

Personal jurisdiction in the internet age



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Personal Jurisdiction in the Internet Age This essay will address the meaning of personal jurisdiction, its significance and application in the modern age of the Internet, and apply the "interactive-passive" test to a selected website.

What Really Happened: A Conspiracy Web Page

What Really Happened is mostly a political conspiracy web site. Each day there are many news stories posted with accompanying commentary by the owner of the web site. This site is very popular and has been in existence for more than five years. Readers are encouraged to make comments and to submit their own essays for publication. There are live interviews with academics and with laypersons. Major topics include the Middle East Peace Process, the September 11 disaster, and the formulation and implementation of American policy abroad and domestically.

On the surface, this web site looks very much like a passive web site. It is providing general information, allowing readers to contribute their opinions, and these characteristics are certainly more passive than interactive. A closer examination, however, reveals that this website is quite interactive. At the top of the page there is a "donate" link. Readers are encouraged to support this site financially because it is not a traditional commercial enterprise. Donating online is a form of two-way communication and hardly passive. In addition, there are many advertisements on this web page. While advertisements alone, per se, are inadequate to justify personal jurisdiction, these particular advertisements are related to the conspiracy topic of the web site. There are shirts with the web page logo for sale, advertisements for investments in gold and precious metals to hide from an inevitable economic crash, and a web site store hawking everything from key rings to videos and hats. Most significantly, these products are sold online, through the web site.

The operator of this web site, therefore, must recognize that many states can acquire personal jurisdiction. This web site is not passive. This web site is much more than the " middle spectrum" cases to which Wolf refers. In conclusion, the operator of this website must be very careful because most, if not all states, can acquire personal jurisdiction over him if a complaint is filed and the Due Process Clause of the U. S. Constitution. Defamation suits would seem a particular risk in this case.

Personal Jurisdiction for Websites

As an initial matter, personal jurisdiction is important for those people or organizations which post web sites because this type of authority grants a court the power to decide a legal case. A lack of personal jurisdiction, therefore, allows the poster of a web site to operate outside the legal reach of a particular court. This has many significant implications. First, a court which acquires personal jurisdiction over an individual or an organization can issue a summons requiring the poster of a web site to appear in that court and to answer the allegations of the complaint. A failure to appear can result in sanctions, such as the issuance of an arrest warrant or the entry of a default judgment. Second, the court's legal decisions, including injunctions, become binding and are recognized in other jurisdictions with reciprocity agreements or obligations. Finally, the poster of the website may be foreclosed from initiating litigation in another court. In sum, the issue of personal jurisdiction should be of fundamental importance to web site publishers, both in terms of civil liabilities and in terms of criminal liabilities. Personal jurisdiction is typically acquired by satisfying a variety of tests, consistent with the Due Process Clause of the U. S. Constitution, and by serving the defendant with proper notice. Personal jurisdiction can be

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acquired when the poster of a website or his business is physically present in the court's territorial jurisdiction. In addition, personal jurisdiction may be acquired when a non-resident motorist is involved in an accident within the court's jurisdiction or when " purposefully directed activities" result in actionable claims (Kesan, 2005: np). The acquisition of personal jurisdiction over out of state actors has been addressed most particularly by the enactment of long arm statutes. These types of statutes, enacted by the overwhelming majority of states, are designed to reach into other states and other jurisdictions in order to acquire personal jurisdiction over distant defendants. There is even a Uniform Interstate and International Procedure Act (UIIPA), which functions as a model long arm statute, and which several states have enacted in substantially the same format and substance. These types of statutes render web site posters more vulnerable to the personal jurisdiction of a variety of forum states.

Wolf notes that mere accessibility of a website in a state is not enough for a court to assert and acquire personal jurisdiction (1999: np). More, the nature of personal jurisdiction, when applied to the Internet, is a complicated and evolving area of the law. The mobility and elusiveness of the Internet is in many ways unprecedented and the law is trying to catch up. To this end, Wolf notes that, Although no bright-line test exists, most courts have applied an " interactive-passive" distinction when determining personal jurisdiction over someone operating a Web Site" (Wolf, 1999: np). This interactive-passive test is premised upon the nature and the extant of the web site poster's activity in a given state. A passive web site is characterized as one which is, in effect, non-participatory. The web site's information is available for browsing and functions as a " general access web site" (Wolf, 1999: np).

This passive characterization has been emphasized by the 9th Circuit Court of Appeals, which stated that, absent any actual sales of products, " no court has ever held that an Internet advertisement alone is sufficient to subject the advertiser to jurisdiction in the plaintiff's home state" (Cybersell, Inc., 1997: np). Thus, the simple provision of information, including advertising, is an insufficient contact for the exercise of personal jurisdiction.

By contrast, an interactive web site is characterized as extending beyond the mere provision of general access information. This type of web-site involves two-way communication through the web site. The types of interaction must, as noted, go beyond mere advertising. Actions that would lead towards a finding of interactivity would be the actual sale of products or the act of solicitation. Once the poster of a web site makes a voluntary contact with a state's residents, he then makes the jump from a passive provider of information to an active participant in that state's affairs. There are, as noted by Wolf, many situations which are not perfectly interactive or passive. He calls these types of cases the " middle spectrum", and in these types of cases the courts have employed a balancing test in order to decide whether or not to exercise personal jurisdiction. The inclusion of a toll-free telephone number to solicit future business was deemed a sufficient indicator of interactive behavior in one case, but judged inadequate in a copyright case where contact information alone was presented without any additional evidence of on-line business transactions or any behavior beyond the mere response to email inquiries. In short, some cases are rather straightforward whereas others require a very clear analysis of the nature of a web site's activities in a particular state.

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