MINIMUM e-contacts

Personal Jurisdiction in the Internet Age

BY HON. DANIEL J. KILEY

The Internet has vastly expanded the opportunities for individuals and businesses to market their goods and services, enabling them literally to "conduct business throughout the world entirely from a desktop."[1] It should come as no surprise, however, that with increased business opportunities comes an increased risk of being sued, often in jurisdictions far from home. "Among the exciting opportunities offered by the Internet," one court has observed, "is the chance to be haled into court in another state."[2] When, and under what circumstances, courts may assert personal jurisdiction over nonresident defendants in suits arising out of Internet transactions has become the subject of much dispute.

The traditional principles applicable to personal jurisdiction are familiar to any first-year law student who has taken a civil procedure class (see sidebar on page 62). The problem with applying these familiar principles to cases arising out of Internet transactions is obvious: Although the Internet is everywhere, it is nowhere in particular.[3] Because "cyberspace lacks the territorial boundaries that form the backbone of traditional personal jurisdictional analyses,"[4] courts have struggled to resolve disputes over personal jurisdiction involving Internet transactions.

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Holland v. Hurley

Last year, Division Two of the Arizona Court of Appeals had the opportunity to resolve a challenge to personal jurisdiction arising out of a sale that occurred over the Internet in *Holland v. Hurley*.[5] In *Holland*, the plaintiff, an Arizona resident, purchased a 1976 Cadillac from the defendant, a Michigan resident, through the online auction site eBay. After taking possession of the Cadillac, the plaintiff decided that its condition did not match the defendant's representations and sued the defendant in Arizona. The Superior Court in Pima County granted the defendant's motion to dismiss the case for lack of personal jurisdiction; the plaintiff then appealed.

Noting that the defendant had no physical presence, agents, offices or property in Arizona, the *Holland* court observed that the plaintiff "correctly acknowledge[d]" that an Arizona court could not exercise general jurisdiction over the Michigan defendant.[6] The *Holland* court went on to state that specific jurisdiction may be asserted if "(1) the defendant purposefully avails himself of the privilege of conducting business in the forum; (2) the claim arises out of or relates to the defendant's contact with the forum; and (3) the exercise of jurisdiction is reasonable."[7]

The record before the court indicated that the Michigan defendant's only contact with Arizona was his sale of the Cadillac via eBay to the plaintiff, an Arizona resident, and some subsequent e-mails and telephone calls between the parties that were, apparently, initiated by the plaintiff.[8] Based on this record, the court held that the plaintiff failed to meet his burden of showing that the defendant "purposefully avail[ed] himself of the privilege of conducting business in Arizona."[9] The court left open the possibility that the result might have been different if the plaintiff had come forward with evidence showing that the defendant regularly conducted business with Arizona residents through eBay, a point emphasized by Judge Espinosa in his concurring opinion.[10] Nevertheless, on the facts presented, the court held that personal jurisdiction cannot be established as a result of "a one-time contract for the sale of a good that involved the forum state only because that is where the purchaser happened to reside."[11]

In its opinion, the *Holland* court cited with approval other cases that had declined to assert personal jurisdiction over nonresident defendants in litigation arising out of eBay transactions, including the decision of the Ninth Circuit Court of Appeals in *Boschetto v. Hansing*[12] and the widely cited decision of the district court for the Eastern District of Michigan in *Winfield Collection, Ltd. v. McCauley*.[13] The holdings of these cases turned on the nature of online auction sites such as eBay, which "permit the highest bidder to purchase the property offered for sale."[14] Because the identity of the successful bidder is "beyond the control over the seller," the seller's contact with the successful bidder's state of residence is precisely the type of "fortuitous" contact that cannot support the exercise of jurisdiction.[15]

In finding no basis to assert personal jurisdiction, the dispositive fact for the *Holland* court was that the disputed transaction took place on eBay, a website that the seller neither owned nor controlled.[16] Neither *Holland* nor any other reported decision in Arizona addresses a challenge to

the exercise of personal jurisdiction in a dispute arising out of a website owned and controlled by a nonresident defendant.

Competing Standards

The advent of Internet-related litigation in the 1990s saw widely varying views emerge about the assertion of personal jurisdiction over web users. Arguing that "[t]he Internet and the Web" are fundamentally different from "the three dimensional world in which the common law developed,"[17] some early commentators urged that cyberspace should be treated "as a separate 'space' to which distinct laws apply."[18] Whether Congress could constitutionally enact "distinct laws" regulating personal jurisdiction in cyberspace without regard to state borders is highly questionable in light of the United States Supreme Court's pronouncement that state boundaries could never be "irrelevant for jurisdictional purposes."[19] In any event, no such "distinct laws" governing jurisdiction in cyberspace were forthcoming, leaving courts to apply traditional principles to this new medium.

Some early cases broadly held that a court in the forum state could properly exercise personal jurisdiction over an out-of-state defendant based on its maintenance of a website that was accessible to forum residents.[20] These courts reasoned that maintaining a website "for the purpose of, and in anticipation of, being accessed and used by any and all [I]nternet users, including those residing in [the forum state], amounts to promotional activities or active solicitations" sufficient to establish "minimum contacts" with the forum.[21]

"[A]s case law in this area has developed, the majority of courts have rejected" the conclusion that "the mere presence of a website, without more, was enough to subject a defendant to personal jurisdiction in the forum where the website could be accessed."[22] Courts have come to recognize that if the mere maintenance of a website, without more, justified the assertion of personal jurisdiction over a nonresident defendant, "[P]ersonal jurisdiction in Internet-related cases would almost always be found in any forum in the country."[23] For the mere existence of a website to render its owner amenable to suit nationwide would be incompatible with the declaration of the U.S. Supreme Court that, although "technological progress has increased" both "the flow of commerce between States" and the consequent "need for jurisdiction over nonresidents," such a trend does not herald "the eventual demise of all restrictions on the personal jurisdiction of state courts."[24]

Moreover, from a practical standpoint, the threat of "the litigious nightmare of being subject to suit in every jurisdiction in this country" based on the operation of a website would inhibit e-commerce, thereby restricting both businesses' marketing opportunities and consumers' choices.[25] Furthermore, allowing each state to assert jurisdiction over any website accessible to its residents risked exposing web users to the burden of "inconsistent regulations throughout fifty states, indeed, throughout the globe."[26] Thus, a consensus emerged in case law that personal jurisdiction over a nonresident defendant cannot be premised solely on the defendant's operation of a website.

The Emergence of the *Zippo* Test

In *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*,[27] the Pennsylvania district court was faced with a challenge to the exercise of personal jurisdiction over a California company in a dispute filed by the manufacturer of Zippo lighters. The manufacturer sued the California defendant for trademark infringement and related claims based on the defendant's use of the word "Zippo" on its website and in the domain names it held. The defendant's contacts with the forum state, Pennsylvania, "occurred almost exclusively over the Internet," with the defendant maintaining "no offices, employees or agents in Pennsylvania."[28] Holding that "the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet," the *Zippo* court set forth a "sliding scale" test to determine when personal jurisdiction may be asserted based on a nonresident defendant's use of the Internet:[29]

> At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction. The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of personal jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.[30]

Applying this test to the facts of the case before it, the *Zippo* court held that the defendant was clearly doing business in Pennsylvania in that the defendant had entered contracts with approximately 3,000 individuals and seven Internet access providers in the state. Therefore, the assertion of personal jurisdiction was proper.[31]

Once hailed as "a seminal authority regarding personal jurisdiction based upon the operation of an Internet web site,"[32] *Zippo*'s "sliding scale" test has come under criticism in recent years, with most of the criticism being directed at the "interactivity" test at the middle of the *Zippo* spectrum.[33] Due to its focus on a website's interactivity as a key factor in the personal jurisdiction analysis, the *Zippo* test has been criticized for creating "bizarre incentives" for those doing business on the Internet "to make their websites less sophisticated in order to avoid jurisdictional exposure."[34] The *Zippo* test likewise has been criticized as "difficult to apply," thereby "generating inconsistent results."[35] For example, in one case the Fifth Circuit Court of Appeals found a website that allowed browsers to exchange e-mails with the host computer, but not to order products or services online, to be passive, whereas the district court for the District of Columbia found a website with similar features to be "the epitome of web site interactivity."[36]

Even assuming courts could agree on the point at which a website becomes "interactive" as the term is used in the *Zippo* test, courts have questioned "why a website's level of interactivity should be determinative on the issue of personal jurisdiction."[37] If, for example, a nonresident of the forum state uses a passive website to post defamatory statements with the intent to injure a particular resident of the forum state, it is not obvious why the passive nature of the website should enable the defendant to escape the forum state's jurisdiction.[38] The converse is

true as well: A nonresident defendant's website may be interactive, but, unless the defendant has established the requisite contacts with the forum, the assertion of personal jurisdiction over the defendant would be unwarranted.[39]

Though courts continue to cite to *Zippo*, in the process they frequently make a subtle but important change to the *Zippo* test. While the middle prong of the *Zippo* test focuses on the "level of interactivity" and the "commercial nature of the exchange of information that occurs on the nonresident defendant's website,"[40] courts applying the test often have shifted the focus to whether the defendant "purposefully avails itself of the privilege of acting in a state through its website."[41] Under this standard, the interactivity of the website, standing alone, is not significant. Instead, the interactivity is relevant only to the extent that it "reveals specifically intended interaction with residents of the [forum] state."[42]

As the Third Circuit Court of Appeals held in *Toys "R" Us, Inc. v. Step Two, S.A.*:

> [T]he mere operation of a commercially interactive web site should not subject the operator to jurisdiction anywhere in the world. Rather, there must be evidence that the defendant "purposefully availed" itself of conducting activity in the forum state, by directly targeting its web site to the state, knowingly interacting with residents of the forum state via its web site, or through sufficient other related contacts.[43]

This "refinement" of the *Zippo* test appropriately keeps the focus of the personal jurisdiction inquiry on "the conduct of," rather than on "the medium utilized by," the defendant.[44]

General Jurisdiction

As with any challenge to the assertion of personal jurisdiction over a nonresident defendant, a court addressing a jurisdictional challenge in an Internet-related dispute must consider whether it may properly exercise general or specific jurisdiction over the defendant.

Numerous cases, including the Arizona district court in *United Truck & Equip., Inc. v. Curry Supply Co.*,[45] have recognized that a nonresident defendant's maintenance of a website is not sufficient to subject the defendant to the general jurisdiction of the forum state.[46] A nonresident defendant's maintenance of a website may nonetheless be one of several factors on which a court relies in finding that the assertion of general jurisdiction is appropriate.[47] A court therefore may consider the nonresident defendant's operation of a website along with other, more traditional factors such as the presence of the defendant's agents, offices or property within the forum state[48]; the volume of the defendant's business in the forum; and whether the defendant has designated an agent for service of process in the forum.[49] Given the high standard that the U.S. Supreme Court has established for the exercise of general jurisdiction,[50] however, plaintiffs would be advised not to rely on general jurisdiction as the sole basis for justifying the exercise of personal jurisdiction over nonresident defendants.

A review of case law resolving challenges to the exercise of specific personal jurisdiction in Internet disputes reveals that two significant lines of cases have emerged. One line, which builds on *Asahi Metal Industry Co., Ltd. v. Superior Court of California*[51] and its progeny, applies what may be called the "something more" test. The other line builds on *Calder v. Jones*[52] and its progeny, and applies what is often called the "effects" test.

The "Something More" Test

In *Asahi*, a Japanese corporation manufactured tire-valve assemblies and sold them to a Taiwanese company for use as components in finished tire tubes. The Taiwanese company, in turn, sold the finished tire tubes in California and elsewhere in the United States. After a California driver injured by an allegedly defective tire tube sued the Taiwanese company, the latter sought indemnification from the Japanese corporation. The Supreme Court unanimously held that a California court could not properly exercise jurisdiction over the Japanese corporation, with a plurality of the Court holding, "The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed

The Traditional Analysis

A court may assert personal jurisdiction over a nonresident defendant if the exercise of such jurisdiction (1) is consistent with the forum state's long-arm statute or rule and (2) comports with due process of law.[1] Because Arizona's long-arm rule, Rule 4.2(a), ARIZ.R.CIV.P., permits the exercise of personal jurisdiction to the full extent of constitutional limits, in Arizona these two inquiries merge into one.[2]

As recognized in the seminal case *International Shoe Co. v. Washington*,[3] due process requires that a nonresident defendant "have certain minimum contacts with" the forum state such that the exercise of jurisdiction "does not offend 'traditional notions of fair play and substantial justice'."[4] A forum may seek to exercise either specific or general jurisdiction. Specific jurisdiction turns on the relationship between the defendant, the forum and the cause of action, and it exists only when the cause of action arises out of or relates to the defendant's contacts with the forum. General jurisdiction, by contrast, depends on the defendant's "substantial" or "continuous and systematic" contacts with the forum, which may be entirely unrelated to the cause of action.[5]

Whether specific or general, personal jurisdiction is proper only if the nonresident defendant "purposefully avails itself of the privilege of conducting activities within the forum State."[6] Thus, although the assertion of personal jurisdiction over a defendant no longer depends, as it once did, on the defendant's physical presence within the forum state,[7] the framework for personal jurisdiction jurisprudence is still built on the territorial boundaries of the states.

—Hon. Daniel J. Kiley

endnotes

1. *See, e.g., Batton v. Tenn. Farmers Mut. Ins. Co.*, 736 P.2d 2, 4 (Ariz. 1987). *See also Shute v. Carnival Cruise Lines*, 897 F.2d 377, 380 (9th Cir. 1990) *rev'd on other grounds*, 499 U.S. 585 (1991).
2. *See Batton*, 736 P.2d at 4.
3. 326 U.S. 310 (1945).
4. *Id.* at 316 (citation omitted).
5. *Austin v. CrystalTech Web Hosting*, 125 P.3d 389, 394 (Ariz. Ct. App. 2005) (citation and internal quotations omitted).
6. *Burger King Corp v. Rudzewicz*, 471 U.S. 462, 474-75 (1985), *quoting Hanson v. Denckla*, 357 U.S. 235, 253 (1958).
7. *See Pennoyer v. Neff*, 95 U.S. 714 (1877).

toward the forum State."[53] Instead, the plurality held, due process requires "something more than that the defendant was aware of its product's entry into the forum State through the stream of commerce in order for the State to exert jurisdiction over the defendant."[54]

Relying on principles established in *Asahi*, many courts addressing commercial disputes over Internet transactions have found that offering goods for sale on the Internet is tantamount to placing goods into the stream of commerce, and have held that "something more" is required to establish personal jurisdiction.[55] As the federal court for the Southern District of New York held in the often-cited case *Bensusan Restaurant Corp. v. King*, "Creating a site, like placing a product into the stream of commerce, may be felt nationwide—or even worldwide—but, without more, it is not an act purposefully directed toward the forum state."[56]

For example, in *Cybersell, Inc. v. Cybersell, Inc.*,[57] the Ninth Circuit Court of Appeals affirmed the district court's dismissal, for lack of personal jurisdiction, of a suit between two Internet marketing and consulting companies whose paths collided in cyberspace because they shared the same name. The Florida defendant, referred to by the Court as Cybersell FL, created a website with the domain name "cybsell.com" on which words such as "CyberSell" and "Welcome to CyberSell!" appeared.[58] Meanwhile, the Arizona plaintiff, Cybersell AZ, registered a service mark for the name "Cybersell." Cybersell AZ subsequently sued Cybersell FL in Arizona federal district court, alleging trademark infringement and other claims. The defendant's motion to dismiss was granted, and the plaintiff appealed.

After surveying cases that addressed the exercise of personal jurisdiction in disputes over Internet transactions, the *Cybersell* court found that:

> [N]o court has ever held that an Internet advertisement alone is sufficient to subject the advertiser to jurisdiction in the plaintiff's home state. Rather, in each [case], there has been "something more" to indicate that the defendant purposefully (albeit electronically) directed his activity in a substantial way to the forum state.[59]

The *Cybersell* court found that Cybersell FL entered into no contracts, made no sales and earned no income in Arizona, and that it "did nothing to encourage people in Arizona to access its site."[60] Furthermore, Cybersell FL sent no e-mail messages to Arizona, and received only one e-mail—from Cybersell AZ—from Arizona. In light of the paucity of contacts between Cybersell FL and the state of Arizona, the *Cybersell* court found that Cybersell FL had not done any act to purposefully avail itself of the privilege of conducting business in Arizona, and therefore that Cybersell FL was not subject to the personal jurisdiction of an Arizona court.[61]

By contrast, in *Park Inns Int'l, Inc. v. Pacific Plaza Hotels, Inc.*,[62] the Arizona district court held that it could properly exercise jurisdiction over certain California hotel operators based on their use, on their websites and in print advertisements, of the plaintiff's registered service mark "park plaza." Noting that the evidence indicated that the defendants' solicitations, on at least one of their websites, "resulted in the transaction of business with Arizona residents," the court held that "solicitation of business within the forum state which results in the transaction of business establishes purposeful availment," justifying the exercise of personal jurisdiction.[63]

As *Park Inns* suggests, "something more" than merely making goods or services available for sale over the Internet may be established by showing actual sales "generated in the state by or through the interactive website."[64] "Purposeful availment" also may be shown if the content of the defendant's website demonstrates that the defendant targeted residents of the forum state as potential customers. For example, in *Snowney v. Harrah's Entertainment, Inc.*,[65] the California Supreme Court held that the defendants, a group of Nevada hotel operators, purposefully availed themselves of the privilege of doing business in California in part by maintaining a website that "specifically targeted residents of California" by "touting the proximity of their hotels to California and providing driving directions from California to their hotels."[66] Other "evidence that Internet activity was directed at, or bore fruit in, the forum state" may include, for example, "the number of 'hits' received by" the defendant's website "from residents in the forum state."[67]

In addition, a defendant's non-Internet contacts with the forum may serve to establish the requisite "something more." For example, in *Rio Properties, Inc. v. Rio Int'l Interlink*,[68] the Ninth Circuit held that the Nevada district court properly exercised personal jurisdiction over the Costa Rican defendant because the latter engaged in "something more" than maintaining a website by running radio and print advertising in the Las Vegas area.[69] Other non-Internet contacts such as business trips to the forum state by the defendant's representatives and telephone and/or fax communications directed to the forum state "may form part of the 'something more' needed to establish personal jurisdiction."[70]

To suffice to establish specific personal jurisdiction over a nonresident defendant, the defendant's "other contacts" establishing "something more" must be related to the plaintiff's cause of action. After all, specific jurisdiction is not proper unless the defen-

dant's forum-related contacts are related to, or give rise to, the cause of action.[71]

The "Effects" Test

Many cases addressing Internet-related intentional torts have followed the principles established in *Calder v. Jones*.[72] In *Calder*, entertainer Shirley Jones, a California resident, filed a libel suit in California against a nationally distributed publication and its Florida-based editor based on an allegedly defamatory article about Jones. The defendants argued that they did not establish minimum contacts with California merely by selling issues of the publication to the general public nationwide. Upholding the exercise of personal jurisdiction, the U.S. Supreme Court held that the defendants' article "concerned the California activities of a California resident," and that "the brunt of the harm" sustained by the plaintiff was suffered in California.[73]

The "effects" test established in *Calder* is thus satisfied if the defendant "(1) committed an intentional act, which was (2) expressly aimed at the forum state, and (3) caused harm, the brunt of which is suffered and which the defendant knows is likely to be suffered in the forum state."[74]

The "express aiming" requirement of the "effects" test is satisfied "when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state."[75]

The Ninth Circuit found the "effects" test satisfied in *Panavision Int'l, L.P. v. Toeppen*.[76] There, the defendant, an Illinois resident, had registered a domain name using the plaintiff's trademark, Panavision, as well as more than 100 domain names for such other companies as Delta Air Lines, Neiman Marcus and Eddie Bauer. When the plaintiff attempted to register the domain name Panavision.com, it discovered that the defendant had already done so. The plaintiff sent the defendant a letter demanding that he stop using the plaintiff's trademark. The defendant, in turn, responded by offering to "settle the matter" by relinquishing the domain name "Panavision.com" to the plaintiff in exchange for $13,000.[77]

The plaintiff sued the defendant in California, alleging trademark dilution. The Ninth Circuit affirmed the district court's denial of the defendant's motion to dismiss for lack of personal jurisdiction. Stating that the defendant "engaged in a scheme to register Panavision's trademarks as his domain names for the purpose of extorting money from Panavision," the court held that the "effects" test was satisfied because the defendant's conduct, "as he knew it would, had the effect of injuring Panavision in California where Panavision has its principal place of business and where the movie and television industry is centered."[78]

By contrast, in *Pebble Beach Co. v. Caddy*,[79] the Ninth Circuit held that the district court properly declined to exercise personal jurisdiction over the English defendant in a trademark infringement case. Caddy, the ironically named defendant, operated an inn named "Pebble Beach" that was located "on a cliff overlooking the pebbly beaches of England's south shore," and advertised his inn on his website, pebble-beach-uk.com.[80] Finding that the "effects" test was not satisfied because Caddy did not "expressly aim" his conduct at the plaintiff, a California golf resort, the *Pebble Beach* court distinguished *Panavision* by stating that, unlike the defendant in that case, Caddy operated a website in support of a "legitimate" business; he was not "a cybersquatter trying to obtain money from" the plaintiff.[81]

Panavision was decided more than a decade ago, when case law in this area was in its infancy, and the opinion in that case does not clearly distinguish between the "something more" and "effects" tests. Unfortunately, some cases decided since then have continued to blur the distinction between the two tests.[82] Greater clarity would result if courts recognized that the application of the "effects" test is limited to intentional torts and analogous statutory claims for copyright infringement and the like.[83] The *Calder* court had based its holding upholding the exercise of personal jurisdiction in part on the fact that the defendants were not "charged with mere untargeted negligence," but rather with "intentional, and allegedly tortious, actions."[84] Relying on *Calder*, the Ninth Circuit has held that the "effects" test "applies only to intentional torts," not to negligence claims or claims sounding in contract.[85]

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"Reasonableness" of Asserting Jurisdiction

Even if the court finds that the nonresident defendant established the requisite "minimum contacts" with the forum, the court also must consider whether the exercise of personal jurisdiction would be reasonable.

As the court made clear in *Austin v. CrystalTech Web Hosting*,[86] the exercise of personal jurisdiction over a nonresident defendant in an Internet-related dispute may be unreasonable despite the presence of the requisite "minimum contacts."[87] In making this "reasonableness" determination, a court may be aided by a review of the discussion of the relevant factors set forth by the Arizona district court in *Chandler v. Roy*.[88]

Conclusion

In *Holland v. Hurley*, the Arizona Court of Appeals held that the seller of an item on eBay does not automatically subject himself or herself to the personal jurisdiction of the state in which the buyer happens to reside. This holding is consistent with traditional "minimum contacts" analysis and with the holdings of other courts that have addressed similar situations.

The *Holland* court expressly noted that the result may well be different if the defendant owned or controlled the website through which the dispute arose. Although no reported case in Arizona has yet addressed that issue, when the issue arises, as it inevitably will, an Arizona court will have significant guidance from case law from the Ninth Circuit and other jurisdictions.

Such case law makes clear that the existence of a website, without more, will not subject the defendant to the exercise of general jurisdiction.

In contract and other claims asserted in commercial cases, an Arizona court may be guided by *Cybersell* and other cases that have applied the "something more" test in determining whether to exercise specific jurisdiction.

Likewise, in intentional torts cases, an Arizona court may be guided by *Panavision* and other cases that have applied the "effects" test. AZAT

endnotes

1. *Thompson v. Handa-Lopez, Inc.*, 998 F. Supp. 738, 742 (W.D. Tex. 1998).
2. *Malone v. Berry*, 881 N.E.2d 283, 287 (Ohio Ct. 2007), *quoting* Haig, 2 N.Y. Prac., *Commercial Litigation in New York State Courts* (2nd ed.) § 2:28.
3. David R. Johnson & David Post, *Law and Borders: The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367, 1376 (1996) ("Because events on the Net occur everywhere but nowhere in particular … no physical jurisdiction has a more compelling claim than any other to subject these events exclusively to its laws.").
4. Note, *Personal Jurisdiction – Minimum Contacts Analysis – Ninth Circuit Holds That Single Sale on eBay Does Not Provide Sufficient Minimum Contacts With Buyer's State* – Boschetto v. Hansing, *539 F.3d 1011 (9th Cir. 2008)*, 122 HARV. L. REV. 1014, 1017 (Jan. 2009).
5. 212 P.3d 890 (Ariz. Ct. App. 2009).
6. *Id.* at 894.
7. *Id.*, *quoting Williams v. Lakeview Co.*, 13 P.3d 280, 282 (Ariz. 2000).
8. *Id.* at 897-98.
9. *Id.* at 900, *quoting Williams*, 13 P.3d at 282.
10. *Id.* at 898, 901.
11. *Id.* at 897, *quoting Boschetto v. Hansing*, 539 F.3d 1011, 1019 (9th Cir. 2008).
12. 539 F.3d 1011, 1020 (9th Cir. 2008).
13. 105 F. Supp. 2d 746 (E.D. Mich. 2000).
14. *Id.* at 749.
15. *Id.*
16. *See Holland*, 212 P.3d at 897.
17. David Thatch, *Personal Jurisdiction and the World-Wide Web: Bits (and Bytes) of Minimum Contacts*, 23 RUTGERS COMP. & TECH L.J. 143, 152, n.41 (1997).
18. Johnson & Post, *supra* note 3, at 1379.
19. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980) ("Nevertheless, we have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution.").
20. *Maritz, Inc. v. Cybergold, Inc.*, 947 F. Supp. 1328, 1332-34 (E.D. Mo. 1996). *Accord Stomp, Inc. v. NeatO, LLC*, 61 F. Supp. 2d 1074, 1078 (C.D. Cal. 1999); *Inset Systems, Inc. v. Instruction Set, Inc.*, 937 F. Supp. 161, 165 (D. Conn. 1996).
21. *Maritz*, 947 F. Supp. at 1332.
22. *Vinten v. Jeantot Marine Alliances, S.A.*, 191 F. Supp. 2d 642, 647 n.10 (D. S.C. 2002).
23. *GTE New Media Services Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000).
24. *Hanson v. Denckla*, 357 U.S. 235, 250-51 (1958).
25. *Millennium Enterprises, Inc. v. Millennium Music, LP*, 33 F. Supp. 2d 907, 923 (D. Or. 1999) (citation and internal quotations omitted).
26. *Digital Equip. Corp. v. AltaVista Tech., Inc.*, 960 F. Supp. 456, 463 (D. Mass. 1997).
27. 952 F. Supp. 1119 (W.D. Pa. 1997).
28. *Id.* at 1121.
29. *Id.* at 1124.
30. *Id.* (citations omitted).
31. *Id.* at 1125-26.
32. *Toys R Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 452 (3d Cir. 2003).
33. The *Holland* court found the *Zippo* test inapplicable because the defendant in that case did not operate the eBay website, and had no control over either the website's level of interactivity or the purchaser's state of residence. 212 P.3d at 896.
34. *Id.* at 896 n.3 (citation and internal quotations omitted). *See also Millennium Enterprises*, 33 F. Supp. 2d at 923 (businesses "might forego this efficient and accessible avenue of commerce if faced with" the threat of being subject to suit nationwide).
35. *Holland*, 212 P.3d at 896 n.3 (citations and internal quotations omitted).
36. *Compare Mink v. AAAA Dev. LLC*, 190 F.3d 333, 337 (5th Cir. 1999) *with Blumenthal v. Drudge*, 992 F. Supp. 44, 56 (D.D.C. 1998).
37. *Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.*, 297 F. Supp. 2d 1154, 1160 (W.D. Wis. 2004) (declining to adopt *Zippo* test).
38. *See id. See also Atkinson v. McLaughlin*, 343 F. Supp. 2d 868, 877-78 (D.N.D. 2004) (asserting personal jurisdiction over nonresident defendants who maintained passive website containing allegedly defamatory statements about North Dakota plaintiffs).
39. *See American Info. Corp. v. American Infometrics, Inc.*, 139 F. Supp. 2d 696, 699 n.6 (D. Md. 2001) (finding interactive features of defendant's website to be irrelevant where no forum state residents were customers of defendant's).
40. *Zippo*, 952 F. Supp. at 1124.
41. *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 890 (6th Cir. 2002).
42. *Id.*
43. *Toys R Us*, 318 F.3d at 454.
44. *Millennium Enterprises*, 33 F. Supp. 2d at 921.
45. 2008 U.S. Dist. LEXIS 110213 (D. Ariz., Nov. 5, 2008).
46. *Id.* at *11-12. *See also Mink*, 190 F.3d at 337; *Millennium Enters.*, 33 F. Supp. 2d at 910; *Bedrejo v. Triple E Canada, Ltd.*, 984 P.2d 739, 742 (Mont. 1999).
47. *See Coremetrics, Inc. v. Atomic Park.com, LLC*, 370 F. Supp. 2d 1013, 1024 (N.D. Cal. 2005) (general jurisdiction over Wisconsin defendant was justified by defendant's website along with other factors such as substantial sales to California residents, purchases from California vendors, and contracts with third parties with offices in California).
48. *See, e.g., In re Consolidated Zicam Product Liability Cases*, 127 P.3d 903, 908 (Ariz. Ct. App. 2006).
49. *See Hirsch v. Blue Cross, Blue Shield of Kansas City*, 800 F.2d 1474, 1478 (9th Cir. 1986).
50. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 418-19 (1984) (Texas court could not exercise general jurisdiction over foreign defendant that purchased millions of dollars' worth of products from a Texas company, and negotiated a contract and trained employees in Texas).
51. 480 U.S. 102 (1987).
52. 465 U.S. 783 (1984).
53. 480 U.S. at 112.
54. *Id.* at 111-12.
55. *See Holland America Line Inc. v. Wartsila North America, Inc.*, 485 F.3d 450, 459 (9th Cir. 2007); *Millennium Enters.*, 33 F. Supp. 2d at 915 n.3.
56. 937 F. Supp. 295, 301 (S.D.N.Y. 1996), *aff'd*, 126 F.3d 25 (2d Cir. 1997).
57. 130 F.3d 414 (9th Cir. 1997).
58. *Id.* at 415. The court's opinion indicates that the word "CyberSell" as it appeared on the website used a capital letter "s," whereas the names of the plaintiff and defendant corporations did not.
59. *Id.* at 418 (citation omitted).
60. *Id.* at 419.
61. *Id.* at 419-20.
62. 5 F. Supp. 2d 762 (D. Ariz. 1998).
63. *Id.* at 765.
64. *Coastal Video Communications Corp. v. Staywell Corp.*, 59 F. Supp. 2d 562, 572 (E.D. Va. 1999) (online sales are important factor in determining whether assertion of general jurisdiction is appropriate).
65. 112 P.3d 28 (Cal. 2005).
66. *Id.* at 34.
67. *Cybersell*, 130 F.3d at 419.
68. 284 F.3d 1007 (9th Cir. 2002).
69. *Id.* at 1020.
70. *Toys R Us*, 318 F.3d at 453-54.
71. *See Park Inns*, 5 F. Supp. 2d at 765-66 (distinguishing between the defendants' forum-related contacts that related to the plaintiff's trademark infringement claim and the defendants' contacts that did not).
72. 465 U.S. 783 (1984).
73. *Id.* at 788-89.
74. *Cummings v. Western Trial Lawyers Ass'n*, 133 F. Supp. 2d 1144, 1153 (D. Ariz. 2001), *citing Bancroft & Masters v. Augusta National Inc.*, 223 F.3d 1082, 1087 (2000).
75. *Cummings*, 133 F. Supp. 2d at 1153, *citing Bancroft & Masters*, 223 F.3d at 1087.
76. 141 F.3d 1316 (9th Cir. 1998).
77. *Id.* at 1319.
78. *Id.* at 1322.
79. 453 F.3d 1151 (9th Cir. 2006).
80. *Id.* at 1153.
81. *Id.* at 1157.
82. *Rio Properties*, 284 F.3d at 1020-21. *See also Adidas America, Inc. v. Kmart Corp.*, 2006 U.S. Dist. LEXIS 70413 * 15-17 (D. Or., July 6, 2006).
83. *See, e.g., Brayton Purcell LLP v. Recordon & Recordon*, 575 F.3d 98, 984 (9th Cir. 2009) (applying "effects" test to copyright infringement claim).
84. *Calder*, 465 U.S. at 789.
85. *Holland America*, 485 F.3d at 460.
86. 125 P.3d 389 (Ariz. Ct. App. 2005).
87. *Id.* at 395.
88. 985 F. Supp. 1205, 1214-15 (D. Ariz. 1997).