The Magna Carta Meets the Twenty-First Century: Personal Jurisdiction and the Internet

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INTRODUCTION

The advancement of technology has tested and transformed the laws of American society, especially the law of personal jurisdiction. The doctrine of personal jurisdiction governs the ability of a court to legitimately exercise its authority over a


2 See Oetker, supra note 1, at 613 (stating that courts have been forced to modernize personal jurisdiction law in response to technological advancements); see also Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-80 (1985) (finding that modern communication and transportation allowed for control of franchisee by nonresident parent company, satisfying minimum contacts requirement); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 295-99 (1980) (discussing impact of automobile in interstate travel); Int'l Shoe v. Washington, 326 U.S. 310, 313-14 (1945) (noting that novel business practices allow corporate entities new ways to distribute products through interstate commerce).
defendant.3 The restrictions of the court are found in the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution.4 At the inception of the personal jurisdiction doctrine, states were limited to exercising personal jurisdiction over individuals who were physically located within their geographic borders.5 Innovations such as the railroad and the automobile6 allowed a tortfeasor to transcend a forum's boundaries with ease and speed, thus evading reproach and leaving a state's citizen without redress. In 1945, the United States Supreme Court remedied this problem by expanding the scope of the personal jurisdiction doctrine in International Shoe v. Washington.7 The Court held that a forum could exercise personal jurisdiction over a foreign defendant so long as the defendant had initiated sufficient "minimum contacts" with that forum.8 The key, therefore, is a defendant's contacts with a jurisdiction, not the form or medium in which those contacts may arise.9

3 See David Bender, Personal Jurisdiction and Web Sites, 547 P.L.I. PAT. 67, 69 (1999) (defining personal jurisdiction); Costa, supra note 1, at 455 (stating that personal jurisdiction is threshold issue in all litigation and governance); Oetker, supra note 1, at 615 (explaining function of personal jurisdiction); see also BLACK'S LAW DICTIONARY, 1144 (6th ed. 1990) (defining personal jurisdiction as "the power of a court over the person of a defendant in contrast to the jurisdiction of a court over a defendant's property or interest therein").

4 See U.S. CONST. amend. V. "No person shall...be deprived of life, liberty, or property, without due process of law...." Id. The Due Process Clause of the Fourteenth Amendment of the United States Constitution states that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. Foundation of personal jurisdiction is based in Due Process Clause. Oetker, supra note 1, at 615. Traditional limits of personal jurisdiction are based in due process notions. Robert W. Hamilton & Gregory A. Castanias, Tangled Web: Personal Jurisdiction and the Internet, 24 No. 2 LIT. 27, 28 (1998). Personal jurisdiction has been molded to comport with Due Process Clause. Howard G. Zaharoff & Thomas W. Evans, Cyberspace and the Internet: Law's Newest Frontier, 41 B. B.J. 14, 24 (1997).

5 See Pennoyer v. Neff, 95 U.S. 714, 773 (1887) (holding that court cannot substitute quasi in rem jurisdiction for in personam jurisdiction); Findlay, supra note 1, at 334 (discussing holding of Pennoyer); Oetker, supra note 1, at 615 (explaining ramifications of Pennoyer); Zaharoff & Evans, supra note 4, at 24 (discussing ramifications of Pennoyer).

6 See World-Wide Volkswagen, 444 U.S. at 295, (discussing use of automobile in interstate movement); Costa, supra note 1, at 453 (discussing expansion of personal jurisdiction with Internet).

7 326 U.S. 310 (1945); see also Costa, supra note 1, at 456 (stating that standards of personal jurisdiction have been shaped by formulation of minimum contacts in Int'l Shoe); Hamilton & Castanias, supra note 4, at 28 (stating origin of modern personal jurisdiction doctrine was Int'l Shoe); Oetker, supra note 1, at 616 (stating expansion of doctrine began with Int'l Shoe).

8 See Int'l Shoe, 326 U.S. at 319-20 (creating "minimum contacts" test); see also Costa, supra note 1, at 456 (discussing Court's "minimum contacts" formulation); Hamilton & Castanias, supra note 4, at 28 (discussing "minimum contacts"); Oetker, supra note 1, at 616 (discussing "minimum contacts").

9 See Costa supra note 1, at 504 ("A party's conduct is the best indicator of his intention to
I. A NEW FORM OF TECHNOLOGY

A. The Problem

The recent emergence and exponential expansion of the Internet has created a number of legal problems, particularly in the arena of personal jurisdiction. Cyberspace defies traditional, geographic concepts of jurisdictional boundaries, since it "is a 'place' that is at the same time nowhere and everywhere." Through the Internet, the flow of information and commerce between the states and across the globe has increased at an unparalleled rate. The courts have

reach out to a particular forum’); Findlay, supra note 1, at 334 (quoting Court's decision in Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985), which rejected notion that personal jurisdiction was defeated by lack of physical contact); Hamilton & Castanias, supra note 4, at 35 ("The relevant analysis should concern the relationship between the plaintiff and the defendant. . ."). See generally Gwen M. Kalow, From the Internet to Court: Exercising Jurisdiction Over World Wide Web Communications, 65 Fordham L. Rev. 2241, 2274 (1997) (stating that 'courts must carefully apply the appropriate existing legal doctrines when deciding personal jurisdiction issues based on Web activity').

See Bender, supra note 3, at 69 (stating that Internet is being used "on a scale unimaginable" only few years ago); Curt A. Canfield & Joseph Labbe, Web or Windows?: Planning for Internet/Intranet Technology—Explosive Growth Experienced, N.Y.L.J., Jan. 21, 1997, at S2 (explaining that increased use of Internet is due, in part, to increased advertising and ease of obtaining access); Findlay, supra note 1, at 334 (stating Internet use "is growing at a remarkable rate"); see also Oetker, supra note 1, at 614 (illustrating dramatic increase in Internet use over past few years).

See Costa, supra note 1, at 455 (listing issues arising in arenas of "free speech, privacy, and intellectual property"). See generally Reno v. ACLU, 521 U.S. 844, 874, 885 (1997) (holding unconstitutional provisions of Communications Decency Act which sought to protect minors from harmful material online); Steve Jackson Games, Inc. v. United States Secret Serv., 36 F.3d 457, 460 (5th Cir. 1994) (addressing whether seizure of computer system containing private, "unopened" e-mail was unlawful interception under Federal Wiretap Act); Sega Enters. Ltd. v. Maphia, 857 F. Supp. 679, 686-87 (N.D. Cal. 1994), modified on other grounds, 948 F. Supp. 923 (N.D. Cal. 1996) (applying principles of primary and contributory copyright infringement to computer bulletin board system used to copy video games); Playboy Enterprises Inc. v. Frena, 839 F. Supp. 1552, 1555-59 (M.D. Fla. 1993) (applying defenses and standards of copyright law to computer bulletin board that posted copies of plaintiff's photographs).

See Bender, supra note 3, at 69-70 (discussing possible potential liabilities in applying personal jurisdiction doctrine); Findlay, supra note 1, at 336 (pointing out that millions of Internet users operate in disregard and/or oblivion to concept of jurisdiction); Hamilton & Castanias, supra note 4, at 27 (stating courts have been grappling with issue of applying traditional doctrine to Internet cases); Oetker, supra note 1, at 614 (stating that current technological advances require further revision of personal jurisdiction standards).


See Drodge, 992 F. Supp. at 48 (discussing how Internet has revolutionized ability to send and receive information); Jonathon T. Cain, Internet Commerce Extends the Long Arm of the Law, Wash. Tech., Feb. 20, 1977, at 20 (stating two hundred billion dollar figure will equate to approximately 20% of total sales); Findlay, supra note 1, at 334 (stating "traffic on the Internet
struggled to adapt personal jurisdiction law to this form of technology and create a uniform doctrine so that Internet users may conform their activities accordingly, and avoid being haled into an unforeseeable forum.\textsuperscript{15} The results, however, have been less than successful.\textsuperscript{16}

Initially, this Note will give a brief history of both personal jurisdiction and the Internet. Second, it will examine both cases that have found personal jurisdiction over foreign defendants through their Internet contacts,\textsuperscript{17} and those cases that have declared Internet contacts insufficient to sustain personal jurisdiction.\textsuperscript{18} Finally, this Note will explain why the stream of commerce theory is the most

\textsuperscript{15} See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) (stating uniformity is necessary to achieve predictability for out-of-state individuals and corporations); Costa, supra note 1, at 459 (stating "application of due process standards to the exercise of personal jurisdiction is meant to ensure a degree of predictability for out-of-state defendants"); Kalow, supra note 9, at 2242-43 (stating courts have been having difficulty applying traditional doctrine and uniform test is necessary); Oetker, supra note 1, at 633 (concluding that uniform system needs to be created). But see Findlay, supra note 1, at 40 (concluding that Internet does not require formulation of new standards for exercise of personal jurisdiction).


appropriate theory to apply to cases based on Internet contacts.\footnote{See CompuServe, 89 F.3d at 1264-65 (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985) when stating that defendant’s contacts with plaintiff were far from “random,” “fortuitous,” or “attenuated,” but rather were purposeful availment of laws of forum and its commercial market); Bensusan, 126 F.3d at 30 (finding that mere foreseeability that defendant’s Web site could be viewed in forum was not enough to exercise personal jurisdiction); Cybersell, 130 F.3d at 420 (finding “effects test” inapplicable as defendant did not intentionally aim its Internet conduct at forum while knowing it would cause harm there); Zippo, 952 F. Supp. at 1126 (finding that by accepting and processing subscription applications from forum and then assigning passwords to applicants, defendant was deliberately and systematically availing itself of privileges and benefits of forum); EDIAS, 947 F. Supp. at 418 (finding jurisdiction based upon terms of contract between parties and subsequent dealings, defendant had “purposely availed itself of doing business in Arizona”); Digital Equipment, 960 F. Supp. at 464-66 (finding jurisdiction based on defendant conducting business and advertising over Internet in forum); Hearst, 1997 WL 97097, at *1 (finding jurisdiction lacking where defendant’s only contact with forum was via Internet and defendant had not contracted to sell, nor sold products to residents in forum); Pres-Kap, 636 So.2d at 1353 (finding jurisdiction lacking because defendant had no deliberate contact with forum; availment not purposeful).}

II. THE INTERNET

A. Origin and History

The Internet is a culmination of computer networks.\footnote{See Bender, supra note 3, at 69 (examining technology of computer network systems); see also ACLU v. Reno, 929 F. Supp. 824, 830 (E.D. Pa. 1996), aff’d, 521 U.S. 844 (1997) (explaining Internet as connection of many individual networks); Hasbro, Inc. v. Clue Computing, Inc., 994 F. Supp. 34, 36 (D. Mass. 1997) (classifying Internet as “a giant electronic network which connects the smaller networks of the world”).} It was originally developed by the United States Department of Defense to facilitate communication in the event of a nuclear attack,\footnote{See Hasbro, 994 F. Supp. at 36 (stating Internet is used to connect universities, government agencies and other research entities); Bender, supra note 3, at 69 (stating Internet used by universities); Costa, supra note 1, at 463 (stating government, universities and corporations use networks); Kalow, supra note 9, at 2248 (discussing educational institutions’ use of Web to provide information about their schools).} but has mainly been utilized by the academic community.\footnote{Hasbro, 994 F. Supp. at 36 (discussing evolution of Internet); see also Bender, supra note 3 (stating use has “blossomed” over recent years); Costa, supra note 1, at 454 (noting growing popularity of cyberspace); Kalow, supra note 9, at 2254 (discussing Web’s popularity).} Since the Internet’s inception, its use and activity have expanded “exponentially.”\footnote{Hasbro, 994 F. Supp. at 36 (discussing distinction between Web and Internet); Costa, supra note 1, at 464 (explaining distinction between Web and Internet and uses of Web); Kalow, supra note 9, at 2247-48 (detailing uses of Web); Oetker, supra note 1, at 622 (discussing} The World Wide Web is only one segment of the Internet, enabling the transmission of information through photographs, audio, and text.\footnote{See Hasbro, 994 F. Supp. at 36 (discussing distinction between Web and Internet); Costa, supra note 1, at 464 (explaining distinction between Web and Internet and uses of Web); Kalow, supra note 9, at 2247-48 (detailing uses of Web); Oetker, supra note 1, at 622 (discussing}} Information placed on a Web site
can be "published" by anyone with access to the Internet. Due to the relative ease of creating Web sites, a vast amount of information has become accessible to anyone with Internet access across the globe. Users may access information on the Internet by either going directly to a Web site's Internet address (if known) or using a "search engine," which is designed to find sites through key terms typed in by the user. Web site addresses are identifiable through both a unique numeric address and an alphanumeric address, called a "domain name."

Domain names are registered and assigned by Network Solutions, Inc., an entity under contract with the Internet Network Information Center. These names are organized into two basic levels. First, the suffix, consisting of three letters, indicates the type of entity which has posted the Web site, "e.g. '.edu' for educational institutions, '.com' for commercial organizations, '.gov' for government organizations." In addition, a grouping of characters, Web's role as method of retrieving information from Internet).

See Hasbro, 994 F. Supp. at 36; see also Reno, 929 F. Supp. at 837 (describing procedure for publishing on Web); Kalow, supra note 9, at 2245-46 (explaining process of publishing); Thomas E. Weber, How Do I Create My Own Web Page?, WALL ST. J., Dec. 9, 1996, at R25 (providing instruction on creation of Web page).

See Hasbro, 994 F. Supp. at 36 ("A vast array of information has accumulated on the World Wide Web."); Reno, 929 F. Supp. at 835 (indicating that Web contains newsgroups on more than 15,000 different subjects); Hamilton & Castanias, supra note 4, at 29 (discussing fact that companies selling information use Web to deliver this information); Kalow, supra note 9, at 2247 (stating that there are numerous uses of Web to satisfy diverse user base).

See Findlay, supra note 1, at 335 (discussing use of Internet); Hamilton & Castanias, supra note 4, at 29 (noting how development of graphical user interface opened up communication over Internet); Kalow, supra note 9, at 2246 (discussing accessibility of information on Internet); Weber, supra note 25, at R25 (illustrating that Web page can be retrieved on Internet by people across globe).

See Intermatic, Inc. v. Toeppen, 947 F. Supp. 1227, 1231 (N.D. Ill. 1996) (noting that most users rely on Web browsers to access Internet); Hasbro, 994 F. Supp. at 36 (discussing methods of accessing sites); Kalow, supra note 9, at 2246 (discussing use of hyper-links).

See Hasbro, 994 F. Supp. at 36-37 (discussing domain names); see also Intermatic, 947 F. Supp. at 1230-31 (discussing details of domain naming system); M.T.V. Networks v. Curry, 867 F. Supp. 202, 204 n.2 (S.D.N.Y. 1994) (discussing value of domain names); Costa, supra note 1, at 464 (stating that users access Web site through its unique domain name).

See Hasbro, 994 F. Supp. at 37; see also Intermatic, 947 F. Supp. at 1231 (discussing registration of domain names); Curry, 867 F. Supp. at 204 n.2 (stating that uniqueness of Internet address ensured by registration services of Internet Network Information Center); Zaharoff & Evans, supra note 4, at 14 (discussing registration and assignment of domain names).

See Hasbro, 994 F. Supp. at 37 (stating "[d]omain names are organized on two levels"); Kenneth S. Dueker, Trademark Law Lost in Cyberspace: Trademark Protection for Internet Addresses, 9 HARV. J. L. & TECH. 483, 492-93 (explaining domain name level structure); Zaharoff & Evans, supra note 4, at 14 (discussing classification levels).

See Hasbro, 994 F. Supp. at 37; see also Intermatic, 947 F. Supp. at 1231 (discussing registration for ".com," ".edu," ".gov," and ".net" domain levels); Dueker, supra note 31, at 512 n.51 (discussing registry for top level domains); Zaharoff & Evans, supra note 4, at 14
chosen by the entity, precedes the primary identifying suffix and makes the domain name unique. Problems arise when competing entities choose the same domain name, and most Internet litigation has revolved around such conflicts.

B. Methods of Communication

The courts have discussed three methods of communication on the Internet: real-time communications, person-to-person messages, and information retrieval. These methods have different characteristics leading to varying degrees of contact which could aid in a personal jurisdiction inquiry.

Real-time communications involve more than one person and receipt is instantaneous. Most Internet users engage in this form of communication in “chat rooms,” a computer forum provided by commercial on-line providers in which participants type and send messages, messages, and messages.

(giving examples of different suffixes used).

33 See Hasbro, 994 F. Supp. at 37; see also Panavision Int’l v. Toeppen, 938 F. Supp. 616, 618 (C.D. Cal. 1996), aff’d, 141 F.3d 1316 (9th Cir. 1998) (noting that businesses typically use company name with suffix “.com” as Internet address); Dueker, supra note 33, at 492-93 (discussing Internet naming conventions); Ryan Yagura, Does Cyberspace Expand the Boundaries of Personal Jurisdiction?, 38 IDEA: J.L. & TECH. 301, 303 (1988) (discussing domain names); Zaharoff & Evans, supra note 4, at 14 (emphasizing that under current Internet naming scheme only one organization can have particular name).

34 See Hasbro, 994 F. Supp. at 37; Yagura, supra note 33, at 303 (discussing problems with domain names); see also Dueker, supra note 33, at 493 (stating that unexpected melee has ensued in trademark arena over Internet addresses); Zaharoff & Evans, supra note 4, at 14 (identifying problems arising when several companies conduct business under same “mark” and seek to own such as their primary Internet address).

35 See Bender, supra note 3, at 70 (stating that trademark infringement actions are frequent); Dueker, supra note 31, at 493 (stating that there are limited number of ways to make domain names distinctive, which leads to inadvertent infringement); Hamilton & Castanias, supra note 4, at 30 (stating most litigation has involved trademark infringement); Zaharoff & Evans, supra note 4, at 14 (stating that “[s]erious litigation has already occurred . . . by trademark owners. . . .”).


37 See Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119, 1123-24 (W.D. Pa. 1997) (employing “sliding-scale” method of analysis); Reno, 929 F. Supp. at 834 (classifying methods of communication for analysis); Cendali & Weinstein, supra note 36, at 980 (stating how sending e-mail can be construed as purposeful availment of recipient forum); Oetker, supra note 1, at 621, 623 (noting that different methods of Internet communication may lead to different degrees of contact, ultimately affecting personal jurisdiction analysis, and discussing various cases analyzing specific personal jurisdiction test employed by each court).

messages to each other.\textsuperscript{39} This form of communication has been aptly compared to telephone communication by the courts.\textsuperscript{40}

Person-to-person communication, commonly referred to as e-mail (electronic mail), has been compared to mailing a letter through the United States Postal Service,\textsuperscript{41} since one party may send another a message without the receiver's knowledge or consent.\textsuperscript{42} A notable difference between e-mail and conventional mail is that an e-mail address does not notify the sender of the geographic location of the receiver.\textsuperscript{43} This should be relevant to a court when determining purposeful availment.

Information retrieval is the most debated topic in the field of personal jurisdiction jurisprudence.\textsuperscript{44} This form of communication involves one party posting a Web site on the Internet containing information as text, audio, video, and pictures, allowing all who have access to the World Wide Web to view the site.\textsuperscript{45} Hosts possess two addresses for their sites: a numeric “IP” address and an alphanumeric “domain name.”\textsuperscript{46} The publisher is aware that their

\textsuperscript{39} See Reno, 929 F. Supp. at 835 (discussing real-time communications or “chat rooms”); Costa, supra note 1, at 464 (describing “Internet Relay Chat” and its real-time capabilities); Krol, supra note 38, at 257-58 (discussing “chat rooms” as common form); Oetker, supra note 1, at 621 (discussing “chat rooms”).

\textsuperscript{40} See Reno, 929 F. Supp. at 835 (comparing Internet Relay Chat to telephone party line); Plus Sys., Inc. v. New England Network, Inc., 804 F. Supp. 111, 119 n.3 (D. Col. 1992) (noting that court rulings serve to analogize Internet to telephone for purpose of determining contacts in personal jurisdiction analysis); Costa, supra note 1, at 497 (emphasizing that courts have compared telephones to Internet); Oetker, supra note 1, at 621 (comparing real-time communications to telephones).

\textsuperscript{41} See Reno, 929 F. Supp. at 834 (comparing e-mail to sending first class letter); Costa, supra note 3, at 463-64 (discussing e-mail); Krol, supra note 38, at 92, 95 (making same comparison); Oetker, supra note 1, at 621 (discussing same analogy).

\textsuperscript{42} See Krol, supra note 38, at 92, 95 (stating e-mail can be sent without recipient's consent); Oetker, supra note 1, at 621 (describing act as unilateral).

\textsuperscript{43} See Krol, supra note 38, at 92-93 (explaining impossibility of determining physical location of recipient in some circumstances); Oetker, supra note 1, at 621 (discussing difference between conventional mail and e-mail).

\textsuperscript{44} See generally Reno, 929 F. Supp. at 835-36 (describing three methods of file retrieval as “ftp,” “gopher” and World Wide Web); Costa, supra note 1, at 464 (describing information retrieval); Oetker, supra note 1, at 622 (describing information retrieval as “probably the most well-known method of Internet communication. . .”).

\textsuperscript{45} See Oetker, supra note 1, at 622 (discussing forms of information available); see also Reno, 929 F. Supp. at 836 (explaining Web as “containing information from a diversity of sources”); Costa, supra note 1, at 464 (describing characteristics of information retrieval); Coe William Ramsey, Burning the Global Village to Roast a Pig: The Communication’s Decency Act of 1996 Is Not “Narrowly Tailored” in Reno v. ACLU, 32 WAKE FOREST L. REV. 1283, 1288 (1997) (discussing forms of information available on Web sites).

Web site is viewable from anywhere in the world. While the receiver unilaterally accesses the material, "the sending computer is actively sending transmissions into the state of the receiver," which may form the basis of personal jurisdiction over the sender since the publisher is knowingly sending electronic messages into foreign jurisdictions.

III. THE DEVELOPMENT OF PERSONAL JURISDICTION DOCTRINE

A. From Pennoyer to International Shoe

The Due Process requirements of the 5th and 14th Amendments of the United States Constitution place restrictions on courts' jurisdictional reach. The Court established in *Pennoyer v. Neff* that, absent consent, a court could only exercise jurisdiction over a defendant who was physically present in its jurisdiction. addresses); *Oetker, supra* note 1, at 622 (explaining "information must be reached via Internet address").


49 See U.S. CONST. amend. V. "No person shall... be deprived of life, liberty, or property, without due process of law..." *Id.* The Due Process Clause of the Fourteenth Amendment of the United States Constitution states that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. Foundation of personal jurisdiction is based in Due Process Clause. *See Oetker, supra* note 1, at 615. Traditional limits of personal jurisdiction are based in due process notions. *See Robert W. Hamilton & Gregory A. Castanias, Tangled Web: Personal Jurisdiction and the Internet, 24 NO. 2 LIT. 27, 28 (1998).* Personal jurisdiction has been molded to comport with Due Process Clause. *See Howard G. Zaharoff & Thomas W. Evans, Cyberspace and the Internet: Law's Newest Frontier, 41 B. J., 14, 24 (1997).*

50 See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (1980) (stating that "the Due Process Clause of the Fourteenth Amendment limits the power of the state court to render a valid personal judgment against a nonresident defendant."); *Costa, supra* note 1, at 460 (discussing Due Process clause of 14th Amendment); *Oetker, supra* note 1, at 615 (discussing protections of 5th and 14th Amendments); David L. Stott, *Personal Jurisdiction in Cyberspace: The Constitutional Boundary of Minimum Contacts Limited to a Web Site, 15 J. MARSHALL J. COMPUTER & INFO. L. 819, 826 (1997) (discussing constitutional limits placed on personal jurisdiction).

51 See *Pennoyer v. Neff, 95 U.S. 714, 773 (1877)* (explaining extent of states' jurisdictional reach); *see also* Kevin M. Clement, *Jurisdictional Salvation and the Hague Treaty, 85 CORNELL L.*
Technological advances, such as the railroad and automobiles, allowed individuals to transcend geographic jurisdictional boundaries with ease and speed.52 The United States Supreme Court expanded the scope of personal jurisdiction to ensure the states' interests in providing a forum where its citizens could receive compensation for the harm caused by a foreigner.53 The Court held that "due process requires [that a defendant] 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.'"54

B. Specific and General Jurisdiction

The Supreme Court formed two types of jurisdiction: general jurisdiction and specific jurisdiction.55 General jurisdiction has been defined as "continuous and systematic" contacts with the forum that are unrelated to the transaction giving rise to the lawsuit.56 Few cases involving Internet litigation have asserted general jurisdiction.57

If the lawsuit is related to the defendant's contacts with the forum,
then courts utilize a two-prong specific jurisdiction analysis. Both prongs must be satisfied for a state to assert personal jurisdiction. Under the first prong, the courts must examine the quality and quantity of the defendant's contacts with the forum. That is, courts must first evaluate "how numerous and deliberate the defendant's contacts with the forum state were." Whether one could foresee being haled into court in the forum is insufficient to assert jurisdiction. The defendant must "purposely avail itself of the privilege of conducting activities within the forum State." The judge must then analyze the relationship between the contacts and the suit.

The second prong of the test requires the courts to determine the

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58 See Kalow, supra note 9, at 2251 (stating that specific jurisdiction entails two-part test); Mirzaian, supra note 51, at 75 (discussing two prong test); Oetker, supra note 1, at 617 (describing specific jurisdiction analysis as two-prong test).


60 See Kalow, supra note 9, at 2241 (stating both prongs must be satisfied to assert personal jurisdiction); Oetker, supra note 1, at 617 (stating same).

61 See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472-78 (1985) (explaining first prong of analysis); Oetker, supra note 1, at 617 (stating same); Sanchez, supra note 61, at 1710 (discussing quality and quantity analysis); Simard, supra note 61, at 566 (discussing first prong of analysis).

62 Oetker, supra note 1, at 617; see also Burger King, 471 U.S. at 475-76 nn. 17-18 (articulating requirement); Sanchez, supra note 61, at 1710 (discussing quality and quantity analysis); Simard, supra note 61, at 566 (discussing first prong of analysis).


reasonableness of asserting jurisdiction over the foreign defendant.66 The court must ask whether the exercise of jurisdiction by the forum would offend "traditional conception[s] of fair play and substantial justice."67 The defendant's contacts must rise to the level "that he should reasonably anticipate being haled into court there."68 The Supreme Court, in World-Wide Volkswagen,69 identified five "gestalt" factors that must be considered when determining fairness.70 They are: (1) the defendant's burden of appearing; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the judicial system's interest in obtaining the most effective resolution of the controversy; and (5) the common interest of all sovereigns in promoting substantive social policies.71 Shortly thereafter, the Court stated that when it was found that the defendant made deliberate contacts with the forum, the burden shifted to the defendant to "present a compelling case that the presence of some other considerations


68 World-Wide Volkswagen, 444 U.S. at 297; see also Nicol, supra note 67, at 313 (discussing key factors court uses in analyzing jurisdiction issues with Internet cases); Oetker, supra note 1, at 617 (quoting same); Perschbacher, supra note 67, at 515 (describing key factors that influence whether court will exercise personal jurisdiction based on Internet contacts).

69 444 U.S. 286 (1980); see also Findlay, supra note 1, at 336 (discussing minimum contacts); Oetker, supra note 1, at 617 (discussing contacts). See generally Cameron & Johnson, supra note 67, at 679 (discussing minimum contacts application to Internet cases).

70 See World-Wide Volkswagen, 444 U.S. at 297 (describing "gestalt factors" that must be analyzed when considering fairness); see also United Elec., Radio and Machine Workers of Am. v. 163 Pleasant St. Corp., 960 F.2d 1080, 1088 (1st Cir. 1992) (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985), listing "gestalt factors"); Oetker, supra note 1, at 617 (discussing fairness evaluation). See generally Kalow, supra note 9, at 2252 (discussing fairness evaluation).

would render jurisdiction unreasonable."  

IV. PERSONAL JURISDICTION CASES EXAMINING INTERNET CONTACTS

There has been no consensus among the courts of the United States on the requirements necessary for a forum to establish personal jurisdiction over a foreign defendant based on Internet contacts. The cases may, however, be categorized into three units for analytical purposes: (1) cases finding jurisdiction based on Internet contacts; (2) cases finding jurisdiction based on Internet contacts plus something more; and (3) cases finding Internet contacts insufficient to exercise personal jurisdiction.

A. Internet Contacts Supporting Personal Jurisdiction

In *Inset Systems v. Instruction Set, Inc.*, the plaintiff ("Inset") sued the defendant ("Instruction") for trademark infringement, claiming that Instruction had unlawfully used its domain name (inset.com) and toll-free number (1-800-US-INSET). Instruction had neither an office in the forum, nor regular business activity in the state. The court found that Instruction advertising via the Internet supported the contention that it was directing its business to "all" states. The court also discovered that Instruction’s Web site could "reach as many as 10,000 Internet users in Connecticut alone." Such potential led the court to believe that Instruction could "reasonably anticipate the possibility of being haled into court [in the forum]."
The court was more concerned with the medium involved rather than the quality or quantity of contacts.79

In *Maritz, Inc. v. Cybergold, Inc.*, 80 Maritz brought suit against Cybergold seeking injunctive relief for Cybergold's trademark infringement upon Maritz's domain name.81 The court stated that the defendant intentionally created a Web site that could transmit to any receiver across the globe82 and was "continually accessible to every Internet-connected computer in [the forum]."83 The court found that the number of transmissions to the state's residents (131 times) showed that the defendant intended to purposely avail itself in the forum.84 Even assuming arguendo that the tortuous conduct had been committed in the defendant's home state, the assertion of personal jurisdiction, said the court, would be proper because "the allegedly infringing activities have produced an effect in [the forum] as they have allegedly caused Maritz economic injury."85 The court, in emphasizing the medium of contact,86 seems to indicate that the mere creation of a Web site opens one to litigation anywhere, since it is foreseeable that anyone can access it and possibly be injured.

75, at 105 (discussing same).
79 See *Inset Sys.*, 937 F. Supp. at 164. See generally *Duffey, supra* note 75, at 133 (discussing trademark infringement); *Oswald, supra* note 75, at 255 (discussing same); *Staffin, supra* note 75, at 105 (discussing same).
80 947 F. Supp. 1328 (E.D. Mo. 1996). See generally *Inset Sys.*, 937 F. Supp. at 162-63 (discussing trademark law); *Costa, supra* note 1, at 453 (discussing trademark law as it applies to Internet); *Flower, supra* note 80, at 845 (discussing personal jurisdiction in Internet cases).
81 See *Maritz*, 947 F. Supp. at 1329 (discussing nature of claim). See generally *Inset Sys.*, 937 F. Supp. at 162-63 (discussing trademark law as it applies to Internet); *Costa, supra* note 1, at 453 (discussing trademark law as it applies to Internet); *Flower, supra* note 80, at 845 (discussing personal jurisdiction in Internet cases).
82 See *Maritz*, 947 F. Supp. at 1330. See generally *Inset Sys.*, 937 F. Supp. at 162-63 (discussing trademark law); *Costa, supra* note 1, at 453 (discussing trademark law as it applies to Internet); *Flower, supra* note 80, at 845 (discussing personal jurisdiction in Internet cases).
83 *Maritz*, 947 F. Supp. at 1330. See generally *Inset Sys.*, 937 F. Supp. at 162-63 (discussing trademark law); *Costa, supra* note 1, at 453 (discussing trademark law as it applies to Internet); *Flower, supra* note 80, at 845 (discussing personal jurisdiction in Internet cases).
84 See *Maritz*, 947 F. Supp. at 1333 (discussing contacts). See generally *Inset Sys.*, 937 F. Supp. at 162-63 (discussing trademark law); *Costa, supra* note 1, at 453 (discussing trademark law as it applies to Internet); *Flower, supra* note 80, at 845 (discussing personal jurisdiction in Internet cases).
85 *Maritz*, 947 F. Supp. at 1331. See generally *Inset Sys.*, 937 F. Supp. at 162-63 (discussing trademark law); *Costa, supra* note 1, at 453 (discussing trademark law as it applies to Internet); *Flower, supra* note 80, at 845 (discussing personal jurisdiction in Internet cases).
86 See *Maritz*, 947 F. Supp. at 1330 (emphasizing Web site was primarily used for advertising and that any of approximately 12,000 Internet users in forum could access it). See generally *Inset Sys.*, 937 F. Supp. at 162-63 (discussing trademark law); *Costa, supra* note 1, at 453 (discussing trademark law as it applies to Internet); *Flower, supra* note 80, at 845 (discussing personal jurisdiction in Internet cases).
Such decisions could potentially have devastating effects.87

B. Internet Contacts Plus Other Contacts Supporting Personal Jurisdiction

Some courts have found the exercise of jurisdiction proper over a defendant who has maintained Internet contacts with the forum if there were other independent contacts as well. Heroes, Inc. v. Heroes Foundation88 was a trademark infringement case89 where the defendant's only contacts with the forum were a newspaper advertisement published in The Washington Post and the posting of a Web site on the Internet.90 In light of the combination of contacts, the court did not have to decide whether Internet contacts alone could suffice for personal jurisdiction purposes.91 The court emphasized, however, the fact that "unlike hard-copy advertisements, Internet advertisements are in electronic printed form so that they can be accessed again and again by many more potential customers."92 The court stated "that the defendant's home page... constitute[d] a reasonable connection between the defendant and the forum."93 The court determined that the "pervasive and durable nature" of its electronic contacts was illustrative of the defendant's purposeful availment of the forum's benefits.94 The court's focus primarily was upon the medium of the

87 See Findlay, supra note 1, at 340 (emphasizing that disregard of minimum contacts test in Internet cases "presents a real threat to the growth of Internet commerce"); Oetker, supra note 1, at 633 (discussing great benefits of Internet on global economy). See generally Costa, supra note 1, at 453 (discussing courts' use of minimum contacts test); Christopher W. Merger, World Wide Web Advertising: Personal Jurisdiction Around the Whole Wide World?, 54 WASH. L. REV. 1269, 1269 (discussing courts' use of minimum contacts test).
89 See id. at 1.
91 See Heroes, 958 F. Supp. at 5.
94 See Costa, supra note 1, at 483; see also Heroes, 958 F. Supp. at 5 (discussing persistent nature of site); Bender, supra note 3, at 90 (stating court found purposeful availment satisfied
An analytical framework with respect to personal jurisdiction over the Internet was created in *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.* In this case, virtually all the defendant’s contacts with the forum were through the Internet. The court began its analysis by stating 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.”

The court found that the defendant’s contacts were sufficient to exercise personal jurisdiction using, what the court termed a “sliding scale,” which evaluated the substantive nature of the defendant’s Internet contacts. The sliding scale is a theoretical continuum. At one end are “active” Web sites, whereby the defendant “enters into contracts with residents of a foreign through site’s durable nature); *Vanderlaan, supra* note 90, at 1426-27 (discussing holding in *Heroes*). See generally Murphy, *supra* note 93, at 244 (discussing *Heroes*).


97 *Zippo*, 952 F. Supp. at 1126 (stating that defendant had advertised to forum, sold approximately 3,000 passwords to forum subscribers and entered into seven contracts with Internet access providers to service customers located in forum); see also Shulman, *supra* note 95, at 792-93 (analyzing *Zippo* approach to resolving personal jurisdiction issue); Tammy S. Trout-Macintyre, *Personal Jurisdiction and the Internet: Does the Shoe Fit?*, 21 HAMLINE L. REV. 223, 223-27 (1997) (discussing *Zippo* analysis). See generally *Vanderlaan, supra* note 90, at 1425 (discussing *Zippo* decision).
jurisdiction that involve the knowing and repeated transmission of computer files over the Internet."\(^{103}\) In such circumstances, the defendant has purposely availed itself of the forum and assertion of personal jurisdiction is proper.\(^{104}\) At the other extreme are "passive" sites, involving circumstances where the defendant has "simply posted information on the Internet 'available to those who are interested in it.'"\(^{105}\) The court stated that personal jurisdiction should not be exercised based on a passive Web site.\(^{106}\) In between is the "middle ground," involving "interactive Web sites where a user can exchange information with the host computer."\(^{107}\) The assertion of jurisdiction is determined by analyzing "the level of interactivity and commercial nature of the exchange of information . . . ."\(^{108}\)

The court emphasized that the medium should not affect personal jurisdiction analysis.\(^{109}\) The defendant continuously and knowingly assigned forum residents passwords to access its site's information.\(^{110}\) The defendant was aware that its contracts with its servers would lead to business in the forum.\(^{111}\) Furthermore, both of these actions were absolutely within the defendant's control.\(^{112}\)

\(^{103}\) See Zippo, 952 F. Supp. at 1124; see also Shulman, supra note 95, at 793 (discussing Zippo approach); Vanderlaan, supra note 90, at 1425 (discussing Court's holding in Zippo); Wilske & Schiller, supra note 99, at 165-66 (discussing Court's holding in Zippo). See generally Friel, supra note 99, at 318-19 (examining Court's holding in Zippo); Russell, supra note 99, at 168-69 (discussing Court's holding in Zippo); Sikora III, supra note 99, at 183-84 (analyzing Court's holding in Zippo).

\(^{104}\) See Zippo, 952 F. Supp. at 1124; see also Wilske & Schiller, supra note 99, at 165-66 (discussing Court's holding in Zippo). See generally Sikora III, supra note 99, at 183-84 (analyzing Court's holding in Zippo).

\(^{105}\) Costa, supra note 1, at 481 (quoting Zippo, 952 F. Supp. at 1124).

\(^{106}\) See Zippo, 952 F. Supp. at 1124 (describing passive Web sites); see also Sanchez, supra note 61, at 1704 (discussing analysis in Zippo); Shulman, supra note 96, at 793 (discussing passive Web sites); Vanderlaan, supra note 90, at 1425 (discussing Court's holding in Zippo).

\(^{107}\) Zippo, 952 F. Supp. at 1124. See generally Friel, supra note 99, at 318-19 (examining Court's holding in Zippo); Russell, supra note 99, at 168-69 (discussing Court's holding in Zippo); Sikora III, supra note 99, at 183-84 (analyzing Court's holding in Zippo).

\(^{108}\) Zippo, 952 F. Supp. at 1124. See generally Friel, supra note 99, at 318-19 (examining Court's holding in Zippo); Russell, supra note 99, at 168-69 (discussing Court's holding in Zippo); Sikora III, supra note 99, at 183-84 (analyzing Court's holding in Zippo).

\(^{109}\) See Zippo, 952 F. Supp. at 1124 ("[D]ifferent results should not be reached simply because business is conducted over the Internet.").

\(^{110}\) See id. at 1126; see also Sanchez, supra note 61, at 1704 (discussing analysis in Zippo); Vanderlaan, supra note 90, at 1425 (discussing Court's holding in Zippo).

\(^{111}\) See Zippo, 952 F. Supp. at 1124. See generally Friel, supra note 100, at 318-19 (examining Court's holding in Zippo); Russell, supra note 100, at 168-69 (discussing Court's holding in Zippo); Sikora III, supra note 100, at 183-84 (analyzing Court's holding in Zippo).

\(^{112}\) See Zippo, 952 F. Supp. at 1124. See generally Friel, supra note 100, at 318-19 (examining Court's holding in Zippo); Russell, supra note 100, at 168-69 (discussing Court's holding in Zippo); Sikora III, supra note 100, at 183-84 (analyzing Court's holding in Zippo).
These factors allowed the court to conclude that jurisdiction was proper.\textsuperscript{113}

Panavision International, L.P. v. Toeppen,\textsuperscript{114} was a trademark infringement case\textsuperscript{115} where the defendant was found to be a "cyber-squatter"\textsuperscript{116} (one who registers a domain name of a company on the Internet in anticipation of later licensing the rights of that name to the company for use on the World Wide Web). The court noted that the defendant was not conducting business in the forum, but he intentionally acted in a manner that had harmful effects in the forum.\textsuperscript{117} The court applied the "effects test" articulated in Calder v. Jones,\textsuperscript{118} i.e., if the defendant's acts were intended to, and did, harm the plaintiff in the forum, the purposeful availment prong has been satisfied.

It seems the court could have asserted personal jurisdiction over the defendant without using the "effects test." It is ambiguous whether a defendant intended to avail itself of a forum, when their only contacts have been through the Internet. In Panavision, however, the defendant also sent a letter to the plaintiff requesting

\textsuperscript{113} See Zippo, 952 F. Supp. at 1128 (stating jurisdiction was proper); see also Sanchez, supra note 107, at 1704 (discussing analysis in Zippo); Vanderlaan, supra note 107, at 1425 (discussing Court's holding in Zippo).

\textsuperscript{114} 141 F.3d 1316 (9th Cir. 1998).

\textsuperscript{115} See id. at 1318 (discussing issues presented).

\textsuperscript{116} Panavision, 141 F.3d at 1318. On Toeppen's "panavision.com" Web site, he had aerial photographs of Pana, Illinois; on his "panaflex.com" site, he simply posted word "Hello." Id. at 1319. Toeppen, at time of his trial, had registered over 100 domain names of well-known companies for useless Web sites on the Internet. Included were "americanstandard.com," "aircanada.com," "deltaairlines.com," "flydelta.com," "northwestairlines.com," "yankeestadium.com," and "frenchopen.com." See Hamilton & Castanias, supra note 4, at 32. Internet is a broad medium for jurisdictional problems and is not itself an independent contact to allow assertion of jurisdiction. See Costa, supra note 1, at 458. Trademark dilution accomplished through intentional "pirating" of domain names has become a serious problem. See generally Sally M. Abel, Trademark Issues in Cyberspace: The Brave New Frontier, 5 MICH. TELECOMM. TECH. L. REV. 91 (1998/99).

\textsuperscript{117} See Panavision, 141 F.3d at 1322 (stating that defendant's intentional action justified assertion of jurisdiction); see also Abel, supra note 116, at 3 (asserting that intentional dilutions may warrant jurisdiction over cyberspace); Costa, supra note 1, at 458 (discussing defendant's intentional actions). See generally Michael E. Allen, Analyzing Minimum Contacts Through the Internet: Should the World Wide Web Mean World Wide Jurisdiction?, 31 IND. L. REV. 385, 385 (1998) (analyzing whether certain forum contacts via Internet warrant assertion of personal jurisdiction).

\textsuperscript{118} 465 U.S. 783 (1984) (discussing "effects test"); see also Allen, supra note 117, at 7 (stating that Panavision vividly illustrates how "effects test" can be used to transform extremely tenuous contact with distant state through Internet related activity into contact sufficient to satisfy minimum contacts test); Karin Mika & Aaron J. Reber, Internet Jurisdictional Issues: Fundamental Fairness in a Virtual World, 30 CREIGHTON L. REV. 1169, 1180 (1997) (explaining factors considered by Calder Court). See generally Oetker, supra note 1, at 615 (explaining evolution of modern personal jurisdictional doctrine).
$13,000 in exchange for the rights to the domain name.\textsuperscript{119} Such a letter could be construed as a purposeful attempt to solicit business in the forum.\textsuperscript{120} The court, therefore, was correct in its result, yet it seems the court’s rationale could be justified on the specific facts of the case without employing the effects test. Some commentators suggest, however, that the effects test is an acceptable rationale for courts to use in Internet cases.\textsuperscript{121}

**EDIAS Software International, L.L.C. v. BASIS International Ltd.**\textsuperscript{122} was a case involving both contract and tort actions.\textsuperscript{123} Pursuant to their agreement, EDIAS was to distribute BASIS’ software products in various European countries.\textsuperscript{124} EDIAS had offices in Arizona (the forum), Germany and the Netherlands.\textsuperscript{125} BASIS was located in

\textsuperscript{119} See *Panavision*, 141 F.3d at 1319 (discussing defendant’s correspondence); see also Abel, *supra* note 117, at 3 (announcing proposition that cyberspace is medium of personal jurisdiction problems); Costa, *supra* note 1, at 458 (stating that notwithstanding any forum of Internet presence as accessible by any user belies notion of per se purposeful availment of particular forum); Vanderlaan, *supra* note 90, at 1399 (explaining that cyberspace has no traditional boundaries).

\textsuperscript{120} See *Panavision*, 141 F.3d at 1319 (construing defendant’s act of sending letter to plaintiff, in addition to Internet contacts, as evidence of minimum contacts and “purposeful availment”); see also Allen, *supra* note 117, at 385 (analyzing whether single contact was sufficient to render defendant amenable to personal jurisdiction); Vanderlaan, *supra* note 90, at 1399 (discussing purposeful availment with its relationship to jurisdiction in realm of cyberspace). See generally Oetker, *supra* note 1, at 621 (discussing problem of comparing e-mail to conventional letters).

\textsuperscript{121} See Allen, *supra* note 117, at 385 (stating “effects test” doctrine may justify assertion of jurisdiction over foreign defendant with Internet contacts); Costa, *supra* note 1, at 500-01 (supporting “effects test”); Oetker, *supra* note 1, at 615 (suggesting that “effects test” doctrine is means of rationalizing assertion of jurisdiction over defendant with Internet contacts).


\textsuperscript{123} See EDIAS, 947 F. Supp. at 415 (discussing plaintiff’s complaint); see also Abel, *supra* note 116, at 3 (arguing how personal jurisdiction is hard to establish over free computer space); Costa, *supra* note 1, at 458 (discussing difficulties of defendant’s fighting assertions of personal jurisdiction based on Internet contacts); Puathasnon, *supra* note 122, at 691 (discussing defendants’ difficulties in resisting claims of personal jurisdiction).

\textsuperscript{124} See EDIAS, 947 F. Supp. at 414 (discussing contract). See generally Breen, *supra* note 122, at 763 (stating that Internet contacts are insufficient to assert jurisdiction over foreign defendant); Puathasnon, *supra* note 122, at 691 (stating that Internet contacts are insufficient to satisfy minimum contacts test); Sanford, *supra* note 122, at 1 (stating Internet contacts alone are insufficient to establish jurisdiction over foreign defendant).

\textsuperscript{125} See EDIAS, 947 F. Supp. at 414 (discussing contacts). See generally Sanchez, *supra* note 61, at 1704 (stating minimum contacts test is vague); Shulman, *supra* note 95, at 791 (discussing personal jurisdiction applied to Internet contacts).
The contract was signed in New Mexico and contained a clause stating New Mexico law would govern. BASIS became dissatisfied with EDIAS and terminated their agreement. BASIS subsequently sent e-mail messages to its employees and posted a "Press release" on its Web site explaining its reasons, which led to the suit.

The court found the exercise of personal jurisdiction over the defendant proper based upon the subsequent dealings between the parties after the formation of the contract and because the defendant's e-mail and Web site messages were intended to cause harm to the plaintiff in the forum. In applying the effects test, the court stated "BASIS should not be permitted to take advantage of modern technology through an Internet Web page and simultaneously escape . . . jurisdiction." The court concluded that the defendant had "purposely availed itself of the privilege of doing business" in the forum.

See EDIAS, 947 F. Supp. at 414 (discussing contacts); see also Puathasnon, supra note 122, at 691 (discussing same); Sanford, supra note 122, at 1 (discussing same); Shulman, supra note 95, at 791 (discussing same).

See EDIAS, 947 F. Supp. at 414 (discussing contacts); see also Mathew Phelps, Recent Developments: A Survey of Recent Developments in the Law VIII Jurisdiction and the Internet, 25 WM. MITCHELL L. REV. 1135, 1135 (1999) (discussing difficulty of analyzing Internet contacts for jurisdiction purposes); Sanford, supra note 122, at 1 (discussing problem Internet poses to personal jurisdiction doctrine); Shulman, supra note 95, at 781 (discussing difficulty of applying personal jurisdiction doctrine to Internet contacts).

See EDIAS, 947 F. Supp. at 414 (discussing contacts); see also Wilske & Schiller, supra note 99, at 165-66 (discussing EDIAS).

See EDIAS, 947 F. Supp. at 414 (discussing contacts); see also Wilske & Schiller, supra note 99, at 165-66 (discussing EDIAS).

See EDIAS, 947 F. Supp. at 416 (discussing numerous telephone calls and e-mail messages between parties); see also Wilske & Schiller, supra note 99, at 165-66 (discussing EDIAS).

See EDIAS, 947 F. Supp. at 418 (classifying harms as intentional); see also Brainerd v. Governors of the Univ. of Arizona, 837 F.2d 1257, 1258 (9th Cir. 1989) (holding that statements made by Canadian during phone call to Arizona conferred jurisdiction in Arizona since defendant knew call would cause harm in forum).

See EDIAS, 947 F. Supp. at 418 (emphasis added). See also Calder v. Jones, 465 U.S. 783, 789-90 (1984) (holding California's exercise of jurisdiction over Florida defendant proper, using effects test); Panavision v. Toeppen, 141 F.3d 1316, 1318 (9th Cir. 1998) (explaining Internet contact was insufficient to assert jurisdiction over foreign defendant). See generally Allen, supra note 117, at 385 (stating that although "effects test" may be used to establish jurisdiction for defendant's intentional contacts, such assertion of jurisdiction with respect to cyberspace contacts is "unlikely"); Oetker, supra note 1, at 617-18 (stating "mere likelihood" that activities will reach forum is insufficient to exercise personal jurisdiction).

See EDIAS, 947 F. Supp. at 418. But see Allen, supra note 117, at 385 (stating that although "effects test" may be used to establish jurisdiction for defendant's intentional contacts, such assertion of jurisdiction with respect to cyberspace contacts is "unlikely"); Oetker, supra note 1, at 617-18 (stating "mere likelihood" that activities will reach forum is insufficient to exercise personal jurisdiction).
It seems that the subsequent dealings between the parties could have satisfied the purposeful availment requirement without the court resorting to an effects test analysis. Contacts included a contract, telephone, e-mail and fax communications, as well as BASIS' sale of approximately $858,000 worth of merchandise to forum consumers. These contacts suggest that the defendant "could have anticipated being 'haled into court' in Arizona." In Digital Equipment Corp. v. AltaVista Technology, Inc., Digital brought suit against AltaVista alleging the defendant violated a licensing agreement it had with Digital to use the name "AltaVista." The court found the exercise of personal jurisdiction proper over AltaVista, regardless of the defendant's attempts to structure its relationship with the plaintiff in order to avoid being subject to suit in the forum, stating:

[AltaVista] may well have done everything possible to avoid jurisdiction in terms of its contract and non-Web contacts with [the forum]. [AltaVista's] Web-site, its design, the extent to which it infringed Digital's trademark, and breached the contract, however necessarily changes the equation: This Web-site, in context, creates minimum contacts.

The court noted that it did not have to decide whether Internet activity alone could subject a foreigner to personal jurisdiction in the forum. The court held the assertion of jurisdiction was proper

134 See EDIAS, 947 F. Supp. at 415, 417 (discussing contacts and dealings between parties); see also Hirsch v. Blue Cross, Blue Shield of Kansas City, 800 F.2d 1474, 1478 (9th Cir. 1986) (finding that continuous obligations to forum residents may satisfy purposeful availment); Abel, supra note 116, at 3 (discussing contacts); Sanford, supra note 122, at 1 (discussing Internet contacts with foreign forum); Schulman, supra note 95, at 791 (discussing contacts).


136 960 F. Supp. 456 (D. Mass. 1997); see also Abel, supra note 116, at 3 (asserting that intentional dilutions/contacts may warrant jurisdiction in cyberspace); Allen, supra note 117, at 385 (illustrating how Panavision's "effects" doctrine can be used to assert jurisdiction based on Internet contacts); Oetker, supra note 1, at 615 (showing that personal jurisdiction may be established through "effects" doctrine).

137 See Digital, 960 F. Supp. at 459 (discussing nature of suit and licensing agreement).


139 See Digital, 960 F. Supp. at 463 (framing issue before court).
because: (1) the defendant conducted business in the forum;\textsuperscript{140} (2) its Web site caused injury in the forum;\textsuperscript{141} and (3) the injury in the forum was the result of the defendant's foreign activities, i.e., its creation of a Web site outside the forum.\textsuperscript{142}

The court acknowledged the implications of its decision, that such a rationale could subject those who create Web sites to jurisdiction in any part of the globe.\textsuperscript{143} The court stated, however, that its holding would not likely lead to inconsistent results in future cases, or restrict commerce conducted over the Internet.\textsuperscript{144}

C. Internet Contacts Not Supporting Personal Jurisdiction

Although some courts have found the exercise of jurisdiction to be proper based on a foreign defendant's Internet contacts with the forum, there a number of courts which have held that Internet contacts are insufficient to establish personal jurisdiction. For example, in Pres-Kap, Inc. v. System One, Direct Access, Inc.,\textsuperscript{145} Pres-Kap was a New York-based travel agency that contracted with the Florida-based plaintiff to use the plaintiff's computerized

\textsuperscript{140} See id. at 464-66 (stating defendant's contract in conjunction with its activities and sales satisfied forum's long-arm statute). \textit{See generally} Foster-Miller v. Babcock and Wilcox Canada, 46 F.3d 138, 145-46 (1st Cir. 1995), \textit{aff'd}, 210 F.3d 1 (1st Cir. 2000) (outlining approaches to motions to dismiss for want of personal jurisdiction); Boit v. Gar-Tec Prods., Inc., 967 F.2d 671,677 (1st Cir. 1992) (outlining method whereby judge conducts limited fact-finding rather than definitive fact-finding to determine likely existence of facts necessary to support personal jurisdiction).

\textsuperscript{141} See \textit{Digital}, 960 F. Supp. at 466-67 (stating misrepresentations made on Web site were made in forum for jurisdictional purposes).

\textsuperscript{142} See id. at 467 (explaining Web site's continuous accessibility in conjunction with other contacts as "persistent course of conduct sufficient to satisfy" personal jurisdiction inquiry); \textit{see also} Ealing Corp. v. Harrods LTD, 790 F.2d 978, 982 (1st Cir. 1986) (holding that misrepresentations sent into forum via telex provided basis for personal jurisdiction); Burtner v. Burnham, 430 N.E.2d 1233, 1237 (Mass. App. Ct. 1982) (holding personal jurisdiction proper over defendant who knowingly sends false information into forum intending it to be relied on and causing injury in forum).


\textsuperscript{144} See \textit{Digital}, 960 F. Supp. at 463 (presuming effects of decision); \textit{see also} Abel, \textit{supra} note 116, at 3 (stating that intentional contacts may warrant jurisdiction over computer media but such proposition is not per se rule). \textit{But see} Costa, \textit{supra} note 1, at 498 (stating that "the case law suggests anything but consistency and predictability").

\textsuperscript{145} 636 So.2d 1351 (Fla. Dist. Ct. App. 1994), \textit{review denied}, 645 So.2d 455 (Fla. 1994); \textit{see also} Panavision v. Toeppen, 141 F.3d 1316, 1318 (9th Cir. 1998) (stating that such Internet contacts are not sufficient for personal jurisdiction); Allen, \textit{supra} note 117, at 385 (stating Internet contacts alone are insufficient to assert jurisdiction over foreign defendant); Sanford, \textit{supra} note 122, at 1 (stating Internet contacts alone are insufficient to assert jurisdiction over foreign defendant).
reservation program. The contract was formed and signed in New York. Pres-Kap subsequently claimed that the system malfunctioned and Pres-Kap stopped making payments; subsequently System One brought suit for breach of contract.

The court stated that "an individual's contract with an out-of-state party alone can [not] automatically establish" grounds for asserting personal jurisdiction over the foreigner. Further, there was no evidence that the defendant was aware of the location of the plaintiff's database. Therefore, the court found that the defendant had no deliberate contact with the forum and the availment was not purposeful.

The case is novel in that the defendant was a consumer, as opposed to being a provider. The court was concerned with protecting consumers, as a class, from being subject to personal jurisdiction in foreign forums for merely engaging with on-line providers. To assert jurisdiction in such cases would be "wildly beyond the reasonable expectations of such computer-information users."

In another case, , the plaintiff

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146 See Pres-Kap, 636 So.2d at 1351-52 (discussing background facts). See generally Costa, supra note 1, at 458 (analyzing Internet contacts through traditional personal jurisdiction doctrine); Michael MacClary, Personal Jurisdiction and the Internet, 3 SUFFOLK J. TRIAL & ADV. 93, 93 (discussing how Supreme Court has applied jurisdiction to non-forum residents and analyzes how such analysis should be used when confronting Internet cases); Trout-Macintyre, supra note 97, at 223 (analyzing Internet contacts through traditional personal jurisdiction doctrine).

147 See Pres-Kap, 636 So.2d at 1353.

148 See id. at 1352.

149 See id. at 1353 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478 (1985)) (alteration in original); see also Panavision, 141 F.3d at 1320 (discussing purposeful availment); Venetian Salami Co. v. Parthenais, 554 So.2d 499, 503 (Fla. 1989) (finding that failure to make installment payments to plaintiff in forum is insufficient to exercise personal jurisdiction over foreign defendant); Castañas, supra note 4, at 35 (discussing application of Burger King to Internet jurisdiction questions).

150 See Pres-Kap, 636 So.2d at 1353.

151 See id. (stating database "happen[ed] to be located in [forum]").

152 See id. at 1351-52 (classifying parties); Allen, supra note 117, at 385 (classifying parties); Costa, supra note 1, at 470 (mentioning cases exceptional character); see also Sanford, supra note 122, at 1 (classifying parties).

153 See Pres-Kap, 636 So.2d at 1353 (stating that finding jurisdiction in this case "would...have far reaching implications" for all foreign consumers); see also Panavision, 141 F.3d at 1318 (stating that although "effects" doctrine may warrant jurisdiction, such implications are far reaching); Oetker, supra note 1, at 615 (discussing minimum contacts doctrine's implications with respect to Internet contacts). But see Costa, supra note 1, at 458 (noting that per se rule of jurisdiction is difficult to infer with respect to cyberspace).

154 Pres-Kap, 636 So.2d at 1353.

155 937 F. Supp. 295 (S.D.N.Y. 1996), aff'd, 126 F.3d 25 (2d Cir. 1997); see also Breen, supra note 122, at 763 (applying minimum contacts test to Internet contacts); Puathasnon, supra note
owned the rights to the registered mark "The Blue Note" and operated "The Blue Note" jazz club in New York.\textsuperscript{156} Defendant King was the owner and operator of "The Blue Note" club in Missouri.\textsuperscript{157} The defendant posted a Web site that advertised his club and contained a telephone number and ticket-purchasing information.\textsuperscript{158}

The court found that the defendant had not purposely availed itself of the privilege of doing business in New York\textsuperscript{159} because in order for customers to purchase tickets, they would have to go to Missouri, since the defendant would not mail them.\textsuperscript{160} Furthermore, the plaintiff's argument, that the defendant should have foreseen his Web site being accessed in the forum and causing injury there, was without merit.\textsuperscript{161} The court held that the "mere foreseeability of in-state consequence" was insufficient to sustain personal jurisdiction.\textsuperscript{162} The court analogized the creating of a Web site with the placing of a product in the "stream of commerce," in that its effects "may be felt nationwide—or even worldwide—but, without more, it is not an act directed toward the forum state."\textsuperscript{163} Therefore, New York did not have jurisdiction based merely on the fact that a Missouri resident had posted a Web site that could be accessed by New York residents.\textsuperscript{164}

\textit{Cybersell, Inc. v. Cybersell, Inc.}\textsuperscript{165} was a trademark infringement

\textsuperscript{122} at 691 (discussing application of minimum contacts test to Internet contacts); Sanford, supra note 122, at 1 (discussing application of minimum contacts test to Internet contacts).

\textsuperscript{156} See Bensusan, 937 F. Supp. at 295.

\textsuperscript{157} See id.

\textsuperscript{158} See id. at 295

\textsuperscript{159} See id. at 299-301 (stating that (1) New York's long-arm statute did not grant jurisdiction, and (2) assertion of jurisdiction would violate Due Process Clause because there was no purposeful availment on behalf of defendant to conduct business in forum).

\textsuperscript{160} See id. at 299 (discussing several steps purchaser must take to get tickets); see also Shea v. Reno, 930 F. Supp. 916, 929 (S.D.N.Y. 1996), \textit{aff'd without opinion}, 521 U.S. 1113 (1997) (discussing procedure for accessing and retrieving information from Web site).

\textsuperscript{161} See Bensusan, 937 F. Supp. at 300 (discussing plaintiff's argument); see also Darienzo v. Wise Shoe Stores, Inc., 427 N.Y.S.2d 831, 833 (App. Div. 2d Dep't. 1980) (noting that New York law requires more than mere foreseeability, defendant must make "a discernable effort...to serve, directly or indirectly, a market in the forum").

\textsuperscript{162} See Bensusan, 937 F. Supp. at 300; see also World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) (stating that foreseeability that product could make its way into forum is not sufficient to assert personal jurisdiction).

\textsuperscript{163} Bensusan, 937 F. Supp. at 301 (citing \textit{Asahi Metal Industry Co. v. Superior Court}, 480 U.S. 102, 112 (1987) [plurality opinion]).


\textsuperscript{165} 130 F.3d 414 (9th Cir. 1997).
case involving the defendant’s Web site. The defendant had no contacts with the forum. Nevertheless, the plaintiff argued that the defendant should be required to answer in the forum because the Internet has no boundaries, and a Web site is “necessarily intended for use on a world wide basis.” The court countered by noting that universal accessibility does not necessarily bespeak intent to focus on any particular forum. The court also found the effects test inapplicable because there were no grounds for asserting jurisdiction over the defendant, and that the Web site was passive in nature.

In *Hearst Corp. v. Goldberger*, the defendant created a Web site, intending to recruit lawyers who wished to become members of a network which would provide legal support services. The defendant used a domain name similar to the plaintiff’s, who subsequently brought suit for trademark infringement. No services were available at the time the plaintiff brought suit.

The court analogized the defendant’s Web site with a magazine advertisement and stated that “national publications [were] not sufficient to provide personal jurisdiction under [New York law].” The court found *Bensusan* to be persuasive authority in this case, and held that the establishment and maintenance of a Web site was passive and insufficient to support the exercise of personal jurisdiction over the defendant.

166 See id. at 415.
167 See id. at 419 (stating that defendant merely “post[ed] an essentially passive home page on the web” and did not “invoke the benefits and protections of [the forum’s] law”).
168 Id. at 415 (discussing plaintiff’s view).
169 See id. at 419 (noting plaintiff only person in forum to access defendant’s Web site).
170 See id. at 420 (“[w]e don’t see this as a Calder case”).
171 See id.
172 See id. at 418 (discussing that cases which have held jurisdiction proper have found “something more” to illustrate defendants’ contacts were intentional).
174 See id. at *1 (explaining nature of defendant’s Web site).
175 See id. (discussing nature of claim).
176 See id.
177 Id. at *10.
178 See id. at *15 (discussing applicability of *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295 (S.D.N.Y. 1996), aff’d, 126 F.3d 25 (2d Cir. 1997)).
179 See id. at *21 (concluding assertion of personal jurisdiction improper).
V. SUGGESTED RESOLUTION

A. Stream of Commerce

Since there is so much uncertainty among the courts that have dealt with cases involving the exercise of personal jurisdiction based on Internet contacts, the courts should utilize a test that will bring order to this problem. Courts should utilize the "stream of commerce" theory enunciated in Justice O'Connor's plurality opinion in Asahi Metal Industry Co., Ltd. v. Superior Court of California. This approach analyzes the defendant's contacts with a Web site, focusing on how interactive the site is. Through this analysis, the mere act of creating a Web site accessible to all would be insufficient to exercise personal jurisdiction over a defendant, hence, other contacts would be necessary to assert jurisdiction. To subject a foreign defendant to jurisdiction based on its product entering the forum, the court must find that: (1) the defendant intentionally directed its product toward the forum; and (2) the exercise of jurisdiction must be reasonable over the defendant.

The "stream of commerce" analysis tends to promote the


181 See Asahi Metal Indus. Co., Ltd. v. Superior Court of California, 480 U.S. 102 (1987) (plurality opinion); see also Bender, supra note 3, at 81 (stating stream of commerce theory is recurring theme); Kalow, supra note 9, at 2269 (stating courts should follow Justice O'Connor's stream of commerce approach); Oetker, supra note 1, at 631 (discussing same).

182 See Kalow, supra note 9, at 2270 (stating approach carefully analyzes contacts to or from Web site to find purposeful availment); Oetker, supra note 1, at 631 (discussing focus of approach); Stott, supra note 50, at 853 (discussing focus on interactivity of Web site).

183 See Kalow, supra note 9, at 2270 (articulating reasons supporting stream of commerce approach); Timothy B. Nagy, Comment, Personal Jurisdiction and Cyberspace: Establishing Precedent in a Borderless Era, 6 COMM. L. CONSEQUTUS 101, 111-12 (1998) (advocating for stream of commerce approach because Internet “is constantly expanding, flexible application of the traditional notions of personal jurisdiction is necessary to ensure that justice is served”); Oetker, supra note 1, at 631 (detailing requirements of approach).

184 See Asahi, 480 U.S. at 112-16 (stating requirements for asserting jurisdiction based on stream of commerce contacts); Kalow, supra note 9, at 2270 (discussing Justice O'Connor's opinion). But see Bender, supra note 3, at 82 (discussing Justice Brennan's opinion in Asahi stating that mere placement of product in stream of commerce satisfies purposeful availment requirement without further evidence).
principal tenets of personal jurisdiction doctrine. This approach would be easy to apply since its structure has already been promulgated in Asahi. This theory realizes that foreseeability is insufficient to satisfy due process, and some degree of purposeful availment is necessary to assert personal jurisdiction over a foreign defendant. This model focuses on the contacts as opposed to the medium utilized by the defendant, which will have the effect of courts arriving at more uniform decisions. Using the "stream of commerce" approach will allow Internet users to conform their Internet activities in accordance with a firm doctrine.

CONCLUSION

An objective analysis of a defendant's contacts with a given forum, under the traditional "quality/nature" framework, would provide the most predictable results. The medium in which those contacts have been expressed should have no bearing upon a personal jurisdiction inquiry. Internet use is growing exponentially, and has had a profound effect on the world's economy. Users need a uniform doctrine so they may regulate their potential exposure to liability with a degree of confidence. A framework focusing on a user's purposeful availment of a forum achieves such a goal, while allowing a degree of freedom so as not to restrict commerce. It is urged that courts realize that a new form of contact does not necessitate a new doctrine.

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185 See Oetker, supra note 1, at 631 (stating one benefit of approach is that it has "already been established in Asahi."); Slott, supra note 50, at 852-54 (emphasizing that stream of commerce approach was utilized by Court in CompuServe, Inc. v. Patterson, 89 F.3d 1257 (6th Cir. 1996)); see also Bensusan Restaurant Corp. v. King, 126 F.3d 25 (2d Cir. 1997), aff'd, 126 F.3d 25 (2d Cir. 1997) (using same test).

186 See Oetker, supra note 1, at 631 (discussing focus of stream of commerce approach); Bender, supra note 3, at 82 (interpreting O'Connor's plurality opinion as stating that mere foreseeability that defendant's product could find its way into forum is insufficient to satisfy purposeful availment requirement).

187 See Kalow, supra note 1, at 2270 (discussing how stream of commerce approach ensures predictable results); Oter, supra note 1, at 631 (noting that other approaches would result in all Web sites being subject to jurisdiction throughout globe).

188 See Costa, supra note 1, at 459 (stating due process demands degree of predictability); Hamilton & Castanias, supra note 1, at 28 (illustrating need for people to be able to predict outcomes of personal jurisdiction inquiries to adjust conduct accordingly); Kalow, supra note 9, at 2269 (stressing need for uniformity in personal jurisdiction decisions).

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