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By Henry H. (Bucky) Fox, Esq.

The Internet presents a new arena in which to apply old legal standards regarding where a person can be sued and has required lawyers and judges to examine well-established principles in an age of rapidly changing technology. The widespread use of the Internet makes it important for businesses to re-think their conclusions on whether their online activities can subject them to "jurisdiction" in another state, which is legalese for whether your company can be sued in another state and you have to defend a claim against it in that state. The Internet has birthed difficult new issues in an old area of law: **jurisdiction**. What degree of use of the Internet by a company makes it susceptible to being sued in places other than those where they clearly conduct their business?

Three general categories of Internet contacts have emerged from the case law dealing with the Internet: passive, interactive, and commercial. These categories represent a sliding scale that is directly proportionate to the nature and quality of the commercial activity that a company, who does not have a business location in the state where a legal action is brought, conducts over the Internet, Passive, Commercial and Interactive.

Categories of Internet Contacts

Passive. Passive contacts are at the low end of the scale. This is when a party simply places information on their own Internet website that is accessible to users in a foreign jurisdiction, registers a domain name, publishes a website, or posts a message on an electronic bulletin board, such use would probably be considered "Passive". A passive Internet contact does little more than make information available to those who

are interested in it and such uses are almost always found to be insufficient to establish jurisdiction. The courts have generally held that a more active utilization of the Internet is required to establish a basis for asserting jurisdiction. For example, an additional non-Internet contact, such as the listing of a toll-free telephone number on the website by which business can be conducted, may be sufficient to establish jurisdiction.

Commercial. Commercial contacts are on the other end of the scale, and generally are found to exist when a company uses the Internet to conduct business. If a company conducts a direct commercial transaction with users in the state or judicial district where a lawsuit is filed, the Courts usually find that they have jurisdiction over that company. Often such commercial contact is accompanied by additional, non-Internet commercial contacts. However, some courts have refused to exercise jurisdiction in cases where the only contacts have been by use of the Internet.

Interactive. Between the passive and commercial ends lies a murky area of "interactive" on-line contacts. When an Internet user can exchange information with another Internet user through e-mail, online forms, file transfers and the like, such contacts are interactive. The courts are split as to whether jurisdiction can be exercised in interactive cases. Generally, courts look to the level of interactivity and the commercial nature of the exchange of information that occurs to determine if the interactive contacts are sufficient to establish jurisdiction.

Views from Florida Courts

For the most part, the federal courts in Florida have adopted the analysis of the three categories described above in determining if they have jurisdiction over a party. However, some cases suggest reluctance by Florida federal district courts to exercise jurisdiction, even when passive contacts are coupled with interactive contacts.

To date, no published Florida state court opinion has dealt with this issue in detail. However, from some comments in the state court opinions, it appears that Florida

courts are reluctant to find Internet contacts sufficient to establish jurisdiction where the only connection with Florida by an out of state company is the use of the Internet with nothing more. In one case, where a New York corporation had contracted to use an online airline reservation system whose primary database was located in Florida, the Court found that this was not enough to justify suing that company in Florida, even though users of the reservation system were solicited, engaged, and entirely within Florida. The decision notes the "far-reaching implications" of holding otherwise:

"Across the nation, in every state, customers of "on-line" computer information networks have contractual arrangements with out-of-state supplier companies Lawyers, journalists, teachers, physicians, courts, universities and business people throughout the country daily conduct various types of computer-assisted research over telephone lines linked to supplier databases located in other states. Based on the trial court's decision below, users of such "on-line" services could be hauled into court in the state in which supplier's billing office and database happen to be located Such a result, in our view, is wildly beyond the reasonable expectations of such computer-information users, and, accordingly, the result offends traditional notions of fair play and substantial justice." *Pres-Kap, Inc. v. System One, Direct Access, Inc.*, 636 So. 2d 1351 (Fla. 3d DCA 1994),

Conclusion

Given the unique ability of the Internet to cross not only state lines but also international borders, it will be necessary for the courts of this nation to adopt a uniform framework of what Internet activity is sufficient to subject a business to the prospect of being sued in another state. In the meantime, business managers and owners need to keep abreast of the efforts of the state and federal courts in Florida and in other states, as they struggle with applying our previously-established measurements of when a business is subject to being sued in another state to the vast array of contacts which the widespread use of the Internet as a method of commerce has created.

This article was based on the information found in the discussion of this topic at *76 Fla. Bar J.*

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