Exercises of Personal Jurisdiction Based on Internet Web Sites

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INTRODUCTION

Use of the Internet is growing at an exponential pace.1 Every
segment of society is now "wired" to the Internet.2 Despite its
increased use, the body of law governing the Internet is not growing
at nearly the same rate. Traditionally, state lines defined the legal
boundaries of a court's jurisdiction.3 These geographic boundaries
were signposts that advised defendants when they were about to
enter another jurisdiction and therefore were subject to that
jurisdiction's laws. Because there are no physical boundaries in
cyberspace, the conventional analysis of personal jurisdiction is ill
suited to lawsuits involving the Internet. Existing jurisdictional
laws must be applied in a manner that recognizes the changes
brought about by technological and economic progress. Prior to the

1 See Shea v. Reno, 930 F. Supp. 916, 926 (S.D.N.Y. 1996) (indicating that number of
Internet users is expected to grow from forty million individuals in 1996 to 200 million by
1999); ACLU v. Reno, 929 F. Supp. 824, 831 (E.D. Pa. 1996) (estimating that number of Internet
users is expected to rise to 200 million by 1999); see also William S. Byassee, Jurisdiction of
Cyberspace: Applying Real World Precedent to the Virtual Community, 30 WAKE FOREST L. REV.
197, 197 n.2 (1995) (indicating Internet use has grown exponentially since 1990); Max S.
Oppenheimer, In Vento Scribere: The Intersection of Cyberspace and Patent Law, 51 FLA. L. REV.
229, 231 (1999) ("[In Justice Stevens' opinion, . 'the Internet has experienced extraordinary
growth'."](quoting Reno v. ACLU, 521 U.S. 844, 850 (1997))); Philip Rollo, The Morass of
(indicating that most Americans have had at least minimal experience with Internet); Philip
Elmer-Dewitt, Battle for the Soil of the Internet, TIME, July 25, 1994 at 50 (stating number of
Internet users doubles every year).

2 See e.g., www.jcrew.com; www.stjohns.edu; www.whitehouse.gov; www.tnc.org.

3 See Robert W. Hamilton and Gregory A. Castanias, Tangled Web: Personal Jurisdiction and
the Internet, 24 NO. 2 LITIG. 27, 29 (1998) (discussing tension between personal jurisdiction law
and Internet because personal jurisdiction law is based on notion that physical boundaries
create legal boundaries); Leonard Klingbaum, Bensusan Restaurant Corp. v. King: An Erroneous
Application of Personal Jurisdiction Law to Internet-Based Contacts (Using the Reasonableness Test to
Ensure Fair Assertions of Personal Jurisdiction Based on Cyberspace Contacts), 19 PACE L. REV. 149,
149 (1998) (discussing constitutional limitations on long-arm jurisdiction based solely on
Internet presence in forum state); Christian E. Mammen, Here Today, Gone Tomorrow: The
712 (1993) (stating personal jurisdiction normally is determined by state borders, not judicial
districts).
creation of the Internet, jurisdictional concepts were adequate. However, in today’s society, those arcane legal principles lose their relation to reality, and injustice rather than justice, will be promoted.

Personal jurisdiction law based on the Internet is still in its “infant stages.”

The district courts and the few circuit courts that have dealt with the issue are split, and the Supreme Court has yet to rule on the issue of personal jurisdiction based on the presence of Web sites on the Internet. Judge Van Graafland, of the Second Circuit, likened the process of creating Internet law to “trying to board a moving bus.” It is imperative that the courts come to some consensus on the matter of personal jurisdiction based on Internet contact. The lack of certainty and uniformity in this area will inhibit businesses from utilizing the numerous benefits of the Internet.

The first part of this note will provide a history and explanation of personal jurisdiction. The second part will provide background information on the Internet. This information will aid in a better understanding of the difficulties inherent in applying existing law to this technological medium. The third part of this note will be an overview of the cases that have tackled the issue of personal jurisdiction over defendants based on the Internet. Finally, the fourth part will provide an avenue for the courts to explore in dealing with this issue.

I. PERSONAL JURISDICTION

Personal jurisdiction is the “court’s power to bring a person into its adjudicative process.” In order for a court to establish personal jurisdiction over a non-resident defendant, the court must determine whether the forum state’s long arm statute allows jurisdiction and whether that assertion of personal jurisdiction comports with the Due Process Clause of the Fourteenth

4 See Zippo Mfg. v. Zippo Dot Com, 952 F. Supp. 1119, 1123 (W.D. Pa. 1997) (stating in recent years Internet has made it possible to do business around world from desktop); see also Millennium Enters. Inc. v. Millennium Music, LP, 33 F. Supp. 2d 907, 914 (D. Or. 1999) (stating personal jurisdiction of Internet seems to be all or nothing scenario, but courts are attempting to issue specific guidelines); Hasbro, Inc. v. Clue Computing, Inc., 994 F. Supp. 34, 39 (D. Mass. 1997) (stating case law concerning Internet is limited).

5 See Bensusan Restaurant Corp. v. King, 126 F.3d 25, 27 (2d Cir. 1997) (applying well-established jurisdiction principles to Internet case).

6 BLACK’S LAW DICTIONARY 857 (7th ed. 1999) (stating personal jurisdiction is also known as “in personam jurisdiction,” “jurisdiction in personam,” “jurisdiction of the person,” “jurisdiction over the person”); see also Shaffer v. Heitner, 433 U.S. 186, 199 (1977) (noting that court’s jurisdiction is based on its authority over defendant’s person).
Amendment. The Due Process Clause establishes the outer limitations of a state's power to exercise personal jurisdiction over a non-resident defendant. The only limitation state legislators face when drafting long arm statutes is that they may not allow a basis for jurisdiction which violates the Due Process Clause. However, states are free to make their long arm statutes as limited as they desire. Once the court has determined that the forum state's long arm statute allows personal jurisdiction over the defendant, the court must next inquire as to whether that assertion of jurisdiction comports with the constitutional requirements of Due Process.

7 See Flemming James, Jr., et al., Civil Procedure §2.3 (4th ed. 1992) (noting that while due process is concern, there is also issue of comity towards other states, and not usurping their state power); Gwenn M. Kalow, Note, From the Internet to Court: Exercising Jurisdiction Over World Wide Web Communications, 65 Fordham L. Rev. 2241, 2250 (1997) (stating that due process requires case-by-case determination before specific jurisdiction over non-resident defendant may be asserted); Christine E. Mayewski, Note, The Presence of a Web Site as a Constitutionally Permissible Basis for Personal Jurisdiction, 73 Ind. L.J. 297, 299-300 (1997) (discussing limits of personal jurisdiction on Internet companies).

8 See U.S. Const. Amend XIV § 1. The Due Process Clause of the Fourteenth Amendment provides in part, "nor shall any State deprive any person of life, liberty, or property, without due process of law..." See id.


10 See Int'l Shoe Co. v. State of Washington, 326 U.S. 310, 310 (1945) (noting that due process requires non-residents to have sufficient minimum contacts with forum state such that judgement will not offend "traditional notions of fair play and substantial justice"); see also Kalow, supra note 7, at 2250 (stating that, although it may impose further limitations, state's legislature is bound by strictures of Due Process Clause); Mayewski, supra note 7, at 300 n.17 (citing states such as California, Louisiana and Missouri as examples of states whose long arm statutes allow exercise of personal jurisdiction up to boundaries set by Due Process Clause).

11 See Kalow, supra note 7, at 2250 (providing Pennsylvania long arm statute, 42 Pa. Cons. Stat. Ann. 5322(a), as example of long arm statute which does not extend state's power over non-resident defendants to full extent of Due Process Clause); Mayewski, supra note 7, at 299-300. See, e.g., N.Y. Civ. Prac. L.&R. §302(a) (McKinney 1990) (allowing New York courts to assert personal jurisdiction over non-resident defendants who (1) transact business within state or contract to supply goods and services within state; or (2) commit tortious act within state; or (3) commit tortious act out of state which injures person or property in state).

12 See Hanson v. Denckla, 357 U.S. 235, 251 (1958) (stating this restriction is both guarantee of immunity from burden of defending against distant or inconvenient litigation and consequence of comity between states in limiting their power so as not to encroach on power of other states); see also Auakian, supra note 9, at 926 (describing how courts must determine whether long-arm statutes comport with Due Process Clause).
A. The Evolution of Personal Jurisdiction from Pennoyer to International Shoe

In Pennoyer v. Neff, the Supreme Court held that "every state possesses exclusive jurisdiction . . . over persons and property within its territory." Thus, in order to exercise personal jurisdiction over a defendant, the defendant had to be within the physical boundaries of the forum state. However, citizens of the forum were subject to personal jurisdiction within that state, even when they were not physically present in the State. As technology progressed, commerce between the states increased and as improvements in communications and transportation made defending a suit in a foreign jurisdiction less burdensome, the requirements for a forum state to exercise personal jurisdiction "evolved from the rigid rule of Pennoyer v. Neff, to the flexible standard of International Shoe Co. v. State of Washington." In International Shoe Company v. State of Washington, the Supreme Court promulgated a flexible, fact specific, two-tiered "minimum contacts" test, stating that:

due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'.

The critical concern in ascertaining whether a forum state may exercise jurisdiction following the decision in International Shoe is the relationship among the defendant, the forum, and the subject matter

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13 95 U.S. 714 (1877).
14 Pennoyer, 95 U.S. at 722.
15 See Pennoyer, 95 U.S. at 723 (stating that to do otherwise would be "encroachment" on other states' power over their citizens or property situated within state).
16 See Miliken v. Meyer, 311 U.S. 457, 462 (1941) (allowing exercise of personal jurisdiction over absent citizen because "[t]he state which accords him privileges and affords protection to him and his property by virtue of his domicile may also exact reciprocal duties").
17 See Hanson, 357 U.S. at 251.
18 326 U.S. 310 (1945).
20 See Int'l Shoe, 326 U.S. at 316 (quoting Miliken v. Meyer, 311 U.S. 457, 463 (1941)).
of the litigation.21

B. Minimum Contacts

In order for the court to establish minimum contacts between the defendant and the forum state, the activities of the defendant must be continuous and systematic.22 The minimum contacts analysis can create personal jurisdiction in two ways.23 A court can assert specific jurisdiction over a defendant where the defendant's activities within the forum state are the subject of the suit.24 A court can exercise general jurisdiction where the continuous and systematic activities of a corporation or party within the forum are "so substantial and of such a nature as to justify"25 the exercise of personal jurisdiction. This exercise of general jurisdiction is permissible even when the cause of action in the forum state is not connected to defendant’s activities within the state.26

Following International Shoe,27 the Court expanded the permissible breadth of state court jurisdiction over non-resident defendants, which was in part a response to advancements in technology and its


25 See Int'l Shoe, 326 U.S. at 318.

26 See Int'l Shoe, 326 U.S. at 318; see also Perkins v. Benguet Consol. Mining, 342 U.S. 437, 448 (1952) (allowing Ohio state courts to exercise personal jurisdiction over Philippine corporation doing business in Ohio during World War II, because all key corporate officers, company office, company's files, and company bank accounts were located in Ohio, and President of company carried on correspondence relating to business from Ohio).

27 326 U.S. 310 (1945).
impact on the economy. In these decisions, the Court held that where a party has established sufficient minimum contacts, the exercise of personal jurisdiction by the forum was valid. However, the cause of action must be based on minimum contacts that have a substantial connection to the forum state, and those contacts are so meaningful that they give rise to an overriding state interest in adjudicating the claims in the forum state. It remains a requirement, however, that a defendant purposefully avails himself of the privilege of doing business in the forum or specifically targets the forum state for business. Furthermore, the contact must be so substantial that being haled into that forum state to defend a

28 See McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223 (1957) (holding that California had jurisdiction over Texas insurer because insurer transacted business with California resident); see also David G. Thomas, Personal Jurisdiction in the Nebulous Regions of Cyberspace: A Call for the Continued Relaxation of Due Process and Another Debilitating Blow to Territorial Jurisdiction, 31 Suffolk U.L. Rev. 507, 508-09 (1997) (noting Court has relaxed and redefined constitutional limits of due process in response to changes and advances in technology).

29 See Hess v. Pawloski, 274 U.S. 352, 356 (1927) (allowing exercise of personal jurisdiction over driver passing through state who was involved in collision as valid exercise of power which did not conflict with Due Process); see also Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985) (dealing with franchise owners in distant states); Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 780 (1984) (allowing personal jurisdiction over defendant because defendant distributed magazines within state); McGee, 355 U.S. at 223 (selling insurance by telephone solicitation in California was sufficient to justify personal jurisdiction).

30 See Keeton, 465 U.S. at 779-80 (allowing New York resident access to New Hampshire court in suit for defamation against Hustler magazine); Perkins, 342 U.S. at 447-48 (finding jurisdiction over Philippine company because of business connections in Ohio); see also Repp v. Holiday Inns, Inc., 624 F. Supp. 851, 852-53 (S.D. Ohio 1985) (subjecting Holiday Inns to suit for action arising in Tennessee); Glover v. Western Airlines, Inc., 745 F.2d 1365, 1369 (Alaska 1987) (allowing Alaskan resident access to state court for suit against Avis, USA, because of substantial connection to forum through relationship with franchisee).

31 See Burger King Corp., 471 U.S. at 476 (holding that continuous but limited activity in forum state will support jurisdiction over claims arising from activity); Keeton, 465 U.S. at 780 (finding personal jurisdiction even though defendant's acts had greater impact in other states); McGee, 355 U.S. at 223 (upholding jurisdiction over claim arising out of single contact solicited in state).

32 See World-Wide Volkswagen v. Woodson, 444 U.S. 286, 297-98 (1980) (holding that Oklahoma could exert jurisdiction over manufacturer if manufacturer serves market directly or indirectly, but state could not exercise personal jurisdiction over car dealer who had not deliberately focused on Oklahoma as market for its cars); Hanson v. Denckla, 357 U.S. 235, 235 (1958) (emphasizing that defendant must make some deliberate choice to relate to state in some meaningful way before bearing burden of defending in forum). But see Mark C. Weber, Purposeful Availment, 39 S.C.L. Rev. 815, 865-71 (1988) (criticizing emphasis on defendant's purposeful in-state contacts).

33 See Burger King Corp., 471 U.S. at 476 (acknowledging that defendant who is not physically present in forum, but who specifically targeted state to conduct business, cannot defeat jurisdiction); Keeton, 465 U.S. at 780 (finding defendant had purposely availed itself of opportunity to engage in in-state activities by distributing its magazines within state). But see Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 418 (1984) (finding contacts with state were not sufficient to warrant personal jurisdiction over defendant).

34 See World-Wide Volkswagen, 444 U.S. at 292 (stating that foreseeability is necessary, but not sufficient basis, for exercising personal jurisdiction); Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228 (1958) (if foreseeability alone were enough, exercise of personal jurisdiction would
suit is foreseeable. It should be noted that the application of the minimum contacts test is somewhat different when the cause of action involves intentional torts such as defamation. In such cases, courts have upheld the exercise of personal jurisdiction over non-resident defendants because the defendant targeted the state through its knowledge that the injury would be felt in the forum state, and could reasonably foresee being haled into court in the forum state to defend its actions.

C. Traditional Notions of Fair Play and Substantial Justice

Once minimum contacts are established, the court must next determine whether the exercise of personal jurisdiction over the defendant would offend "traditional notions of fair play and substantial justice." While this second factor was once considered

have been sustained because it was foreseeable that settler of trust would move to Florida).

35 See Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 112 (1987). There continues to be a great deal of debate around the issue of the purposeful availment requirement when a defendant can reasonably foresee that its goods will enter the forum state through the "stream of commerce." The Asahi Court split on the question of whether the act of selling goods outside the forum state, which will foreseeably be imported into the forum state for resale, is sufficient grounds to support personal jurisdiction. Justice O'Connor's plurality opinion, joined by three other Justices, rejected the premise that "mere awareness" that the stream of commerce may sweep goods into the forum state after they have left the defendant's hands is enough to show "purposeful availment." O'Connor would require clearer evidence that defendant sought to serve market in a particular state before personal jurisdiction would ensue. Id. at 112-13.

In contrast, the concurring Justices in Asahi would find that sending goods into the stream of commerce, at least in substantial quantities, constitutes "purposeful availment," whether or not the original maker foresees that the goods will be sold in a particular state. Id. at 117. The rationale behind this view is that the manufacturer both foresees and benefits from such sales in other states, whether it distributes the goods directly or simply takes advantage of this fact through someone else's efforts.


36 See Calder v. Jones, 465 U.S. 783, 789-90 (1984) (holding that California had personal jurisdiction over defendant concerning allegedly defamatory article written in Florida); Hugel v. McNeill, 886 F.2d 1, 4-5 (1st Cir. 1989); (holding New Hampshire could exert personal jurisdiction over defendant who allegedly defamed plaintiff in Washington Post article); see also Rollo, supra note 1, at 675 (reviewing cases and decisions regarding defamation).

37 See Calder, 465 U.S. at 789-90; McNeill, 886 F.2d at 4-5. But see Noonan v. Winston Co., 135 F.3d 85, 90 (1st Cir. 1998) (holding that Massachusetts could not subject French magazine publisher to personal jurisdiction because publisher had insufficient contacts and did not intentionally injure plaintiff).

38 See Miliken v. Meyer, 311 U.S. 457, 463 (1940); see also Asahi, 480 U.S. at 114 (stating that
of relatively little importance, it might be of significantly more importance since the Court’s decision in Asahi Metal Industry Company v. Superior Court of California, as eight of the nine justices agreed that despite the requisite minimum contacts, jurisdiction could not be upheld under the second prong of International Shoe.

In determining whether such an exercise of personal jurisdiction comports with notions of fair play and substantial justice, the courts look to the burden on defendant in defending itself in the forum state. Recently, courts began to look not only at the burden the defendant would have to bear in defending against this litigation, but also to (1) the forum state’s interest in having the claim adjudicated in that state; (2) the plaintiff’s interest in having that

“When minimum contacts have been established, often the interests of the plaintiff... will justify even the serious burdens placed on the alien defendant.”); Burger King Corp., 471 U.S. at 476 (holding that defendants failed to demonstrate how jurisdiction in that forum would be fundamentally unfair); Keeton, 465 U.S. at 780-81 (finding that defendant’s regular circulation of magazines in New Hampshire was sufficient to support exercise of personal jurisdiction); Calder, 465 U. S. at 790 (stating individual injured in California need not go to Florida to seek redress); Brother Records v. Harper Collins, 682 A.2d 714, 718 (N.H. 1996) (finding jurisdiction based on defendant’s acts aimed toward forum residents); Beth I. Boland & Diane Gwin, The Internet and Personal Jurisdiction Under the Constitution: In What State, Exactly, Is the Internet Located?, 44 B. B.J. 16, 16 (2000) (discussing “traditional notions of fair play and substantial justice”); E. Gabriel Perle, John Taylor Williams & Mark A. Fischer, Electronic Publishing and Software, Part II, 17 COMP. L. 15, 15 (2000) (discussing fairness).


40 See Asahi, 480 U.S. at 113 (quoting Miliken v. Meyer, 311 U.S. at 463); see also Mayewski, supra note 7, at 301-302 (explaining that although Justices could not agree on contacts issue, they did come to consensus on reasonableness issue). But see Burger King, 471 U.S. at 476 (concluding that Florida had legitimate interest in resolving dispute); McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223 (1957) (holding that California had “manifest interest in providing effective means of redress for its residents with respect to insurance claims”). See, e.g., Pritzner v. Yari, 42 F.3d 53, 62 (1st Cir. 1994) (explaining that Puerto Rico had significant interest in land ownership dispute); Weiss v. La Suisse, 69 F. Supp. 2d 449 (S.D.N.Y. 1999) (holding New York’s laws governing insurance contracts create significant state interest in adjudicating dispute).


42 See McGee, 355 U.S. at 223 (holding that California had “manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims” and that such interest, combined with small inconvenience to defendant insurer, was sufficient to allow California to exercise personal jurisdiction over defendant insurance company); see also Asahi, 480 U.S. at 115 (explaining that procedural and substantive laws of other nations must be weighed); Burger King, 471 U.S. at 477 (stating that these considerations can establish
claim adjudicated in that forum;\(^43\) (3) the interest of the judicial system as a whole in providing the most efficient resolution of controversies;\(^44\) and (4) the interests of the several states in furthering social policies.\(^45\) These factors have reduced the incidence of inconvenient litigation.\(^46\) Despite these changes to personal jurisdiction, the Court cautioned that even though the rigid rule of \textit{Pennoyer} has been abandoned, “the reasonableness of asserting jurisdiction over the defendant must be assessed ‘in the context of our federal system of government’.”\(^47\) The Court, in support of the federal system of government, has “never accepted the proposition that state lines are irrelevant for jurisdictional purposes” as the Framers...intended that the States retain many essential attributes of sovereignty, including...the sovereign power to try

jurisdiction upon lesser showing of minimum contacts); World-Wide Volkswagen v. Woodson, 444 U.S. 286, 292 (1980) (enumerating considerations courts should consider).

\(^43\) See \textit{Asahi}, 480 U.S. at 114-16 (discussing same); \textit{Burger King}, 471 U.S. at 476 (considering this factor in its decision); World-Wide Volkswagen, 444 U.S. at 292 (stating that “implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State’s interest in adjudicating the dispute...”).; Kulko v. California Superior Court, 436 U.S. 84, 92 (1978) (discussing same); Shaffer v. Heitner, 433 U.S. 186, 192 (1977) (discussing plaintiff’s interests as factor); \textit{see also} Ruckstuhl v. Owens Corning Fiberglas Corp., 731 So. 2d 881, 891 (La. 1999) (finding that all states’ interests are furthered in Louisiana’s pursuit of defendant as part of tobacco litigation).

\(^44\) See World-Wide Volkswagen, 444 U.S. at 292 (discussing judicial system interest).

\textit{Compare} Burger King Corp., 471 U.S. at 476-77 (suggesting that where defendant has purposely directed activities to forum state, jurisdiction is presumptively reasonable and defendant will have to make “compelling case” that other considerations make jurisdiction unreasonable), and Calder v. Jones, 465 U.S. 783, 790 (1984) (holding that it is not unreasonable for writer to defend defamation suit in California), \textit{with} \textit{Asahi}, 480 U.S. at 116 (finding that jurisdiction exercised by California court would be unreasonable and unfair); \textit{see also} Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 418-19 (1984) (reversing Texas Supreme Court holding of personal jurisdiction over defendant due to unreasonable).


\(^46\) See Burger King Corp., 471 U.S. at 476 (stating that these considerations might support reasonableness of exercising jurisdiction on lesser showing of minimum contacts); World-Wide Volkswagen Corp., 444 U.S. at 292 (stating same).

causes in their courts. The sovereignty of each State, in turn, implied a limitation on the sovereignty of all its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment. 48

Thus, while the Court has expanded a forum state’s power to exercise jurisdiction over a foreign defendant, it has maintained that there is a limit to which a forum’s jurisdiction may reach. 49

II. HOW THE INTERNET WORKS

There are millions of computers all over the world, many of which are linked by networks. 50 The Internet is a spider web of larger networks, which connect smaller networks of linked computers. 51 The Internet had its genesis in an experimental Department of Defense project, the Advanced Research Projects Administration (“ARPA”), whose goal was to link the computer networks of the military, defense contractors and university laboratories conducting research. 52 ARPA had two goals: first, to

48 See World-Wide Volkswagen, 444 U.S. at 293; Maloney, supra note 24, 1301 n.202 (discussing assertions of personal jurisdiction); David E. Seidelson, Jurisdiction Over Nonresident Defendants: Reprise, 4 WIDENER J. PUBLIC L. 199, 215 (1994) (expanding on quote).
51 See Shea, 930 F. Supp. at 925-26 (discussing computer networks); ACLU, 929 F. Supp. at 830-31 (explaining that small networks, also known as local area networks, are connected to other networks allowing any computer in network to communicate with any other computer in network); see also Andrew R. Basile, Jr., Recent Developments: Intellectual Property Law & the Internet, 584 P.L.I./PAT. 293, 295 (1999) (stating Internet is network of computers); Shelley Ross Saxer, One Professor’s Approach to Increasing Technology Use in Legal Education, 6 RICH. J. L. & TECH. 21, 28 (2000) (stating same).
52 See Shea, 930 F. Supp. at 926 (stating that sending “packet-switching” messages from one computer to another, subdivided into smaller “packets” when sent independently to destination, each traveling along different links in overlapping systems, and having those “packets” reassembled upon arrival, ensured that necessary communications would be feasible if any portion of network was not functioning); ACLU, 929 F. Supp. at 831 (stating government sought to create system which would facilitate continuance of communication even when portions of system were damaged by creating redundant system of linked
enable remote use of powerful supercomputers not located in their local areas; and second, to ensure vital communication in the event of war.53 Utilizing the system created by ARPA, companies created similar networks, which linked universities, research facilities, and commercial entities.54 Eventually these faster systems were linked together, and it is this series of linked networks which gradually superceded ARPA, and is the Internet as we know it today.55 Since the Internet is a spider web of connected networks that lacks a centralized storage location, control point, or communications channel, it is impossible for any single entity or group to control the Internet.56

Individuals can access cyberspace,57 and the Internet in computers, allowing communications sent over overlapping linked system to travel any number of routes to its destination).


54 See Shea, 930 F. Supp. at 926 (noting high speed networks that developed included NSFNet, sponsored by National Science Foundation, regional networks, and large commercial networks run by entities such as Sprint, IBM, and Performance Systems International); ACLU, 929 F. Supp. at 832 (giving examples of these networks such as BITNET, CSNET, FIDONET and USERNET); see also Daniel V. Logue, If the International Shoe Fits, Wear It: Applying Traditional Personal Jurisdiction Analysis to Cyberspace in Compuserve, Inc. v. Patterson, 42 VILL. L. REV. 1213, 1254 n.3 (1997) (citing discussion in Shea detailing growth of university, research facility, and commercial entity networks from ARPA); Richard S. Zembek, Jurisdiction and the Internet: Fundamental Fairness in the Networked World of Cyberspace, 6 ALB. L.J. SCI. & TECH. 339, 381 n.20 (1996) (stating that ARPA was backbone of other networks that were formed).

55 See Shea, 930 F. Supp. at 926 (stating that demise of ARPA network, which formally ceased operations in 1990, came as most network traffic shifted away from ARPA network to these faster networks); ACLU, 929 F. Supp. at 832 (noting that ARPA network ceased to exist as similar networks developed to link sites around world); see also Logue, supra note 54, at 1254 n.3 (citing discussion in Shea detailing development of Internet from ARPA); Rollo, supra note 1, at 676-77 (noting that Internet grew out of ARPA).

56 See Shea, 930 F. Supp. at 926 (indicating that because Internet links together independent networks no single entity or group of entities is able to control or limit it); ACLU, 929 F. Supp. at 832 (noting that single entity controlling of all information on Internet would not be technically feasible); see also Byassee, supra note 1, at 200-201 (noting that Internet operates through informal agreements by users and stronger agreements by owners of large computers, nationally linked through high-speed telephone connections, thus creating no central governing authority); Rollo, supra note 1, at 694 n.109 (quoting Shea, and discussing inability of any single entity to control or limit Internet).

57 See ACLU, 929 F. Supp. at 832 (indicating that users have many ways to access cyberspace); see also Byassee, supra note 1, at 220 n.5 (defining term cyberspace and giving credit for coining term to science fiction author William Gibson); John D. Faucher, Let the Chips Fall Where They May: Choice of Law in Computer Bulletin Board Defamation Cases, 26 U.C. DAVIS L. REV. 1045, 1078 n.9 (1993) (noting computer activist’s description of cyberspace); Oppenheimer, supra note 1, at 231 (discussing fact that together various methods of Internet information and communication retrieval constitute cyberspace); Zembek, supra note 54, at 381 n.12 (explaining origins of term “cyberspace”). See generally Edward A. Cavazos &
particular, in a wide variety of ways. An individual can access the Internet either by use of a computer that is directly, and usually permanently linked to the Internet, or by use of a personal computer with a telephone modem connected to a larger network of computers that is itself directly linked to the Internet. Access to the Internet can take a variety of forms. Many universities and other educational institutions, as well as businesses, libraries,

Gavino Morin, Cyberspace and the Law: Your Rights and Duties in the On-Line World 1 (1994) (discussing that in his book Neuronerancer, Gibson described cyberspace as hallucination resembling physical space which was computer-generated through abstract data).

58 See Shea, 930 F. Supp. at 926 (pointing out that access to Internet can take any one of several forms); ACLU, 929 F. Supp. at 832 (noting that individuals have multiple avenues to access Internet in particular); see also Oppenheimer, supra note 1, at 231 (noting that individuals can obtain access to Internet from many different sources); Charles R. Topping, The Surf Is Up, but Who Owns the Beach? – Who Should Regulate Commerce on the Internet?, 13 NOTRE DAME J.L. ETHICS & PUB. POL’Y 179, 198 (1999) (citing ACLU v. Reno, noting that individuals can access Internet in several ways). See generally Margot Slade, E-Mail, E-Commerce and New E-Buildings, N. Y. TIMES, Aug. 1, 1999 at 11(1) (describing consumers’ use of E-Buildings as new form of direct Internet access).

59 See Shea, 930 F. Supp. at 926 (indicating many entities maintain computer networks directly linked to Internet system); ACLU, 929 F. Supp. at 832 (stating that usually computer is connected to network which is permanently and directly connected to Internet); see also Schneider & Hedley, supra note 53, at 301 (discussing direct connection option via local area network (LAN)); Slade, supra note 58, at 1 (defining “direct connection”)

60 See Shea, 930 F. Supp. at 926 n.4 (defining modem as “as a device that translates digital information into a signal for transmission over a telephone line (‘modulation’) and translates a signal received over a telephone line into digital information (‘demodulation’’); ACLU, 929 F. Supp. at 832 (stating personal computers must have modem to access Internet); see also Schneider & Hedley, supra note 53, at 301 (describing how to obtain dial-up access to Internet); Slade, supra note 58, at 1 (defining “dial-up connection”).

61 See Shea, 930 F. Supp. at 926 n.4 (stating signal is sent over telephone lines); ACLU, 929 F. Supp. at 832 (indicating that modems connect over telephone line to larger computer, or computer network); see also Byassee, supra note 1, at 198 (indicating computers are linked over telephone lines); Slade, supra note 58, at 1 (defining computer access to Internet via “cable modem”).

62 See Shea, 930 F. Supp. at 926 (noting “[a]ccess to the Internet can take any one of several forms”); ACLU, 929 F. Supp. at 832 (indicating there are variety of entities through which individuals gain access to Internet); see also Byassee, supra note 1, at 198 (providing overview of forms of Internet access); Oppenheimer, supra note 1, at 231 (indicating there are many different forms and methods for achieving Internet access).

63 See Shea, 930 F. Supp. at 926 (stating that many educational institutions maintain direct Internet access); ACLU, 929 F. Supp. at 832 (stating that students and faculty are provided with access to Internet, often through direct connections in university libraries, offices, computer centers, and dorm rooms); see also Oppenheimer, supra note 1, at 231 (stating that majority of colleges and universities provide Internet access for their students and faculty); Topping, supra note 58, at 198 (noting that educational institutions, primarily universities, provide Internet access to their constituents).

64 See Shea, 930 F. Supp. at 926 (stating that many businesses maintain direct Internet access); ACLU, 929 F. Supp. at 832-33 (stating corporations and other employers have found Internet resources and access sufficiently important to provide Internet connections for their employees); see also Byassee, supra note 1, at 200 (indicating corporate networks structure services with scope of their membership in mind); Oppenheimer, supra note 1, at 231 (explaining that many employees have Internet access through office network provided by employer); Zembek, supra note 54, at 345 (stating businesses utilize Internet to form contracts, business relations, and financial exchanges).
and individual communities, maintain computer networks that are directly linked to the Internet. Moreover, Internet Service Providers, national commercial on-line services, bulletin board systems (known as BBSs), and commercial entities, offer users Internet access.

Once the user has gained Internet access, he may utilize a variety of methods to transmit and receive text, data, computer programs,

65 See Shea, 930 F. Supp. at 926 (stating that many libraries maintain Internet access); ACLU, 929 F. Supp. at 833 (stating many local libraries offer free Internet use to their patrons, and in addition, some offer telephone modem access to libraries' computers which are directly linked to Internet); see also Oppenheimer, supra note 1, at 231 (explaining that many local libraries provide free Internet access); Topping, supra note 58, at 198 (citing ACLU v. Reno, which noted that local libraries offer patrons use of Internet linked computers).

66 See Shea, 930 F. Supp. at 926 (stating users are issued account numbers and passwords which allow them access to these networks either directly or by modem); ACLU, 929 F. Supp. at 832 (stating that many communities, such as Richmond, Virginia; Tallahassee, Florida; Seattle, Washington; and San Diego California, have followed example of Cleveland Free-Net Community Computer System and established community networks, called "free links," to provide their citizens with link to Internet); see also Oppenheimer, supra note 1, at 231 (stating that many communities provide free access); Topping, supra note 58, at 198 (citing discussion in ACLU v. Reno, regarding provision of Internet access by individual communities).

67 See Shea, 930 F. Supp. at 926 (stating commercial entities which provide Internet access generally do so by providing modem access to computers or networks for monthly fee); ACLU, 929 F. Supp. at 833 (stating some Internet service providers are non-profit organizations that provide Internet access either at low cost or for free); see also Elmer-Dewitt, supra, note 1, at 50 (stating that dozens of small businesses sell monthly Internet access starting at $10-$30); Schneider & Hedley, supra note 53, at 302 (discussing obtaining dial-up Internet access through Internet service providers).

68 See Shea, 930 F. Supp. at 926 (stating national commercial on-line services offer subscribers both Internet access and proprietary computer networks which also contain extensive information); ACLU, 929 F. Supp. at 833 (stating major service providers such as America Online, CompuServe, Microsoft Network, and Prodigy have almost twelve million subscribers in United States); see also Byassee, supra note 1, at 220 n.12 (describing Internet service providers); Oppenheimer, supra note 1, at 231 (noting that commercial online services had just under twelve million individual subscribers in 1996).

69 See Shea, 930 F. Supp. at 926 (stating some BBSs offer users links to Internet); ACLU, 929 F. Supp. at 833-34 (stating that with small investment, individuals, non-profit organizations, advocacy groups, and businesses can offer bulletin board service with proprietary content where members, subscribers or customers can exchange information); see also Byassee, supra note 1, at 220 n.13 (discussing role of BBSs in cyberspace and operation of bulletin board services); Faucher, supra note 57, at 1045-49 (describing growth, advantages, and problems associated with computer bulletin boards); Zemek, supra note 54, at 381 n.24 (describing BBSs as cross between billboard and morning newspaper while noting key distinctions between two).

70 See Shea, 930 F. Supp. at 926 (stating that Internet service providers are generally commercial entities); ACLU, 929 F. Supp. at 833 (stating individuals can access Internet by patronizing "computer coffee shop" where customers can use Internet access provided by shop for charge while enjoying cup of coffee); see also Topping, supra note 58, at 198 (citing discussion in ACLU v. Reno, regarding Internet access at "storefront computer coffee shops").

71 See Shea, 930 F. Supp. at 926-28 (discussing categories of Internet use); ACLU, 929 F. Supp. at 834-36 (discussing variety of methods to communicate and exchange information over Internet); see also Oppenheimer, supra note 1, at 231 (explaining that Internet access allows communication and information retrieval methods that transmit text, sound, pictures, and moving video images); Rollo, supra note 1, at 677-78 (discussing Internet's numerous methods for information retrieval and communication).
sound, visual images and moving video images. One such method of communication is one-to-one messaging, of which the most popular is electronic mail (known as "e-mail"). One-to-many messaging, such as "listservs," provides many subscribers with information on particular subjects of interest to them by allowing people to subscribe to a "listserv" mailing list on a topic. Distributed message databases, such as "USENET newsgroups" cover a broad range of topics and are among the most popular and widely used services on the Internet. "USENET newsgroups" are similar to "listservs" in function, in that they are forums to

72 See Shea, 930 F. Supp. at 926-27 (discussing categories of Internet use); ACLU, 929 F. Supp. at 834 (discussing "wide variety of different methods of communication and information exchange over the network"); see also Oppenheimer, supra note 1, at 231 (explaining that once one has access there are "a wide variety of communication and information retrieval methods"); Rolio, supra note 1, at 677-78 (discussing some of Internet's "numerous forms of information retrieval and communication").

73 See Shea, 930 F. Supp. at 927 (explaining e-mail as perhaps most used Internet service whereby user can use any of many available "mailers" software capable of reading and writing e-mail to address and transmit electronic letter); ACLU, 929 F. Supp. at 834 (stating e-mail does not take predetermined path but takes varying paths to recipient, depending on traffic); Kalow, supra note 7, at 2244 (stating that in 1997 approximately thirty-five to sixty million people worldwide used e-mail); see also Byassee, supra note 1, at 201 n.17 (stating that each user of e-mail has unique address which is expressed in standard format, such as, jdoe888@stjohns.edu, with section before "@" symbol representing user name on local system and section after symbol representing identity of computer on Internet).

74 See Shea, 930 F. Supp. at 927 (describing different kinds of "listservs"); ACLU, 929 F. Supp. at 834 (describing "listservs" as "mail exploders" because of numerical multiplicity of subscribers that receive message from single list); Vasiliki Pagidas, First Amendment - Freedom of Speech - Provisions of the Communications Decency Act of 1996 Intended to Protect Minors from Exposure to Indecent and Patently Offensive Material on the Internet Violate the First Amendment - Reno v. ACLU, 117 S.Ct. 2329 (1997), 8 SETON HALL CONST. L.J. 975, 977 n.13 (1998) (describing "listservs" and "mail exploders" as automatic mailing list services); Topping, supra note 58, at 198 n.79 (specifying "listservs" as example of one-to-many messaging); Rachel Weintraub-Reiter, Hate Speech Over the Internet: A Traditional Constitutional Analysis or a New Cyber Constitution?, 8 B.U. PUB. INT. L. J. 145, 158 n.114 (1998) (citing "listservs" as example of automatic mailing list service).

75 See Shea, 930 F. Supp. at 927 (describing different kinds of "listservs"); ACLU, 929 F. Supp. at 834 (noting there are thousands of "listservs" with hundreds of thousands of subscribers); Kalow, supra note 7, at 2245 (indicating "listservs" are electronic mailing lists created by interest groups).


77 See ACLU, 929 F. Supp. at 835 (stating that in 1994, approximately 100,000 messages were posted daily on newsgroups and those messages were distributed to approximately 190,000 computers or computer networks that participate in USENET system).
disseminate and exchange information on a specific topic, but differ in that users need not subscribe in advance to receive the information.\textsuperscript{78} Real time communication, such as "Internet Relay Chat" allows two or more individuals on the Internet to meet and engage in dialogue with other people on the Internet in "real time," analogous to a telephone party line.\textsuperscript{79}

Remote information retrieval, such as file transfer protocol ("ftp"), "gopher" servers ("gopher") and the "World Wide Web" ("WWW"), are methods of locating and retrieving information stored on remote computers.\textsuperscript{80} File-transfer protocol is a method by which a user can contact a server, view a directory of files, and copy one or more of those files to his computer.\textsuperscript{81} "Gopher" guides an individual's search through remote computers by presenting information in a set of increasingly narrow menus which allow the user to locate a desired file.\textsuperscript{82} The World Wide Web,\textsuperscript{83} an area of the

\textsuperscript{78} See ACLU, 929 F. Supp. at 835; Bysassee, supra note 1, at 201 n.17 (noting that unlike "USENET" messages, e-mail message are sent only to individuals to whom they are addressed); Communities Virtual and Real, supra note 76, at 1609 n.41-42 (defining USENET newsgroups and listservs).

\textsuperscript{79} See ACLU, 929 F. Supp. at 835 (stating that some commercial online services have "chat" systems which allow their members to communicate virtually instantly); Bysassee, supra note 1, at 201 n.18; Jennifer E. Markiewicz, Seeking Shelter from the MP3 Storm: How Far Does the Digital Millennium Copyright Act Online Service Provider Liability Limitation Reach?, 7 COMM. L. CONSPECTUS 423, 440-41 (1999) (describing Internet Relay Chat); Tjerk Vonck, Welcome to the mIRC Homepage: IRC FAQ, at <http://www.mirc.com/ircintro.htm> (visited November 8, 1999) (detailing history, instructions and frequently asked questions relating to Internet Relay Chat).

\textsuperscript{80} See Shea, 930 F. Supp. at 928 (stating that someone wishing to make article, file, or software available to other users will set up server which adheres to certain communications protocols and is capable of retrieving and presenting stored information in response to request using same communications protocol); ACLU, 929 F. Supp. at 835-36 (discussing primary methods of locating and retrieving information on Internet); Developments in the Law-The Law of Cyberspace: Introduction, 112 HARV. L. REV. 1574, 1579 (1999) (stating that World Wide Web is most popular form of remote information retrieval); Rolo, supra note 1, at 676-77 and n.112 (stating that there are many ways to retrieve information through Internet); Timothy Zick, Congress, The Internet, and the Intractable Pornography Problem: The Child Online Protection Act of 1998, 32 CREIGHTON L. REV. 1147, 1154-55 (1999) (stating that diverse body of information can be retrieved).

\textsuperscript{81} See Shea, 930 F. Supp. at 928 n.8 ("To locate files available for copying, a user can contact an 'Archie' server—a remote computer capable of searching directories for file names containing a particular string of characters on FTP servers permitting anonymous retrieval"); ACLU, 929 F. Supp. at 835 (describing file transfer protocol method); Bysassee, supra note 1, at 220 n.19 (explaining how one can transfer files using file transfer protocol); Markiewicz, supra note 79, at 445 n.72 (explaining that file transfer protocols often control access); Securities Activity on the Internet: Report of the Internet Task Force to the Technical Committee, 1128 PLI/CORP 533, 545 (June-July 1999) (stating that file transfer protocol useful for downloading files).

\textsuperscript{82} See Shea, 930 F. Supp. at 929 (stating that content provider who maintains gopher server has no way of knowing who will gain access to available information); ACLU, 929 F. Supp. at 835-36 (identifying "gopher" as another approach to remote information retrieval); Bysassee, supra note 1, at 220 n.21 (describing "gopher" method of retrieving information); Susan B.
Internet which has recently exploded in popularity,84 is similar to “Gopher” in principal. The Web provides users with a medium to locate and access information on the Internet.85 It links together diversified information on Internet-linked computers by setting common information storage formats (“HTML”)86 and a common language for the exchange of Web documents (“HTTP”).87 A user must have a Web “browser”88 capable of displaying documents.
formatted in HTTP, and each document has an address, known as a Uniform Resource Locator ("URL"), which identifies the server on which it resides. A user may utilize a "search engine" to help him navigate the Web.

The Web is a system running on tens of thousands of individual computers, with no centralized control. Users may transfer between one Web site and another site on a different computer by pointing and clicking on underlined phrases called "hyperlinks" (also called "links"). These links allow a user to travel from site to site, which may be located on different servers in different states. This intricate system creates "an on-line world with no physical boundaries." The ease with which the Web can be explored,

89 See Shea, 930 F. Supp. at 929 (discussing how documents on World Wide Web are accessed); Young June (Jay) Yang, Domain Names and Trademarks on the Internet: Asian Pacific Rim Perspective, 564 PLI/PAT 295, 299 (June 1999) (indicating that URLs differentiate web pages); Naura, supra note 83, at 11 (indicating that URLs are addresses used to find precise locations); Rollo, supra note 1, at 677 (noting that World Wide Web uses URLs to locate information).


91 See Shea 930 F. Supp. at 926 (stating that no entity controls content made publicly available, nor limits access to Internet); ACLU, 929 F. Supp. at 838 (stating Web known as "distributed system" running on tens of thousands of individual computers); Byassee, supra note 1, at 200-01 (stating that Internet operates by informal agreements of users and formal agreements between owners of large network computers); see also Ballon supra note 84, at 19 (indicating there is no sole ownership of Internet); Naura supra note 83, at 9 (indicating Internet is not controlled or owned by single organization).

92 See John Rothchild, Protecting the Digital Consumer: The Limits of Cyberspace Utopianism, 74 IND. L.J. 893, 900 (1999) (noting that hyperlinks are used to access web pages); Millet supra note 90, at 33 (describing use of hyperlinks); see also ACLU, 929 F. Supp. at 836 (stating that hyperlinks allow information to be accessed and organized in flexible ways); Kath Brown, Finding a Way Through the Fascinating Maze, DAILY NEWS (NEW PLYMOUTH), Sep. 18, 2000, at *7 (describing hyperlinks as "those blue words...just ask[ing] to be clicked").

93 See ACLU, 929 F. Supp. at 837 (identifying WWW as "unique" tool whose power "stems from the ability of a link to point to any document, regardless of its status or physical location"); Rothchild, supra note 92, at 900 (stating hyperlinks can point to Web pages on any computer in world that is set up as Web server).

94 Kalow, supra note 7, at 2247; see also Jason L. Brodsky, Civil Procedure — Surf# the Stream of Commerce: Compromise v. Patterson, 89 F.3d 1257 (6th Cir. 1996), 70 TEMP. L. REV. 825, 825 (1997) (describing Internet as "faceless, nameless, and existing in reality beyond physical boundaries"). But see Donnie L. Kidd, Jr., Note, On Law & Technology, Casting the Net: Another Confusing Analysis of Personal Jurisdiction and Internet Contacts in Telco Communications v. An Apple a Day, 32 RICH. L. REV. 505, 543 n.4 (1998) (criticizing theory for its "failure to account for the fact that such transmitted information must reside on a machine located in physical space and that access to this 'world' requires the use of another machine in a specific identifiable location").
combined with the low entry barriers involved,\textsuperscript{95} has made it an ideal platform for connecting and sharing information. Many organizations and individuals now publish\textsuperscript{96} documents called "home pages,"\textsuperscript{97} on the World Wide Web.\textsuperscript{98} Once this information is published, it is accessible to any person or organization with Internet access.\textsuperscript{99}

### III. CASES INVOLVING PERSONAL JURISDICTION ON THE INTERNET

While there is scant authority on the issue of personal jurisdiction based on Internet contacts, most courts have agreed that "the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of the commercial activity that an entity conducts over the Internet."\textsuperscript{100} In doing so, courts have articulated three categories of situations along a "sliding scale"\textsuperscript{101} for evaluating jurisdictional cases based on Internet web sites.\textsuperscript{102} The court in \textit{Zippo Manufacturing Company v. Zippo Dot Com} explained that "this sliding scale is consistent with well developed personal jurisdiction principles."\textsuperscript{103}


\textsuperscript{96} See ACLU, 929 F. Supp. at 837 (explaining Internet publishing); Kalow, supra note 7, at 2245 (explaining people who publish or create their own web sites are called "site operators").

\textsuperscript{97} See Mayewski, supra note 7, at 310 (indicating that home page is also called "web site"); Lydia M. Karlowicz & Lulit Bezuayehu, \textit{Serve up Your Own Web Site}, PC/COMPUTING, Jan. 1997, at 310 (instructing how to set up own web server and web site); Thomas E. Weber, \textit{How Do I Create My Own Webpage?}, \textit{WALL ST. J.}, Dec. 9, 1996, at R25 (describing how easy it is to create and operate homepage).

\textsuperscript{98} See ACLU, 929 F. Supp. at 837; Kalow, supra note 7, at 2246.


\textsuperscript{101} See \textit{Zippo}, 952 F. Supp. at 1124.

\textsuperscript{102} See \textit{Zippo}, 952 F. Supp. at 1124; see also Millennium Music, 33 F. Supp. 2d at 915 (discussing "sliding scale" as enumerated in \textit{Zippo}); Patriot Sys., Inc., v. C-Cubed Corp., 21 F. Supp. 2d 1318, 1324 (D. Utah 1998) (describing different considerations on "sliding scale").

\textsuperscript{103} \textit{Zippo}, 952 F. Supp. at 1124; see also Decker v. Circus Circus Hotel, 49 F. Supp. 2d 743, 747-48 (D.NJ 1999) (following \textit{Zippo}); Millennium Music, 33 F. Supp. 2d at 915 (describing
At one end of the scale are situations where the defendant repeatedly conducted business over the Internet with residents of the forum by engaging in repeated or ongoing transactions with forum residents, or entered into contracts with residents of the forum state.\(^ {104} \) These activities within the forum state, combined with the presence of the web site, often provide sufficient minimum contacts for an exercise of personal jurisdiction.\(^ {105} \) Courts have also found that when the causes of action involve intentional torts committed over the Internet and directed towards a forum resident, the defendant purposefully availed himself of the forum and thus is subject to personal jurisdiction within that state.\(^ {106} \)

At the other end of the scale are passive web sites, which are sites that merely provide information, such as advertisements.\(^ {107} \) The courts have concluded that when the only contact between the defendant and the forum state is the existence of a passive web site, the courts will decline to assert personal jurisdiction.\(^ {108} \) Where,
however, the defendant has minimum contacts with the state other than the existence of a passive web site, the court uses those other contacts to determine whether personal jurisdiction should be exercised over the defendant.\textsuperscript{109}

The gray area in the middle of the scale involves situations where a defendant operates an interactive web site, allowing a user to exchange information with a host computer.\textsuperscript{110} In these instances, courts have come to differing conclusions.\textsuperscript{111} Some courts find the existence of an interactive web site alone is sufficient to establish minimum contacts,\textsuperscript{112} while other courts require additional contacts with the forum not related to the underlying claim in the present case.\textsuperscript{113} Still other courts require additional contacts with the forum relating to the cause of action.\textsuperscript{114}
In Zippo Manufacturing Company v. Zippo Dot Com,115 the court announced a test to be applied in this area, holding that where a defendant operates an interactive Web site "the exercise of jurisdiction [should be] determined by examining the level of interactivity and [the] commercial nature of the exchange of information that occurs on the Web site."116 In Millennium Enterprises, Inc., v. Millennium Music, LP,117 the court articulated a third requirement to be added to the Zippo test, so as to include the "fundamental requirement of personal jurisdiction."118 To fulfill this requirement there must be "'deliberate action' within the forum state in the form of transactions between the defendant and residents of the forum or conduct of the defendant purposefully directed at residents of the forum state."119

IV. WHERE DO WE GO FROM HERE?

At the time of Pennoyer v. Neff state boundaries were the signposts limiting personal jurisdiction.120 Jurisdiction has since expanded to accommodate the changes in the way business is done.121 In were sparked via website constitutes contact with forum relating to underlying cause of action); Alta Vista, 960 F. Supp. at 466–67 (discussing how tortious conduct of misrepresentation, when directed at forum through website, is conduct with forum related to underlying cause of action).


118 See id. (stating "the fundamental requirement of personal jurisdiction is 'deliberate action' within the forum state in the form of transactions between the defendant and residents of the forum or conduct of the defendant purposely directed at the residents of the forum state") (citing Calder v. Jones, 465 U.S. 783, 788-90 (1984)); see also Marguerite S. Dougherty, The Lanham Act: Keeping Pace With Technology, 7 J. L. & POL'Y 455, 494 (1999) (discussing Millennium); Oetker, supra note 116, at 633 n.158 (discussing Millennium); Traynor, supra note 99, at 116 (discussing Millennium).

119 Millennium, 33 F. Supp. 2d at 921 (discussing "deliberate action"); see also Panavision Int'l, L.P., v. Toeppen, 141 F.3d 1316, 1321 (9th Cir. 1998) (classifying defendant's actions over Internet as intentional); CompuServe Inc., v. Patterson, 89 F.3d 1257, 1264 (6th Cir. 1996) (describing defendant's contacts as intentional); EDIAS Software Int'l, L.LC., v. BASIS Int'l Ltd., 947 F. Supp. 413, 420 (D. Ariz. 1996) (concluding harms caused by defendant's Web site were intentional).

120 See Hamilton and Castanias, supra note 3, at 29; Klingbaum, supra note 3, at 149; Mammen, supra note 3, at 712.

expanding personal jurisdiction, the Court rejected the notion that personal jurisdiction might turn on "mechanical tests," but instead emphasized the need for a "highly realistic" approach. Courts stopped defining jurisdiction by physical presence within a state, and began to determine whether personal jurisdiction could be exercised based on the more flexible and fact specific "minimum contacts" test enunciated in International Shoe. That minimum contacts test was then refined again and again to reflect the changing needs of a society increasingly dependent on technology. Even while expanding allowances of personal jurisdiction, the Court limits this expansion to be sure that it comports with Due Process. Utilizing the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." In reworking the rules of personal jurisdiction to the Internet, these rules must adhere to the Due Process restriction. In adapting the rules of personal jurisdiction to fit this new technology, the court should recognize that once

122 See Burger King Corp., 471 U.S. at 478-79.
123 See Burger King Corp., 471 U.S. at 478-79 (describing doctrine as having to be flexible); Logue, supra note 53, at 221 (discussing "highly realistic" approach); Christopher Lyon, The Ninth Circuit's Approach to Personal Jurisdiction in Intellectual Property Cases: How Long is the Arm of California Courts in Reaching Foreign Defendants?, 15 LOY. L.A. ENT. L. J. 661 (1995).
124 See Int'l Shoe Co. v. State of Washington, 362 U.S. 310 (1945); see also Sheehan, supra note 49, at 440 n.103 (discussing "highly realistic" approach).
information on a Web site is published, it is accessible to any person or organization with Internet access, all over the world.\textsuperscript{128}

In situations of interactive web sites where the defendant plainly conducts business over the Internet with residents of the forum, there is no question that personal jurisdiction may be exercised.\textsuperscript{129} The traditional minimum contacts test can be applied to these cases without need for alteration to accommodate this technology. The defendant's activities, whether or not over the Internet, constitute the minimum contacts with the forum state necessary for the exercise of personal jurisdiction. Where the defendant has conducted business within the forum, or otherwise purposefully availed himself of the protections of the forum, he has sufficient minimum contacts with the state to subject him to personal jurisdiction.\textsuperscript{130} It is through these contacts with the forum state that defendants purposefully avail themselves of the privilege of doing business in the forum\textsuperscript{131} or specifically target that forum state for business,\textsuperscript{132} and the conduct is such that being haled into that forum state to defend a suit is foreseeable.\textsuperscript{133} The majority of courts have come to the appropriate decision regarding passive web sites, and most courts are likely to decide

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\textsuperscript{128} See ACLU, 929 F. Supp. at 837 (identifying world wide web as "unique" tool whose power "stems from the ability of a link to point to any document, regardless of its status or physical location"); Millet supra note 90, at 33 (describing use of hyperlinks); Rothchild, supra note 92, at 900 (noting that hyperlinks are used to access web pages).

\textsuperscript{129} See Zippo Mig. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119, 1125-26 (W.D. Pa.) (holding defendant amenable to personal jurisdiction in forum state where defendant company contracted with three thousand individuals and seven companies within forum state to provide news services).

\textsuperscript{130} See Compuserve, Inc. v. Patterson, 89 F.3d 1257, 1261 (6th Cir. 1996) (holding that party making contracts with parties in forum state was subject to personal jurisdiction even where contacts to state were entirely electronic).

\textsuperscript{131} See Hanson v. Denckla, 357 U.S. 235 (1958); see also Goldstein, Emerging Issues in Online Advertising and Promotion Law, 570 P.L.I. HAN. SER. 821, 869 (1999) (advising Web site owners to disclaim purposeful avalement); Rollo, supra note 1, at 672 (discussing purposeful avalement); Vartanian, supra note 107, at 23 (discussing purposeful avalement).

\textsuperscript{132} See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985) (acknowledging jurisdiction may be proper regardless of defendant's physical presence in forum); Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 418 (1984) (requiring more than defendant making purchases from forum state, if personal jurisdiction is asserted in cause of action not related to those transactions); Lampert, The Internet and Personal Jurisdiction, 198 N.J. LAW. MAG. 47 (1999) (discussing "specifically targeted"); Rollo, supra note 1, at 689 (stating court in Compuserve found that defendant "specifically targeted" forum).

\end{footnotesize}
such cases similarly in the future. By creating a passive web site, a defendant in no way purposefully availed herself of the privilege of doing business in the forum or specifically targeted that forum state for business. Moreover, a defendant does not, by the nature of her conduct, anticipate nor foresee being haled into court in the forum state. Operators of passive Web sites have no control over who accesses their web sites, which once published, are accessible to any person all over the world with Internet access. Since these Web site operators do not purposefully avail themselves of the forum, a court would be hard pressed to find a valid basis for the exercise of personal jurisdiction. Not only would it be unjust and unfair for the court to exercise personal jurisdiction over operators of passive Web sites, but declining to do so would aid in the development of this technology. Allowing these web site operators to structure their conduct so that they may operate without fear of being haled into any and all forums based solely on the existence of their Web site will stimulate economic and technological advances.

134 See Jefferson F. Scher, Swapping Claims in Cyberspace: Legal/Technical Context and Negotiation Strategies for Domain Name Deals, 21 HASTINGS COMM. & ENT. L.J. 545, 564 (1999) (discussing court decisions requiring some affirmative act by party in order to become subject to personal jurisdiction of forum); see also Bensusan Restaurant Corp. v. King, 937 F. Supp. 295, 297 (S.D.N.Y. 1996) (stating that absent “plus-factors” such as toll-free numbers, web site simply promoting local activities for benefit of local users was insufficient to warrant exercise of personal jurisdiction), aff’d, 126 F.3d. 25 (2d. Cir. 1997).

135 See Panavision Int’l L.P. v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998) (holding that maintaining web site accessible in forum (but not hosted there) is not sufficient in itself to establish basis for personal jurisdiction).

136 See Hanson, 357 U.S. at 248 (finding no personal jurisdiction in Florida over Delaware trust company simply because the will that established trust was probated in Florida); see also Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 419-20 (9th Cir. 1997) (stating defendant had not purposely availed itself of forum’s benefits or laws); Zippo Mfg. Co. v. Zippo Dot Com, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997) (stating operation of passive Web site by defendant is not sufficient to assert jurisdiction); Bensusan, 937 F. Supp. at 299 (stating mere posting of Web site is insufficient to assert jurisdiction).

137 See Helicopteros, 466 U.S. at 418 (stating that mere purchases from forum are insufficient to assert jurisdiction over foreign defendant). But see Burger King, 471 U.S. at 476 (acknowledging jurisdiction may be asserted without physical presence of defendant). See, e.g., Lampert, supra note 132, at 50 (discussing whether electronic transmissions from website are “specifically targeted” at particular forum).

138 See World-Wide Volkswagen, 444 U.S. at 297 (holding that mere likelihood that product will be in forum state insufficient to establish personal jurisdiction); see also Costa, supra note 107, at 459 (stating due process considerations are intended to give defendant degree of predictability with regard to his activities); Hamilton and Castanias, supra note 3, at 28 (stating defendant should be forewarned of possible suit); Kalow, supra note 7, at 2269 (discussing predictability).
With respect to the middle area of the sliding scale, the court in *Millennium*\(^{139}\) has probably come closest to the ideal. By looking at the commercial nature of the web site,\(^{140}\) the nature of the exchange of information that occurs through the site,\(^{141}\) and requiring deliberate action on the defendant’s part with residents of the forum state,\(^{142}\) the court successfully adapted the rules of personal jurisdiction within the confines of Due Process.

**CONCLUSION**

We should be reminded of what the Supreme Court emphasized in *Hanson v. Denckla*,\(^{143}\) that “it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”\(^{144}\) By examining the level of interactivity and the commercial nature of the exchange of information that occurs through a Web site, and by requiring the defendant to purposefully avail himself of the forum, the spirit of the minimum contacts test remains the same. This approach allows for the flexibility essential in recognition of the needs of technology, while remaining true to the fundamental precept of personal jurisdiction, which is a deliberate action within the forum state.

As an increasing number of businesses advertise and do business over the Internet, the issue of asserting personal jurisdiction will be addressed more frequently. The approach set out above will allow the courts to structure their inquiry into whether a court may exercise jurisdiction over such a defendant in a way that adheres to the spirit and notion of the *International Shoe* test, along with its progeny, while accommodating the new issues technology, and specifically the Internet, have brought into the query.

*Carly Henek*

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140 See Zippo, 952 F. Supp. at 1124 (stating amount and type of business done over Internet relevant to personal jurisdiction).

141 See Zippo, 952 F. Supp. at 1124 (discussing difference between active and passive Web sites).

142 See *Millennium*, 33 F. Supp. 2d at 921 (stating deliberate action fundamental to personal jurisdiction).

