

# Cyber-jurisdiction

by Ellen S. Moore

The Internet has evolved over the past few decades into a complex medium that enables its users to disseminate information quickly and inexpensively to half a billion individuals worldwide. These communications are routed throughout the United States and abroad, notwithstanding their origin and destination. Two decades ago, there were less than 300 computers linked to the Internet.<sup>1</sup> By the year 2000, there were estimated to be 175 million people accessing the Internet.<sup>2</sup> It is now estimated that half a billion people worldwide have access to the Internet from their homes, and that number will swell to 600 million by the end of the year.<sup>3</sup> Also, by the end of 2002, Internet users are expected to spend more than \$1 trillion in on-line commerce.<sup>4</sup>

In short, every Virginia lawyer probably has a client who accesses the Internet to post or receive information and/or to buy or sell goods or services. These clients, because of the global nature of the Web, may become involved in disputes that stretch across the United States, if not the world.

Indeed, the Internet explosion has generated many jurisdictional disputes, putting the onus on courts to determine how to apply historic concepts regarding personal jurisdiction to the boundary-less world of the Internet. The courts' latest, and now most common approach has been to apply basic personal jurisdiction analysis to Internet activities on a "sliding scale" analysis of the

interactivity of the site. Virginia courts, too, have integrated this sliding scale analysis in their review of Internet-related jurisdiction. Many of these same courts, however, have not diminished their focus on the perceived harm to the plaintiff or what is known as the "effects doctrine." Indeed, application of the sliding scale analysis itself has been inconsistent from court to court, leaving potential plaintiffs with no certainty that their case will be heard in their local forum. Additionally, potential defendants are unable to judge their risk of being haled into a foreign court.

## General Bases For Jurisdiction

The basic premise of personal jurisdiction analysis utilizes a two-part review under the state's long-arm statute and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. In many states, including Virginia, this analysis is simplified by the courts' interpreting the long-arm statute<sup>5</sup> to be satisfied whenever the constitutional requirements are met.<sup>6</sup>

Briefly stated, the Due Process Clause requires that no defendant be haled into court unless he has "certain minimum contacts" with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"<sup>7</sup> The defendant must have "purposely avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."<sup>8</sup> Also, the

exercise of jurisdiction must be “fair and reasonable” under the circumstances of the case and the “defendant’s conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there.”<sup>9</sup>

Personal jurisdiction further may be founded on either of two theories, general or specific jurisdiction. A court exercises general jurisdiction when an action “does not arise out of the defendant’s activities in the forum state, . . . [but] the requisite ‘minimum contacts’ between the defendant and the forum state are ‘fairly extensive.’”<sup>10</sup> In such a case, the defendant’s contacts must be “continuous and systematic.”<sup>11</sup> A court may exercise specific jurisdiction when the suit arises out of the defendant’s activities in the forum state.<sup>12</sup> When exercising specific jurisdiction over the defendant, the courts need not find extensive contacts between the defendant and the forum state, but the “fair warning” requirement of the Due Process Clause requires that the defendant have “purposely directed” its activities at the forum.<sup>13</sup>

## Judicial Analysis of Cyber-jurisdiction

The Internet has not altered the courts’ use of traditional jurisdictional concepts; instead, it merely has added a new factor in the analysis of such contacts. Some courts, especially the early reviewers of these issues, compared the Internet with more recognized forms of communication and commerce. For example, courts have analogized the use of electronic mail to that of the regular postal service, or Internet advertising to that of advertising a product via paper communications and thereby inserting that product into the stream of commerce. This analysis often falls short, however, in considering the potential interactivity allowed by the Internet and the fact that the Internet reaches a much broader and more geographically diverse audience than do most paper-based advertisements or publications. Many courts, therefore, have adopted a sliding scale or continuum of characteristics of Internet presence and interactivity to assist in resolving the question of just when and how much Internet presence is enough for jurisdiction in a given forum.

As set forth in the seminal case of *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*,<sup>14</sup> three general categories of Internet presence have emerged, creating three general lines of case law addressing personal jurisdiction issues. The first category includes passive Web sites that merely present information without accepting information from the viewer, taking orders, or selling or offering services or products. Generally, no jurisdiction is found with passive sites. The second category concerns Web sites with both passive and active characteristics—those that allow for the exchange of some information between the site and the viewer. Here the court will analyze the level of interactivity with the customer or user in that state to determine jurisdiction. The third category includes those Web sites where the provider actively conducts business over the Internet by allowing the user to enter into contracts or purchase products advertised on the site. Jurisdiction is generally found where the Web site is highly interactive.

Jurisdictional determinations, however, are very fact-dependent, and courts have not hesitated to mold the sliding scale analysis or utilize different jurisdictional analyses. What some courts interpret to be a purely passive Web site, other courts hold to be at least partly active—resulting in very different rulings concern-

ing very similar Web sites. Still, other courts have set aside the sliding scale analysis—at least on occasion—to utilize “effects doctrine” or other analysis in determining whether to exercise jurisdiction over a nonresident defendant. Thus, it is difficult for Internet users to measure their risk of being haled into court in a foreign jurisdiction.

### Passive Web Sites

Courts generally find insufficient evidence to support personal jurisdiction based solely on a plaintiff’s accessing the passive Web site of a nonresident defendant in the forum state, absent some additional showing that the nonresident defendant purposely attempted to conduct or solicit business in the forum state. The following sections present a survey of cases reviewed concerning passive Web sites.

#### Cases Finding No Jurisdiction<sup>15</sup>

- In *Revell v. Lidov*,<sup>16</sup> the United States District Court for the Northern District of Texas, Dallas Division adopted the sliding scale analysis, finding no jurisdiction where the individual had posted an allegedly defamatory article on a “passive” Web site.
- In *Mink v. AAAA Development, LLC*,<sup>17</sup> the Fifth Circuit followed the sliding scale analysis in determining that a Vermont company was not subject to jurisdiction in Texas for its use of a Web site advertisement that included a printable order form to mail in, the mailing address, electronic mail address and a toll-free telephone number.
- In *Bensusan Restaurant Corp. v. King*,<sup>18</sup> the Second Circuit found jurisdiction lacking in a trademark infringement action where the defendant’s home page was passive, and gave the Internet user information without selling or offering to sell services or products.
- In *Cybersell, Inc. v. Cybersell, Inc.*,<sup>19</sup> the Ninth Circuit found jurisdiction lacking where the defendant’s site provided the company’s local phone number and electronic mail address, but no services could be provided, no contracts could be consummated and no products could be sold via the Internet.<sup>20</sup>

#### Cases Finding Jurisdiction

- In *Inset Systems, Inc. v. Instruction Set, Inc.*,<sup>21</sup> the United States District Court for the District of Connecticut held that it had jurisdiction over a defendant based on its continuous advertisement over the Internet, which included at least 10,000 potential access sites in Connecticut, and the use and advertisement of a toll-free number on its Web site.
- In an unpublished opinion, *In re Martin Gardner Reiffin*,<sup>22</sup> the United States Court of Appeals for the Federal Circuit denied mandamus reinstating venue in the District of Columbia because the California district court, to which venue was transferred, could exercise personal jurisdiction over the defendant for the publication of allegedly libelous information on a passive Web site where the defendant’s conduct had an effect in California by damaging the California plaintiff’s reputation in his home state.

Most courts, following the *Zippo* decision, find no jurisdiction based on this passive level of activity. However, a few courts, including some in Virginia, utilize an “effects” analysis to find jurisdiction even when a passive Web site is used.<sup>23</sup>

### Web Sites with Both Passive and Active Characteristics

The second type of Web site is the “intermediate” interactive site, where the provider allows for the exchange of certain information between it and users accessing the site. This type of site may provide various services on-line to the user. Most courts hold that these cases require an evaluation of the “level of interactivity and commercial nature of the exchange of information that occurs on the [w]eb site” before a determination of jurisdiction can be made. Cases generally find jurisdiction based on interactive Web sites.

### Cases Finding Personal Jurisdiction— Not Utilizing the Sliding Scale Analysis<sup>24</sup>

- In *Panavision International L.P. v. Toepfen*,<sup>25</sup> the Ninth Circuit followed an “effects doctrine” analysis in finding jurisdiction over the nonresident defendant based on his scheme to register the plaintiff’s domain name to extort money from the plaintiff.
- In *Superguide Corp. v. Kegan*,<sup>26</sup> the United States District Court for the Western District of North Carolina found jurisdiction over a nonresident defendant based on the defendant’s Web site advertisement of products to forum state residents and the court’s assumption that most of those residents had utilized the defendant’s services.

### Cases Finding Personal Jurisdiction— Utilizing the Sliding Scale Analysis

- In *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*,<sup>27</sup> the United States District Court for the Western District of Pennsylvania found jurisdiction over the defendant based on its “conducting of electronic commerce with Pennsylvania residents,” which constituted a “purposeful avilment of doing business in Pennsylvania.”<sup>28</sup>
- In *Hasbro v. Clue Computing, Inc.*,<sup>29</sup> Massachusetts found jurisdiction in a trademark infringement claim over a Colorado corporation which utilized a partially-interactive Web site that could be accessed by Massachusetts citizens.
- In *American Network, Inc. v. Access America/Connect Atlanta, Inc.*,<sup>30</sup> the Southern District of New York found jurisdiction over a nonresident defendant who was attempting to reach and had signed up subscribers to its business in the forum state.
- In *Heroes, Inc. v. Heroes Foundation*,<sup>31</sup> the District of Columbia court found jurisdiction based on a nonresident defendant’s solicitation of donations through its home page.

### Cases Finding No Jurisdiction— Not Utilizing the Sliding Scale Analysis

- In *Kubik v. Route 252*,<sup>32</sup> the Pennsylvania Superior Court held that a Delaware restaurant’s on-line advertisements, which included directions, a newsletter and the on-line sale of gift certificates, were not sufficient to elicit jurisdiction in Pennsylvania.
- In *CD Solutions, Inc. v. Tooker*,<sup>33</sup> the District Court for the Northern District of Texas found that the plaintiff’s claims did not arise from defendant’s Internet contacts with the forum state and thus declined to exercise jurisdiction over the defendant.

### Cases Finding No Jurisdiction— Utilizing the Sliding Scale Analysis

- In *Amazon Tours, Inc. v. Wet-A-Line Tours, L.L.C.*,<sup>34</sup> a magistrate for the District Court for the Northern District of Texas found that it lacked jurisdiction over a Georgia company whose Internet site provided information about tour packages, a message posting board, a form to request a brochure and links to the company’s electronic mail address, because this did “not constitute the kind of interactivity required to exercise jurisdiction over a nonresident defendant.”
- In *Butler v. Beer Across America*,<sup>35</sup> the District Court for the Northern District of Alabama concluded the defendant’s semi-interactive Web site, with a limited order form that could be completed and submitted like a reply card in the mail, was insufficient to satisfy minimum contacts requirements under the Due Process Clause.
- In *Hearst Corp. v. Goldberger*,<sup>36</sup> the District Court for the Southern District of New York found no jurisdiction over the nonresident defendant because, although forum state residents accessed the defendant’s Web site, the defendant had neither contracted to sell nor sold any products or services in New York.

### Active Web Sites

The third type of Web site is one in which the provider actively conducts its business over the Internet, by displaying product or service information and allowing the user to enter into contracts and purchase the products or services advertised, most often charged to a credit card number given by the user. Courts generally have no trouble finding personal jurisdiction over providers of such sites.

- In *Rainy Day Books, Inc. v. Rainy Day Books & Café, L.L.C.*,<sup>37</sup> the District Court for the District of Kansas found jurisdiction over a Maryland bookstore whose Internet site provided information about the store, upcoming events, permits the user to subscribe to a mailing list, obtain information regarding gift certificates or purchase books on-line by clicking a link to an on-line third-party ordering service (which would give the bookstore a credit for the sale).
- In *Intercon, Inc. v. Bell Atlantic Internet Solutions, Inc.*,<sup>38</sup> the Tenth Circuit Court of Appeals found jurisdiction over a

Delaware company that “purposefully availed” itself of the plaintiff for months after receiving notice from the plaintiff that it was mistakenly routing its customers’ electronic mail messages through the plaintiff’s server.

- In *Compuserve, Inc. v. Patterson*,<sup>39</sup> the Sixth Circuit found jurisdiction to be appropriate where the defendants contracted with plaintiff, an Ohio corporation, for Internet access and to distribute the defendants’ computer software via the plaintiff’s Internet network.

## Cyber-jurisdiction in Virginia Courts

Virginia court decisions mimic the spread of determinations found throughout the rest of the United States’ courts. Some Virginia courts clearly have adopted the sliding scale analysis, while others utilize an “effects” doctrine analysis.

### Passive Web Sites— Case Finding No Jurisdiction (Utilizing the Sliding Scale Analysis)

In *Weinstein v. Todd Marine Enterprises*,<sup>40</sup> the District Court for the Eastern District of Virginia dismissed the action for lack of jurisdiction over the defendant. The case was for breach of contract and fraud concerning the sale of seven cruisers to a Virginia plaintiff. The court found jurisdiction to be inappropriate because the defendant had not even advertised its own Web page in Virginia. Rather, its information appeared on an on-line classified advertisement site.

### Passive Web Sites— Case Finding Personal Jurisdiction (Utilizing the Effects Doctrine)

In a not-yet-published, decision by Judge Williams in the District Court in Big Stone Gap, *Young v. New Haven Advocate, et al.*,<sup>41</sup> the court found jurisdiction over a defendant for its use of a passive Web site to make allegedly false statements against a Virginia official, based on the application of the effects doctrine.<sup>42</sup> The court, while noting the *Zippo* “sliding scale” analysis, followed *Telco*,<sup>43</sup> discussed below. Rejecting the defendants’ argument that it would be unfair to subject them to world wide jurisdiction for merely posting information on the Internet, the court noted that the defendants’ actions were not “fortuitous or unintentional” in that they posted their product, the articles, on the Internet, knowing that the information could be viewed by Virginia residents, and that this act gave rise to the litigation.<sup>44</sup> Moreover, the court found that Virginia had a “significant interest in deterring the posting of defamatory materials concerning one of its citizens,” especially a public employee.

In *Krantz v. Air Line Pilots Assoc., Int’l, et al.*,<sup>45</sup> an early Internet-related jurisdiction case, the Supreme Court of Virginia found jurisdiction over a pilot and labor union who utilized a computer center electronic switchboard system operated from Virginia to spread defamatory information about the plaintiff, another air line pilot, as part of an effort to interfere with his prospective employment contracts. The court found that the defendant used the Virginia system as a means of furthering his plan to ruin

*Krantz*—to enlist the aid of other pilots in spreading negative information about *Krantz*. This was a “purposeful activity in Virginia” and constituted the necessary minimum contacts necessary for the maintenance of this action in Virginia.<sup>46</sup>

### Web Sites with Both Passive and Active Characteristics— Case Finding Jurisdiction

In *Telco Communications v. An Apple A Day*,<sup>47</sup> the District Court for the Eastern District of Virginia utilized a hybrid sliding scale and effects doctrine analysis in holding that the nonresident defendant was subject to Virginia’s jurisdiction in a suit alleging defamation, tortious interference with contract and business conspiracy related to two press releases placed on the Internet. In conducting its jurisdictional analysis, the court recognized the distinction between a passive Web site “that does little more than make information available to those who are interested in it,” and which does not provide grounds for personal jurisdiction over the provider, and an “active” site, which, in this case, gave readers a phone number to call in order to solicit their business.<sup>48</sup> The court found that the defendant’s “posting a Web site advertisement or solicitation constitutes a persistent course of conduct, and that the two or three press releases rise to the level of regularly doing or soliciting business” under subsection (A)(4) of Virginia’s long arm statute; also, the court found jurisdiction under subsection (A)(3) providing for personal jurisdiction over a person who causes “tortious injury by an act or omission in” Virginia.<sup>49</sup> The court further found that the service defendants used distributed the information to several Virginia consumer information facilities, including America On-line, which is headquartered in the forum district, and NationsBank. Thus the allegedly defamatory speech was made available in Virginia, plaintiff was a Virginia resident, and its effects were felt in Virginia. The court further found that the defendants should have known that the material would be distributed to Virginia, where the plaintiff was located, and therefore could have reasonably expected to be hailed into court in Virginia, such that no due process concerns arose in the case.

### Active Web Sites— Cases Finding Jurisdiction

In *Designs88, Ltd. v. Power Uptik Productions, L.L.C.*,<sup>50</sup> the District Court for the Western District of Virginia adhered to the sliding scale analysis in holding that jurisdiction was appropriate over defendants involved in a membership-based Web site on day trading. The court noted that “mere access to a passive Web site in the forum state is insufficient to support a finding of personal jurisdiction.” In this case, however, the defendants allegedly solicited and maintained a relationship with the plaintiff to design, implement and maintain the defendants’ Web site, on which the plaintiff worked in Virginia. The court rejected the defendants’ argument that the physical location of the plaintiff was irrelevant to his work, which existed “only in cyberspace,” noting that “[t]here being no District Court of Cyberspace, the defendants’ argument that laboring on the Internet defeats traditional personal jurisdiction is unpersuasive; Defendants will have to settle begrudgingly for the Western District of Virginia.”<sup>51</sup>



In *Alitalia-Linee Aeree Italiane v. Casinoalitalia.com*,<sup>52</sup> the District Court for the Eastern District of Virginia applied a hybrid analysis in holding that it could exercise jurisdiction over a non-resident defendant who operated a highly interactive Web site that allowed for the formation of contracts, gambling on-line and the generation of profits from Virginia customers. In this case brought under the Anticybersquatting Consumer Protection Act, the plaintiff, an Italian airline, sued the defendant, a Dominican Republic entity, for using a similar domain name for its on-line gambling business. Analyzing the case first under the "effects doctrine," the court found that the defendant had caused tortious injury in Virginia by its commission of a tortious act outside of Virginia, by infringing on the plaintiff's trademark, causing the likelihood of confusion and mistake by Virginia customers and diluting the quality of plaintiff's mark. The court further found that a defendant who conducts advertising and soliciting over the Internet, which can be accessed by a Virginia resident 24-hours-a-day, does so regularly for purposes of Virginia's long-arm statute. Lastly, the Virginia court applied the sliding scale or "continuum" analysis of Internet jurisdiction, looking at the level of interactivity and the commercial nature of the Web site. Here, the defendant had on-line casino gambling that was very interactive in nature, five Virginia customers and had earned money from its interactions with such customers. The court held that the defendant thus had engaged in ongoing business transactions in Virginia and the minimum contacts required by the Due Process Clause were satisfied.

In the 1999 case of *Coastal Video Communications Corp. v. The Staywell Corp.*,<sup>53</sup> the District Court for the Eastern District of Virginia raised the possibility that general jurisdiction could be exercised over a defendant where its Internet-based contacts with the forum state were so "continuous and systematic" that the "defendant may be subject to suit for causes of action entirely distinct from the in-state activities."<sup>54</sup> The court found that the defendant, in this case a Web site owner offering the sale of its publication over the Internet, offered an "on-line storefront that is readily accessible to every person in Virginia" who could access the world wide Web, but held that further discovery would be necessary to determine whether there was sufficient activity between Virginia residents and the Web site to justify general jurisdiction.<sup>55</sup> It should be noted that the defendant also conducted non-Internet business in Virginia. The court further held that specific jurisdiction was lacking because there was not evidence that the publication subject to the copyright dispute between the parties was ever sold in Virginia.

## Conclusion

While the sliding scale formula provides some guidance to counsel and their clients, even passive Web sites can expose an Internet user to suit in a foreign jurisdiction. Many courts still utilize the "effects doctrine" in their analysis of Internet-related cases, whether or not they also recognize the sliding scale analysis established in *Zippo*. Moreover, courts have been somewhat inconsistent in applying the sliding scale analysis when they do utilize that test; for example, what one court deems to be a passive Web site, another court finds to be active in nature. Counsel should keep this in mind when advising individuals and businesses seeking to expand their audience for advertisements or information via the Internet, or those harmed by the activities of

such individuals and businesses. There are no sure answers for those utilizing the Internet regarding where they may be haled into court. ☹



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### Endnotes:

- 1 *American Civil Liberties Union v. Reno*, 929 F. Supp. 824, 831 (E.D. Pa. 1996).
- 2 Jeffrey Pollock and Debra Lightner, *Civil Procedure in the Age of the Internet Jurisdiction*, New Jersey L.J. (August 14, 2000).
- 3 Sidney Luk, Surfing Swells to 500m On-line, *South China Morning Post, Ltd.* (March 8, 2002); Research and Analysis, "Distraction Stations," *Computer Reseller News* (March 4, 2002).
- 4 Research and Analysis, "Distraction Stations," *Computer Reseller News* (March 4, 2002).
- 5 See, e.g., § 8.01-328.1 of the Code of Virginia.
- 6 See, e.g., *Asabi Metal Indus. v. Superior Court*, 480 U.S. 102, 106 (1987); *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414 (9th Cir. Dec. 1997); *Ruston Gas Turbines, Inc. v. Donaldson Co.*, 9 F.3d 415, 418 (5th Cir. 1993); *Alitalia-Linee Aeree Italiane v. Casinoalitalia.com*, 128 F. Supp. 2d 340, 348 (E.D.Va. 2001); *Weinstein v. Todd Marine Enterprises, Inc.*, 115 F. Supp. 2d 668, 671 (E.D.Va. 2000) (citing *Nan-Ya Plastics v. DeSantis*, 237 Va. 255, 259, 377 S.E.2d 388 (1989)); *SF Hotel Co., L.P. v. Energy Investments, Inc.*, 985 F. Supp. 1032 (D. Kan. Nov. 19, 1997); *Transcraft Corp. v. Doonan Trailer Corp.*, 1997 WL 733905, 1997 U.S. Dist. LEXIS 18687 (N.D. Ill. Nov. 17, 1997); *Pawlucz v. Global Upholstry Co.*, 854 F. Supp. 364, 366 (E.D. Pa. 1994); *MCA Records, Inc. v. Highland Music Inc.*, 844 F. Supp. 1201, 1203 (M.D. Tenn. 1993).
- 7 *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).
- 8 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985).
- 9 *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1987).
- 10 *Nichols v. G.D. Searle & Co.*, 991 F.2d 1195, 1199 (4th Cir. 1993) (citing *Ratliff v. Cooper Laboratories, Inc.*, 444 F.2d 745, 748 (4th Cir.), cert. denied, 404 U.S. 948 (1971)).
- 11 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984).
- 12 *Federal Ins. Co. v. Lake Shore, Inc.*, 886 F.2d 654, 660 (4th Cir. 1989).
- 13 *Id.* (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)).
- 14 952 F. Supp. 1119 (W.D. Pa. 1997); discussed in Daniel A. Ross, "Jurisdictional Issues Raised by Intellectual Property Disputes on the Internet," *The Metropolitan Corporate Counsel* (2000).
- 15 See also, *SF Hotel Co., L.P. v. Energy Investments, Inc.*, 985 F. Supp. 1032 (D. Kan. Nov. 19, 1997) (adopting the test found in *Zippo*, finding no jurisdiction over a nonresident defendant who maintained a passive Web site providing general information about its hotel with no provision for direct communication between the defendant and the Internet user); *Transcraft Corp. v. Doonan Trailer Corp.*, 1997 WL 733905, 1997 U.S. Dist. LEXIS 18687 (N.D. Ill. Nov. 17, 1997) (finding no jurisdiction over a defendant based on a Web site providing general advertisement about defendant's business, finding that the defendant had not thereby "entered" into Illinois in a way that contributed to the plaintiff's injury nor specifically intended its advertisements to reach Illinois customers); *Weber v. Jolly Hotels*, 977 F. Supp. 327, 333 (D.N.J. Sep. 12, 1997) (finding no jurisdiction over a defendant where general information was placed on defendant's Web site as an advertisement and "not as a means of conducting business"); *Smith v. Hobby Lobby Stores, Inc.*, 968 F. Supp. 1356 (W.D. Ark. June 25, 1997) (finding no jurisdiction in the forum where the Hong Kong-based defendant's advertisement in a trade publication merely appeared on the Internet and was not directed at Arkansas residents and the defendant did not contract to supply any goods or services to Arkansas residents over the Internet); *McDonough v. Fallon McElligott, Inc.*, 1996 WL

- 753991, 1996 U.S. District LEXIS 15139 (S.D. Cal. Aug. 5, 1996) (finding no jurisdiction over a nonresident defendant whose Internet advertising merely was accessible in the forum state).
- 16 No. 3:00-CV-1268-R (N.D. Tex., N. Div. Mar. 20, 2001), *cited in* "Defamation Suit over Pan Am 103 Article Dismissed," *Computer & On-line Industry Litigation Reporter* (April 10, 2001).
- 17 190 F.3d 333 (5th Cir. 1999).
- 18 126 F.3d 25 (2d Cir. 1997), *aff'g* 937 F. Supp. 295 (S.D.N.Y. 1996).
- 19 130 F.3d 414 (9th Cir. Dec. 1997).
- 20 *Id.* at 418-19. In *Cybersell*, the Ninth Circuit declined to incorporate an "effects" analysis because a corporation "does not suffer harm in a particular geographic location in the same sense that an individual does." That court, however, later applied an "effects" analysis in *Panavision International L.P. v. Toeppen*, 141 F.3d 1316 (9th Cir. 1998), discussed below.
- 21 937 F. Supp. 161 (D. Conn. Apr. 17, 1996). *Compare Mink v. AAAA Development, LLC*, 190 F.3d 333 (5th Cir. 1999) (defendant was not subject to jurisdiction in Texas though defendant's Web site advertisement accessible in Texas provided users a printable order form to mail in, the mailing address, electronic mail address and a toll-free telephone number).
- 22 2000 U.S. App. LEXIS 22469 (Fed. Cir. 2000).
- 23 See Section IV.A. *infra*.
- 24 The partly "active" nature of these cases appear only in the allegedly illicit activities of the defendants and not in the nature of the Web sites, which were not reported as interactive. Under a sliding scale examination of the above Web sites the sites likely would have been viewed as passive sites by other courts.
- 25 141 F.3d 1316 (9th Cir. 1998).
- 26 1997 U.S. Dist. LEXIS 19317 (1997), *motion to dismiss denied* at 987 F. Supp. 481 (W.D.N.C. Oct. 8, 1997).
- 27 952 F. Supp. 1119 (W.D. Pa. 1997). As stated above, this court was the first to expressly recognize the sliding scale of Internet activity.
- 28 *Id.* at 1124-1127.
- 29 1997 WL 836498, 1997 U.S. Dist. LEXIS 18857 (D. Mass. Sep. 30, 1997). See also *Digital Equip. Corp. v. AltaVista Technology, Inc.*, 960 F. Supp. 456 (D. Mass. Mar. 12, 1997) (Finding jurisdiction over nonresident defendant that solicited business in the forum state through its Web site and had completed sales to forum state residents.).
- 30 975 F. Supp. 494 (S.D.N.Y. Aug. 14, 1997).
- 31 1997 U.S. Dist. LEXIS 19317, *accepted, mot. denied by*, 958 F. Supp. 1 (D.D.C. Dec. 19, 1996).
- 32 PICS Case No. 00-2252 (Pa. Super. Nov. 17, 2000) (*discussed in* Lori Litchmanof, "Civil Practice," *Law Weekly* (Nov. 27, 2000)); see also *Response Reward Systems, LC v. Meijer, Incorporated*, 2002 U.S. Dist. LEXIS (M.D. Fla. 2002) (providing coupons on Internet site not enough to confer personal jurisdiction over Michigan defendant, not enough to show "a general course of business within the state" or receipt of a "pecuniary benefit" from the state).
- 33 965 F. Supp. 17 (N.D. Tex. May 9, 1997).
- 34 2002 U.S. Dist. LEXIS (N.D. Tex. 2002).
- 35 83 F. Supp. 2d 1261 (N.D. Ala. 2000). See also *Mink v. AAAA Development, LLC*, 190 F.3d 333 (5th Cir. 1999) (finding Web site advertisements with order forms to be passive Web sites).
- 36 1997 WL 97097, 1997 U.S. Dist. LEXIS 2065 (S.D.N.Y. Feb. 26, 1997).
- 37 2002 U.S. Dist. LEXIS 2043 (D. Kan. 2002).
- 38 205 F.3d 1244 (10th Cir. 2000).
- 39 89 F.3d 1257 (6th Cir. July 22, 1996), *reb'g and suggestion for reb'g en banc denied* (Sep. 19, 1996).
- 40 115 F. Supp. 2d 668 (\_\_\_\_ 2000).
- 41 Civ. 2:00CV00086 (August 9, 2001).
- 42 O'Donna Ramsey, "Judge rules local court can preside over libel suit," *Coalfield.com* (August 14, 2001).
- 43 See, *infra*, *Telco Communications v. An Apple A Day*, 977 F. Supp. 404 (E.D. Va. 1997).
- 44 *Young*, Civ. 2:00CV00086 at 26-27.
- 45 245 Va. 202, 427 S.E.2d 326 (1993).
- 46 245 Va. at 206-207.
- 47 977 F. Supp. 404 (E.D. Va. 1997) (Alexandria Div.) (Cacheris, J.). *Compare Mink v. AAAA Development, LLC*, 190 F.3d 333 (5th Cir. 1999) (finding Web site advertisements with toll free numbers and order forms to be passive Web sites).
- 48 *Id.* at 406 (*Citing Inset Systems, Inc. v. Instruction Set, Inc.*, 937 F. Supp. 161 (D. Conn. 1996)). *Compare Mink v. AAAA Development, LLC*, 190 F.3d 333 (5th Cir. 1999) (finding Web site advertisements with toll free numbers and order forms to be passive Web sites).
- 49 977 F. Supp. at 407.
- 50 133 F. Supp. 873 (W.D. Va. 2001) (J. Michael)
- 51 *Id.* at 877.
- 52 128 F. Supp. 2d 340 (E.D. Va. 2001) (J. Ellis).
- 53 59 F. Supp. 2d 562 (E.D. Va. 1999) (J. Smith).
- 54 *Id.* at 565.
- 55 *Id.* at 568.