

## Internet Law

- Module 5
- Jurisdiction over Disputes in Internet Commerce

## Zippo Manuf. v. Zippo Dot Com (W.D.Pa.1997)

- D web site
  - 3 levels
  - 2% of paying are from PA
  - K w/ 7 PA ISPs
- PA Long Arm statute
- Purposeful availment?
  - Passive
  - Level of interactivity / commercial-ness
  - Enable contracts



**zippo** | The name in flame

### **Cybersell, Inc. v. Cybersell, Inc. (9th.1997)**

- P in AZ advertises over internet – first spammers
- D in FL does web page construction – maintains web page
  - [www.cybsell.com/](http://www.cybsell.com/) . . .
- AZ long-arm rule
- Internet advertising alone, or “something more”

### **Panavision Int'l v. Toeppen (9th.1998)**

- Cal. long arm statute
- Purposeful availment – via effects doctrine
  - Intentional, deliberate action
  - Aimed, directed
  - Harm in forum state & D likely knows harm is there
- Panavision HQ and movie/TV industries are in Cal.
- “something more” bundles elements of all three
  - Toeppen scheme to extort money from Panavision

## Panavision Int'l v. Toeppen (9th.1998)

Internet Law, Spring 2009, Prof. Greg R. Vetter

5-5

Fun With Domain Names:

In 1995, I registered about 200 domain names. Some were generic English words, like hydrogen.com. Others corresponded with trademarks that were shared by more than one company, like americanstandard.com. And some corresponded with trademarked coined words, like panavision.com.

It was clear to me at the time that domain names were valuable, undeveloped virtual real estate. There was absolutely no statutory or case law regarding trademarks in the context of Internet domain names at the time. It seemed to be an excellent opportunity to do the virtual equivalent of buying up property around a factory -- eventually the factory owner would realize that he needed the scarce resource which I possessed.

I sat on my virtual real estate and waited for offers (and threats). Many even-tempered folks purchased domain names and went on their way. Others sued me. I litigated two domain names because I wanted to determine if a domain name holder is legally bound to turn over a domain to a trademark holder.

Unfortunately, Federal Courts sided with trademark holders in Intermatic and Panavision. Rather than accepting my real estate analogy, the courts likened my actions to taking a lollipop from a defenseless toddler. Shortly after the courts ruled against me, I abandoned all domain registrations corresponding with trademarks.

The Panavision and Intermatic cases formed the foundation of modern Internet trademark law. Unfortunately, both unreasonably favor the trademark holders.

It's worth noting that a well-known letter which I sent to Panavision in 1996 was not actually a demand, as it was characterized by Panavision's attorney. Rather, it was a response to multiple unpleasant phone calls and phone messages from a particular individual at Panavision. Of course, it is the job of one's attorney to transform objective reality into something more melodramatic and exciting than it really is. Panavision's attorney was adept at spouting melodramatic language. If only he was not opposing counsel!

## Revell v. Lidov (5th.2002)

- Lidov posts Pan Am 103 article on Columbia School of Journalism self-posting website
- Revell sues in the N.D. Tex.
- Internet bulletin board is the contact out of which the alleged cause arises
- Article doesn't discuss Texas
- Mere residence in a forum isn't enough



## CompuServe v. Patterson (6th.1996)



- Patterson as . . .
  - Contracted w/ Ohio-based CompuServe as his product distribution center
- What are the contacts?
- Substantial enough?
- Or, a non-jurisdiction-granting minimal course of dealing?
  - Quality versus number or status of contacts
- Three “do not hold . . .” statements

## Distribution of Publications Online

- Print publications
  - Substantiality of the circulation
- Electronic publications?
  
- Scherr v. Abrahams (N.D. Ill.1998)
  - Minor print distribution
  - Online had 20,000 “subscribers” but no jur. under Zippo analysis
  
- Also, Naxos, Toys R Us

## Computer Eqpt. in the Forum State

- Web server
- Database

## Combined Ks; Foreign Defendants

- Combined online/offline contacts
  - Relevance of online contacts in combination with offline contacts
  - Foreign Defendants under FRCP 4(k)(2)

### (k) Territorial Limits of Effective Service.

(1) **In General.** Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under [Rule 14](#) or [19](#) and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) **Federal Claim Outside State-Court Jurisdiction.** For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

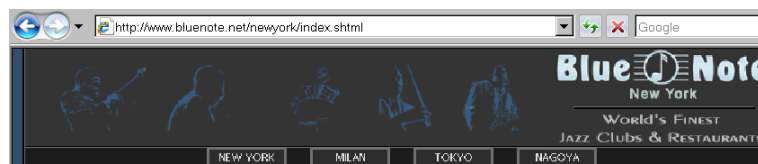
## Long Arm Statutes - business within the state

- Three most likely web site bases
  - Business in the state
  - Causing tortious injury in the state
  - Soliciting business within the state
- Mere posting of content versus making sales of goods
  - “sale” of chat-room access?
- Registration of domain name to “extort money”?
  - (unless not cyber-pirating)
- And . . . streaming music, registering domain name, email?

## Tortious injury in the state – Bensusan Rest. v. King (2nd.1997)



- Generally, two types of statutes: (1) conduct in state; (2) mixed in/out {needing “plus” factor}
- NY tortious injury long arm:
  - §302(a)(2): within
  - §302(a)3: outside the state, but
    - reasonably expect consequences in the forum state
    - AND
    - derive substantial revenue from IC



## Reg. Soliciting Business; Eqpt Location

- Does/should
  - Availability = solicitation?
- To what extent should the equipment location be a factor in the various long-arm statute approaches?
  - D posting a BBS message tortiously interfering with P's employment, where BBS computer is in VA
- What about propagation of messages / content?

## Rothchild

... a person in State A may make a communication through a Web site hosted on a computer located in State B, that is received by a person in State C who obtains access to the Internet through a server located in State D (which is owned and operated by a company headquartered in State E), and that results in a transaction involving the shipment of physical goods or downloading of digital goods from a source located in State F.



- Two popular choice of law approaches
  - Last event location
  - Most significant relationship

Most significant relationship factors for fraud or misrepresentation

(1) the place where the plaintiff acted in reliance upon the defendant's representations, (2) the place where the plaintiff received the representations, (3) the place where the defendant made the representations, (4) the residence and nationality of the parties, (5) the place where a tangible thing which is the subject of the transaction was situated, and (6) the place where the plaintiff was to render performance under the fraudulently induced contract.

## Goldsmith

Whose substantive legal rules apply to a defamatory message that is written by someone in Mexico, read by someone in Israel by means of an Internet server located in the United States, injuring the reputation of a Norwegian?



- Complexity
- Situs
  - Valid issues, but not much worse than real space
- Non-geographic choice of law alternatives

## Other Jurisdiction

- Subject Matter
  - Involving internet typically doesn't raise new issues
  - But . . . "divided infringement" for process claims in patent law
  - IM out and into state was IC
- General
  - Operating a web site to support "continuous and systematic" contacts
  - Use of Zippo?