation which "arises out of" a defendant's contacts with the forum."<sup>27</sup> By contrast, general jurisdiction was defined as "continuous and systematic" contacts, unrelated to the litigation, with the forum state.<sup>28</sup> Although it is unclear how numerous or significant the contacts must be to meet the general jurisdiction standard, the Court did seem to indicate that a very high level of activity within the forum state must exist in order to assert general jurisdiction.<sup>29</sup>

### 3. *Two-Prong Test for Specific Jurisdiction*

If the cause of action is connected to the contacts with the forum state, courts will use the specific personal jurisdiction analysis.<sup>30</sup> The Supreme Court has separated this examination into two different inquiries.<sup>31</sup> The first prong focuses on the quality and quantity of contacts with the forum state.<sup>32</sup> The second prong examines the fairness in bringing the defendant into that state's courts.<sup>33</sup> Both prongs must be satisfied before that state may exercise personal jurisdiction over the out-of-state defendant.<sup>34</sup>

Under the first prong of the test for specific jurisdiction, courts must evaluate two things. First, courts must consider how numerous and deliberate the defendant's contacts with the forum state were.<sup>35</sup> Second, the court must determine how closely related the contacts were to the lawsuit.<sup>36</sup>

In *World-Wide Volkswagen Corp. v. Woodson*,<sup>37</sup> the Supreme Court held that the defendant's contacts with the forum state must reach the level "that he should reasonably anticipate being haled into court there."<sup>38</sup> The mere likelihood that

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25. *Id.* at 412.

26. *Id.* at 414-15.

27. *Id.* at 414 (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)); *see id.* at 414 n.8.

28. *Id.* at 415 & 414 n.9.

29. *Id.* at 415-18 (holding that general jurisdiction did not exist even though the defendant negotiated a contract in the forum state, purchased helicopters and equipment in the forum state, accepted checks drawn on a bank account in the forum state, and sent personnel for training in the forum state).

30. *Id.* at 414 & n.8.

31. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-78 (1985).

32. *Id.* at 472-76.

33. *Id.* at 476-78.

34. *Id.* at 477-78.

35. *Id.* at 475-76 & nn.17-18.

36. *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 414 (1984).

37. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

38. *Id.* at 297.

contact will occur is insufficient.<sup>39</sup> The Court was clearly concerned with the ability of persons to structure their business with some predictability as to where they may be subject to personal jurisdiction.<sup>40</sup>

This prong was further discussed in *Asahi Metal Industry Co. v. Superior Court*.<sup>41</sup> Writing for a four-member plurality, Justice O'Connor wrote that the mere placement of a product within the stream of commerce was not sufficient to satisfy the first-prong test for specific jurisdiction.<sup>42</sup> Justice O'Connor's plurality opinion held that only purposeful and direct contacts made by the defendant would suffice.<sup>43</sup>

In contrast, Justice Brennan's plurality opinion found that the defendant did purposefully avail itself to the forum state's market.<sup>44</sup> Due to the fact that the defendant received economic benefit from the forum state, the mere placement of a product within the stream of commerce satisfied the first-prong test for specific jurisdiction.<sup>45</sup>

Under prong two of the specific jurisdiction test, courts must examine whether allowing litigation against the nonresident defendant in the forum state offends "traditional conception of fair play and substantial justice."<sup>46</sup> In 1980, the Supreme Court recognized several factors which must be considered in evaluating the fairness of the forum.<sup>47</sup> The Court stated that courts should evaluate the

burden on the defendant . . . in light of other relevant factors, including the forum State's interest in adjudicating the dispute; . . . the plaintiff's interest in obtaining convenient and effective relief; . . . the interstate judicial system's

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39. *Id.*

40. *Id.* The Court stated that "[w]hen a corporation 'purposefully avails itself of the privilege of conducting activities within the forum State,' it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation." *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

41. *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987) (plurality opinion).

42. *Id.* at 112. In discussing *World-Wide*, the *Asahi* Court found that the *World-Wide* Court "rejected the assertion that a consumer's unilateral act of bringing the defendant's product into the forum State was a sufficient constitutional basis for personal jurisdiction." *Id.* at 109 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. at 295-96). Therefore, contact with the forum state must be based upon the defendant's actions. Under Justice O'Connor's view, where the only contact with a forum state occurs through the defendant's placement of a product within the stream of commerce, the defendant did not "purposefully avail itself" to every state's market. *Id.* at 112.

43. *Id.* Justice O'Connor noted that the defendant did not solicit business in the forum state, designed no products for the forum state, did no business in the forum state, nor controlled the distribution mechanism which brought the product to the forum state. *Id.* at 112-13.

44. *Id.* at 116-17 (Brennan, J., concurring in part and concurring in the judgment).

45. *Id.* at 117. The Brennan plurality, however, agreed with Justice O'Connor in that the exercise of personal jurisdiction in this case would be unreasonable and unfair because of the heavy burden on the defendant, coupled with the "slight interests of the plaintiff and forum State." *Id.* at 116.

46. *International Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945).

47. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. at 292.



interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.<sup>48</sup>

Five years later, the Court added that when the defendant made purposeful contacts with the forum state, the burden shifts to the defendant to "present a compelling case that the presence of some other considerations would render jurisdiction *unreasonable*."<sup>49</sup>

### B. *The Mechanics of the Internet*

#### 1. *Internet Basics*

The Internet is actually nowhere and everywhere.<sup>50</sup> It is not tangible and does not exist in one place.<sup>51</sup> Although an overly-simplistic definition, the Internet is a vast web of interconnected networks with each network being connected to many different computers, including home computers via telephone lines and modems.<sup>52</sup> The Internet was "designed to be a decentralized, self-maintaining series of redundant links between computers and computer networks, capable of rapidly transmitting communications without direct human involvement."<sup>53</sup> To coordinate the flow of this informational traffic, one or more computers—known as servers—will function as guides to ensure that this information is passed on in an orderly fashion.<sup>54</sup> These servers also are equipped to communicate with other servers and, through these, other networks.<sup>55</sup>

To illustrate this concept, suppose X owns a computer with a modem and access to a local network. When X wants to communicate on the Internet, he must connect his home computer to his local network. Through the server system in the local network, he can connect to other servers and networks throughout the world.<sup>56</sup>

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48. *Id.*

49. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985) (emphasis added).

50. *Blumenthal v. Drudge*, 992 F. Supp. 44, 48 (D.D.C. 1998).

51. *ACLU v. Reno*, 929 F. Supp. 824, 830 (E.D. Pa. 1996). As one court put it, "[t]o paraphrase Gertrude Stein, as far as the Internet is concerned, not only is there perhaps 'no there there,' the 'there' is *everywhere* where there is Internet access." *Blumenthal v. Drudge*, 992 F. Supp. at 48 (quoting *Digital Equip. Corp. v. Altavista Tech., Inc.*, 960 F. Supp. 456, 462 (D. Mass. 1997)).

52. HARLEY HAHN & RICK STOUT, *THE INTERNET COMPLETE REFERENCE* 2, 29 (1994). A network is numerous computers linked in a way that enables information to pass between them. *Id.* at 10.

53. *ACLU v. Reno*, 929 F. Supp. at 831; *see also* *MTV Networks v. Curry*, 867 F. Supp. 202, 203 n.1 (S.D.N.Y. 1994) (stating that the "Internet is a cooperative venture, owned by no one, but regulated by several volunteer agencies").

54. CRICKET LIU ET AL., *MANAGING INTERNET INFORMATION SERVICES* 7 (1994).

55. *Id.*

56. *See* *ACLU v. Reno*, 929 F. Supp. at 844 (stating that "[t]he Internet is therefore a

## 2. *The Paths the Information Travels*

The Internet was created so information could be transmitted through repetitious links without human intervention.<sup>57</sup> Because of this, the path a transmission takes may vary from one second to the next.<sup>58</sup> For example, if a person in Des Moines, Iowa, sends a message to Austin, Texas, that message may travel through computers in Kansas City, Missouri, then Wichita, Kansas, then Oklahoma City, Oklahoma, and then Dallas, Texas, before finally reaching Austin. But, if for some reason these links were damaged or busy with other requests, that same message may, instead, travel through computers in Chicago, Illinois, then Little Rock, Arkansas, then Shreveport, Louisiana, and then Waco, Texas, before, once again, reaching Austin.<sup>59</sup> Also, because the Internet uses a system called "packet switching," which divides communication into smaller divisions or "packets," different portions of the same message may be sent through different routes.<sup>60</sup> When all portions of the same message reach the destination, the receiving computer reassembles the message back to its complete form.<sup>61</sup>

Given the facts that this system is void of human intervention, the paths that the messages take vary from transmission-to-transmission, and each message is broken into smaller messages which may proceed along different paths, a sender has no knowledge or control as to which states the message may pass through.

## 3. *The Internet Language*

In any type of conversation, the two parties must comprehend the same language to communicate effectively. Internet communication is no different; each computer must be able to understand the language of the other.<sup>62</sup> Therefore, it was agreed that all computers, regardless of the manufacturer, would be able to understand one common language: Transmission Control Protocol/Internet Protocol (TCP/IP).<sup>63</sup> This enables a MacIntosh home user in Denver, Colorado, to download the same information as an IBM user in Detroit, Michigan. This uniform language also allows the Denver user to send e-mail messages to the Detroit user.<sup>64</sup>

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unique and wholly new medium of worldwide human communication").

57. *Id.* at 831.

58. *Id.* at 831-32.

59. *See id.*

60. *Id.* at 832.

61. *Id.*

62. HAHN & STOUT, *supra* note 52, at 30.

63. *Id.* at 29-31; LIU, *supra* note 54, at 8-13.

64. LIU, *supra* note 54, at 8-13.



#### 4. *Methods to Communicate over the Internet*

There are three methods of communication on the Internet: person-to-person messages, real-time communications, and information retrieval.<sup>65</sup> Each method has different characteristics which may lead to different degrees of contact, ultimately affecting a personal jurisdiction analysis.<sup>66</sup>

Person-to-person messages, also known as e-mail, are very similar to sending a letter through the Postal Service.<sup>67</sup> One party initiates the contact to one or more parties, possibly without the other party's knowledge or consent.<sup>68</sup> The sender mails a message over the Internet to the receiver's e-mail address.<sup>69</sup> Unlike conventional mail, the e-mail address does not necessarily inform the sender as to the physical location of the receiver.<sup>70</sup> Another difference between e-mail and conventional mail is the time it takes for delivery.<sup>71</sup> While e-mail is usually delivered in a matter of seconds, postal delivery may take days or weeks.<sup>72</sup>

Just as electronic mail can be compared to conventional mail, real-time communications are easily comparable to telephones.<sup>73</sup> In this system, two or more people communicate over the Internet either by typing messages or through voice communications.<sup>74</sup> The transmissions are received in an instant.<sup>75</sup> One common form of such communication is "chat rooms" through commercial on-line providers.<sup>76</sup> The on-line systems create chat rooms on almost any subject imaginable.<sup>77</sup> Once members virtually enter the room, their typed communications will be transmitted to

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65. *ACLU v. Reno*, 929 F. Supp. at 834.

66. *See infra* Part III.

67. *KROL*, *supra* note 3, at 92, 95.

68. *Id.*

69. *Id.* at 96-97.

70. *Id.* at 92-93. The typical e-mail address contains two series of characters separated by an "@" symbol. *HAHN & STOUT*, *supra* note 52, at 91. The first series refers to the individual's account or user i.d. *Id.* The second series refers to that individual's server system or domain. *Id.* The second series may, therefore, give a hint as to where the receiver is physically located. For example, a server system at Drake University is *drake.edu*. It would be obvious to a sender where such an account is located. But another server may be *ut.edu*. The sender in this instance would have no idea if the "ut" stood for University of Texas, Tennessee, or Tulsa. It becomes impossible to ascertain the physical location of members of commercial servers such as America Online simply by examining an e-mail address, because all American Online members' e-mail accounts end with *aol.com*.

71. *KROL*, *supra* note 3, at 92.

72. *Id.*

73. Helen Rose, *Live Conversations: Internet Relay Chat and Others*, in *THE INTERNET UNLEASHED* 418, 418-22 (1994).

74. *HAHN & STOUT*, *supra* note 52, at 394; *KROL*, *supra* note 3, at 256.

75. *HAHN & STOUT*, *supra* note 52, at 394.

76. *KROL*, *supra* note 3, at 257-58.

77. *See id.*

any other person in the room in a matter of seconds.<sup>78</sup>

Information retrieval is probably the most well-known method of Internet communication and most relevant to the discussion of personal jurisdiction and the Internet. In this system, an Internet user has access, through the World Wide Web (WWW),<sup>79</sup> to all information in any of the server systems throughout the world.<sup>80</sup> This information includes text, audio, video, and still images.<sup>81</sup> The location of the information must be reached via an Internet address.<sup>82</sup> The court in *MTV Networks v. Curry*<sup>83</sup> explained the Internet address system, as follows:

Each host computer providing Internet services ("site") has a unique Internet address. Users seeking to exchange digital information (electronic mail ("e-mail"), computer programs, images, music) with a particular Internet host require the host's address in order to establish a connection.

Hosts actually possess two fungible addresses: a numeric "IP" address such as 123.456.123.12, and a[n] alphanumeric "domain name" such as microsoft.com, with greater mnemonic potential. . . . Internet domain names are similar to telephone number mnemonics, but they are of greater importance, since there is no satisfactory Internet equivalent to a telephone company white pages or directory assistance, and domain names can often be guessed. A domain name mirroring a corporate name may be a valuable corporate asset, as it facilitates communication with a customer base.

The uniqueness of Internet addresses is ensured by the registration services of the Internet Network Information Center ("InterNIC"), a collaborative project established by the National Science Foundation.<sup>84</sup>

Many of these Internet documents contain links that allow the user to access other related material, not necessarily on the same server.<sup>85</sup> The publisher of these documents may allow general access, such that any person is free to view this

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78. *Id.* at 258. Throughout the communication, transmissions are being sent to and from all the computers linked to that room. Without even realizing it, one user may be sending communications into every state simultaneously.

79. The WWW may be thought of as "an attempt to organize all the information on the Internet . . . as a set of hypertext documents." *Id.* at 229. Through a series of "links," a user may travel from one informational site to another. *Id.*

80. See *ACLU v. Reno*, 929 F. Supp. 824, 836 (E.D. Pa. 1996). The WWW was "created to serve as the platform for a global, online store of knowledge, containing information from a diversity of sources and accessible to Internet users around the world." *Id.*

81. *Id.*

82. *MTV Networks v. Curry*, 867 F. Supp. 202, 203 n.2 (S.D.N.Y. 1994); see also *ACLU v. Reno*, 929 F. Supp. at 836 ("An essential element of the Web is that any document has an address (rather like a telephone number).").

83. *MTV Networks v. Curry*, 867 F. Supp. 202 (S.D.N.Y. 1994).

84. *Id.* at 203 n.2 (citation omitted).

85. *ACLU v. Reno*, 929 F. Supp. at 836.

material.<sup>86</sup> The publisher may, however, limit access in such a way that a viewer may only download this material if selected criteria are met.<sup>87</sup>

In this method of communication, one party must unilaterally seek the information, most commonly through search engines.<sup>88</sup> Although the receiver unilaterally searched for the material, the sending computer is actively sending transmissions into the state of the receiver—this may serve as a contact with the forum state.

### III. INTERNET/PERSONAL JURISDICTION CASES

In the past few years, several courts have been forced to decide whether personal jurisdiction existed over an out-of-state defendant, whose contacts arose over the Internet. Although the courts use the same basic traditional personal jurisdiction analysis, many courts alter the tests. Of particular significance is how the courts incorporate the Internet activities of the defendant into the minimum contacts with the forum state.

#### A. Cases Finding Personal Jurisdiction

This section will discuss cases where personal jurisdiction was found to exist. Along with a brief description of each case, this section will analyze the specific personal jurisdiction test each court employed and the significant facts each court focused on to reach its conclusion.

In *Inset Systems, Inc. v. Instruction Set, Inc.*,<sup>89</sup> Inset Systems, Inc. (Inset), sought damages and injunctive relief due to trademark infringement against Instruction Set, Inc. (ISI).<sup>90</sup> ISI was a Massachusetts corporation which supplied computer technology and support.<sup>91</sup> ISI also advertised under the domain address of *inset.com* on the Internet.<sup>92</sup> Inset, which was the owner of the federal trademark

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86. HAHN & STOUT, *supra* note 52, at 3.

87. ACLU v. Reno, 929 F. Supp. at 837. The limited access is widely used in areas which contain pornography. *Id.* at 844. One such method requires that the viewer must subscribe to a service which verifies the user's age. *Id.* at 846-47. In return, the service issues the viewer a password which allows the viewer to access these restricted web pages. *Id.* Some of these services require a fee while others operate free of charge. *Id.* at 846.

88. Panavision Int'l v. Toeppen, 141 F.3d 1316, 1319 (9th Cir. 1998). There are many commercial search engines such as Yahoo, Netscape, Magellan, and Webcrawler. ACLU v. Reno, 929 F. Supp. at 837. The search is based upon selected terms imputed by the user. *Id.*

89. Inset Sys., Inc. v. Instruction Set, Inc., 937 F. Supp. 161 (D. Conn. 1996).

90. *Id.* at 162.

91. *Id.*

92. *Id.* at 163.

INSET, claimed that ISI's use of the trademark was unauthorized.<sup>93</sup>

ISI claimed that the United States District Court for the District of Connecticut did not have personal jurisdiction because ISI did not have sufficient minimum contacts with Connecticut to satisfy due process.<sup>94</sup> The court first examined whether ISI's contacts with Connecticut were to the extent that ISI would be on notice of being haled into court.<sup>95</sup> The court asserted that because ISI advertised over the Internet and operated a toll-free phone number, ISI was directing its activities to all states.<sup>96</sup> The court stated ISI's Internet activities could "reach as many as 10,000 Internet users within Connecticut alone."<sup>97</sup> This fact led the court to believe ISI was conducting business within Connecticut and, therefore, could reasonably anticipate defending litigation in Connecticut.<sup>98</sup>

In *CompuServe, Inc. v. Patterson*,<sup>99</sup> CompuServe, an Ohio-based computer service, provided Internet access to individual subscribers.<sup>100</sup> CompuServe also operated a software database where subscribers could submit (upload) software programs or receive (download) these programs.<sup>101</sup> Subscribers who downloaded the software were encouraged to pay for the programs but were not required to do so.<sup>102</sup> If the user chose to pay for the program, the money was sent to CompuServe, which kept fifteen percent as a distributing fee.<sup>103</sup> Patterson, a lawyer from Houston, Texas, was a subscriber to CompuServe and also uploaded thirty-two software programs.<sup>104</sup>

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93. *Id.*

94. *Id.* at 164. Although ISI did not address whether the requirements of Connecticut's long-arm statute had been satisfied, the court began its analysis there. *Id.* at 163-64. The court concluded that because ISI had continuously advertised over the Internet and that there were at minimum 10,000 access sites to the Internet in Connecticut, the requirements of the long-arm statute were met. *Id.* at 164.

95. *Id.* at 164-65. It has been noted that this approach differs from Justice O'Connor's approach in *Asahi*. Gwenn M. Kalow, Note, *From the Internet to Court: Exercising Jurisdiction over World Wide Web Communications*, 65 FORDHAM L. REV. 2241, 2259 (1997). In *Asahi*, the first focus was "whether the defendant purposefully availed himself of the forum state's jurisdiction" rather than whether the defendant could reasonably anticipate defending litigation within the forum state. *Id.*

96. *Inset Sys., Inc., v. Instruction Set, Inc.*, 937 F. Supp. at 165.

97. *Id.* The opinion fails to mention whether any of these 10,000 users actually received information via the Internet from ISI. The court seemed satisfied with the fact that, potentially, each of these users could. *Id.*

98. *Id.* After determining ISI had could reasonably anticipate being haled into court in Connecticut, the court stated that exercising personal jurisdiction over ISI "comports with notions of fair play and substantial justice" because of the proximity between Massachusetts and Connecticut and the strong state interest. *Id.*

99. *CompuServe, Inc. v. Patterson*, 89 F.3d 1257 (1996).

100. *Id.* at 1260.

101. *Id.* at 1260-61.

102. *Id.* at 1260.

103. *Id.*

104. *Id.* 1259-61.

After CompuServe began to market software similar in name and purpose, Patterson demanded \$100,000 to settle potential trademark infringement claims.<sup>105</sup> CompuServe sought a declaratory judgment that it did not infringe on Patterson's copyright, and Patterson countered that the Ohio court did not have personal jurisdiction.<sup>106</sup>

In determining whether personal jurisdiction could be asserted over the defendant, the court employed a test composed of three requirements: (1) whether the defendant purposefully availed himself of the privilege of doing business within the state; (2) whether the litigation arose out of those contacts; and (3) whether exercising personal jurisdiction over the defendant would be reasonable.<sup>107</sup> In reversing the decision of the district court and finding that personal jurisdiction existed, the Sixth Circuit focused on CompuServe as a distributor of Patterson's products.<sup>108</sup> Although Patterson claimed he had never entered Ohio and had only sold his software to twelve people in Ohio over the Internet,<sup>109</sup> the court pointed out that the software was stored in CompuServe's computer system in Ohio—therefore, Ohio was involved by virtue of its connection to Compuserve.<sup>110</sup> So, although Patterson had never physically entered Ohio, he purposefully conducted business within Ohio over the Internet.<sup>111</sup>

In *Maritz, Inc. v. CyberGold, Inc.*,<sup>112</sup> Maritz sought injunctive relief against CyberGold for trademark infringement in the United States District Court for the Eastern District of Missouri.<sup>113</sup> CyberGold was located in California, and its only contacts with Missouri occurred over the Internet.<sup>114</sup> CyberGold operated a website which advertised upcoming services.<sup>115</sup> CyberGold also offered to place Internet users on a mailing list.<sup>116</sup> If a customer was interested in being placed on the list, they would answer questions posed by CyberGold so that the advertisements would

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105. *Id.* at 1261.

106. *Id.* at 1259.

107. *Id.* at 1263-68. Note the similarity to the plurality *Asahi* opinion. See *Asahi Metal Indust. Co. v. Superior Court*, 480 U.S. 102, 110-16 (1987).

108. *CompuServe, Inc. v. Patterson*, 89 F.3d at 1264-65.

109. *Id.* at 1260-61.

110. *Id.* at 1264-65.

111. *Id.*

112. *Maritz, Inc. v. CyberGold, Inc.*, 947 F. Supp. 1328 (E.D. Mo. 1996).

113. *Id.* at 1329.

114. *Id.* at 1330.

115. *Id.*

116. *Id.* If a user consented to placing his name on the list, CyberGold would e-mail future advertisements directly to the user's e-mail address. *Id.* Although this service was not yet operational, "CyberGold's acts of developing a mailing list through its acceptance of addresses on its website are also part of the allegedly infringing activity about which plaintiff complains." *Id.* at 1333.

be specialized to the users' interests.<sup>117</sup>

In determining whether the court's exercise of personal jurisdiction violated due process, the court examined whether the defendant "should reasonably anticipate being haled into court there, and [whether] the maintenance of the suit . . . offend[ed] traditional notions of fair play and substantial justice."<sup>118</sup> The court—focusing primarily on whether the defendant could reasonably anticipate being haled into court there—analyzed the following five factors set forth by the Eighth Circuit to guide its due process analysis: (1) the quality of the contacts; (2) the quantity of the contacts; (3) the relationship between the contacts and the cause of action; (4) the interest of the forum state; and (5) the litigants' convenience.<sup>119</sup>

In its analysis, the court focused on one fact: CyberGold purposefully created a website that would transmit advertising information to any Internet user throughout the world.<sup>120</sup> CyberGold argued that the website was passive, in that once the computer system was up and running, it was completely automatic, and that the system would respond to any user who wished to access its website.<sup>121</sup> CyberGold, therefore, claimed it could not control where the information was sent.<sup>122</sup> The court did not find that argument convincing, stating that CyberGold was engaged in "active measures" and "indiscriminately respond[ed] to . . . every user" who visited the Internet site, including persons in Missouri.<sup>123</sup>

In *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*,<sup>124</sup> Zippo Manufacturing Company (Manufacturing) sued Zippo Dot Com (Dot Com) for trademark violations.<sup>125</sup> Manufacturing, a Pennsylvania corporation, made Zippo lighters.<sup>126</sup> Dot Com, a California corporation, operated a website under the domain names *zippo.com*, *zippo.net*, and *zipponews.com*.<sup>127</sup> The websites required users to sub-

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117. *Id.* at 1330.

118. *Id.* at 1332 (quoting *Soo Line R.R. v. Hawker Siddeley Canada, Inc.*, 950 F.2d 526, 528-29 (8th Cir. 1991)). The first part of the test is very similar to the first prong of the specific jurisdiction test set out in *World-Wide*. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

119. *Maritz, Inc. v. CyberGold, Inc.*, 947 F. Supp. at 1332.

120. *Id.* at 1333.

121. *Id.* It should be noted that CyberGold's website is not completely passive. A passive website does nothing more than provide information on the Internet for users to access. *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997). CyberGold, on the other hand, continuously sent and received information in cases where the user wished to be placed on the mailing list. *Maritz, Inc. v. CyberGold, Inc.*, 947 F. Supp. at 1330.

122. *Maritz, Inc. v. CyberGold, Inc.*, 947 F. Supp. at 1333.

123. *Id.* In fact, CyberGold transmitted information into Missouri approximately 130 times.  
*Id.*

124. *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997).

125. *Id.* at 1121.

126. *Id.*

127. *Id.*



scribe, which entailed a subscription fee, to Dot Com's service before a password would be issued to the user.<sup>128</sup> Each time users entered Dot Com's website, the users were required to transmit their password to the website.<sup>129</sup> Out of Dot Com's 140,000 subscribers, two percent (3000) were from Pennsylvania.<sup>130</sup>

The court's due process analysis focused on a three-part test: (1) whether there were sufficient minimum contacts; (2) whether the claim arose from those contacts; and (3) whether exercising personal jurisdiction would be reasonable.<sup>131</sup> The court began by distinguishing this case from one where the only contacts with the forum state occurred through the operation of a website.<sup>132</sup> The court found that Dot Com's conduct of charging a fee to enter its website amounted to electronic commerce.<sup>133</sup> Therefore, Dot Com had purposefully availed itself by doing business in Pennsylvania.<sup>134</sup> The court reasoned that if Dot Com did not want to be subject to personal jurisdiction in Pennsylvania, it should not have sold subscriptions to users in that state.<sup>135</sup>

#### B. Cases Finding No Personal Jurisdiction

The section examines cases in which personal jurisdiction over out-of-state defendants was not asserted.

In *Bensusan Restaurant Corp. v. King*,<sup>136</sup> Bensusan, the creator of a nightclub called "The Blue Note" in New York City brought a trademark infringement action against King, the owner of a nightclub called "The Blue Note" in Columbia, Missouri.<sup>137</sup> King designed a website to inform local Internet users of upcoming events at the nightclub.<sup>138</sup>

The court's due process analysis examined three factors: (1) whether the defendant purposefully availed himself to the benefits of the forum state; (2) the reasonableness of asserting personal jurisdiction over the defendant; and (3) the

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128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 1122-23.

132. *Id.* at 1125.

133. *Id.* at 1125-26.

134. *Id.* It appears that this court believed Dot Com had purposefully availed itself to doing business in every state in which Dot Com sold a subscription.

135. *Id.* at 1126-27.

136. *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295 (S.D.N.Y. 1996), *aff'd*, 126 F.3d 25 (2d Cir. 1997).

137. *Id.* at 297-98.

138. *Id.* King also placed a disclaimer on his website that his Blue Note nightclub was in no way affiliated with Blue Note Records or The Blue Note nightclub in New York City. *Bensusan Restaurant Corp. v. King*, 126 F.3d at 27.

quantity and quality of the contacts with the forum state.<sup>139</sup> By applying these factors to the facts of this case, the court refused to exercise personal jurisdiction.<sup>140</sup> King had created a true passive website—in order for this information to enter New York, residents of New York would have had to take affirmative steps to bring this material into the state.<sup>141</sup> Thus, the court reasoned, creating a website was comparable to placing a product in the stream of commerce and, without more, is not an act directed to New York as a forum state.<sup>142</sup>

In *Smith v. Hobby Lobby Stores, Inc.*,<sup>143</sup> Smith brought a wrongful death action against Hobby Lobby Stores, Inc. (Hobby).<sup>144</sup> Subsequently, Hobby filed a third-party complaint against Boto Co., Ltd. (Boto), a foreign corporation, seeking indemnity.<sup>145</sup> Boto claimed there was no basis for personal jurisdiction.<sup>146</sup>

In its due process analysis, the court focused on the following five factors set forth by the Eighth Circuit: (1) the quality and quantity of the contacts with the forum state; (2) the relationship between the contacts and the cause of action; and, to a lesser extent; (3) the interest of the forum state; and (4) the convenience to the litigants.<sup>147</sup> One contact the court examined was a monthly Hong Kong trade publication, available on the Internet, in which Boto advertised.<sup>148</sup> The court stated that a contact is insufficient to support the exercise of personal jurisdiction when that contact is only an advertisement on a website.<sup>149</sup> The court also noted that this was not a case where a website was being used to contract the sale of goods or services.<sup>150</sup>

Finally, in *Expert Pages v. Buckalew*,<sup>151</sup> the court examined a different type of Internet contact with the forum state.<sup>152</sup> Buckalew, "a young adult" who resided in Virginia, allegedly illegally copied part of the California based Expert Pages' website.<sup>153</sup> The court's due process analysis employed the following three-part test: (1) whether the defendant purposefully availed himself of the privilege of doing business within the forum; (2) whether the claim relates to the contact; and (3)

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139. *Bensusan Restaurant Corp. v. King*, 937 F. Supp. at 300-01.

140. *Id.*

141. *Id.* at 299.

142. *Id.* at 301.

143. *Smith v. Hobby Lobby Stores, Inc.*, 968 F. Supp. 1356 (W.D. Ark. 1997).

144. *Id.* at 1358.

145. *Id.*

146. *Id.*

147. *Id.* at 1359-60 (citing *Aftanase v. Economy Baler Co.*, 343 F.2d 187 (8th Cir. 1965)).

148. *Id.* at 1361.

149. *Id.* at 1365.

150. *Id.*

151. *Expert Pages v. Buckalew*, No. C-97-2109-VRW, 1997 WL 488011 (N.D. Cal. Aug. 6, 1997).

152. *Id.* at \*1.

153. *Id.* at \*1-2.

whether exercising jurisdiction would be reasonable.<sup>154</sup> The court stated that when the contact is a foreign act giving rise to consequences in the forum state, this contact will substitute for the first two prongs of the test.<sup>155</sup> Because Buckalew's actions allegedly caused injury to Expert Pages, the court concluded that the first two prongs were met.<sup>156</sup>

Unlike the previous cases, the court concluded the exercise of jurisdiction must fail, not because of insufficient contacts, but because it would not be reasonable.<sup>157</sup> Because there would be a substantial burden placed on Buckalew if he had to defend himself in California, the court determined that jurisdiction in this case would be unreasonable.<sup>158</sup>

### C. Comparing the Cases

The biggest difference between the cases is found in the various tests the courts set out in determining personal jurisdiction; specifically, using "purposefully availing" versus "reasonably anticipating" under the minimum contacts prongs.<sup>159</sup> Accordingly, two identical cases may result in different outcomes, depending on which test a court employs. An example of this inconsistency can be seen by comparing *Bensusan* with *Inset*. In both cases, the defendant's only contact with the

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154. *Id.* at \*2.

155. *Id.* An interesting question becomes whether Buckalew's entering Expert Pages' website, after he realized it was located in California, constitutes a "virtual" entry in California because the allegedly illegal activity occurred while Buckalew was on Expert Pages' website. It seems that those two facts may have also satisfied the first two prongs of the specific personal jurisdiction test.

156. *Id.* at \*2-3.

157. *Id.* at \*3-5.

158. *Id.* In holding that the exercise of personal jurisdiction would be unreasonable, the court focused on the facts that Buckalew was a pro se defendant, that he lived on the other side of the country (Virginia), and that his only means of support was through a website which generated income from twelve customers. *Id.*

For a recent case with a comprehensive discussion of personal jurisdiction based on maintenance of an Internet website, see *Millennium Enterprises, Inc. v. Millennium, L.P.*, 33 F. Supp. 2d 907 (D. Or. 1999). In *Millennium*, the court held that a finding of general personal jurisdiction based on the website would "eviscerate the personal jurisdiction requirement as it currently exists." *Id.* at 910 (quoting *McDonough v. Fallon McElligott, Inc.*, 40 U.S.P.Q.2d 1826 (S.D. Cal. 1996)). The court further held that no specific personal jurisdiction existed because the website, "interactive though it may be, is not 'conduct and connection' with Oregon giving defendants 'fair warning' so that they would reasonably anticipate being 'haled' into court [in Oregon]." *Id.* at 921. Thus, because the website did not intentionally or purposefully target its activities at the particular jurisdiction, no personal jurisdiction was found to exist. *Id.* at 922.

159. Compare *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295, 300-01 (S.D.N.Y. 1996), *aff'd*, 126 F.3d 25 (2d Cir. 1997), and *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1263-64 (6th Cir. 1996), with *Maritz, Inc. v. CyberGold, Inc.*, 947 F. Supp. 1328, 1332-34 (E.D. Mo. 1996), and *Inset Sys., Inc. v. Instruction Set, Inc.*, 937 F. Supp. 161, 164-65 (D. Conn. 1996).

forum state occurred through a website designed to merely advertise, not to sell services or goods. The *Bensusan* court concluded that this type of contact did not rise to the level of purposefully availing themselves to the forum state,<sup>160</sup> while the *Inset* court determined that based on this contact, the defendant should have reasonably anticipated being haled into foreign courts.<sup>161</sup>

On the other hand, it cannot be stated that there is no consistency. The *Zippo* court stated, that after its review of current Internet cases, the general rule is that "the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet."<sup>162</sup> The court described it as a sliding scale—on one end, the defendant clearly engages in Internet commerce;<sup>163</sup> on the other end, the defendant has merely posted information upon a website.<sup>164</sup> In the middle of these two extremes, "the exercise of jurisdiction is determined by examining the level of interactivity" between the user's and host's computers and the "commercial nature of the exchange of information that occurs on the Web site."<sup>165</sup>

Although this may be the general rule, creators of websites still must be wary because, like the *Inset* court exemplified, courts are not compelled to follow the general rule.

#### IV. OTHER SUGGESTED APPROACHES

Naturally, amidst the uncertainty of this area of law, several approaches have been offered to rectify the situation. This section will discuss differing approaches offered by legal scholars. Although each differing approach standardizes the test for jurisdiction, they differ in the weight given to the traditional due process requirements.

##### A. *Stream of Commerce*

One approach offered focuses on how much interactivity is required by the creator's website for the user.<sup>166</sup> Under this approach, courts should view the creation of a website as placing an item into the "stream of commerce" and,

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160. *Bensusan Restaurant Corp. v. King*, 937 F. Supp. at 300-01.

161. *Inset Sys., Inc. v. Instruction Set, Inc.*, 937 F. Supp. at 165.

162. *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

163. *Id.*; see *CompuServe, Inc. v. Patterson*, 89 F.3d at 1260-61.

164. *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. at 1124; see *Bensusan Restaurant Corp. v. King*, 937 F. Supp. at 297.

165. *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. at 1124.

166. David L. Stott, Comment, *Personal Jurisdiction in Cyberspace: The Constitutional Boundary of Minimum Contacts Limited to a Web Site*, 15 J. MARSHALL J. COMPUTER & INFO. L. 819, 853 (1997).

therefore, apply the analysis offered by Justice O'Connor in her *Asahi* plurality opinion.<sup>167</sup> Under this approach, the mere passive act of placing information on the Internet, accessible only by the unilateral activity of the user, would be an unacceptable contact for exerting jurisdiction.<sup>168</sup> To find jurisdiction, the defendant must have additional contacts with the foreign state.

Another valuable aspect of this approach is that the framework has already been established in *Asahi*.<sup>169</sup> Once courts accept that a website is similar to placing a product in the stream of commerce, courts would then apply the existing personal jurisdiction law to this new form of contacts.

This approach realizes that if placing information on the web was a sufficient contact for courts to exercise jurisdiction, every state would have jurisdiction over every website on the Internet.<sup>170</sup> Clearly, due process would no longer be a barrier to be overcome before exercising personal jurisdiction.

### B. Virtual Presence

Under this approach, a website is viewed as having a virtual presence at every point on the Internet, which in turn means that it is present in every state and every nation.<sup>171</sup> Once a person places information on the Internet, the courts would view that act as that person's virtual entity placing the information in every state. Therefore, their virtual body entered into that state and placed the information there. It is equivalent to that person actually physically entering the state. If this is accepted, then the courts would have no problems in finding that every website owner either purposefully availed themselves to that state or should reasonably anticipate being haled into that state's court system.

This approach is similar to the "stream of commerce" theory offered by the Brennan plurality in *Asahi*. In the Internet context, the WWW would be viewed as being part of the stream of commerce. Therefore, the mere placement of information into that stream would be sufficient contact by the defendant with the foreign state to justify that state's courts assertion of personal jurisdiction.<sup>172</sup>

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167. *Id.* at 852-54.

168. Timothy B. Nagy, Comment, *Personal Jurisdiction and Cyberspace: Establishing Precedent in a Borderless Era*, 6 COMM'LAW CONCEPTUS 101, 111-12 (1998). One justification for this approach is that given that the Internet "is constantly expanding, flexible application of the traditional notions of personal jurisdiction is necessary to ensure that justice is served." *Id.* at 112.

169. Stott, *supra* note 166, at 852-54 (recognizing that this approach was used by the court in *CompuServe*).

170. Nagy, *supra* note 168, at 111-12.

171. Leif Swedlow, Note, *Three Paradigms of Presence: A Solution for Personal Jurisdiction on the Internet*, 22 OKLA. CITY U. L. REV. 337, 370-71 (1997).

172. Christine B. Mayewski, Note, *The Presence of a Web Site as a Constitutionally Permissible Basis for Personal Jurisdiction*, 73 IND. L.J. 297, 325-26 (1997). This contact is viewed

The stability that this system provides would be coupled with a high price. It disregards the purpose of the due process requirements for personal jurisdiction. Plaintiffs would be allowed to force website owners to litigate disputes in any and every jurisdiction. It is not hard to imagine that plaintiffs would choose the most inconvenient jurisdiction to the defendant or the most plaintiff-friendly jurisdiction.<sup>173</sup> Although this system does seem unreasonable, courts have used it.<sup>174</sup> The *Inset* court, for example, stated that the website owner "directed its advertising activity via the Internet . . . toward not only the state of Connecticut, but to all states."<sup>175</sup>

### C. Single-Point Presence

The single-point presence approach, which is much more restricted than the virtual presence model, centers around the belief that a person, even a virtual being, cannot be in more than one place at a time.<sup>176</sup> Also, unlike the virtual presence model, this system focuses on which party initiates the Internet contact. For example, an Internet user who visits a website is viewed as traveling to the state where the website is located, and a user who e-mails another is viewed as traveling to the state of the recipient to deliver the mail. This system is already in use for telephone communications and could easily be applied to the Internet because of the similarities between telecommunications and the Internet; like a person receiving a phone call, the website has no control over who visits their site. Because of this, the central question in each case becomes which party initiated the contact.

Under this approach, passive websites would be safe from defending themselves in foreign jurisdictions. The biggest drawback to this system is that, unlike a physical body traveling, a virtual body would not know what physical state or nation they were visiting. Plus, the virtual body could potentially travel through other states

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as being sufficient because, under this approach, the act of operating a website is a conscious decision by the operator "to enter the realm of interstate, and even global, commerce—even if their primary objective is to serve a local market." *Id.* at 325.

173. It has, however, been argued that the concern that this approach "will expose defendants to national, or worldwide, jurisdiction is overstated." *Id.* at 326. This argument suggests that forum-shopping would not be any greater in the Internet context because of the reasonableness factors, especially in light of *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984) and *Calder v. Jones*, 465 U.S. 783 (1984), which courts must also consider. Mayewski, *supra* note 172, at 326.

174. See *Inset Sys., Inc. v. Instruction Set, Inc.*, 937 F. Supp. 161 (D. Conn. 1996), *Heroes, Inc. v. Heroes Found.*, 958 F. Supp. 1 (D.D.C. 1996); *Maritz, Inc. v. CyberGold Inc.*, 947 F. Supp. 1328 (E.D. Mo. 1996).

175. *Inset Sys., Inc. v. Instruction Set, Inc.*, 937 F. Supp. at 165. It should be noted that typically, under this approach, operating a website is viewed more like a "product than a mere advertisement." Mayewski, *supra* note 172, at 325. This is due to "the Web site's unique content and interactive capabilities." *Id.*

176. Swedlow, *supra* note 171, at 375.



to reach its destination. It is questionable whether those traveled-through states count as a contact.

#### V. CONCLUSION

Once again, technology has developed faster than our laws. A uniformed system needs to be created so that people can conduct their business with certainty as to which jurisdictions they can be haled into. At the same time, the system should take into account some outside considerations. The Internet has brought people, separated by any number of miles, closer together. It is a great tool for advancing the global economy. The Internet provides information, education, and entertainment to all users. These facts should not be taken lightly. Whichever system is utilized, it should not be at the expense of hindering further Internet development and use. At the same time, plaintiffs should have a reasonable forum in which to litigate their grievances. A delicate balance must be reached.

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\* *Editor's Note:* Recipient of the 1999 H.G. Cartwright Award. This award, named in honor of Harold G. Cartwright, L'25, is presented to the author of each year's most outstanding student-written Note.

