The World-Wide Jurisdiction: An Analysis of Over-Inclusive Internet Jurisdictional Law and an Attempt by Congress to Fix It

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THE WORLD-WIDE JURISDICTION:
AN ANALYSIS OF OVER-INCLUSIVE INTERNET JURISDICTIONAL LAW AND AN ATTEMPT BY CONGRESS TO FIX IT

I. INTRODUCTION

Did you know that in the Netherlands it is illegal to criticize the royal family? Are you aware that in South Korea, an individual can be placed in jail for praising North Korea? Until recently, this was, at best, bad conversation material. However, in the age of the Internet and the worldwide jurisdiction, Internet users may have to learn the laws of any country where their web site or bulletin board can be accessed in order to avoid liability.

In recent years, use of the Internet has grown at an explosive rate. However, there currently exists no single entity to control the enormous amount of information that is transmitted through it. In 1969, the early roots of the Internet were created as an experimental project of the Advanced Research Project Agency. In its beginnings, the Internet was essentially a network of linked computers owned by the military, defense contractors, and university laboratories conducting defense-related research. This

2 Id.
3 Id.
4 Eugene R. Quinn, Tax Implications For Electronic Commerce Over the Internet, 4.2 J. TECH. L. & POL’Y 1 (1999). Many experts believe that 1 billion people will be connected to the Internet by 2005. Currently, traffic on the Internet doubles every 100 days.
6 Id. The Internet is “not a physical or tangible entity, but rather a giant network which interconnects innumerable smaller groups of linked computer networks.” The Internet is made up of computers and computer networks owned by governmental and public institutions, non-profit organizations, and private citizens. “The resulting whole is a...global medium of communications, or

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network was specifically designed to be a decentralized and completely self-maintaining system, which was capable of transmitting information without human control. The point of this was "to allow vital research and communications to continue even if portions of the network were damaged."

While this system may function well during a war or other catastrophic event, it does not allow for efficient monitoring. There is no single entity that supervises the Internet. It functions only because of the millions of separate computers that independently decide to transfer data. There is "no centralized storage location, control point, or communications channel for the Internet, and it would not be technically feasible for a single entity to control all of the information conveyed on the Internet." Therefore, the task of preventing illegal conduct on the Internet has fallen on the courts of individual nations. However, one very important question remains. Which courts should govern?

7 Id.
8 Id. In order to achieve this "resilient nationwide (and ultimately global) communications medium," the creators established multiple links to and from each computer. For example, one computer might be linked to ten different computers, and each of those computers would be linked to ten other computers, and so on. Therefore, if a message needed to be sent from Chicago to Los Angeles, because of the links, it could possibly be sent first to New York, then Dallas, then Cleveland, and then finally to Los Angeles. If that link was damaged, it would automatically be re-routed through, for example, Kansas City, Detroit, and Seattle before Los Angeles. All of this could be done in seconds. Thus, the sender always has an available route to immediately send the information.
9 Id.
10 Reno, 929 F.Supp. at 830.
11 Id at 832.
A. Traditional American Jurisdiction

In the United States, traditional jurisdictional principles have been created mainly through case law.\textsuperscript{12} The foremost case in the field of American jurisdiction is \textit{International Shoe Co. v. Washington}.\textsuperscript{13} In that case, the Supreme Court held that in order for a court to subject a defendant to its jurisdiction, due process required the existence of minimum contacts between the defendant and the forum state.\textsuperscript{14} Otherwise, the Court ruled, asserting jurisdiction would offend traditional notions of fair play and substantial justice.\textsuperscript{15}

In later cases, the Court clarified this standard and determined that under a proper analysis, a court must question whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there."\textsuperscript{16} In addition, the defendant must purposefully direct his activities towards the residents of the forum.\textsuperscript{17}

Once it has been decided that a defendant purposefully established minimum contacts within the forum state, five factors may be considered to determine whether the assertion of personal jurisdiction would comport with "fair play and substantial justice."\textsuperscript{18} Courts may evaluate (1) the burden on the defendant, (2)
the forum State's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several States in furthering fundamental substantive social policies. 19

When analyzing personal jurisdiction, one must also make a distinction between general jurisdiction and specific jurisdiction. 20 To establish general jurisdiction, the defendant's contacts with the forum state must be "continuous and systematic." If the contacts meet this requirement, the state may exercise personal jurisdiction over the defendant even if the harm is unrelated to the defendant's contacts with the state. 21 Specific jurisdiction is established, on the other hand, only when the harm directly arises out of the minimum contacts with the forum. 22

B. Internet Jurisdiction

Although these well-settled jurisdictional guidelines have proven sufficient for the purposes of traditional disputes over jurisdiction, the Internet has created unique concerns. For example, a web page placed on the Internet can be seen just as clearly in any nation in the world as it is in the place where its

19 Id. at 477.
20 Id.
22 Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 (1984). For example, if the defendant's headquarters are located in San Francisco and the plaintiff is injured by an act of the defendant in Chicago, the plaintiff can sue the defendant in California under general jurisdiction even though the harm happened in Illinois because the defendant is physically located there and thus has continuous and systematic contacts with the state. In contrast, if defendant is located in Chicago, but does business in San Francisco, the defendant can still be sued in California if the plaintiff is harmed in California due to business dealings in California. For example, if a business letter is sent to California that defames that plaintiff.
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server is located. Therefore, every nation has an equal interest in regulating that web site because citizens of every nation can view it. This interest could potentially translate into a legitimate exercise of personal jurisdiction over the author of the web site, who has initiated foreseeable minimum contacts with that nation. Although these contacts may not be purposeful, that factor is likely irrelevant when, for example, a web site directed to Canadians can be viewed perfectly by all Americans. While it is not technically impossible to limit web page access to persons whose computers are located in a particular nation, it is very difficult and expensive to do so.

Nations are then left with two choices, both of which are problematic. The courts can implement an over-inclusive policy that creates jurisdiction due to the contact created simply by the web site or the court can follow an under-inclusive policy and deny jurisdiction when the web site owner lacks other physical contacts with the forum. The over-inclusive policy protects and enforces the laws and ideology of the forum nation, but stunts the growth of the Internet. On the other hand, an under-inclusive policy allows for the flourishing of technology, but allows certain wrongful activity in its nation to go unpunished.

24 Id.
25 Id. The contacts were foreseeable because due to the “global character” of the Internet the author had to know that the web site could be seen all over the world.
26 Id.
27 Id.
28 See supra note 23.
II BACKGROUND

A. Why Is It Necessary To Create New Legislation?

Recently, the trend in American Internet case and statutory law has been the over-inclusive method. For example, American courts have found jurisdiction over defendants who simply wrote e-mail to an individual in the forum-state or placed something on a web site that was accessible to individuals located in the forum.\(^{29}\) While the rulings of these courts and the extension of certain statutes may have been warranted under the facts of each specific situation, these legislatures and courts set a very dangerous precedent that essentially has subjected web page authors to a world-wide jurisdiction.

Recently, European lawmakers and judges have begun to follow the lead of the United States.\(^{30}\) This culminated in the infringement by a French court on the First Amendment rights of a major American corporation in the Yahoo! case.\(^{31}\) As a result of these decisions, web page authors are likely to fear liability in foreign jurisdictions.\(^{32}\) The growth of the Internet may be stunted and the American and world economies harmed.\(^{33}\)

The following article is composed of several examples of extraterritorial jurisdictional expansion by the legislatures and courts in the United States and Europe. Specifically I will cover (1) Over-Inclusive American statutes, (2) Over-Inclusive European statutes, (3) Over-Inclusive American case law, and (4) Europe’s recent and shockingly over-inclusive case, the Yahoo! decision in


\(^{31}\) Id.


\(^{33}\) Leonard Kennedy and Lori Zallaps, If it Ain’t Broke….The FCC and Internet Regulation, 7 COMMLAW CONSPECTUS 17 (Winter, 1999).
France. These laws and cases show a need to restrict the reach of jurisdictions through the Internet.

B. Over-Inclusive American Statutes

1. The Internet Gambling Prohibition Act

Although it has yet to be passed, the proposed Internet Gambling Prohibition Act would express create extraterritorial jurisdiction. The bill explicitly states "that the Federal Government should have extraterritorial jurisdiction over the transmission... of (1) bets or wagers...(2) information assisting in the placing of bets or wagers, and (3) any communication that entitles the transmitter or recipient... to receive money or credit as a result of bets or wagers." This law exhibits the clear intent of Congress to extend the jurisdiction of American federal courts.

2. Antitrust Laws

Antitrust laws in the United States have also extended jurisdiction. For example, section 1 of the Sherman Act provides that "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal." Section 2 prohibits monopolization, attempts at monopolization, and combinations or conspiracies to monopolize any part of interstate or foreign commerce.

35 Id. at § 4.
36 Id. (emphasis added).
38 15 U.S.C. § 2 (1994). Violations of this statute are considered criminal felonies that may result in a fine, imprisonment or both. Also, parties injured by
Initially, it was held that the Sherman Act could not be enforced against a foreign entity that conducted its business outside of American borders.\(^3\) In fact, in one opinion of the Supreme Court, Justin Holmes stated, "the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done."\(^4\)

However, this ruling would not stand. In several later cases, the Supreme Court held that U.S. courts could exercise jurisdiction over foreign defendants even if only some of the acts occurred within the United States or, even more broadly, if the activity merely affected the foreign commerce of the United States.\(^1\)

### 3. National Labor Relations Act

The purpose of the National Labor Relations Act was to create equality in bargaining power between employees and corporations in order to increase wages and improve working conditions for workers.\(^2\) However, due to the globalization of the marketplace and the rise of multinational corporations that can easily move overseas and free themselves from stringent American labor laws, the effectiveness of this statute has been minimized, and unions have argued for extraterritorial extension of the Act.\(^3\)

Although most courts have held that the Act does not extend jurisdiction internationally, one court held that jurisdiction was violations of the Sherman Act or Clayton Act may bring private rights of action. The maximum fine for a corporation is $10,000,000. The maximum fine for an individual is $350,000 and/or three years in prison. Treble damages, attorneys' fees, and legal costs may be recovered for violations of the Sherman Act.

\(^4\) Id. at 356.
established even for activity that occurred in Japan. In *Dowd v. International Longshoremen's Association*, the Eleventh Circuit Court of Appeals upheld an NLRA violation against an American union where the employees actually doing the illegal boycotting were foreign nationals in Japan. Specifically, an American union requested that several Japanese unions not unload ships that had been loaded in America by workers who were not in a union. The district court was petitioned for an injunction of the American union's actions. The union claimed that there was no jurisdiction under the NLRA because the acts of the Japanese unions occurred outside of U.S. territory.5

The Eleventh Circuit, however, dismissed this argument and held that there was jurisdiction because the union intended the effect of its actions to be noticed within the United States.

4. Child Online Protection Act

In October 1998, the Child Online Protection Act was signed into law. Like the above legislation, the statute contained language that implies an extraterritorial jurisdictional reach. It stated, "whoever knowingly... in interstate or foreign commerce by means of the World Wide Web, makes any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors shall be fined not more than $ 50,000, imprisoned not more than six months, or both."51

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44 *Dowd v. International Longshoremen's Ass'n.*, 975 F.2d 779 (11th Cir. 1992).
45 Id. at 792.
46 Id. at 780.
47 Id.
48 Id. at 785.
49 *Dowd*, 975 F.2d at 790. The court stated that "since the object and effect of the conduct in question was to implement a secondary boycott within the United States, we do not believe the location of that conduct is determinative."
The jurisdictional scope of this statute was never determined, however. Shortly after it was signed into law, a federal court enjoined the statute and determined it to be unconstitutionally burdensome for other reasons.\(^5\)

Nonetheless, Congress once again showed a willingness to infringe on the sovereignty of other nations by extending U.S. jurisdiction.

5. Local Legislation

Although the legislation in this section does not affect international jurisdiction, it exhibits a willingness of American states to follow the trend of the federal government and pass legislation that potentially extends the state’s jurisdiction over other sovereign states.

In a decision that directly affects the legal community, the Florida Bar has expressly stated that its rules of ethics apply to any web sites viewable in Florida that advertise for attorneys.\(^5\) In the *Computer-Accessed Communications & Internet Guidelines*, the Florida Bar stated that “all World Wide Web sites and home pages accessed via the Internet that are controlled or sponsored by a lawyer or law firm and that contain information concerning the lawyer's or law firm's services must include” certain criteria mandated by the Florida Bar.\(^5\) Since the guidelines apply even to web sites simply “accessed” in Florida, the state is apparently

\(^5\) *Reno*, 217 F.3d 162 (3rd Cir. 2000). In a similar case, the Supreme Court acknowledged that most of the disputed material originated in foreign jurisdictions. However, the Court dismissed this issue as a difficult question and decided not to decide the issue. *Reno v. ACLU*, 521 U.S. 844, 878 n.45 (1997).

\(^5\) Dan Burk, Jurisdiction in a World Without Borders, 1 VA. J.L. TECH. 3, *3* (Spring, 1997)

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attempting to regulate the advertisements of attorneys outside of its jurisdiction.55

The state of Georgia also created Internet legislation56 that extended the state's jurisdiction outside of its borders. In 1996, the Georgia state legislature passed the Computer Systems Protection Act, which made it illegal "for any person (or) any organization… knowingly to transmit any data through a computer network… for the purpose of… exchanging data… if such data uses any individual name, trade name (or) registered trademark… to falsely identify the person."57 This statute can be construed to grant extraterritorial reach outside of the state of Georgia since it holds "any person" liable who transmits data into Georgia through the Internet.

Also, the state of Minnesota has been very active in reaching across borders to enforce on-line violations of its law.58 On July 18, 1995, Attorney General Hubert "Skip" Humphrey III announced the filing of six civil lawsuits against Internet advertisers. Humphrey attacked a variety of fraudulent schemes, such as "credit repair" operations, pyramid schemes, and a promotion for a "miracle drug" for cancer and AIDS and proceeded under the state's consumer fraud and deceptive trade-practices laws.59

At this same announcement, the state of Minnesota circulated a memorandum, which was titled, "WARNING TO ALL INTER.NET USERS AND PROVIDERS."60 This memo asserted that the state possessed broad jurisdiction over any Internet activity affecting Minnesota.61 Specifically, the memo argued that the state possessed personal jurisdiction over anyone "who [transmits] information via the Internet knowing that information will be disseminated in Minnesota."62 Since anyone who posts

55 See Burk, supra note 53.
56 Id. at *4.
58 Supra note 53, at *4.
59 Mark Eckenwiler, States Get Entangled in the Web, LEGAL TIMES, Jan. 22 1996, at 35.
60 Id.
61 Id.
62 Id.
information of the Internet knows that it may and probably will be accessed in Minnesota, this memo implies that anyone who simply posts on the Internet falls within the jurisdiction of Minnesota.


Finally, in 1986, Congress passed the Money Laundering Control Act, which was intended to prevent group criminal activity. It basically acted as a notification to accomplices that if they knowingly conducted transactions with a criminal, they would be subject to criminal liability equal to that of the central figure in the crime. Furthermore, this law authorized the government to seize the assets and profits of money launderers and it created stiffer penalties in order to deter the number of persons willing to engage in money laundering.

Most importantly, for the purposes of this article, the statute implied that extraterritorial jurisdiction existed for enforcement of the law by the U.S. government. For example, in order to establish jurisdiction under the statute, “the conduct (must be) committed by a U.S. citizen or, in the case of the defendant who is not a United States citizen, the conduct must have occurred in part in the United States, and (2) the transaction or series of related transactions involves funds or monetary instruments of a value in excess of $10,000.”

Based on the broad language of this statute, it appears that any activity on the Internet could fall under this statute because all activity on the Internet can arguably occur “in part” in the United States. In fact, a web page author in Canada technically acts partly in the United States because his or her web site can be accessed in

64 Peter J. Kacarab, An Indepth Analysis of the New Money Laundering Statutes, 8 AKRON TAX J. 1, 2 (1991).
65 Id.
66 Id.
68 Id.
the United States. Thus he or she may fall under the jurisdiction clause of this statute.

B. Over-Inclusive European Statutes

1. Council of Europe Convention on Cyber-Crime

The Council of Europe, established in 1949, consists of 41 member states, including all of the members of the European Union.69 It was formed primarily as a forum to uphold and strengthen human rights and democracy in Europe.70 Recently, the Council of Europe has been the negotiating forum for a number of conventions on criminal matters, in which the United States has participated.71 For example, in 1997 the Council started a committee to research crime on the Internet and to begin drafting a binding convention to facilitate international cooperation in the investigation and prosecution of computer crimes.72

The committee has been successful in drafting several proposals. However, in the most recent draft, the jurisdictional clause may extend the jurisdiction of some of the member states too far.73 The draft states, "each Party shall take such legislative and other measures as may be necessary to establish jurisdiction over any

69 Frequently Asked Questions and Answers About the Council of Europe Convention on CyberCrime, available at http://www.usdoj.gov/criminal/cybercrime/COEFAQs.htm#Q1 (last visited April 11, 2001). The fifteen members of the European Union are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom.
70 Id.
71 Id. Since the late 1980s, the Council has been working to create legislation regarding hacking and other computer-related crimes. In 1989, it published a study and recommendations addressing the need for new substantive laws criminalizing certain conduct committed through computer networks.
72 Id.
offence established in accordance with Articles 2 and 11 of this Convention, when the offence is committed (a) [in whole or in part] in its territory... [or] (b) by one of its nationals...if the offence is committed outside the territorial jurisdiction of any (member) State.\textsuperscript{74}

The problem with this clause is section (b) where the statute allows for jurisdiction over a national of a country even if the offense is committed outside the territory of a member state. Thus, according to this section of the draft, the treaty allows people to be "charged with computer crimes even [if] the country where they live does not consider what they did as a crime."\textsuperscript{75}

Furthermore footnote twenty-nine of article twenty-seven, specifies "that the mere fact that the requested Party’s legal system knows no such procedure is not a sufficient ground to refuse to apply the procedure requested by the requesting Party."\textsuperscript{76} As a result, the council could potentially force states to act beyond their already established laws and hold Internet entities liable for actions that are not even illegal under the individual legal code of a state.\textsuperscript{77}

\section*{B. Pro-Plaintiff British Liable Laws}

Although libel laws in England do not expressly create extraterritorial jurisdiction, the attitude for libel suits in England is so strongly pro-plaintiff that recently the legislature has broadly allowed jurisdiction over foreign defendants.\textsuperscript{78} In May 2000, the House of Lords allowed a Russian millionaire to sue \textit{Forbes}


\textsuperscript{77} Id.

\textsuperscript{78} \textit{Houston, supra} note 1.
magazine for libel.\textsuperscript{79} Earlier in the year, both the \textit{New York Times} and \textit{International Herald Times} were both haled into British courts for libel.\textsuperscript{80}

Similarly, in 1997, a scientist who claimed that Michael Dolenga, an American graduate student, defamed him on an Internet bulletin board sued Dolenga for libel in England.\textsuperscript{81} The scientist won a default judgment after Dolenga failed to appear in court.\textsuperscript{82}

Thus it is clear that, following the lead of the U.S., the courts and legislatures in Europe are also willing to extend their jurisdiction over sovereign nations.

\textbf{C. Over-Inclusive American Case Law}

\textit{1. Highly Expansive Cases}

\textit{a. United States v. Thomas}

\textit{Thomas} was one of the first cases to discuss issues relating to an extended Internet jurisdiction. In this case, the defendants, Robert Thomas and his wife Carleen Thomas, operated an Internet Bulletin Board from their home in Milpitas, California.\textsuperscript{83} The bulletin board displayed a collection of sexually explicit photographs that the defendants scanned onto the site from pornographic magazines.\textsuperscript{84} The defendants also sold sexually explicit videotapes from this bulletin board.\textsuperscript{85} In order to access

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{79} Id.
\item \textsuperscript{80} Id.
\item \textsuperscript{81} Id.
\item \textsuperscript{82} Id.
\item \textsuperscript{83} \textit{United States v. Thomas}, 74 F.3d 701, 705 (6th Cir. 1996). Milpitas is a small city in Northern California. It is roughly 40 miles from Berkeley, California.
\item \textsuperscript{84} Id.
\item \textsuperscript{85} Id.
\end{itemize}
\end{footnotesize}
the site, members were required to pay a small fee and provide the defendants with their name and telephone number.\textsuperscript{86}

After receiving a complaint from an individual residing in Tennessee, an undercover officer downloaded several of the sexually explicit photos onto his computer in Memphis.\textsuperscript{87} The defendants were then indicted in the Western District of Tennessee for several charges including obscenity.\textsuperscript{88}

The defendants challenged the jurisdiction of the Western District of Tennessee for several of the charges and argued that the case should be transferred to California.\textsuperscript{89} The defendants claimed that jurisdiction in Tennessee was inappropriate because they did not cause the files to be transmitted to the Western District of Tennessee.\textsuperscript{90} Rather, the defendants asserted, it was the government agent, who, without their knowledge, accessed and downloaded the files and caused them to enter Tennessee.\textsuperscript{91}

The court disagreed and recognized that venue for federal obscenity prosecutions lie in any district from, through, or into which the allegedly obscene material moves.\textsuperscript{92} Therefore, the court found that the defendants could be tried in Tennessee.\textsuperscript{93}

\begin{itemize}
\item \textsuperscript{86} Id.
\item \textsuperscript{87} Id.
\item \textsuperscript{88} Thomas, 74 F.3d at 705.
\item \textsuperscript{89} Id.
\item \textsuperscript{90} Id. at 709. It was important for the defendants to change the venue from Tennessee to California. See Miller v. California, 413 U.S. 15 (1973). In Miller, the U.S. Supreme Court established a three-prong test for determining obscenity. Under the first prong of the Miller obscenity test, the jury is to apply "contemporary community standards." Defendants acknowledge the general principle that, in cases involving interstate transportation of obscene material, juries are properly instructed to apply the community standards of the geographic area where the materials are sent.
\item \textsuperscript{91} Id.
\item \textsuperscript{92} Id.
\item \textsuperscript{93} Thomas, 74 F.3d at 709.
\end{itemize}

In Resuscitation Technologies, the defendant discovered the plaintiff, an Indiana corporation, through plaintiff's Internet site. After the initial discovery, the plaintiff contacted the defendant several times through e-mail, telephone, and regular mail. The plaintiff filed a lawsuit in Indiana seeking damages for breach of the confidentiality agreements, intentional interference with a business relationship, and conversion. The defendant moved to dismiss for lack of personal jurisdiction.

The court ruled that jurisdiction is present if the defendant has at least minimum contacts with the forum state and, the court acknowledged, in modern day business practices it is not always necessary for an entity to physically enter the state. In fact, the court reiterated, in modern commercial life, most business is contracted through the mail, over the phone, or even on the Internet.

In this case, the court found that the contacts between the parties began when the plaintiff began to solicit business on the Internet, the defendant replied, and the parties continued to electronically communicate. The court found that the intended result of the numerous Internet and other electronic communication by defendant with the plaintiff and with the State of Indiana were to transact business in Indiana. Therefore, according to the court, the state of Indiana's interest in solving the dispute was very strong and the court had jurisdiction.

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95 Id. at *4.
96 Id. at *8
97 Id.
98 See supra note 94 at *10.
99 Id. at *18.
100 Id.
101 Id. at *17.
102 Id. at *18.

In California Software, two plaintiffs filed a complaint in California alleging that the defendant made false statements using the telephone, mail, and a nationwide computer network concerning the plaintiffs' right to market a software program. Both plaintiffs maintained their principal places of business in California. The defendant, a Nevada corporation with its principal place of business in Vermont, filed a motion to dismiss in the California court for lack of jurisdiction.

The issue before the court was whether the defendants' use of the above means of communication with the plaintiff in California supports an exercise of jurisdiction in California. The court ruled that it had jurisdiction because the Internet site was accessible in California.

d. Heroes, Inc. v. Heroes Foundation

In Heroes, Inc., the plaintiff and defendant were both charitable organizations that provided support for the surviving families of firefighters killed in the line of duty. The plaintiff, a District of Columbia organization, sued the defendant, a New York corporation, for trademark infringement in the District of Columbia over the defendant's use of the plaintiff's federally registered trademark, "HEROES." The defendant moved to dismiss for lack of jurisdiction. However, the plaintiff argued that the defendant had created sufficient contacts with the District...

104 Id. at 1357.
105 Id.
106 Id.
107 Id. at 1357.
109 Id.
110 Id.
of Columbia due to the defendant’s home page on the Internet, which is accessible to District residents.\textsuperscript{111}

The court found that it had jurisdiction and ruled that because it was possible for a District of Columbia resident to gain access to the page at any time since it was first posted, the defendant sustained sufficient contact with the District of Columbia.\textsuperscript{112}

\subsection*{e. Inset Systems, Inc. v. Instruction Set, Inc.}

In \textit{Inset Systems, Inc.}, the plaintiff, a Connecticut corporation filed a complaint against the defendant, a Massachusetts corporation, after the defendant registered a domain name utilizing the plaintiff's trademark.\textsuperscript{113} The complaint was filed in Connecticut, but the defendant claimed the court lacked jurisdiction because the defendant did not have sufficient minimum contacts within Connecticut to satisfy due process.\textsuperscript{114} Minimum contacts were lacking, according to the defendant, because it did not conduct business in Connecticut on a regular basis, it did not maintain an office in Connecticut, and it did not have employees in the state.\textsuperscript{115} The plaintiff, however, claimed that minimum contacts were satisfied because the defendant used the Internet to conduct business within the state of Connecticut.\textsuperscript{116}

In a very broad interpretation of jurisdiction through Internet connections, the court found that it had jurisdiction over the defendant.\textsuperscript{117} It stated, "in the present case, [the defendant] has directed its advertising activities via the Internet...toward not only

\begin{itemize}
\item \textsuperscript{111} \textit{Id.} at 6.
\item \textsuperscript{112} \textit{Id.} at 14. The court also noted that the existence of an advertisement place in \textit{The Washington Post} by the defendant was also a determinative factor in ruling that the court had jurisdiction to hear the matter. However, the court hinted that the web page alone would have been sufficient.
\item \textsuperscript{113} \textit{Inset Systems, Inc. v. Instruction Set, Inc.}, 937 F. Supp. 161 (D. Conn. 1996).
\item \textsuperscript{114} \textit{Id.} at 162.
\item \textsuperscript{115} \textit{Id.}
\item \textsuperscript{116} \textit{Id.} at 162-63.
\item \textsuperscript{117} \textit{Id.} at 165.
\end{itemize}
the state of Connecticut, but to all states. The Internet is designed to communicate with people and their businesses in every state. Advertisement on the Internet can reach as many as 10,000 Internet users within Connecticut alone. Further, once posted on the Internet, unlike television and radio advertising, the advertisement is available continuously to any Internet user. [The plaintiff] has therefore, purposefully availed itself of the privilege of doing business within Connecticut.

f. Maritz, Inc. v. Cybergold, Inc.

In Maritz, the plaintiff brought an action for trademark infringement in Missouri against an Internet service provider with its principal place of business in California. The plaintiff argued that the defendant was subject to the jurisdiction of the court because the defendant operated an Internet site that was accessible by Missouri residents. Other than the website, the defendant had no contacts with the state.

The court ruled that the defendant's accessible web site was sufficient to establish jurisdiction in Missouri. The court held that by posting information through its web site the defendant sought to create a mailing list of Internet users. In fact, the court reasoned that the defendant had created the website in the hope that Internet users, who are surfing the Internet, will access the defendant's web site and eventually sign up on its mailing list. The court found that although the defendant claimed its site was

118 Inset Systems, 937 F.Supp. at 165.
119 Id.
120 Id.
121 Id.
122 Id.
124 Id. at 1330.
125 Id.
126 Id. at 1333.
127 Id. at 1330.
128 Maritz, 947 F. Supp. at 1330.
merely passive, its true intent was to reach all Internet users, regardless of geographic location, and thus its claim of the site’s passivity was not completely accurate.\textsuperscript{129} The court then stated that “by analogy, if a Missouri resident would mail a letter to [the defendant] in California requesting information from [the defendant] regarding its service, [the defendant] would have the option as to whether to mail information to the Missouri resident and would have to take some active measures to respond to the mail.\textsuperscript{130} With [the defendant’s] web site, [the defendant] automatically and indiscriminately responds to each and every Internet user who accesses its website.\textsuperscript{131} Through its website, [the defendant] has consciously decided to transmit advertising information to all Internet users, knowing that such information will be transmitted globally.\textsuperscript{132} Thus, [the defendant’s] contacts are of such a quality and nature, albeit a very new quality and nature for personal jurisdiction jurisprudence, that they favor the exercise of personal jurisdiction over defendant”\textsuperscript{133}

\textbf{g. iCraveTV}

The most dramatic ruling by an American court on Internet jurisdiction may have occurred in the iCraveTV case. On June 26, 2000, an American federal judge issued an injunction against iCraveTV, a Toronto-based Internet company\textsuperscript{134} that picked up television broadcasts and aired them live over the Internet. The

\begin{itemize}
\item[129] Id. at 1333.
\item[130] Id.
\item[131] Id.
\item[132] Id.
\item[133] *Maritz*, 947 F.Supp. at 1333.
\item[134] The court had jurisdiction in Pennsylvania because the domain was registered to an address there.
\end{itemize}
injunction ordered the company not to place the broadcasts on its web page if viewers in the United States could access them.135

The interesting fact in this case is that iCraveTV’s activities appear to be legal under Canadian law, the principal place of business of the defendant.136 However, because iCraveTV could not possibly provide its service solely for Canadians and assure the U.S. court that it was sufficiently preventing Americans from viewing its broadcasts, iCraveTV shut down its web site.137 Due to this decision, Canadians were prevented from engaging in legal activities in Canada due to the order of an American court.

2. Moderately Expansive Case Law


In 1996, an American court dealt for the first time with an Internet issue involving international jurisdiction in Playboy Enterprises, Inc. v. Chuckleberry Publishing, Inc.138 In this case, the defendant, Tattilo Editrice, was an Italian publisher who produced a male entertainment magazine named “Playmen.”139 After announcing plans to publish the magazine in the United States, the defendant was permanently enjoined from using the trademark “Playmen” in the United States following a lawsuit filed

136 Id.
139 Id. at 1041.
by Playboy Enterprises.\textsuperscript{140} Fifteen years later, he created an Internet site that utilized the "Playmen" mark and displayed certain photographs from the Italian magazine.\textsuperscript{141} The Internet site was created by uploading images onto a World Wide Web server located in Italy.\textsuperscript{142}

Playboy moved for a finding of contempt against Tattilo.\textsuperscript{143} The court determined that the Internet site violated the injunction, and therefore found Tattilo in contempt.\textsuperscript{144} Tattilo was ordered, within two weeks, to either shut down its Internet site completely or refrain from accepting any new subscriptions from customers residing in the United States, invalidate the user names and passwords to the Internet site previously purchased by American customers, and refund to its American customers the remaining unused portions of their subscriptions.\textsuperscript{145}

\textit{b. EDIAS Software International, L.L.C. v. BASIS International Ltd.}

\textit{EDIAS Software International} involved several charges including defamation.\textsuperscript{146} The plaintiff filed the action in a federal court in Arizona against the defendant, a New Mexico corporation with no offices or employees in Arizona.\textsuperscript{147} The plaintiff argued that the defamatory messages of the defendant that appeared in e-mail messages and on the web page served to establish specific personal jurisdiction.\textsuperscript{148}

\begin{flushleft}
\footnotesize
\textsuperscript{140} Id. at 1041-42. The defendant was actually enjoined from not only using the trademark "Playmen," but also "Playboy" or any other word confusingly similar. \\
\textsuperscript{141} Id. at 1042. \\
\textsuperscript{142} Id. \\
\textsuperscript{143} Playboy Enterprises, 939 F.Supp. at 1044. \\
\textsuperscript{144} Id. \\
\textsuperscript{145} Id. \\
\textsuperscript{146} EDIAS Software Int'l v. BASIS Int'l., 947 F. Supp. 413 (D. Ariz. 1996). \\
\textsuperscript{147} Id. at 415. \\
\textsuperscript{148} Id. at 416.
\end{flushleft}
In deciding the case, the court cited the Ninth Circuit's three-part test for specific jurisdiction that requires:

1) the nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections;

2) the claim must be one which arises out of or results from the defendant forum related activities; and

3) exercise of the jurisdiction must be reasonable.\(^{149}\)

Based on this criteria, the court ruled that the defendant's e-mail messages to Arizona and the web site, which reached Arizona customers, acted as sufficient contacts under the minimum contacts requirement.\(^{150}\) The court stated that when intentional actions are expressly aimed at the state and cause foreseeable harm to the defendant, jurisdiction in the forum state exists.\(^{151}\) The court found that the e-mail and web page were both directed at Arizona and allegedly caused foreseeable harm to the plaintiff in Arizona.\(^{152}\) Thus, the court ruled that it did have jurisdiction over the defendant.\(^{153}\) Furthermore, the court clarified that the defendant could not be "permitted to take advantage of modern technology through an Internet Web page and forum and simultaneously escape traditional notions of jurisdiction."\(^{154}\)

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\(^{149}\) Id. at 417.
\(^{150}\) EDIAS Software, 947 F.Supp. at 421.
\(^{151}\) Id.
\(^{152}\) Id.
\(^{153}\) Id.
\(^{154}\) Id.
3. Mildly Expansive Case Law

a. Hall v. LaRonde

In Hall, the defendant agreed to sell licenses for a software application and pay the plaintiff one dollar for every license sold. At one point, the defendant continued to sell the software licenses, but failed to compensate the plaintiff. The plaintiff filed the lawsuit in California even though the defendant maintained his principal place of business in New York and alleged that jurisdiction was established because the two parties had communicated via electronic mail. The defendant made a motion to quash service of the summons on the ground that the courts in California had no jurisdiction.

The court stated that the physical presence of the defendant in the forum-state was not necessary for the court to have jurisdiction. Because of the prevalence of the Internet in business, the court stated, "there is no reason why the requisite minimum contacts cannot be electronic." Based on the facts, the court ruled that it was clear that the plaintiff contacted New York, but it was also clear that the defendant contacted California. These contacts by the defendant with California consisted of more than simply purchasing a software module from Hall. The agreement stated that the defendant would make continuing payments to plaintiff. Thus, the defendant created a continuing relationship with the state of California and established the required minimum contacts necessary for jurisdiction.

156 Id. at 1344.
157 Id. at 1345.
158 Id.
159 Hall, 66 Cal. Rptr. 2d at 1347.
160 Id.
161 Id.
162 Hall, 66 Cal. Rptr. 2d at 1347.
163 Id.
164 Hall, 66 Cal. Rptr. 2d at 1347.
b. Digital Equipment Corp. v. AltaVista Technology, Inc.

In Digital Equipment Corp., the plaintiff, a Massachusetts corporation and owner of an Internet search engine, sought a preliminary injunction in Massachusetts, claiming that the defendant's web site breached its licensing agreement and infringed on plaintiff's trademark rights.\textsuperscript{165} The defendant was based in California.\textsuperscript{166}

Over the defendant's objections, the court held that it had jurisdiction over defendant because the defendant's Internet activities, including sales and advertising to Massachusetts's residents, constituted transacting business there.\textsuperscript{167} Thus, the court ruled, the defendant knew its activities would have an effect on consumers in Massachusetts and a harmful effect on plaintiff.\textsuperscript{168} This sufficiently satisfied the "purposeful availment" due process test.\textsuperscript{169}

c. Humphrey v. Granite Gate Resorts, Inc.

In Granite Gate Resorts, the defendant was a Nevada corporation that intended to start an on-line gambling site from Belize.\textsuperscript{170} A consumer investigator for the Minnesota attorney general went undercover to solicit information about the site and was told that Internet gambling was legal.\textsuperscript{171} The attorney general then filed a complaint alleging that appellants had engaged in deceptive trade practices, false advertising, and consumer fraud by

\textsuperscript{166} Id.
\textsuperscript{167} Id. at 466.
\textsuperscript{168} Id.
\textsuperscript{169} Id.
\textsuperscript{170} Humphrey v. Granite Gate Resorts, Inc., 568 N.W.2d 715 (Minn. Ct. App. 1997). The site was not yet functional, but the defendant had begun to advertise the site and take names of those interested in participating.
\textsuperscript{171} Id. at 717.
advertising in Minnesota that gambling on the Internet is lawful.\textsuperscript{172} The defendants filed a motion to dismiss for lack of jurisdiction.\textsuperscript{173}

The court ruled that the state of Minnesota did have jurisdiction over the defendant.\textsuperscript{174} In reaching this conclusion, the court used several factors, including (1) the quantity of the defendant's contacts and (2) the nature and quality of the defendant's contacts.\textsuperscript{175}

The court found that the first factor was satisfied by a substantial number of contacts between the defendant and Minnesota.\textsuperscript{176} In fact, during a two-week period in February and March 1996, at least two hundred and forty-eight [248] Minnesota computers accessed appellants' web sites, computers located in Minnesota were among the five hundred [500] computers that most often accessed appellants' web sites and the mailing list included the name and address of at least one Minnesota resident.\textsuperscript{177}

The court further ruled that defendants who know their message will be broadcast in the state of Minnesota are subject to suit in the state of Minnesota.\textsuperscript{178} In fact, the court ruled Internet advertisements are similar to television and mail advertisements in that advertisers distribute messages to Internet users, and users must take affirmative action to receive the advertised product.\textsuperscript{179} Here, the site actually stated that it was "open to International markets," which shows intent to find participants from all over the nation and world.\textsuperscript{180} In addition, the court found that because the site was written in English, a clear intent to reach the American market, which includes Minnesota, was shown.\textsuperscript{181} This provided

\textsuperscript{172} Id.  
\textsuperscript{173} Id.  
\textsuperscript{174} Id. at 721.  
\textsuperscript{175} Humphrey, 568 N.W.2d at 718.  
\textsuperscript{176} Id.  
\textsuperscript{177} Id.  
\textsuperscript{178} Id. at 720.  
\textsuperscript{179} Id.  
\textsuperscript{180} Humphrey, 568 N.W.2d at 720.  
\textsuperscript{181} Id.
the minimum contacts sufficient to support a finding of personal jurisdiction.\(^{182}\)


In Zippo Dot Com, Inc., the Pennsylvania-based plaintiff, manufacturer of the well-known cigarette lighters, filed a complaint against the defendant, a California corporation, for trademark infringement for registering and utilizing several domain names with the “ZIPPO” trademark.\(^{183}\) Although the complaint was filed in the Western District of Pennsylvania, the defendant claimed that the court did not have jurisdiction because the defendant did not maintain any offices, employees or agents in Pennsylvania.\(^{184}\)

However, the defendant did have contacts with Pennsylvania through the Internet.\(^{185}\) For example, the defendant advertised its services to Pennsylvania residents by posting information about its service on its web page.\(^{186}\) This page was accessible to Pennsylvania residents via the Internet.\(^{187}\) Furthermore, the defendant had approximately 140,000 paying subscribers worldwide.\(^{188}\) Approximately two percent [3,000] of those subscribers were Pennsylvania residents, who contracted to receive the defendant’s service by visiting its web site and filling out the application.\(^{189}\) Additionally, the defendant entered into agreements with seven Internet access providers in Pennsylvania to permit their subscribers to access the defendant’s news

\(^{182}\) Id.


\(^{184}\) Id. at 1120.

\(^{185}\) Id. at 1121.

\(^{186}\) Id.

\(^{187}\) Id.

\(^{188}\) Zippo, 952 F. Supp. 1121.

\(^{189}\) Id.
service.\textsuperscript{190} Two of these providers were located in the Western District of Pennsylvania.\textsuperscript{191}

The court ruled that it had jurisdiction over the defendant.\textsuperscript{192} First, it noted that the defendant had not just posted information on the Internet that was merely accessible to Pennsylvania residents who were connected to the Internet.\textsuperscript{193} Although the defendant tried to characterize its conduct as falling short of purposeful availment of doing business in Pennsylvania by merely claiming to "operat(e) a Web site" or "advertis(e)," the defendant had done more than advertise on the Internet in Pennsylvania.\textsuperscript{194} In fact, the defendant had contracted with approximately 3,000 individuals and seven Internet access providers in Pennsylvania.\textsuperscript{195} This, the court concluded, equaled purposeful availment.\textsuperscript{196}

4. Potentially Expansive Case Law

\textit{a. Smith v. Hobby Lobby Stores, Inc.}

This case involved a wrongful death action, in which the plaintiffs, Woodrow and Mary Elizabeth Smith purchased an artificial Christmas tree and three 100-bulb strands of electric Christmas lights from a Hobby Lobby Store in Rogers, Arkansas.\textsuperscript{197} A fire occurred at the Smith residence, which allegedly was caused by the lights and artificial Christmas tree.\textsuperscript{198} The fire destroyed the Smith home and Mary Elizabeth died from injuries sustained during the fire.\textsuperscript{199}

\textsuperscript{190} \textit{Id.}
\textsuperscript{191} \textit{Id.}
\textsuperscript{192} \textit{Id. at} 1122.
\textsuperscript{193} \textit{Zippo,} 952 F.Supp. at 1125-26.
\textsuperscript{194} \textit{Id.}
\textsuperscript{195} \textit{Id.}
\textsuperscript{196} \textit{Id.}
\textsuperscript{198} \textit{Id. at} 1358.
\textsuperscript{199} \textit{Id.}
The complaint alleged that Hobby Lobby was liable under various theories including negligence, breach of warranty, and strict liability. However, Hobby Lobby sought and was granted leave to file a third-party complaint against Boto and Everstar Merchandise Co., Ltd, the manufacturer and supplier of the artificial Christmas tree, respectively. Boto was a foreign corporation with its main place of business in Hong Kong.

In arguing that the court had jurisdiction over Boto, the plaintiffs stressed the fact that Boto advertises in Arkansas via the World-Wide Web. However, the court rejected this argument and held that the mere advertisement on the Internet does not mean that a company is subject to personal jurisdiction. Otherwise, the court reasoned, the advertisement would place them in the jurisdiction at every location on the planet where someone is capable of logging on the Internet.

The court further stated that, in this case, at the most, Boto's advertisement in a trade publication appears on the Internet. Boto did not contract to sell any goods or services to any citizens of Arkansas over the Internet site. Thus, the court found that the alleged Internet posting by Boto is simply an insufficient "contact" with Arkansas to support forcing the Hong Kong business into the courts of Arkansas. The court ruled that the company would have had to contract to sell goods or services over the Internet to Arkansas residents in order for this court to establish jurisdiction.

200 Smith, 968 F.Supp. at 1358.
201 Id.
202 Id.
203 Id. at 1363.
204 Id.
205 Id. at 1364.
206 Id.
207 Smith, 968 F.Supp. at 1365.
208 Id.
209 Id.
b. Hearst Corporation v. Goldberger

In Goldberger, the plaintiff, owner and publisher of ESQUIRE Magazine, brought a trademark infringement action in the Southern District of New York against the defendant, who had registered an Internet domain name, "ESQWIRE.COM."\(^{210}\) The defendant lived in New Jersey and worked in Philadelphia.\(^{211}\)

The court ruled that it lacked jurisdiction over the defendant, and therefore the case should be transferred to the United States District Court for the District of New Jersey.\(^{212}\) The court stated that where the defendant has not contracted to sell or actually sold any goods or services in the state of New York, a finding of personal jurisdiction in New York based on an Internet web site would mean that there would be nationwide or even worldwide personal jurisdiction over anyone and everyone who has established an Internet web site.\(^{213}\) The court ruled that this nationwide jurisdiction was not consistent with traditional personal jurisdiction case law or public policy.\(^{214}\)

c. Bensusan Restaurant Corp. v. King

In this case, the plaintiff, Bensusan, a New York corporation, was the creator of a jazz club in New York City known as "The Blue Note."\(^{215}\) The plaintiff owned all rights, title and interest in and to the federally registered mark "The Blue Note."\(^{216}\) The defendant was an individual who lived in Columbia, Missouri and owned a club in that city also called "The Blue Note."\(^{217}\) In April

\(^{210}\) *Hearst v. Goldberger*, 1997 WL 97097 (S.D.N.Y. 1997). The website, "ESQWIRE.COM" offered networking services for attorneys and also provides legal information services.

\(^{211}\) *Id.*

\(^{212}\) *Id.*

\(^{213}\) *Id.*

\(^{214}\) *Id.*


\(^{216}\) *Id.* at 297.

\(^{217}\) *Id.*
of 1996, the defendant posted a "site" on the Internet to promote his club.\textsuperscript{218} The web site, which was located on a computer server in Missouri, allegedly contained "a logo that was substantially similar to the plaintiff's logo."\textsuperscript{219} The plaintiff brought an action for trademark infringement and dilution in the Southern District of New York.\textsuperscript{220} The defendant moved to dismiss for lack of personal jurisdiction.\textsuperscript{221}

The court determined that the appropriate standard for jurisdiction in a trademark infringement case is an offering for sale of even one copy of an infringing product in the jurisdiction, even if no sale results.\textsuperscript{222} This, argued the court, is the requirement for a court to attain jurisdiction over the alleged infringer.\textsuperscript{223} Therefore, the court stated, "the issue that arises in this action is whether the creation of a web site, which exists either in Missouri or in cyberspace (i.e., anywhere the Internet exists) with a telephone number to order the allegedly infringing product, is an offer to sell the product in New York."\textsuperscript{224}

After further discussion, the court ruled that it did not have jurisdiction over the defendant.\textsuperscript{225} The court reasoned that in order to access the site a New York resident would have to take affirmative steps, and stated that "the mere fact that a person can gain information on the allegedly infringing product is not the equivalent of a person advertising, promoting, selling or otherwise making an effort to target its product in New York."\textsuperscript{226} Here, there [was] simply no allegation or proof that any infringing goods were shipped into New York or that any other infringing activity was directed at New York or caused by [the defendant] to occur [in New York].\textsuperscript{227}

\begin{itemize}
\item \textsuperscript{218} Bensusan Restaurant Corp, 937 F. Supp. at 297.
\item \textsuperscript{219} Id.
\item \textsuperscript{220} Id. at 298.
\item \textsuperscript{221} Id.
\item \textsuperscript{222} Id. at 299.
\item \textsuperscript{223} Id.
\item \textsuperscript{224} Id. at 299.
\item \textsuperscript{225} Bensusan Restaurant, 937 F.Supp. at 299.
\item \textsuperscript{226} Id.
\item \textsuperscript{227} Id.
\end{itemize}
5. Non-Expansive Case Law


In this case, the plaintiff claimed that the defendants knowingly reproduced his copyrighted photo of basketball star, Charles Barkley, for a Nikon camera advertisement without seeking or obtaining permission, and subsequently, the plaintiff filed a lawsuit in California.\(^{228}\) Although, the defendant was a Minnesota corporation and had no clients, offices, or accounts in California, the plaintiff claimed that the California court could find jurisdiction because the defendant maintained an Internet site.\(^{229}\)

However, the court ruled that the fact that the defendant had a web site used by Californians could not establish jurisdiction by itself. The court stated that because the web enables easy worldwide access, allowing Internet sites to supply sufficient contacts that create personal jurisdiction would destroy the current personal jurisdiction requirements.\(^{230}\)


In Pres-Kap, Inc., the plaintiff agreed to install and maintain computerized airline reservation terminals for the defendant travel agent.\(^{231}\) At one point, a dispute arose between the parties concerning the alleged malfunctioning of the airline reservation system.\(^{232}\) The defendant complained to the plaintiff's New York office, but allegedly no effort was made to repair the equipment.\(^{233}\) As a result, the defendant stopped making its monthly lease

\(^{229}\) Id. at *6.
\(^{230}\) Id. at *8.
\(^{232}\) Id. at 1352.
\(^{233}\) Id.
payments under the contract, and in July 1991, the plaintiff removed the leased computer terminals at the defendant's request. 234 The plaintiff sued in a Florida court for breach of the lease agreement. 235 However, because the defendant's business was located in New York, the defendant moved to dismiss for lack of jurisdiction. 236 The plaintiff argued that the court had jurisdiction because the computer database of the plaintiff's airline reservation system, which the defendant accessed through computer terminals, was located in Miami. 237

In overturning the trial court, the appellate court ruled that this contact "cannot convert this obviously New York-based transaction into a Florida transaction so that the defendant could reasonably expect to be sued in Florida in the event the transaction soured." 238 The court reasoned that the defendant was probably not even aware of the exact location of the database. 239 Furthermore, even if the defendants had knowledge of the location of the database, it would not have changed the defendant's reasonable belief that in the event of a dispute, that it would be haled into a New York court since it was a "New York-based contract solicited by the plaintiff in New York, negotiated by the parties in New York, executed by the defendant in New York, and serviced by the plaintiff in New York." 240 The court further stated that a different decision would have far-reaching implications for businesses that use out of state computer services. 241 Businesses could be haled into court in the Location State of the database, "even if such users, as here, are solicited, engaged, and serviced entirely instate by the supplier's local representatives." 242

234 Pres-Kap, 636 So. 2d at 1352.
235 Id.
236 Id.
237 Id. at 1353.
238 Id.
239 Id.
240 Id.
241 Pres-Kap, 636 So. 2d at 1353.
242 Id.
6. American Case Law Summary

The case law in the first section above created a very dangerous precedent for Internet jurisdictional issues. According to the rulings of the highly expansive cases, whenever an individual simply posts anything on the Internet or sends an e-mail, the individual can be held liable in any jurisdiction where the Internet is accessible.\(^{243}\) Since the Internet can be accessed anywhere in the world, the rulings of these courts imply that Internet activity establishes a world-wide jurisdiction.

Unfortunately, this precedent was eventually realized when an American corporation actually was deprived of its First Amendment right to freedom of speech by a foreign court in the Yahoo! decision that I will discuss below. However, the case law in this section raises an even greater concern. If Internet companies have to fear foreign civil or criminal liability for the information they post, the growth of the Internet will be severely stunted and the U.S. and world economies will likely be gravely affected.\(^{244}\)

In the moderately expansive section of American case law, the courts limited their jurisdictional reach a little more than the courts' in the first group. For example, in Playboy, even though the court asserted jurisdiction over a defendant due to Internet contacts, it tried to remedy its overreaching by attempting to censor the material only where the material was illegal. (The court held that the infringing trademark could not be used in the United States, but it could be used elsewhere. The court did not want to interfere in activity that was legal elsewhere.)

However, this case does not completely solve the problem. The defendant, in this situation, offered a web site that was accessible only to members. Based on the membership information, the defendant could determine the locations of the members and deny access to those in the United States. Thus, it was easy for the

\(^{243}\) Hearst Corp. v. Goldberger, 1997 WL 97097 at *20 (S.D.N.Y. 1997). This court expressly rejected the holdings of Heroes and Maritz.

\(^{244}\) See Kennedy, supra note 3.
defendant to deny access to citizens of one nation and still provide it for individuals in locations where the material was legal.

In contrast, most web sites provide information, photographs, and other material to anonymous individuals without requiring membership information.\(^\text{245}\) In fact, many web page authors believe anonymity is necessary to protect privacy and to prevent the hesitancy of individuals to access certain sites.\(^\text{246}\) Furthermore, there is no assurance that individuals will provide accurate information. Without the requirement of a credit card or another type of identification, the savvy web surfer can easily insert a false address in order to gain access to a site. Thus, the ruling by the *Playboy* court is likely not an effective solution.

In *EDIAS*, the court found that jurisdiction had been established simply because the web site was specifically directed at the forum-state. This rule is also overly abroad. Since every web site is accessible in every forum, it is arguable that every web site is directed to every forum. Thus, a court could broadly interpret the ruling in *EDIAS* in order to subject any web page author to its jurisdiction.

Although the mildly expansive cases still improperly expanded jurisdiction over web page authors, ISPs, and Internet companies, other factors existed in these cases that somewhat legitimized the courts’ rulings. For example, in two of the cases, citizens of the forum-state were listed on the web page’s membership directories and, in the other cases, the defendant web sites actually sold goods or engaged in business with individuals in the forum. It is not clear, however, whether the court would have found that

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245 Three of the five most visited web sites allow individuals to access all information on the site without providing any personal information (One of the other two, AOL.com, allows surfers to gain access to a significant amount of material without a membership). The five most visited web sites are, in order, yahoo.com, AOL.com, MSN.com, microsoft.com, and passport.com. Todd Pack, *Orlando Company Gets Lots of Action at Toy Fair*, ORLANDO SENTINEL, May 12, 2001.

246 See *ACLU v. Miller*, 1997 WL 552487 (1997) (the court found that a law banning anonymous speech on the Internet was an unconstitutional restriction on free speech.).
jurisdiction was established based solely on Internet contacts. The potentially expansive cases also suggested that selling goods over the Internet could satisfy the minimum contacts requirement.

While these are rulings were more legitimate than the rulings in the previous sections, the established precedent is still troubling. Currently, commerce on the Internet is growing at an astounding rate.247 Its success may be vital to the economies of the United States, Europe, and the rest of the world.248 By following the holdings of the courts in these categories, future courts would essentially free non-profit web sites from jurisdiction, but more strictly subject Internet businesses to their jurisdictions. This is not the solution. Although non-profit web authors deserve strong protection from foreign jurisdiction, businesses must be given the highest priority for protection in order to encourage growth on the Internet and thus the economy.

D. Overly-Inclusive European Case Law

1. Yahoo! Case

In early April 2000, the International League against Racism and Anti-Semitism [LICRA] filed a lawsuit against Yahoo! Inc. in Paris, France. The lawsuit was based on Yahoo!'s consent to the auctioning of Nazi-related paraphernalia on its web site.249 On
May 22, 2000, the court issued an injunction against Yahoo! mandating that it remove from the accessibility of any person in France any “messages, images and texts relating to...Nazi objects, relics, insignia and emblems and flags [and]...web pages exposing the texts, extracts or citations of "Mein Kampf"..., which may currently be consulted, reproduced or telecharged [from] the services of Yahoo! Inc.” If Yahoo! did not comply, it would be fined 100,000 Euros per day.

In response to Yahoo!'s argument that the court did not have jurisdiction to grant the injunction, the court held that due to the “visualization in France of [Nazi] objects and [the] eventual participation of a surfer established in France in such an exposition, [therefore] Yahoo! Inc...ha[d] committed a wrong on the territory of France.” In other words, the court held, in a very broad ruling, that if an individual could view a web page in France, the owner of the web page would be subject to French law. Although Yahoo!'s activity is protected by American law, the court essentially forced the activity off of the Internet and off of the computers of law-abiding Americans.


250 See Licra, supra note 30. In addition to the injunction, the court reminded Yahoo! that the practice of displaying Nazi uniforms, emblems, and insignia may be criminal activity.

251 Id. The court ruled that although it would be difficult for Yahoo! to block French visitors, the court argued that this task was not insurmountable. Furthermore, the court found that Yahoo! was able to identify the geographical origin of the user by discovering the IP address of the user. Therefore, the court ruled, Yahoo! should be able to prohibit users from France. The court encouraged Yahoo! to take “any and all measures” to prevent the activity.

252 Id. One hundred thousand Euros is roughly the equivalent of $102,000 (USD).

253 Id. Yahoo! argues that the court does not have jurisdiction because the alleged activity was committed within the territory of the United States.

254 Id. The court held that because the harm was suffered in France, the court had jurisdiction pursuant to article 46 of the New Code of Civil Procedure.
III. PROPOSED LEGISLATION

The ruling by the French court in the Yahoo! case was very alarming. Basically, under the court’s logic, any web page author could be haled into the court in any nation in the world. In response, on January 3, 2001, Dreier introduced House Resolution 12, a bill aimed at the protection of U.S. Internet Service Providers (ISP’s) from foreign regulation. The bill states that the House of Representatives opposes the imposition of criminal liability on any Internet service provider based on content supplied or controlled by a third party. Furthermore, the bill mandates House opposition to any efforts by foreign governments to hold Internet service providers based in the United States criminally liable under foreign laws for content that is protected by the First Amendment to the United States Constitution, processed by servers located in the United States, and not targeted toward the citizens of the foreign country.

IV. ANALYSIS

Dreier’s legislation is very important to the Internet and thus the economy. In recent years, the Internet has created new models for business, communication, and the spread of new ideas. These new models have created significant new growth in the American economy. In support of his bill, Congressman David Dreier stated, “exposing Internet service providers to criminal liability for user content will impose costly burdens on a key part of America’s economy, the technology sector; it will seriously degrade the ease and speed of consumer access to the Internet; and it will expose American ISP’s to control and regulation by foreign courts and governments, many of which don’t respect the First Amendment.”

255 Office of Congressman David Dreier, Dreier Bill Boosts Internet Growth, at http://www.house.gov/dreier/pr010401.htm (last visited March 8, 2001). In support of his bill, Congressman David Dreier stated, “exposing Internet service providers to criminal liability for user content will impose costly burdens on a key part of America’s economy, the technology sector; it will seriously degrade the ease and speed of consumer access to the Internet; and it will expose American ISP’s to control and regulation by foreign courts and governments, many of which don’t respect the First Amendment.”

256 H.RES. 12, 107th Cong., January 7, 2001

257 Leonard Kennedy and Lori Zallaps, If it Ain’t Broke....The FCC and Internet Regulation, 7 CommLaw Conspectus 17 (Winter, 1999).
economy and the global marketplace as new companies have emerged and older companies have grown stronger.\(^{258}\)

Take, for instance, Dell Computer Corporation. In 1985, Michael Dell, with a small loan from his parents, created a computer company that sold its product solely through mail and phone orders.\(^{259}\) In 1999 alone, due mainly to the growth of the Internet, Dell computer generated $16.8 billion in revenue.\(^{260}\) The Internet Business Manager at Dell, Barry Collins, explained the company's success. "Using the Internet," he said, "makes it easier for customers to do business with Dell and [also] reduces the cost of doing business [for Dell]."\(^{261}\)

Dreier and many others believe, however, that regulation of the Internet by numerous governments and an unknown world-wide jurisdiction could slow its substantial growth.\(^{262}\) Michael Durham, a Sabre executive, worries that "new laws and regulations...levied on the Internet could stunt its growth just as it is showing such great potential."\(^{263}\) The CEO of Cisco, John Chambers, claims that government regulation "will bring th[e] [Internet] industry to a halt."\(^{264}\)

Specifically, regulation and an over-sized jurisdiction will hurt the Internet in two main ways. First, prices of Internet services and goods sold over the Internet will increase.\(^{265}\) Due to the immense potential of liability, Internet service providers and corporations will likely become stuck in considerable amounts of

\(^{258}\) Id. at 21. In fact, in 1998, it was estimated that 1.1 million jobs were created by the Internet. Since the Internet is only in its infancy, many project that only a small portion of its job growth potential has been realized.

\(^{259}\) Id. at 19.

\(^{260}\) Id. at 20. Another success story involves Egghead.com. Originally, the online software seller was based solely out of brick and mortar stores. However, when competition from superstores threatened the future of Egghead, its owner closed down all of its retail stores and created egghead.com.

\(^{261}\) Id.

\(^{262}\) See supra note 258 at 21.

\(^{263}\) Id.

\(^{264}\) Id.

litigation. 266 They will have to hire attorneys, which will result in substantial legal fees. 267 Also, more legislation that expands liability for Internet companies will necessitate further expenditure for efforts to lobby the legislature for more protective laws. 268 Finally, Internet entities will basically be forced to attain insurance coverage to protect their companies from verdicts in foreign jurisdictions. 269 All of these costs will likely be passed to the consumers resulting in higher priced goods and more expensive Internet connection fees. 270

Second, an increase in the likelihood of liability will stunt the growth and expansion of the Internet. 271 Not only would this harm the American and global economy by causing losses for individual investors and major corporations, but it may also deny access to the large amount of beneficial and helpful information provided by the Internet. 272

V. CONCLUSION

The bill introduced by Dreier is a good start to remedy the jurisdictional problem facing Internet companies and to allow the Internet to continue to grow. However, much more must be done. The United States must set an example for the rest of the world. It cannot be hypocritical and condemn the Yahoo! decision and then only weeks later extend its jurisdiction over iCraveTV. Congress must pass legislation that frees a substantial number of foreign Internet companies from the jurisdiction of American courts. In exchange, the U.S. government should seek treaties with foreign governments, which would restrict jurisdiction to the location nation of certain companies whose only contacts with foreign nations are through the Internet. This protection should extend, at

266 Id. at *35.
267 Id.
268 Id.
269 Id.
270 See supra note 266 at *35.
271 Id. at *34.
272 Id.
the very least, to subjective subject matter disputes, such as
defamation or obscenity charges, so that Internet companies at
least can try to understand the laws of different jurisdictions and
also to large corporations that will spur growth in the Internet
sector.

Although the enforcement of certain laws by the U.S.
government would be impossible, the benefits to American
Internet corporations would be substantial. American Internet
companies would be free to post information and engage in
business practices over the Web with the knowledge that they are
liable only under American law. This would allow American
companies to retain their rights under the First Amendment, and
most importantly, it would free Internet companies from the fear
that the normally protectable information they post will cost them
damages or, even worse, criminal charges. This will encourage the
continued growth of the Internet. The substantial economic
benefits gained from this policy will sufficiently supplement the
loss of American sovereignty.

William Crane