Case Notes

Trying To Board a Moving Volkswagen

Bensusan Restaurant Corp. v. King, 937 F. Supp. 295 (S.D.N.Y. 1996), *aff'd*, 126 F.3d 25 (2d Cir. 1997).

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For jazz lovers, there is only one "Blue Note," located in New York City's Greenwich Village.[1] Unfortunately, the World Wide Web[2] recognizes no such exclusivity.

In April of 1996, Richard King—owner and operator of a club in Columbia, Missouri also called "The Blue Note"—posted a site on the World Wide Web of the Internet to advertise his establishment.[3] King's Web site, located on a computer server in Missouri, allegedly contains a logo substantially similar to that used by the "Blue Note" in New York

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1. "The Blue Note" is located at 131 West 3rd Street in New York City. *See* CHARLES A. SUISMAN & CAROL MOLESWORTH, MANHATTAN: USER'S GUIDE 13 (1996). The Bensusan Restaurant Corporation "owns all rights, title and interest in and to the federally registered mark 'The Blue Note.'" Bensusan Restaurant Corp. v. King, 937 F. Supp. 295, 297 (S.D.N.Y. 1996).

2. The Internet is:

> the world's largest computer network (a network consisting of two or more computers linked together to hare electronic mail and files). The Internet is actually a network of thousands of independent networks, containing several million "host" computers that provide information services. An estimated 25 million individuals have some form of Internet access, and this audience is doubling each year. The Internet is a cooperative venture, owned by no one, but regulated by several volunteer agencies.

MTV Networks v. Curry, 867 F. Supp. 202, 203 n. 1 (S.D.N.Y. 1994) (citations omitted). A "site" is an Internet address which permits users to exchange digital information with a particular host, *see id.* at 203 n. 2, and the World Wide Web refers to the collection of sites available on the Internet, *see* Shea v. Reno, 930 F. Supp. 916, 929 (1996).

3. *See* Bensusan Restaurant Corp., 937 F. Supp. at 297.

City.[4] The Web site is a general access site, viewable by anyone having access to the Internet.[5] It lists general information about the club in Missouri as well as a calendar of events and ticketing information.[6] The ticketing information contains names and addresses of ticket outlets and a telephone number for charge-by-phone ticket orders, which are available for pick-up on the night of the event at the box office in Columbia.[7]

At the time the action was brought, King's Web site contained the following disclaimer: "The Blue Note's Cyberspot should not be confused with one of the world's finest jazz club[s] [the] Blue Note, located in the heart of New York's Greenwich Village. If you should find yourself in the big apple give them a visit."[8] The reference to the New York City "Blue Note" in the disclaimer contained a "hyperlink"[9] which allow Internet users to connect directly to the Web site for the New York City "Blue Note" by clicking on the hyperlink.[10] After Bensusan Restaurant Corporation ("Bensusan")—owners of the New York City "Blue Note"—objected to King's Web site, King removed the sentence: "If you should find yourself in the big apple give them a visit"[11] from the disclaimer and eliminated the hyperlink.[12]

Bensusan brought an action against King, individually and doing business as The Blue Note, alleging that King was infringing on Bensusan's rights in its trademark "The Blue Note."[13] King moved to dismiss the complaint for lack of personal jurisdiction pursuant to Fed. R. Civ P. 12(b)(2).[14] District Judge Sidney H. Stein granted the motion, and dismissed the complaint holding that "the existence of a 'site' on the World Wide Web of the Internet, without anything more, is [not] sufficient to vest [a court] with personal jurisdiction."[15] The United States Court of Appeals for the Second Circuit affirmed the decision.[16]

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4. *See id.* (citation omitted).

5. *See id.* (citation omitted).

6. *See* Bensusan Restaurant Corp. v. King, 937 F. Supp. 295, 297 (S.D.N.Y. 1996) (citation omitted).

7. *See id.* (citation omitted).

8. *Id.* at 297-98 (citation omitted).

9. A "hyperlink" is "highlighted text or images that, when selected by the user, permit him to view another, related Web document." Shea v. Reno, 930 F. Supp. 916, 929 (1996). With these links, "a user can move seamlessly between documents, regardless of their location; when a user viewing the document located on one server selects a link to a document located elsewhere, the browser will automatically contact the second server and display the document." *Id.*

10. Bensusan Restaurant Corp., 937 F. Supp. at 298.

11. *Id.*

12. *See* Bensusan Restaurant Corp. v. King, 937 F. Supp. 295, 298 (S.D.N.Y. 1996) (citation omitted).

13. *See id.* at 297.

14. *See id.*

15. *Id.*

16. *See* Bensusan Restaurant Corp. v. King, 126 F.3d 25 (2d Cir. 1997).

In its opinion, the Second Circuit stated that "attempting to apply established . . . law in the fast-developing world of the internet is somewhat like trying to board a moving bus."[17] The better analogy is that attempting to apply established personal jurisdiction law to the Internet and the Web is like trying to board a moving Volkswagen, because it is necessary to reevaluate doctrines of personal jurisdiction from cases such as *World-Wide Volkswagen Corp. v. Woodson*[18] to *Asahi Metal Industry Co., Ltd. v. Superior Court of Solano County*.[19] This Case Note argues that if an individual or corporation operates a World Wide Web site, any state's exercise of personal jurisdiction over the individual or corporation maintaining the Web site would not violate the Due Process Clause of the United States Constitution.[20]

II.

Millions of Americans already "surf" the Web from their homes and offices, and as the number of Internet consumers increases, entrepreneurs will increasingly tailor their services to this unique forum. The possibilities for commercial transactions on the Web are almost limitless.[21] Experts forecast growth in electronic banking, consumer products, computer software, electronic advertising, and financial investments due to increased use of the Web.[22] Businesses currently take advantage of the Web in a number of ways. For example, many corporations use Web sites to advertise their goods and services and solicit purchases. Some corporations, including many airlines, offer some discount services only through the Web. Many companies—such as Dell Computer which earns $3 million in sales each day through its Web sites—earn significant profits through their Web sites.[23] Retailers have used Web sites as virtual shopping malls, permitting consumers to purchase clothing or electronics from

17. *Id.* at 27.

18. 444 U.S. 286 (1980).

19. 480 U.S. 102 (1987).

20. This Case Note only discusses Judge Stein's conclusion that "the exercise of personal jurisdiction over King would violate the protections of the Due Process Clause." Bensusan Restaurant Corp. v. King, 937 F. Supp. 295, 301 (S.D.N.Y. 1996). Personal jurisdiction over a defendant is measured by the scope of the long-arm statute of the jurisdiction in which the court sits, and not all long-arm statutes are co-extensive with the Due Process Clause. As a result, the Due Process Clause might permit the exercise of personal jurisdiction over a defendant, but it is possible that the state's long-arm statute does not cover a defendant's actions. In such a case, a court sitting in that jurisdiction would not be able to exercise personal jurisdiction over the defendant.

21. *See* David Thatch, Note and Comment, *Personal Jurisdiction and the World-Wide Web*, 23 RUTGERS COMPUTER TECH. L.J. 143, 153 (1997).

22. *See id.*

23. Lawrence M. Fisher, *Company Reports; Dell Computer's Earnings Exceed Analysts' Estimates*, N.Y. TIMES, Nov. 25, 1997 at D2.

the comfort of one's home. One can even request an application from Yale Law School, purchase a plane ticket to Malaga, Spain, or find out the score of a Baltimore Orioles baseball game simply by "clicking" on a mouse.

While the emergence of the Web has had a tremendous impact on the lives of Americans by making information infinitely more accessible, it has caused difficult problems for courts trying to regulate this new technology with established doctrines of personal jurisdiction. Transactions occurring on the World Wide Web take place in a fictional domain known as "cyberspace." Cyberspace, because it has no geographical situs, has stymied courts attempting to apply settled doctrines of personal jurisdiction formulated in response to the actions of salespersons, sales of automobiles or shipments of automotive parts. In cases such as *World-Wide Volkswagen* or *Asahi*, there was a tangibility to the commercial transactions, agents were accepting orders from customers or companies were shipping parts to distributors. In the case of a Web site, a commercial transaction for thousands of dollars can take place in cyberspace with the click of a button and no human contact.

III.

This Case Note argues that the common law jurisdictional rules governing commercial transactions are not readily adaptable to the World Wide Web, and that the uniqueness of the Web renders most current personal jurisdiction analysis obsolete. Indeed, the notion that personal jurisdiction analysis must adapt to reflect innovations in technology is not new, for the United States Supreme Court has recognized that "[a]s technological progress has increased the flow of commerce between States, the need for jurisdiction over nonresidents has undergone a similar increase."[24]

The purpose of restricting personal jurisdiction is to protect the interests of non-resident defendants.[25] A defendant can be subject to either specific or general personal jurisdiction in a forum state. To exercise "general" jurisdiction, a plaintiff must establish that the defendant's contacts with the forum state are so "continuous and substantial" with the forum state that the defendant should expect to be called into court to defend any cause of action.[26] To exercise "specific" jurisdiction, a plaintiff must satisfy a two-pronged test. First, the defendant's actions must be

24. Hanson v. Denckla, 357 U.S. 235, 250-51 (1958).

25. *See* United States v. Morton, 467 U.S. 822, 828 (1984).

26. *See* Helicopteros Nacionales de Colombia S.A. v. Hall, 466 U.S. 408, 414-16 & 414 n.9 (1984).

covered by the state's long-arm statute.[27] Second, the due process requirements of the Constitution must be fulfilled.

Due process requires the defendant to have certain minimum contacts with the forum state.[28] The minimum contacts test requires three conditions for finding personal jurisdiction. First, the defendant must have purposefully availed herself to the forum state.[29] Purposeful availment is found when a defendant's action is purposefully directed toward the forum state and shows a substantial connection with the forum state.[30] Second, the claim must arise from the defendant's activities with the forum state. Third, the court's exercise of jurisdiction must comport with "fair play and substantial justice."[31] The factors that the court must consider are: (1) the extent of defendant's purposeful interjection; (2) the burden on the defendant in defending in the forum; (3) the extent of the conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum.[32] When all three conditions of the minimum contacts tests are fulfilled, due process is satisfied and the court may assert personal jurisdiction over an out-of-state defendant.

While a number of Supreme Court personal jurisdiction decisions are relevant when determining whether due process allows a court to exercise *in personam* jurisdiction over an individual or corporation operating a World Wide Web site, the most important of these is *Asahi Metal Industry Co., Ltd. v. Superior Court of Solano County*, which sets forth the "stream of commerce" theory. In *Asahi*, a foreign manufacturer sold its product to a distributor.[33] The distributor then sold the product worldwide, an act which the Court labeled as placing a "product into the

27. The Due Process Clause of the Fourteenth Amendment sets the outermost limits of a state's power to exercise personal jurisdiction. Each state has the power to impose further limits beyond the Due Process Clause by granting its courts the power to exercise personal jurisdiction over non-residents through long-arm statutes. Certain states set forth in their long-arm statutes the types of contacts with the forum state necessary to authorize courts to exercise jurisdiction over a non-resident defendant. New York's long-arm statute includes contacts such as transacting business within the state, committing a tortious act within the state, or being a defendant in a matrimonial or family action who previously resided in the state. *See* N.Y. C.P.L.R. § 302(a) (McKinney 1990). Other states grant their courts the power to assert jurisdiction to fullest extent permissible under the Due Process Clause. In these states, if a court has the power to exercise jurisdiction under the Due Process Clause, it has the statutory power to assert jurisdiction.

28. *See* International Shoe v. Washington, 326 U.S. 310, 316 (1945).

29. *See* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

30. *See* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985).

31. *Id.* at 477-78.

32. *See id.* at 476-77.

33. *See* Asahi Metal Industry Co., Ltd. v. Superior Court of Solano County, 480 U.S. 102, 102 (1987).

stream of commerce."[34] A product liability suit arose in California and the Court held that a California court's assertion of personal jurisdiction over the foreign manufacturer violated the Due Process Clause.[35] Justice O'Connor's opinion for the Court found that placing a "product into the stream of commerce, without more," did not satisfy the purposeful availment element of the minimum contacts test.[36] O'Connor stated that "[a]dditional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State."[37] Under O'Connor's analysis, in order for the purposeful availment prong to be met, the defendant must do more than place her product in the stream of commerce, she must engage in additional action towards the forum state such as "designing the product for the market in the forum State, advertising in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State."[38] O'Connor concluded that "a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed towards the forum State."[39]

Justice O'Connor's plurality opinion in *Asahi* appears to set the stage for the personal jurisdiction analysis of Web sites. Creating a Web site and posting information on it can be considered to be placing a product into the "stream of commerce."[40] Large corporations—such as Nike, Pepsi, or NBC—or even small operations—such as King's Blue Note in *Bensusan*—create Web sites to market their goods and services to a *national* audience. In fact, a Web site operated by a large company such as Dell Computer would be foolish to tailor its Web site to an audience in a specific state—by engaging in "additional activity" towards a particular state—for fear of alienating consumers viewing the Web site from others areas.

The collision of the World Wide Web and personal jurisdiction analysis had led to a legal conundrum. Bensusan has a claim that King's Web site infringed on his "Blue Note" trademark. There is an alleged harm that should be adjudicated and redressed, but a court sitting in New York is powerless under the Due Process Clause to exercise either specific or

34. *Id.* at 112.
35. *See id.* at 116.
36. *Id.* at 112.
37. *Id.*
38. Asahi Metal Industry Co., Ltd. v. Superior Court of Solano County, 480 U.S. 102, 112 (1987).
39. *Id.*
40. *See* David L. Stott, Comment, *Personal Jurisdiction in Cyberspace*, 15 J. MARSHALL J. COMPUTER & INFO. L. 819, 827 (1997).

general jurisdiction over King, because under Justice O'Connor's analysis in *Asahi*, "King has done nothing to purposefully avail himself of the benefits of New York."[41] As Judge Stein stated in relying on *Asahi*: "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."[42] The question then becomes: Is it possible to exercise personal jurisdiction over a defendant operating a Web site directed at a national audience?

Courts have come to different conclusions on whether to assert personal jurisdiction over a defendant that operates and maintains a Web site. In *Inset Systems, Inc. v. Instruction Set, Inc.*,[43] Instruction Set, Inc. ("ISI"), a Massachusetts corporation, advertised its computers goods and services on the World Wide Web using the domain name "Inset.Com."[44] Inset did not authorize ISI's use of its "Inset" trademark.[45] Nonetheless, ISI utilized Inset's trademark in both its domain name and toll-free telephone number.[46] The District Court held that "advertising via the Internet is solicitation of a sufficient repetitive nature to satisfy [the Connecticut long-arm statute]."[47] The court also held that ISI had sufficient minimum contacts with Connecticut to justify the exercise of personal jurisdiction over the defendant.[48] The Court concluded that the "Internet as well as toll-free numbers are 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 .... [U]nlike television and radio advertising, the [Internet] advertisement is available continuously to any Internet user."[49] Thus, ISI had "purposefully availed itself of the privilege of doing business within Connecticut."[50]

Another district court in *Maritz v. CyberGold*[51] reached a similar result holding that personal jurisdiction could be exercised by a Missouri court over a Web site directed at a national audience.[52] In *Maritz*, the defendant CyberGold, a California corporation, was offering a future service that would provide Internet users with electronic mailings of adver-

41. Bensusan Restaurant Corp. v. King, 937 F. Supp. 295, 301 (S.D.N.Y. 1996).
42. *Id.* (citation omitted).
43. 937 F. Supp. 161 (D. Conn. 1996).
44. *See* Inset Systems, Inc. v. Instruction Set, Inc., 937 F. Supp. 161, 162-63 (D. Conn. 1996).
45. *See id.* at 163.
46. *See id.*
47. *Id.* at 164.
48. *See id.* at 165.
49. Inset Systems, Inc. v. Instruction Set, Inc., 937 F. Supp. 161, 165 (D. Conn. 1996).
50. *Id.*
51. 947 F. Supp. 1328 (E.D. Miss. 1996).
52. *See* Maritz v. CyberGold, 947 F. Supp. 1328, 1334 (E.D. Miss. 1996).

tisements in each user's particular areas of interest.[53] The Web site advertised the forthcoming e-mail service and invited individuals to sign up on a mailing list for future service. The plaintiff, Maritz, is a corporation located in Missouri that provides e-mail service under its trademark name—GOLDMAIL.[54] The court held that Missouri's long-arm statute reached CyberGold because its activity may have produced an effect in Missouri by allegedly causing Maritz economic injury.[55] The court held that CyberGold had sufficient minimum contacts with Missouri to justify the exercise of personal jurisdiction over the defendant.[56] It stated: "With CyberGold's website, CyberGold automatically and indiscriminately responds to each and every internet user who accesses its website. Through its website, CyberGold has consciously decided to transmit advertising information to all internet users, knowing that such information will be transmitted globally."[57] The court found that "CyberGold's contacts are of such a quality and nature for personal jurisdiction jurisprudence, that they favor the exercise of personal jurisdiction."[58]

Finally, in *Telco Communications v. An Apple a Day*,[59] the defendant, An Apple a Day ("An Apple") posted two or three allegedly defamatory press releases on its Web site.[60] The court found that by conducting their advertising and soliciting over the Internet—which could be accessed by a Virginia resident twenty-four hours a day, the defendants regularly did business for purposes of the Virginia long-arm statute.[61] It found that "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."[62] It also held that the exercise of personal jurisdiction over the defendant did not violate due process. For, An Apple could have reasonably foreseen being called into a Virginia court because of its activities because An Apple "should have reasonably known that their press release would be disseminated [in Virginia], and they certainly knew that [the plaintiff] is based in Virginia."[63]

Other courts have been reluctant to assert personal jurisdiction over a defendant based upon the operation of a Web site. For example, in

53. *See id.* at 1330.
54. *See id.* at 1336.
55. *See id.* at 1331.
56. *See id.* at 1334.
57. Maritz v. CyberGold, 947 F. Supp. 1328, 1333 (E.D. Miss. 1996).
58. *Id.*
59. 1997 WL 595086 (E.D. Va. Sept. 24, 1997).
60. *See* Telco Communications v. An Apple a Day, 1997 WL 595086at *1, *3 (E.D. Va. Sept. 24, 1997)
61. *See id.* at *3.
62. *Id.*
63. *Id.* at *5.

Hearst Corporation v. Goldberger,[64] the plaintiff, Hearst Corporation, is the owner and publisher of Esquire Magazine, owning the ESQUIRE trademark.[65] The defendant, Goldberger, is a New Jersey attorney who created a Web site to provide legal support services to attorneys via computer.[66] Goldberger named his service "ESQ.WIRE1" and registered the domain name "esqwire.com."[67] After the Web site was accessible and advertising the forthcoming service, Hearst filed a complaint against Goldberger, and Goldberger subsequently moved to dismiss the complaint for lack of personal jurisdiction and failure to state a claim.[68]

The court found that Goldberger's contacts with New York were limited to the Web site.[69] The *Hearst* court relied on Judge Stein's opinion in *Bensusan*, stating that "Goldberger has 'simply created a Web site and permitted anyone who could find it to access it," and that "a [W]eb site, without more," does not provide sufficient minimum contacts for a forum state to assert personal jurisdiction.[70] The *Hearst* court refused to exercise personal jurisdiction over Goldberger because "to allow personal jurisdiction based on an Internet web site 'would be tantamount to a declaration that this Court, and every other court throughout he world, may assert [personal] jurisdiction over all information providers on the global World Wide Web. Such a holding would have a devastating impact on those who use this global service."[71]

Motivating the *Hearst* court's decision was its belief that Goldberger's Web site was "most analogous to an advertisement in a national magazine."[72] The court stated: "Like such an ad, Goldberger's Internet web site may be viewed by people in all fifty states (and all over the world too for that matter), but it is not targeted at the residents of New York or any other particular state."[73] It stated: "National advertisements also have been held to not constitute sufficient 'minimum contacts' to satisfy constitutional due process requirements."[74] The notion that a Web site is analogous to an advertisement in a national magazine led to another court's refusal to exercise personal jurisdiction over a defendant adver-

64. 1997 WL 97097 (S.D.N.Y. Feb. 26, 1997).
65. *See* Hearst Corporation v. Goldberger, 1997 WL 97097, at *3 (S.D.N.Y. Feb. 26, 1997).
66. *See id.*
67. *Id.* at *4.
68. *See id.* at *4-*5.
69. *See id.* at *8.
70. Hearst Corporation v. Goldberger, 1997 WL 97097, at *16 (S.D.N.Y. Feb. 26, 1997).
71. *Id.* at *20 (citing Playboy Enterprises, Inc. v. Chuckleberry Pub., Inc., 939 F. Supp. 1032, 1039-40 (S.D.N.Y. 1996)).
72. *Id.* at *10.
73. *Id.*
74. *Id.* at *11 n.13 (citations omitted).

tising his business on a Web site. In *Weber v. Jolly Hotels*,[75] the court refused to exercise general jurisdiction because it advertised its services over the Internet. The *Weber* court found that such an assertion of personal jurisdiction "would violate the Due Process Clause . . . and would disrespect the principles established by *International Shoe* and its progeny."[76]

What is most remarkable about the cases discussed above—aside from Judge Stein's opinion in *Bensusan*—is the failure of these courts to discuss *Asahi*. For better or worse, *Asahi* —and its stream of commerce theory—is the current law concerning personal jurisdiction. Indeed, the above cases engage in legal fiction when they fail to discuss *Asahi*, relying instead on simplistic notions of reasonable foreseeability or national advertising. This Case Note argues that is possible to use *Asahi* as a basis for reformulating personal jurisdiction law with regard to the World Wide Web. However, instead of focusing on Justice O'Connor's opinion as a framework for Internet personal jurisdiction law, one should rely on Justice Brennan's concept of the stream of commerce.[77]

Brennan's opinion rejects the additional activity requirement present in O'Connor's framework.[78] He states:

> The stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale. As long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise .... A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity. These benefits accrue regardless of whether that participant directly conducts business in the forum State, or engages in additional conduct directed toward that State.[79]

Under Brennan's analysis, awareness that the product is being marketed in a forum state is sufficient for the exercise of personal jurisdiction over the manufacturer. In the World Wide Web context, the operator a Web site is aware that his product—the Web site—can be viewed by individuals outside the state in which the site is administered. For example, in *Bensusan*, King knew that persons across the nation viewing his Web site might mistake his "Blue Note" for the one in New York City. As a result, he initially placed a disclaimer on the Web site distinguishing his operation from that of the original New York City Blue Note. However,

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75. 1997 WL 574950 (D. N.J. Sept. 12, 1997).

76. Weber v. Jolly Hotels, 1997 WL 574950, at *6 (D. N.J. Sept. 12, 1997).

77. Asahi Metal Industry Co., Ltd. v. Superior Court of Solano County, 480 U.S. 102, 116-21 (1987) (Brennan, J., plurality opinion).

78. *See id.* at 117.

79. *Id.*

the question remains: Why did King create a Web site for a small club in Missouri? One would think that if he was seeking only to appeal to individuals around the Columbia area, a local newspaper or magazine advertisement would have greater success in reaching his target audience. Unless, his target audience was not Missouri residents, but rather jazz lovers across the country surfing the Web. Thus, I argue that corporations or individuals that advertise using Web sites cannot have it both ways. They cannot both advertise to a national, even global audience on the Web, and be free from accountability in the courts of a state in which their advertisement can be seen. If one chooses to appeal to a national audience, one must be ready for consequences on a national scale.

One case that endorses this approach is *Keeton v. Hustler Magazine, Inc.*[80] The Supreme Court held that Hustler's regular circulation of magazines in the forum state was sufficient to support the exercise of jurisdiction in a libel action against Hustler. The Court concluded that the forum state's interest in redressing injuries occurring within the state along with its interest in cooperating with other states in the application of the "single publication rule," supported the exercise of personal jurisdiction over Hustler.[81] The Court stated:

> Where, as in this case, respondent Hustler Magazine, Inc., has continuously and deliberately exploited the New Hampshire market, it must reasonably anticipate being haled into court there in a libel action based on the contents of its magazine .... Respondent produces a national magazine aimed at a national audience. There is no unfairness in calling it to answer for the contents of that publication where a substantial number of copies are regularly sold and distributed.[82]

It is important to note that the plaintiff was not a resident of New Hampshire—the forum state—and that her sole connection with the state was Hustler's circulation of the magazine that she assisted in producing.[83] The plaintiff was a New York resident, so the New Hampshire courts were not even adjudicating a libel case involving one of their own residents.[84] Still, the Supreme Court authorized the New Hampshire courts to exercise jurisdiction over Hustler because it was a national magazine directed at a national audience.

If a non-resident can employ a state's courts to assert personal jurisdiction over a national magazine, then it is difficult to believe that the New York City Blue Note cannot pursue a suit against King's Web site—which is also directed at a national audience, individuals surfing the Web.

80. 465 U.S. 770 (1984).
81. Keeton v. Hustler Magazine, 465 U.S. 770, 777-78 (1984).
82. *Id.* at 781.
83. *See id.* at 772.
84. *See id.*

Just as the publishers of a magazine expect to garner significant profits from selling copies in states across the nation, businesses—large and small—maintaining Web sites expect their Internet activities to have a national impact and directly or indirectly benefit their operations. Since a person is aware that her Web site has a national audience, if she intends to enjoy the national benefits of her technological investment, she must be prepared to face the aftermath that such an operation with a national scope may have.

Some commentators have argued that applying this approach would have "devastating effects."[85] First, they argue that some individuals operate "local" Web sites and only attempt to solicit business in their local community. Although these individuals know that the Web can be accessed globally, they assume that only those familiar with their business will visit the site.[86] As a result, it is unfair to subject an individual who operates a Web site for the New Haven community to suit in Puerto Rico—a forum to which their efforts were not directed. Second, a related concern is that allowing any state to exercise personal jurisdiction over an individual or corporation maintaining the Web site would lead to forum shopping.[87] A plaintiff would be able to file suit in any jurisdiction in the United States because Web sites can be accessed from any place in the country. Plaintiffs would select the jurisdiction or jurisdictions that have the most "plaintiff-friendly policies."

Commentators who advance these critiques overstate their case. The problem is not that any state would be able to exercise personal jurisdiction over an individual or corporation maintaining a Web site. Instead, it is the assumption that only those in the local community familiar with the business or activity will access the "local" Web site. Such an argument is analogous to the contention that a New Haven business that advertises in *The New York Times* does not expect anyone in Puerto Rico or Alaska to see their advertisement and respond. Since such an argument is not accepted when the medium is a newspaper, it should not be recognized in the case of the World Wide Web.

Further, it is true that this Case Note's expansion of jurisdiction could cause operators of Web sites to defend lawsuits in distant forums and thus endure certain hardships. However, the alternative—the current *status quo*—is that individuals and corporations such as Bensusan, who have been allegedly wronged by a distant competitor, have no legal redress. Those who have committed a tort, whether through a physical act

85. Gwenn M. Kalow, Note, *From the Internet to Court*, 65 FORDHAM L. REV. 2241, 2267 (1997).

86. *See id.* at 2241.

87. *See id.*

or in cyberspace, should not escape the consequences simply because their alleged victim dwells in a distant forum. In addition, the danger of possible "forum-shopping" is no greater than it is in the case of newspapers and magazines. As in *Keeton*, a state may be more "plaintiff-friendly" because its statute of limitations is longer than that of any other state, but the instances of a plaintiff searching for a state to which neither she nor the defendant have any connection are likely to be extremely rare. For, just as the defendant will incur greater costs in defending a suit in such a state, so will the plaintiff, and this will likely deter plaintiffs from seeking out such forums.

CONCLUSION

In Justice Blackmun's dissent in *World-Wide Volkswagen*, he stated: "[A] critical factor in the disposition of litigation is the nature of the instrument under consideration. It has been said that we are a nation on wheels. What we are concerned with here is the automobile and its peripatetic character."[88] In the 1990s, we are a nation dependent on the computer and the World Wide Web. Since the Web has allowed for the instantaneous dissemination of information and made commercial transactions possible with the click of a button, personal jurisdiction rules should be relaxed to adapt to these changing circumstances. Since the manner in which our nation conducts commerce has changed greatly since Justice O'Connor set forth the rules governing personal jurisdiction and the stream of commerce in 1987, there is no reason why our personal jurisdiction law should remain trapped in the 1980s.

88. World-Wide Volkswagen v. Woodson, 444 U.S. 286, 318 (1980) (Blackmun, J., dissenting).