



Internet Jurisdiction Makes Life Interesting

BY PETER S. VOGEL

The Internet has brought great social change, but its impact on the law is still in a state of flux. Business was less complicated before the advent of automobiles and air travel, but now people conduct business in far-flung and distant locations. Although the law regarding jurisdiction is not perfect, the U.S. Supreme Court has provided a clear path to understanding jurisdiction. But the Internet has turned things upside down, and social networking has only made things more complicated. This article will discuss how the historical elements of jurisdiction apply to Internet transactions and social networking.

HISTORICAL JURISDICTION

One of the leading cases on general jurisdiction decided by the U.S. Supreme Court was *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414–16 (1984). The Supreme Court ruled that a Texas federal court did not have general jurisdiction over a helicopter company that operated in Colombia because the Colombian defendant had no “systematic and continuous” contact with Texas.

An important case on personal jurisdiction was *Latshaw v. H.E. Johnston*, 167 F.3d 208, 211 (5th Cir. 1999), where the 5th Court of Appeals ruled that:

A federal court sitting in diversity may exercise personal jurisdiction over a nonresident defendant if (1) the long-arm statute of the forum state confers personal jurisdiction over that defendant; and (2) exercise of such jurisdiction by the forum state is consistent with due process under the United States Constitution.

Latshaw and Johnston had an oral agreement for the purchase and sale of oilfield equipment between residents of Texas and Louisiana, and the court ruled that there was sufficient personal jurisdiction to permit the lawsuit to be in Texas federal court even though Johnson operated his business in Louisiana. The two operated in business for many years and, in spite of relying on an oral agreement, the court supported the personal jurisdiction of the Louisiana business.

In the famous jurisdiction case *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), the Supreme Court ruled that in the absence of general jurisdiction, specific jurisdiction permits a court to exercise personal jurisdiction over a non-resident defendant for forum-related activities where the “relationship between the defendant and the forum falls within the minimum contacts’ framework.”

The due process clause of the Fourteenth Amendment is one component that helps determine if jurisdiction applies. In *International Shoe*, the Supreme Court held that although International Shoe was a Missouri company, it had “minimum contacts” with Washington State. Therefore jurisdiction in Washington was proper for the payment of employment taxes because International Shoe had employees in Washington State but otherwise no business operations.

Forty years later, the Court established a three-pronged test for personal jurisdiction in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (which cited *International Shoe*, p. 319):

- (1) The defendant must have sufficient “minimum contacts” with the forum state;
- (2) The claim asserted against the defendant must arise out of those contacts; and
- (3) The exercise of jurisdiction must be reasonable. *Id.*

The “Constitutional touchstone” of the minimum contacts analysis is embodied in the first prong, “whether the defendant purposefully established” contact with the forum state.

Burger King brought its suit in Florida against a Michigan franchisee even though the franchisee had not been in Florida except for employee training. The Supreme Court’s three-pronged test determined that the defendant had the minimum contacts in Florida so jurisdiction could not be avoided merely because the defendant did not physically enter the forum state:

[I]t is an inescapable fact of modern commercial life that a substantial amount of commercial business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. (*Burger King*, 471 U.S. at 476.)

The last issue for jurisdiction is foreseeability. *World Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) is often cited: “[T]he foreseeability that is critical to the due process analysis is ... that the defendant’s conduct and connection with the forum State are such that he should reasonably expect to be haled into court there.”

In *World Wide Volkswagen*, the Court decided that the seller of an automobile sold in New York could not be brought in to federal court in Oklahoma as there was no foreseeability that there would be an auto accident in Oklahoma. So there was no personal jurisdiction in Oklahoma.



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EARLY INTERNET JURISDICTION DECISIONS

The owner of the Blue Note, a famous jazz club in New York City, decided in 1995 that it made sense to register the domain name of **bluenote.com**. The club owner was unhappy to learn that the domain name was taken by a music venue in Columbia, Mo., also called the Blue Note. The 2nd Circuit Court of Appeals ruled that the New York federal court did not have jurisdiction in a trademark infringement claim in *Bensusan Restaurant Corp. v. Richard B. King*, 126 F.3d 25 (2nd Cir. 1997). Apparently, at the time, the Columbia Blue Note's website provided the address and phone number for the New York City Blue Note in case that was what the website visitor was looking for. Further, the Columbia Blue Note website was passive (only providing information about events and phone numbers) and not interactive, so the 2nd Circuit ruled that there was no New York jurisdiction as there was no "purposeful availment" in New York.

ZIPPO SLIDING SCALE FOR INTERNET JURISDICTION

Probably the most important case in determining Internet jurisdiction to date has been *Zippo Mfr. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). Zippo brought a suit in its home state of Pennsylvania against the California Internet news service called Zippo Dot Com, which, on the surface, looked like it was capitalizing on the lighter manufacturer's famous name. The trial court ruled that there was Pennsylvania jurisdiction because Zippo Dot Com regularly delivered news to its approximately 140,000 paying subscribers worldwide, of which about 2 percent (or 3,000) were Pennsylvania residents.

INTERNATIONAL JURISDICTION

One of the most provocative Internet jurisdiction cases to date is one where a French court enjoined Yahoo's U.S. website from selling Nazi memorabilia. In the case of *Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme.*, DC No. CV-00-21275-JF (9th Cir), two French groups dedicated to eliminating anti-Semitism brought a lawsuit against Yahoo, as it is illegal to sell Nazi memorabilia in France. Actually, the French Yahoo website, **yahoo.fr**, does not sell Nazi memorabilia, but the U.S. website may sell to buyers located in France. So rather than fight in France, and because the U.S. website was in the United States, Yahoo chose to fight in U.S. District Court in California. The District Court granted summary judgment in favor of Yahoo, but on appeal the 9th Circuit ruled that the U.S. courts did not have authority over the French court since there had been no attempted enforcement in the United States of the French injunction.

VIRTUAL JURISDICTION

With the advent of virtual worlds on the Internet, additional legal complexities have ensued. The American Bar Associa-

tion has published *Virtual Law* for individuals who practice law in virtual worlds. The book's author, Benjamin Tyson Duranske, has experience in the real world and in Second Life. Second Life (**secondlife.com**) is a virtual world where avatars, or computer users' online alter egos, purchase property using Linden dollars, and where businesses like Dell, IBM, Manpower, and many other real world businesses operate. Additionally, avatars in Second Life buy and sell clothing, computers, buildings, land, and the like.

As a jurisdiction issue, virtual worlds present interesting possibilities. When Second Life took away Marc Bragg's virtual property, he brought a lawsuit in Pennsylvania where he resides. A U.S. district judge ruled that Pennsylvania was the proper jurisdiction in the case (*Bragg v. Linden Research, Inc.*, No. CIV.A.06 4925 (E.D. Pennsylvania, May 30, 2007), although Linden Research, Second Life's parent company, claimed that the terms of use required all disputes to be resolved in arbitration in California. The judge reasoned that because Phillip Rosedale, the founder of Second Life, held a virtual town hall meeting on Secondlife.com but invited residents of Pennsylvania to attend, Rosedale and Linden Research purposely availed themselves of Pennsylvania and should have realized they might be hauled into a Pennsylvania court.

TERMS OF SERVICE

Most courts around the world enforce the terms of service found on websites, so if parties want to establish jurisdiction (and venue, for that matter), they can include which law and venue applies. However, most Internet users do not review terms of service and do not understand the contractual terms that apply.

TEXAS CASES

Most courts in Texas follow Internet jurisdiction from *Zippo*, and not many have appellate review. Notably, the Fort Worth Court of Appeals did consider a data mining case in *TravelJungle v. Am. Airlines, Inc.*, 212 S.W.3d 841 (Tex. App. — Fort Worth, no pet.), and otherwise the 5th Circuit adopted *Zippo* in the case of *Mink v. AAAA*, 190 F.3d 333 (5th Cir. 1999).

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