



The Internet and Legal Jurisdiction

What Every Business Needs to Know to Minimize Risk

Your business's online activities can put you at risk of being subject to lawsuits in other states or even foreign countries. This ebook explains basic concepts relating to jurisdiction and provides some best practices for controlling the risk. Checklists for avoiding pitfalls are included. The ebook is adapted from content in ***Internet Law: The Complete Guide***, published by STP.



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introduction

In order for any court to hear a legal dispute and enter a valid judgment, it must have jurisdiction over both the plaintiff and the defendant. Jurisdictional questions related to cyberspace typically address whether a court has jurisdiction over the individuals or entities (known as *personal jurisdiction*). Such disputes are inevitable, because the Internet transcends state and national boundaries and fosters much human interaction that might not have occurred but for the advent of the Internet.

Ordinarily, a state court's personal jurisdiction is based on whether the people, businesses, transactions, or events at issue in the case lie within the state's physical territory, and the Due Process Clause of the Fourteenth Amendment limits the states' ability to assert jurisdiction over nonresident defendants. However, these traditional geographic limits no longer adequately define jurisdiction in a world where commercial transactions are routinely conducted in cyberspace by parties living thousands of miles distant, who may not even know where the other party is located in a geographical sense.

If a site exists "on the Web" that allows commerce with anyone from anywhere that has Internet access, is the owner's business address really relevant? A seller may have a brick-and-mortar shop in Tennessee, a website hosted by a server in California, a warehouse in Kansas, and customers dotted around the globe. "Where" then, is this business "located"?

One of the ways courts are adapting to this new situation is by redefining personal jurisdiction to be based on more than simple physical location. Unfortunately, many businesses remain unaware of these shifting sands of culpability that may leave them vulnerable. This ebook will help you reassess your business's online activities with a view to reducing the danger that you will be subject to personal jurisdiction in areas outside your state.

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LONG-ARM STATUTES REACH OUT ACROSS BORDERS

... state boundaries no longer a barrier to lawsuits

Many states have tried to exert personal jurisdiction over defendants who reside outside their borders. To this end, they have enacted “long-arm” statutes that confer jurisdiction over nonresident defendants, based on some contacts the defendant has had with the state or its citizens. A typical long-arm statute usually provides that certain activities conducted with someone from that state may be sufficient basis for courts in that state to establish personal jurisdiction. If your business engages in any of these activities, you may find yourself involved in a lawsuit outside your state.



SELF-ASSESSMENT CHECKLIST

...for activities that may trigger personal jurisdiction in another state or country

| | | Yes | No |
|----|--|--------------------------|--------------------------|
| 1. | Do I transact business in states other than my own state or in countries other than the United States? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. | Does my business own or use real property in states other than my own state or in countries other than the United States? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. | Does my business insure persons or property in states other than my own state or in countries other than the United States? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. | Does my business make contracts in states other than my own state or in countries other than the United States? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. | Do I act as a director or officer of a corporation organized under the laws of states other than my own state or under the laws of countries other than the United States? | <input type="checkbox"/> | <input type="checkbox"/> |

If you answered Yes to any of questions 1 through 5, you may be subject to personal jurisdiction outside your home state.

MINIMUM CONTACTS

...how much contact is too much?

To the extent that a defendant conducts activities within a particular state that the courts have described as “minimum contacts,” the defendant enjoys the benefits and protection of the laws of that state. However, those same contacts give rise to obligations in that state and a procedure that requires the defendant to respond to a lawsuit in the state can, in most instances, be considered fair.

To establish minimum contact, the defendant must purposefully avail himself or herself of the privilege of conducting activities within the forum state, thus invoking both the benefits and protections of its laws. The nonresident defendant’s connection with the forum state must be such that the defendant should reasonably anticipate having to defend a lawsuit there.

In addition, the United States Supreme Court has held that a nonresident defendant’s contacts with a forum state must be “continuous and systematic” in order to subject such a defendant to a lawsuit there.

However, a defendant may not avoid personal jurisdiction simply because he or she did not physically enter the state in question if they otherwise meet the requirements and their activity was “purposefully directed” at the state.

SELF-ASSESSMENT CHECKLIST

...for determining your “minimum contact” with other states and countries

| | | Yes | No |
|----|--|--------------------------|--------------------------|
| 1. | Does my business frequently contact people in other states and countries? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. | Does my business have a toll-free telephone number that is available nationwide? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. | Does my organization solicit charitable contributions from residents of other states and countries? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. | Does my business accept orders from residents of other states and countries? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. | Does my business have a physical presence, such as offices, employees, contractors, or agents, in other states and countries? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. | Does my business offer specially regulated products or services, such as alcohol, firearms, medications, or insurance, to residents of other states and countries? | <input type="checkbox"/> | <input type="checkbox"/> |

If you answered Yes to any of questions 1 through 6, you may be seen to have established “minimum contact” with states and countries beyond your home state and country.

PERSONAL JURISDICTION IN CYBERSPACE

... courts recognize global reach of Internet

Courts have struggled to adapt traditional notions of personal jurisdiction and long-arm statutes to activities online, interpreting the existing Supreme Court and other precedents in order to decide what sorts of activity will lead to a court having jurisdiction over a defendant whose only or primary connection to a forum state is via the Internet.

One of the tests courts have used is based on the degree of interactivity between the parties involved. The more interactive the relationship, the higher the likelihood that personal jurisdiction will be established. For example, a website that does nothing more than advertise on the Internet has a low degree of interactivity and a lower chance of establishing personal jurisdiction, while a website that allows users to exchange information with the host computer is more interactive and more risky.

SELF-ASSESSMENT CHECKLIST

for minimizing your website's degree of interactivity

| | Yes | No |
|---|--------------------------|--------------------------|
| 1. Do I limit the contents of my website to information only? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do I restrict access to my website and Internet content by requiring visitors to my site to identify their location before reaching certain content? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Do I place disclaimers on my website stating that the content is for informational purposes only? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Do I maintain statistics about the number of contacts I receive from my website? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Do I avoid posting information connecting my business with other states or countries, such as testimonials from satisfied customers residing in other states or countries? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Have I ensured that my website is not "directed at" residents of another state or country? | <input type="checkbox"/> | <input type="checkbox"/> |

summary

The potential rewards of online business are undeniable. However, the prospect of having to defend a lawsuit in a court a thousand miles away from your business's physical location is daunting.

While the extremes of personal jurisdiction resulting from Internet contacts are easy to identify, the majority of disputes will arise and be decided in the more "gray" middle ground: situations in which there is a varying degree of contact with a particular state through the Internet or in which other communications (such as telephone conversations or correspondence by regular mail) supplement the Internet communications.

The law regarding the jurisdiction of state courts to adjudicate disputes arising from conduct occurring on the Internet is developing rapidly. Currently, there is no one standard that applies to all situations. Therefore, whether a person whose conduct occurs wholly in cyberspace will be subject to the jurisdiction of a particular state court cannot be precisely determined in the abstract. For example, the earliest cases to consider how much "cyber" contact with a state would be enough to establish personal jurisdiction over a nonresident defendant determined that *substantial* contacts beyond merely electronic communications would be required. Over time, some courts have found less-significant contacts enough to confer jurisdiction over nonresidents, while other courts continue to follow the older standard. Until a clear line of cases emerges or until the U.S. Supreme Court rules on the issue, businesses and their attorneys must consider jurisdictional issues carefully, weighing the specific facts of a given situation.

The content of this ebook is a general outline of some areas of concern and should not be considered a definitive or comprehensive discussion of all issues relating to jurisdiction and the Internet.

Announcing A New Publication: *U.S. Social Media Law*

STP has just released an entirely new chapter on U.S. Social Media Law in its publication [Internet Law: The Complete Guide](#). This new chapter is also available to buy as an individual publication for only \$US89. In this latest guide in the *Internet Essentials* series the following topics are covered:



- Business Law
- Intellectual Property
- Social Media Use in Litigation
- Disposition of Social Media Assets
- International Law
- Upcoming Developments in Social Media

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ABOUT THE AUTHORS

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