3. Personal Jurisdiction

ZIPPO MANUFACTURING COMPANY v. ZIPPO DOT COM, INC.
952 F. Supp. 1119 (E.D. Pa. 1997)

McLAUGHLIN, J.

This is an Internet domain name dispute. At this stage of the controversy, we must decide the Constitutionally permissible reach of Pennsylvania's Long Arm Statute through cyberspace. Plaintiff Zippo Manufacturing Corporation ("Manufacturing") has filed a five count complaint against Zippo Dot Com, Inc. ("Dot Com") alleging trademark dilution, infringement, and false designation under the Federal Trademark Act. Dot Com has moved to dismiss for lack of personal jurisdiction For the reasons set forth below, Defendant's motion is denied.

I. BACKGROUND

The facts relevant to this motion are as follows. Manufacturing is a Pennsylvania corporation with its principal place of business in Bradford, Pennsylvania. Manufacturing makes, among other things, well known "Zippo" tobacco lighters. Dot Com is a California corporation with its principal place of business in Sunnyvale, California. Dot Com operates an Internet Web site and an Internet news service and has obtained the exclusive right to use the domain names "zippo.com", "zippo.net" and "zipponews.com" on the Internet.

Dot Com's Web site contains information about the company, advertisements and an application for its Internet news service. The news service itself consists of three levels of membership - public/free, "Original" and "Super." Each successive level offers access to a greater number of Internet newsgroups. A customer who wants to subscribe fills out an on-line application that asks for a variety of information including the person's name and address. Payment is made by credit card over the Internet or the telephone. The application is then processed and the subscriber is assigned a password which permits the subscriber to view and/or download Internet newsgroup messages that are stored on the Defendant's server in California.

Dot Com's contacts with Pennsylvania have occurred almost exclusively over the Internet. Dot Com's offices, employees and Internet servers are located in California. Dot Com maintains no offices, employees or agents in Pennsylvania. Dot Com's advertising for its service to Pennsylvania residents involves posting information on its Web page, which is accessible to Pennsylvania residents via the Internet. Defendant has approximately 140,000 paying subscribers worldwide. Approximately two percent (3,000) are Pennsylvania residents. These subscribers have contracted to receive Dot Com's service by visiting its Web site and filling out the application. Additionally, Dot Com has entered into agreements with seven Internet access providers in Pennsylvania to permit their subscribers to access Dot Com's news service.

II. STANDARD OF REVIEW

When a defendant raises the defense of the court's lack of personal jurisdiction, the burden falls upon the plaintiff to come forward with sufficient facts to establish that jurisdiction is proper. The plaintiff meets this burden by making a prima facie showing of "sufficient contacts

between the defendant and the forum state."

III. DISCUSSION

A. Personal Jurisdiction

1. The Traditional Framework

Our authority to exercise personal jurisdiction in this case is conferred by state law. The extent to which we may exercise that authority is governed by the Due Process Clause of the Fourteenth Amendment to the Federal Constitution. Pennsylvania's long arm jurisdiction statute is codified at 42 Pa.C.S.A. § 5322(a). The portion of the statute authorizing us to exercise jurisdiction here permits the exercise of jurisdiction over non-resident defendants upon:

> (2) Contracting to supply services or things in this Commonwealth.

It is undisputed that Dot Com contracted to supply Internet news services to approximately 3,000 Pennsylvania residents and also entered into agreements with seven Internet access providers in Pennsylvania.

The Constitutional limitations on the exercise of personal jurisdiction differ depending upon whether a court seeks to exercise general or specific jurisdiction over a non-resident defendant. General jurisdiction permits a court to exercise personal jurisdiction over a non-resident defendant for non-forum related activities when the defendant has engaged in "systematic and continuous" activities in the forum. In the absence of general jurisdiction, specific jurisdiction permits a court to exercise personal jurisdiction over a non-resident defendant for forum-related activities where the "relationship between the defendant and the forum falls within the 'minimum contacts' framework" of *International Shoe Co. v. Washington,* 326 U.S. 310 (1945), and its progeny. Manufacturing concedes that if personal jurisdiction exists in this case, it must be specific.

A three-pronged test has emerged for determining whether the exercise of specific personal jurisdiction over a non-resident defendant is appropriate: (1) the defendant must have sufficient "minimum contacts" with the forum state, (2) the claim asserted against the defendant must arise out of those contacts, and (3) the exercise of jurisdiction must be reasonable. The "Constitutional touchstone" of the minimum contacts analysis is embodied in the first prong, "whether the defendant purposefully established" contacts with the forum state. *Burger King Corp. v. Rudzewicz,* 471 U.S. 462 (1985). Defendants who "'reach out beyond one state' and create continuing relationships and obligations with the citizens of another state are subject to regulation and sanctions in the other State for consequences of their actions." "The foreseeability that is critical to the due process analysis is ... that the defendant's conduct and connection with the forum State are such that he should reasonably expect to be haled into court there." *World Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 295 (1980). This protects defendants from being forced to answer for their actions in a foreign jurisdiction based on "random, fortuitous or attenuated" contacts. "Jurisdiction is proper, however, where contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State."

The "reasonableness" prong exists to protect defendants against unfairly inconvenient litigation. Under this prong, the exercise of jurisdiction will be reasonable if it does not offend "traditional notions of fair play and substantial justice." *International Shoe,* 326 U.S. at 316.

When determining the reasonableness of a particular forum, the court must consider the burden on the defendant in light of other factors including: "the forum state's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief, at least when that interest is not adequately protected by the plaintiff's right to choose the forum; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several states in furthering fundamental substantive social policies."

2. *The Internet and Jurisdiction*

In *Hanson v. Denckla,* the Supreme Court noted that "as technological progress has increased the flow of commerce between States, the need for jurisdiction has undergone a similar increase." *Hanson v. Denckla,* 357 U.S. 235, 250-51 (1958). Twenty seven years later, the Court observed that jurisdiction could not be avoided "merely because the defendant did not *physically* enter the forum state. *Burger King,* 471 U.S. at 476. The Court observed that:

> It is an inescapable fact of modern commercial life that a substantial amount of commercial business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted.

Enter the Internet. "In recent years, businesses have begun to use the Internet to provide information and products to consumers and other businesses." The Internet makes it possible to conduct business throughout the world entirely from a desktop. With this global revolution looming on the horizon, the development of the law concerning the permissible scope of personal jurisdiction based on Internet use is in its infant stages. The cases are scant. Nevertheless, our review of the available cases reveals that the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet. This sliding scale is consistent with well developed personal jurisdiction principles. At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. *E.g. Compuserve, Inc. v. Patterson,* 89 F.3d 1257 (6th Cir. 1996). At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction. *E.g. Bensusan Restaurant Corp., v. King,* 937 F. Supp. 295 (S.D.N.Y. 1996). The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site. *E.g. Maritz, Inc. v. Cybergold, Inc.,* 947 F. Supp. 1328 (E.D. Mo. 1996).

Traditionally, when an entity intentionally reaches beyond its boundaries to conduct business with foreign residents, the exercise of specific jurisdiction is proper. *Burger King,* 471 U.S. at 475. Different results should not be reached simply because business is conducted over the Internet. In *Compuserve, Inc. v. Patterson,* 89 F.3d 1257 (6th Cir. 1996), the Sixth Circuit addressed the significance of doing business over the Internet. In that case, Patterson, a Texas

resident, entered into a contract to distribute shareware through Compuserve's Internet server located in Ohio. From Texas, Patterson electronically uploaded thirty-two master software files to Compuserve's server in Ohio via the Internet. One of Patterson's software products was designed to help people navigate the Internet. When Compuserve later began to market a product that Patterson believed to be similar to his own, he threatened to sue. Compuserve brought an action in the Southern District of Ohio, seeking a declaratory judgment. The District Court granted Patterson's motion to dismiss for lack of personal jurisdiction. The Sixth Circuit reversed, reasoning that Patterson had purposefully directed his business activities toward Ohio by knowingly entering into a contract with an Ohio resident and then "deliberately and repeatedly" transmitted files to Ohio.

In *Maritz, Inc. v. Cybergold, Inc.,* 947 F. Supp. 1328 (E.D. Mo. 1996), the defendant had put up a Web site as a promotion for its upcoming Internet service. The service consisted of assigning users an electronic mailbox and then forwarding advertisements for products and services that matched the users' interests to those electronic mailboxes. The defendant planned to charge advertisers and provide users with incentives to view the advertisements. Although the service was not yet operational, users were encouraged to add their address to a mailing list to receive updates about the service. The court rejected the defendant's contention that it operated a "passive Web site." The court reasoned that the defendant's conduct amounted to "active solicitations" and "promotional activities" designed to "develop a mailing list of Internet users" and that the defendant "indiscriminately responded to every user" who accessed the site.

Inset Systems, Inc. v. Instruction Set, 937 F. Supp. 161 (D. Conn. 1996), represents the outer limits of the exercise of personal jurisdiction based on the Internet. In *Inset Systems,* a Connecticut corporation sued a Massachusetts corporation in the District of Connecticut for trademark infringement based on the use of an Internet domain name. The defendant's contacts with Connecticut consisted of posting a Web site that was accessible to approximately 10,000 Connecticut residents and maintaining a toll free number. The court exercised personal jurisdiction, reasoning that advertising on the Internet constituted the purposeful doing of business in Connecticut because "unlike television and radio advertising, the advertisement is available continuously to any Internet user."

Bensusan Restaurant Corp., v. King, 937 F. Supp. 295 (S.D. N.Y. 1996) reached a different conclusion based on a similar Web site. In *Bensusan,* the operator of a New York jazz club sued the operator of a Missouri jazz club for trademark infringement. The Internet Web site at issue contained general information about the defendant's club, a calendar of events and ticket information. However, the site was not interactive. If a user wanted to go to the club, she would have to call or visit a ticket outlet and then pick up tickets at the club. The court refused to exercise jurisdiction based on the Web Site alone, reasoning that it did not rise to the level of purposeful availment of that jurisdiction's laws. The court distinguished the case from *Compuserve*, where the user had "'reached out' from Texas to Ohio and 'originated and maintained' contacts with Ohio."

3. *Application to this Case*

First, we note that this is not an Internet advertising case in the line of *Inset Systems* and *Bensusan.* Dot Com has not just posted information on a Web site that is accessible to

Pennsylvania residents who are connected to the Internet. This is not even an interactivity case in the line of *Maritz.* Dot Com has done more than create an interactive Web site through which it exchanges information with Pennsylvania residents in hopes of using that information for commercial gain later. We are not being asked to determine whether Dot Com's Web site alone constitutes the purposeful availment of doing business in Pennsylvania. This is a "doing business over the Internet" case in the line of *Compuserve.* We are being asked to determine whether Dot Com's conducting of electronic commerce with Pennsylvania residents constitutes the purposeful availment of doing business in Pennsylvania. We conclude that it does. Dot Com has contracted with approximately 3,000 individuals and seven Internet access providers in Pennsylvania. The intended object of these transactions has been the downloading of the electronic messages that form the basis of this suit in Pennsylvania.

We find Dot Com's efforts to characterize its conduct as falling short of purposeful availment of doing business in Pennsylvania wholly unpersuasive. At oral argument, Defendant repeatedly characterized its actions as merely "operating a Web site" or "advertising." This argument is misplaced. Dot Com has done more than advertise on the Internet in Pennsylvania. Defendant has sold passwords to approximately 3,000 subscribers in Pennsylvania and entered into seven contracts with Internet access providers to furnish its services to their customers in Pennsylvania.

Dot Com also contends that its contacts with Pennsylvania residents are "fortuitous" within the meaning of *World Wide Volkswagen,* 444 U.S. 286 (1980). Defendant argues that it has not 'actively' solicited business in Pennsylvania and that any business it conducts with Pennsylvania residents has resulted from contacts that were initiated by Pennsylvanians who visited the Defendant's Web site. The fact that Dot Com's services have been consumed in Pennsylvania is not "fortuitous" within the meaning of *World Wide Volkswagen.* In *World Wide Volkswagen,* a couple that had purchased a vehicle in New York, while they were New York residents, were injured while driving that vehicle through Oklahoma and brought suit in an Oklahoma state court. The manufacturer did not sell its vehicles in Oklahoma and had not made an effort to establish business relationships in Oklahoma. The Supreme Court characterized the manufacturer's ties with Oklahoma as fortuitous because they resulted entirely out the fact that the plaintiffs had driven their car into that state.

Here, Dot Com argues that its contacts with Pennsylvania residents are fortuitous because Pennsylvanians happened to find its Web site or heard about its news service elsewhere and decided to subscribe. This argument misconstrues the concept of fortuitous contacts. Dot Com's contacts with Pennsylvania would be fortuitous within the meaning of *World Wide Volkswagen* if it had no Pennsylvania subscribers and an Ohio subscriber forwarded a copy of a file he obtained from Dot Com to a friend in Pennsylvania or an Ohio subscriber brought his computer along on a trip to Pennsylvania and used it to access Dot Com's service. That is not the situation here. Dot Com repeatedly and consciously chose to process Pennsylvania residents' applications and to assign them passwords. Dot Com knew that the result of these contracts would be the transmission of electronic messages into Pennsylvania. The transmission of these files was entirely within its control. Dot Com cannot maintain that these contracts are "fortuitous" or "coincidental" within the meaning of *World Wide Volkswagen.* When a defendant makes a conscious choice to conduct business with the residents of a forum state, "it has clear notice that it is subject to suit there." *World Wide Volkswagen,* 444 U.S. at 297. Dot Com was under no

obligation to sell its services to Pennsylvania residents. It freely chose to do so, presumably in order to profit from those transactions. If a corporation determines that the risk of being subject to personal jurisdiction in a particular forum is too great, it can choose to sever its connection to the state. If Dot Com had not wanted to be amenable to jurisdiction in Pennsylvania, the solution would have been simple - it could have chosen not to sell its services to Pennsylvania residents.

Next, Dot Com argues that its forum-related activities are not numerous or significant enough to create a "substantial connection" with Pennsylvania. Defendant points to the fact that only two percent of its subscribers are Pennsylvania residents. However, the Supreme Court has made clear that even a single contact can be sufficient. *McGee,* 355 U.S. at 223. The test has always focused on the "nature and quality" of the contacts with the forum and not the quantity of those contacts. The Sixth Circuit also rejected a similar argument in *Compuserve* when it wrote that the contacts were "deliberate and repeated even if they yielded little revenue."

We also conclude that the cause of action arises out of Dot Com's forum-related conduct in this case. The Third Circuit has stated that "a cause of action for trademark infringement occurs where the passing off occurs." In the instant case, both a significant amount of the alleged infringement and dilution, and resulting injury have occurred in Pennsylvania. The object of Dot Com's contracts with Pennsylvania residents is the transmission of the messages that Plaintiff claims dilute and infringe upon its trademark. When these messages are transmitted into Pennsylvania and viewed by Pennsylvania residents on their computers, there can be no question that the alleged infringement and dilution occur in Pennsylvania. Moreover, since Manufacturing is a Pennsylvania corporation, a substantial amount of the injury from the alleged wrongdoing is likely to occur in Pennsylvania. Thus, we conclude that the cause of action arises out of Dot Com's forum-related activities.

Finally, Dot Com argues that the exercise of jurisdiction would be unreasonable in this case. We disagree. There can be no question that Pennsylvania has a strong interest in adjudicating disputes involving the alleged infringement of trademarks owned by resident corporations. We must also give due regard to the Plaintiff's choice to seek relief in Pennsylvania. These concerns outweigh the burden created by forcing the Defendant to defend the suit in Pennsylvania, especially when Dot Com consciously chose to conduct business in Pennsylvania, pursuing profits from the actions that are now in question. The Due Process Clause is not a "territorial shield to interstate obligations that have been voluntarily assumed."

We conclude that this Court may exercise personal jurisdiction over the Defendant.

AMWAY CORP. v. THE PROCTER & GAMBLE CO.
2000 U.S. Dist. LEXIS 372 (W.D. Mich. 2000)

Plaintiff Amway has filed suit against Defendant Sidney Schwartz, alleging tortious interference with contract and with actual and prospective business relations.

Defendant Schwartz, who is a resident of the State of Oregon, has filed a motion to dismiss for lack of personal jurisdiction. Under Michigan law, a court may exercise limited personal jurisdiction over an individual for actions arising out of "the doing or causing an act to be done,

or consequences to occur, in the state resulting in an action for tort." M.C.L.A. § 600.705(2); M.S.A. § 27A.705(2).

There is no allegation in this case that Schwartz has entered the State of Michigan or that he has conducted any business in the State of Michigan. Instead, Plaintiff asserts that the subject matter of the lawsuit arises out of or is related to Schwartz's contacts with the forum. Plaintiff contends this Court has limited personal jurisdiction over Schwartz based upon the fact that Schwartz's actions caused tortious consequences to occur in Michigan.

Plaintiff's first contention is that Defendant Schwartz's maintenance of the Internet web site entitled "Amway: the Untold Story," was intended to and did cause consequences in Michigan, sufficient to constitute the necessary minimum contacts with the forum state.

Sidney Schwartz resides in Oregon. He has created a Web site where he posts information about Amway that he has collected, and e-mail responses from those who have visited his Web site. Defendant Schwartz's Web site is accessible to people in every state and all over the globe.

The issue of what type of Internet activity is sufficient to establish personal jurisdiction in a particular forum is a relatively new issue. Courts that have considered the issue have adopted the "sliding scale" approach set forth in *Zippo Mfg. Co. v. Zippo Dot Com. Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). The *Zippo* test was adopted by the Fifth Circuit and it has been applied by numerous district courts.

Defendant Schwartz contends that his Web page is a passive Web site that does little more than make information available to those who are interested in it, and that therefore, under the authority of *Zippo* and *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295 (S.D.N.Y. 1996), *aff'd*, 126 F.3d 25 (2d Cir. 1997), is not grounds for the exercise of personal jurisdiction. If jurisdiction were be based upon a defendant's mere presence on the Internet, a defendant would be subjected to jurisdiction on a worldwide basis and the personal jurisdiction requirements as they currently exist would be eviscerated. Accordingly, in each case where personal jurisdiction has been exercised, there has been "something more" to indicate that the defendant purposefully (albeit electronically) directed his activity in a substantial way to the forum state.

That "something more" may be satisfied by the "effects doctrine." As noted in *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998), in tort cases, jurisdiction may attach if the defendant's conduct is aimed at or has an effect in the forum state. "Courts have found purposeful availment when the claim involves an intentional tort allegedly committed over the Internet, such that the defendant intentionally directed its tortious activities at the forum state."

Plaintiff's complaint focuses on Defendants' allegedly intentional tortious activity of placing defamatory statements on the Web site with the intent that it would cause harm to Plaintiff in Michigan.

Allegations that a defendant intentionally directed its tortious Internet activities at the forum state are analyzed under the "effects test" articulated in *Calder v. Jones*, 465 U.S. 783, 788-90 (1984). In *Calder* the Supreme Court held that personal jurisdiction was properly asserted over a non-resident defendant whose libelous actions were directed at the plaintiff resident of the forum state. The *Calder* effects test requires the plaintiff to show the following:

(1) The defendant committed an intentional tort;

(2) The plaintiff felt the brunt of the harm in the forum such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of that tort;

(3) The defendant expressly aimed his tortious conduct at the forum such that the forum can be said to be the focal point of the tortious activity.

In *Panavision*, the Illinois defendant engaged in a scheme to register Panavision's trademarks as his domain names on the Internet and then to extort money from Panavision by trading on the value of those names. The Ninth Circuit determined that the defendant's actions were aimed at Panavision in California and the brunt of the harm was felt in California. Accordingly, the Ninth Circuit affirmed the district court's exercise of personal jurisdiction over the defendant in California under the effects doctrine.

In *Blumenthal v. Drudge*, 992 F. Supp. 44 (D.D.C. 1998), the District Court for the District of Columbia held that it had personal jurisdiction over Matt Drudge, a California resident, who had posted an allegedly defamatory article about Sidney and Jacqueline Blumenthal, residents of Washington, D.C., on the Internet. Among the factors considered by the court was the fact that the Web site was not truly passive because it allowed readers to directly e-mail Drudge and to request subscriptions to his report. In addition, the court observed that because Drudge's Web page primarily concerned political gossip and rumor in Washington, D.C., it was targeted at readers in Washington, D.C., by virtue of the subjects covered.

Plaintiff Amway has alleged that Defendant Schwartz "has committed and is committing tortious acts with the intent and effect of harming Amway in Michigan." Plaintiff alleges that Defendant Schwartz has conspired "to damage or destroy Amway's business using the Internet." More specifically, Plaintiff alleges that Defendant Schwartz is the author of a web site which has been "devoted to making malicious attacks against Amway" and "foments hate rhetoric about Amway, its employees, and its distributors." Plaintiff alleges that Defendant Schwartz has broadcasted "vulgar, false, and defamatory statements about Amway, its officers, its business practices, and its products," all "calculated to paint Amway in a false and negative light." Plaintiff's complaint clearly meets the first prong of the "effects" test. Plaintiff has alleged that Defendant committed an intentional tort.

The second prong of the test requires Plaintiff to show that it felt the brunt of the harm in the forum such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of that tort. Although it has been noted a corporation typically does not suffer harm in a particular geographic location in the same sense that an individual does, there is nothing in the case law that would preclude a determination that a corporation suffers the brunt of harm in its principal place of business. The court held in *Panavision* that the brunt of the harm suffered by Panavision was in California, the state where it maintained its principal place of business.

Amway is a Michigan corporation with its principal place of business in Ada, Michigan. The business was founded in Michigan and its headquarters remain in Michigan. Because the complaint alleges interference with business relations through the dissemination of false and defamatory statements about Amway, its officers, its business practices, and its products, Plaintiff has made a prima facie showing that Plaintiff felt the brunt of the harm in Michigan.

In order to make out the third prong of the Calder "effects" test, "the plaintiff must show that

the defendant knew that the plaintiff would suffer the brunt of the harm caused by the tortious conduct in the forum, and point to specific activity indicating that the defendant expressly aimed its tortious conduct at the forum."

Defendant Schwartz was an Amway distributor for a period of time so that he could get informational mailings from Amway. Because he had an insider's knowledge of Amway, and because Plaintiff is alleging that he was using his Web page to target not only Amway, but its officers as well, there is no question that Michigan was the focal point of the allegedly tortious activity.

Considering the pleadings in the light most favorable to the Plaintiff, this Court concludes that the allegations in Plaintiff's complaint, together with the excerpts of Defendant Schwartz's deposition, are sufficient to make out a prima facie showing of personal jurisdiction over Defendant Schwartz under the effects doctrine. Plaintiff has made a prima facie showing that Defendant Schwartz has taken intentional actions, aimed at the forum state, and that these actions cause harm, the brunt of which is suffered, and which the defendant knew was likely to be suffered, in the forum state.

YOUNG v. NEW HAVEN ADVOCATE

315 F.3d 256 (4th Cir. 2002), *cert. denied*, 538 U.S. 1035 (2003)

MICHAEL, Circuit Judge:

The question in this appeal is whether two Connecticut newspapers and certain of their staff subjected themselves to personal jurisdiction in Virginia by posting on the Internet news articles that, in the context of discussing the State of Connecticut's policy of housing its prisoners in Virginia institutions, allegedly defamed the warden of a Virginia prison. Our recent decision in *ALS Scan, Inc. v. Digital Service Consultants, Inc.*, 293 F.3d 707 (4th Cir. 2002), supplies the standard for determining a court's authority to exercise personal jurisdiction over an out-of-state person who places information on the Internet. Applying that standard, we hold that a court in Virginia cannot constitutionally exercise jurisdiction over the Connecticut-based newspaper defendants because they did not manifest an intent to aim their websites or the posted articles at a Virginia audience. Accordingly, we reverse the district court's order denying the defendants' motion to dismiss for lack of personal jurisdiction.

I.

Sometime in the late 1990s the State of Connecticut was faced with substantial overcrowding in its maximum security prisons. To alleviate the problem, Connecticut contracted with the Commonwealth of Virginia to house Connecticut prisoners in Virginia's correctional facilities. Beginning in late 1999 Connecticut transferred about 500 prisoners, mostly African-American and Hispanic, to the Wallens Ridge State Prison, a "supermax" facility in Big Stone Gap, Virginia. The plaintiff, Stanley Young, is the warden at Wallens Ridge. Connecticut's arrangement to incarcerate a sizeable number of its offenders in Virginia prisons provoked considerable public debate in Connecticut. Several Connecticut legislators openly criticized the policy, and there were demonstrations against it at the state capitol in Hartford.

Connecticut newspapers, including defendants the New Haven Advocate (the Advocate) and the Hartford Courant (the Courant), began reporting on the controversy. On March 30, 2000, the Advocate published a news article, written by one of its reporters, defendant Camille Jackson, about the transfer of Connecticut inmates to Wallens Ridge. The article discussed the allegedly harsh conditions at the Virginia prison and pointed out that the long trip to southwestern Virginia made visits by prisoners' families difficult or impossible. In the middle of her lengthy article, Jackson mentioned a class action that inmates transferred from Connecticut had filed against Warden Young and the Connecticut Commissioner of Corrections. The inmates alleged a lack of proper hygiene and medical care and the denial of religious privileges at Wallens Ridge. Finally, the article reported that a Connecticut state senator had expressed concern about the presence of Confederate Civil War memorabilia in Warden Young's office. At about the same time the Courant published three columns, written by defendant Amy Pagnozzi, questioning the practice of relocating Connecticut inmates to Virginia prisons. The columns reported on letters written home by inmates who alleged cruelty by prison guards. In one column Pagnozzi called Wallens Ridge a "cut-rate gulag." Warden Young was not mentioned in any of the Pagnozzi columns.

On May 12, 2000, Warden Young sued the two newspapers, their editors (Gail Thompson and Brian Toolan), and the two reporters for libel in a diversity action filed in the Western District of Virginia. He claimed that the newspapers' articles imply that he "is a racist who advocates racism" and that he "encourages abuse of inmates by the guards" at Wallens Ridge. Young alleged that the newspapers circulated the allegedly defamatory articles throughout the world by posting them on their Internet websites.

The newspaper defendants filed motions to dismiss the complaint on the ground that the district court lacked personal jurisdiction over them. In support of the motions the editor and reporter from each newspaper provided declarations establishing the following undisputed facts. The Advocate is a free newspaper published once a week in New Haven, Connecticut. It is distributed in New Haven and the surrounding area, and some of its content is published on the Internet. The Advocate has a small number of subscribers, and none of them are in Virginia. The Courant is published daily in Hartford, Connecticut. The newspaper is distributed in and around Hartford, and some of its content is published on the Internet. When the articles in question were published, the Courant had eight mail subscribers in Virginia. Neither newspaper solicits subscriptions from Virginia residents. No one from either newspaper traveled to Virginia to work on the articles about Connecticut's prisoner transfer policy. The two reporters, Jackson and Pagnozzi, made a few telephone calls into Virginia to gather information for the articles. Both interviewed by telephone a spokesman for the Virginia Department of Corrections. All other interviews were done with people located in Connecticut. The two reporters wrote their articles in Connecticut. The individual defendants (the reporters and editors) do not have any traditional contacts with Virginia. They do not live in Virginia, solicit any business there, or have any assets or business relationships there. The newspapers do not have offices or employees in Virginia, and they do not regularly solicit or do business in Virginia. Finally, the newspapers do not derive any substantial revenue from goods used or services rendered in Virginia.

In responding to the declarations of the editors and reporters, Warden Young pointed out that the newspapers posted the allegedly defamatory articles on Internet websites that were accessible to Virginia residents. In addition, Young provided copies of assorted printouts from the

newspapers' websites. For the Advocate, Young submitted the Advocate's homepage, which includes links to articles about the "Best of New Haven" and New Haven's park police. The nine pages from newmassmedia.com, a website maintained by the publishers of the Advocate, consist of classified advertising from that week's newspapers and instructions on how to submit a classified ad. The listings include advertisements for real estate rentals in New Haven and Guilford, Connecticut, for roommates wanted and tattoo services offered in Hamden, Connecticut, and for a bassist needed by a band in West Haven, Connecticut. For the Courant, Young provided nine pages from hartfordcourant.com and ctnow.com for January 26, 2001. The hartfordcourant.com homepage characterizes the website as a "source of news and entertainment in and about Connecticut." A page soliciting advertising in the Courant refers to "exposure for your message in this market" in the "best medium in the state to deliver your advertising message." The pages from ctnow.com, a website produced by the Courant, provide news stories from that day's edition of the Courant, weather reports for Hartford and New Haven, and links to sites for the University of Connecticut and Connecticut state government. The website promotes its online advertising as a "source for jobs in Connecticut." The website printouts provided for January 26, 2001, do not have any content with a connection to readers in Virginia.

The district court denied the newspaper defendants' motions to dismiss, concluding that it could exercise personal jurisdiction over them under Virginia's long-arm statute, Va. Code Ann. § 8.01-328(A)(3), because "the defendants' Connecticut-based Internet activities constituted an act leading to an injury to the plaintiff in Virginia." The district court also held that the defendants' Internet activities were sufficient to satisfy the requirements of constitutional due process. The district court's decision that it has personal jurisdiction over these defendants presents a legal question that we review de novo.

II.

A federal court may exercise personal jurisdiction over a defendant in the manner provided by state law. Because Virginia's long-arm statute extends personal jurisdiction to the extent permitted by the Due Process Clause, "the statutory inquiry necessarily merges with the constitutional inquiry." The question, then, is whether the defendant has sufficient "minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). A court may assume power over an out of-state defendant either by a proper "finding [of] specific jurisdiction based on conduct connected to the suit or by [a proper] finding [of] general jurisdiction." Warden Young argues only for specific jurisdiction. In determining whether specific jurisdiction exists, we traditionally ask (1) whether the defendant purposefully availed itself of the privileges of conducting activities in the forum state, (2) whether the plaintiff's claim arises out of the defendant's forum-related activities, and (3) "whether the exercise of personal jurisdiction over the defendant would be constitutionally reasonable." The plaintiff, of course, has the burden to establish that personal jurisdiction exists over the out-of-state defendant.

We turn to whether the district court can exercise specific jurisdiction over the newspaper defendants, namely, the two newspapers, the two editors, and the two reporters. To begin with, we can put aside the few Virginia contacts that are not Internet based because Warden Young does not rely on them. Thus, Young does not claim that the reporters' few telephone calls into Virginia or the Courant's eight Virginia subscribers are sufficient to establish personal

jurisdiction over those defendants. Nor did the district court rely on these traditional contacts.

Warden Young argues that the district court has specific personal jurisdiction over the newspaper defendants because of the following contacts between them and Virginia: (1) the newspapers, knowing that Young was a Virginia resident, intentionally discussed and defamed him in their articles, (2) the newspapers posted the articles on their websites, which were accessible in Virginia, and (3) the primary effects of the defamatory statements on Young's reputation were felt in Virginia. Young emphasizes that he is not arguing that jurisdiction is proper in any location where defamatory Internet content can be accessed, which would be anywhere in the world. Rather, Young argues that personal jurisdiction is proper in Virginia because the newspapers understood that their defamatory articles, available to Virginia residents on the Internet, would expose Young to public hatred, contempt, and ridicule in Virginia, where he lived and worked. As the district court put it, "the defendants were all well aware of the fact that the plaintiff was employed as a warden within the Virginia correctional system and resided in Virginia," and they "also should have been aware that any harm suffered by Young from the circulation of these articles on the Internet would primarily occur in Virginia."

Young frames his argument in a way that makes one thing clear: if the newspapers' contacts with Virginia were sufficient to establish personal jurisdiction, those contacts arose solely from the newspapers' Internet-based activities. Recently, in *ALS Scan* we discussed the challenges presented in applying traditional jurisdictional principles to decide when "an out-of-state citizen, through electronic contacts, has conceptually 'entered' the State via the Internet for jurisdictional purposes." *ALS Scan*, 293 F.3d at 713. There, we held that "specific jurisdiction in the Internet context may be based only on an out-of-state person's Internet activity directed at [the forum state] and causing injury that gives rise to a potential claim cognizable in [that state]." We noted that this standard for determining specific jurisdiction based on Internet contacts is consistent with the one used by the Supreme Court in *Calder v. Jones*, 465 U.S. 783 (1984). *Calder*, though not an Internet case, has particular relevance here because it deals with personal jurisdiction in the context of a libel suit. In *Calder* a California actress brought suit there against, among others, two Floridians, a reporter and an editor who wrote and edited in Florida a National Enquirer article claiming that the actress had a problem with alcohol. The Supreme Court held that California had jurisdiction over the Florida residents because "California [was] the focal point both of the story and of the harm suffered." The writers' "actions were expressly aimed at California," the Court said, "and they knew that the brunt of [the potentially devastating] injury would be felt by [the actress] in the State in which she lives and works and in which the National Enquirer has its largest circulation," 600,000 copies.

Warden Young argues that *Calder* requires a finding of jurisdiction in this case simply because the newspapers posted articles on their Internet websites that discussed the warden and his Virginia prison, and he would feel the effects of any libel in Virginia, where he lives and works. *Calder* does not sweep that broadly, as we have recognized. For example, in *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 625-26 (4th Cir. 1997), we emphasized how important it is in light of *Calder* to look at whether the defendant has expressly aimed or directed its conduct toward the forum. We said that "although the place that the plaintiff feels the alleged injury is plainly relevant to the [jurisdictional] inquiry, it must ultimately be accompanied by the defendant's own [sufficient minimum] contacts with the state if jurisdiction is to be upheld." We

thus had no trouble in concluding in *ALS Scan* that application of *Calder* in the Internet context requires proof that the out-of-state defendant's Internet activity is expressly targeted at or directed to the forum state. In *ALS Scan* we went on to adapt the traditional standard for establishing specific jurisdiction so that it makes sense in the Internet context. We "concluded that a State may, consistent with due process, exercise judicial power over a person outside of the State when that person (1) directs electronic activity into the State, (2) with the manifested intent of engaging in business or other interactions within the State, and (3) that activity creates, in a person within the State, a potential cause of action cognizable in the State's courts."

When the Internet activity is, as here, the posting of news articles on a website, the *ALS Scan* test works more smoothly when parts one and two of the test are considered together. We thus ask whether the newspapers manifested an intent to direct their website content -which included certain articles discussing conditions in a Virginia prison -- to a Virginia audience. As we recognized in *ALS Scan*, "a person's act of placing information on the Internet" is not sufficient by itself to "subject[] that person to personal jurisdiction in each State in which the information is accessed." Otherwise, a "person placing information on the Internet would be subject to personal jurisdiction in every State," and the traditional due process principles governing a State's jurisdiction over persons outside of its borders would be subverted. Thus, the fact that the newspapers' websites could be accessed anywhere, including Virginia, does not by itself demonstrate that the newspapers were intentionally directing their website content to a Virginia audience. Something more than posting and accessibility is needed to "indicate that the [newspapers] purposefully (albeit electronically) directed [their] activity in a substantial way to the forum state," Virginia. The newspapers must, through the Internet postings, manifest an intent to target and focus on Virginia readers.

We therefore turn to the pages from the newspapers' websites that Warden Young placed in the record, and we examine their general thrust and content. The overall content of both websites is decidedly local, and neither newspaper's website contains advertisements aimed at a Virginia audience. For example, the website that distributes the Courant, ctnow.com, provides access to local (Connecticut) weather and traffic information and links to websites for the University of Connecticut and Connecticut state government. The Advocate's website features stories focusing on New Haven, such as one entitled "The Best of New Haven." In sum, it appears that these newspapers maintain their websites to serve local readers in Connecticut, to expand the reach of their papers within their local markets, and to provide their local markets with a place for classified ads. The websites are not designed to attract or serve a Virginia audience.

We also examine the specific articles Young complains about to determine whether they were posted on the Internet with the intent to target a Virginia audience. The articles included discussions about the allegedly harsh conditions at the Wallens Ridge prison, where Young was warden. One article mentioned Young by name and quoted a Connecticut state senator who reported that Young had Confederate Civil War memorabilia in his office. The focus of the articles, however, was the Connecticut prisoner transfer policy and its impact on the transferred prisoners and their families back home in Connecticut. The articles reported on and encouraged a public debate in Connecticut about whether the transfer policy was sound or practical for that state and its citizens. Connecticut, not Virginia, was the focal point of the articles. *Cf. Griffis v. Luban*, 646 N.W.2d 527, 536 (Minn. 2002) ("The mere fact that [the defendant, who posted

allegedly defamatory statements about the plaintiff on the Internet] knew that [the plaintiff] resided and worked in Alabama is not sufficient to extend personal jurisdiction over [the defendant] in Alabama, because that knowledge does not demonstrate targeting of Alabama as the focal point of the . . . statements.").

The facts in this case establish that the newspapers' websites, as well as the articles in question, were aimed at a Connecticut audience. The newspapers did not post materials on the Internet with the manifest intent of targeting Virginia readers. Accordingly, the newspapers could not have "reasonably anticipated being haled into court [in Virginia] to answer for the truth of the statements made in their articles." *Calder*, 465 U.S. at 790. In sum, the newspapers do not have sufficient Internet contacts with Virginia to permit the district court to exercise specific jurisdiction over them.

BOSCHETTO v. HANSING

539 F.3d 1011 (9th Cir. 2008), *cert. denied*, 555 U.S. 1171 (2009)

B. FLETCHER, Circuit Judge:

This appeal presents a question that remains surprisingly unanswered by the circuit courts: Does the sale of an item via the eBay Internet auction site provide sufficient "minimum contacts" to support personal jurisdiction over a nonresident defendant in the buyer's forum state? Plaintiff-Appellant Paul Boschetto ("Boschetto") was the winning bidder for a 1964 Ford Galaxie sold on eBay by the Defendant-Appellee, Jeffrey Hansing ("Hansing") for $ 34,106. Boschetto arranged for the car to be shipped from Wisconsin to California, but upon arrival it failed to meet his expectations or the advertised description. Boschetto sued in federal court; his complaint was dismissed for lack of personal jurisdiction. We now affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Boschetto lives in San Francisco, California. Defendant-Appellee Jeffrey D. Hansing resides in Milton, Wisconsin. Defendants-Appellees Frank-Boucher Chrysler Dodge-Jeep, Gordie Boucher Ford and Boucher Automotive Group ("Boucher Defendants") are private corporations with their principal places of business in Wisconsin. The Boucher Defendants operate a website that advertises their auto dealerships, although it is not alleged that this website was connected in any way with the transaction at issue in this case. Hansing is an employee of one of the Boucher Defendants, Frank Boucher Chrysler Dodge-Jeep. The complaint avers that on August 1, 2005, all Defendants "owned and advertised a 1964 Ford Galaxie 500 XL 427/425 hp 'R Code' in awesome condition, not restored, rust free chrome in excellent condition, recently rebuilt and ready to be driven, with clear title, and a vehicle warranty number of 4E68R149127."

The car was advertised for sale on the eBay Internet auction site. The eBay listing indicated that the item was located in Janesville, Wisconsin. Boschetto bid $ 34,106 for the Galaxie on August 8, 2005, and was notified through eBay that same day that he was the winning bidder. Boschetto and Hansing communicated via email to arrange for delivery of the vehicle from Wisconsin to California. Boschetto ultimately hired a transport company to pick up the car in Wisconsin; it arrived in California on September 15, 2005.

Upon delivery, Boschetto discovered that the car was not an "R Code" as advertised, and noted a variety of other problems, including a motor that would not turn over, rust, and extensive dents on the body of the vehicle. Boschetto contacted eBay and Hansing in an attempt to rescind the purchase, but those efforts failed. He filed a complaint in United States District Court, Northern District of California on February 23, 2006. Boschetto alleged four state law causes of action (violation of California Consumer Protection Act; breach of contract; misrepresentation; and fraud), and pled jurisdiction pursuant to the federal diversity statute, 28 U.S.C. § 1332(a).

All Defendants moved to dismiss based on lack of personal jurisdiction. On July 13, 2006, the district court granted the motion. The district court reasoned that the lone jurisdictionally relevant contact with California, an eBay sale consummated with a California purchaser, was insufficient to establish jurisdiction over any of the Defendants. Although Hansing used eBay to market the automobile, the district court observed that "eBay acted not as a 'distribution center' but rather as a virtual forum for the exchange of goods," and that in a standard eBay transaction--like the one at issue in this appeal--the item goes to whomever is the highest bidder, and so "the eBay seller does not purposefully avail himself of the privilege of doing business in a forum state absent some additional conduct directed at the forum state."

II. PERSONAL JURISDICTION

When no federal statute governs personal jurisdiction, the district court applies the law of the forum state. *See Panavision Int'l L.P. v. Toeppen,* 141 F.3d 1316, 1320 (9th Cir. 1998). California's long-arm statute is co-extensive with federal standards, so a federal court may exercise personal jurisdiction if doing so comports with federal constitutional due process. "For a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least 'minimum contacts' with the relevant forum such that the exercise of jurisdiction 'does not offend traditional notions of fair play and substantial justice.'" *Schwarzenegger v. Fred Martin Co.,* 374 F.3d 797, 801 (9th Cir. 2004) (quoting *International Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945)). There are two forms of personal jurisdiction that a forum state may exercise over a nonresident defendant--general jurisdiction and specific jurisdiction. We deal here only with the latter.

A. The district court correctly dismissed Boschetto's complaint for lack of personal jurisdiction.

We apply a three-part test to determine whether the exercise of specific jurisdiction over a nonresident defendant is appropriate:

> (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform (some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
>
> (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
>
> (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

For part one of this three-part test, we have typically analyzed cases that sound primarily in contract--as Boschetto's case does--under a "purposeful availment" standard. To have purposefully availed itself of the privilege of doing business in the forum, a defendant must have "performed some type of affirmative conduct which allows or promotes the transaction of business within the forum state." Our evaluation of the jurisdictional significance of a defendant's contract or other business in the forum is not rigid and formalistic, but rather practical and pragmatic. *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 478 (1985) ("[W]e have emphasized the need for a highly realistic approach that recognizes that contract is ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction."). In doing so, we are guided by the Supreme Court's admonition that the formation of a contract with a nonresident defendant is not, standing alone, sufficient to create jurisdiction. *Id.* ("If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot.").

Here, Boschetto fails at step one of the test for specific jurisdiction, as the lone transaction for the sale of one item does not establish that the Defendants purposefully availed themselves of the privilege of doing business in California. The arrangement between Boschetto and Hansing which is, at bottom, a contract for the sale of a good, is insufficient to have created a substantial connection with California. Hansing (and assuming *arguendo* that they had any involvement in the transaction, the Boucher Defendants) did not create any ongoing obligations with Boschetto in California; once the car was sold the parties were to go their separate ways. Neither Boschetto's complaint nor his affidavit in opposition to dismissal point to any continuing commitments assumed by the Defendants under the contract. Nor did performance of the contract require the Defendants to engage in any substantial business in California. On Boschetto's version of the facts, funds were sent to Wisconsin and arrangements were made to pick up the car there and have it delivered to California. This was, as the district court observed, a "one-shot affair." *See Compuserve, Inc. v. Patterson,* 89 F.3d 1257, 1265 (6th Cir. 1996)). As the Supreme Court has expressly cautioned, a contract alone does not automatically establish minimum contacts in the plaintiff's home forum. *See Burger King Corp.,* 471 U.S. at 478; *cf. Travelers Health Ass'n v. Commonwealth of Va,* 339 U.S. 643, 647 (1950) (purposeful availment found if "business activities reach out beyond one state and create *continuing relationships and obligations")* (emphasis added).[1]

Ignoring the limited nature of the transaction at issue, Boschetto attaches special significance to the fact that the transaction was consummated via eBay, noting that the eBay listing could

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[1] In *Burger King* the Court noted that even a "single act" by the defendant can support jurisdiction, but only if that act creates a "substantial connection" with the forum. 471 U.S. at 476 n.18 (quoting *McGee v. Int'l Life Ins. Co.,* 355 U.S. 220, 223 (1957)). Applied here, it is not the fact that Defendants may have entered into only one contract with a California resident that is dispositive. Rather, it is the fact that the nature of the contract entered into did not create any "substantial connection" between Boschetto and the Defendants beyond the contract itself. ("It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State.").

have been viewed by anyone in California (or any other state for that matter) with Internet access. But the fact that eBay was used as the conduit for this sale does not affect the jurisdictional outcome, at least not on the particular facts presented here.

In *Cybersell, Inc. v. Cybersell, Inc.,* 130 F.3d 414, 419 (9th Cir. 1997), we discussed with approval a sliding scale analysis that looks to how interactive an Internet website is for purposes of determining its jurisdictional effect. ("In sum, the common thread, well stated by the district court in *Zippo,* is that the 'likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of the commercial activity that an entity conducts over the Internet.'") (quoting *Zippo Mfg. Co. v. Zippo Dot Com,* 952 F. Supp. 1119, 1124 (W.D. Pa. 1997)). The plaintiff in *Cybersell* relied on the fact that the defendant operated a website, accessible in the forum state, that contained allegedly infringing trademarks. The defendant's website advertised its services but did not allow parties to transact business via the site. Noting the lack of interactivity on the defendant's website, the court concluded that the defendant had "done no act and [ ] consummated no transaction, nor has it performed any act by which it purposefully availed itself of the privilege of conducting activities, in Arizona, thereby invoking the benefits and protections of Arizona law."

The *Cybersell* analysis, while persuasive where the contact under consideration is the website itself, is largely inapplicable in this case. Here, eBay was used to create a listing for the sale of a good. Based on a superficial application of *Cybersell,* the eBay listing process and the sale it engenders is "interactive." But, as the district court noted, "the issue is not whether the court has personal jurisdiction over the intermediary eBay but whether it has personal jurisdiction over an individual who conducted business over eBay." In *Cybersell* and related cases where the Internet site actually belongs to and is operated by the defendant, the nature of the website has jurisdictional significance because the website allows the defendant to maintain some ongoing contact with the forum state (as well as every other state that can access the site). *See Zippo,* 952 F. Supp. at 1125-26 ("We are being asked to determine whether Dot Com's conducting of electronic commerce with Pennsylvania residents constitutes the purposeful availment of doing business in Pennsylvania."). Here, the eBay listing was not part of broader e-commerce activity; the listing temporarily advertised a good for sale and that listing closed once the item was sold, thereby extinguishing the Internet contact for this transaction within the forum state (and every other forum).[2]

Moreover, Boschetto does not allege that any of the Defendants are using eBay to conduct business generally. He does not allege that Defendants conduct regular sales in California (or anywhere else) via eBay. Based on his own affidavit he named the Boucher Defendants based on a "good faith belief" that Hansing may have been acting as their agent during the sale. But he does not go on to allege--on information and belief or otherwise--that either Hansing or the Boucher Defendants are regular users of the eBay sales platform to sell their cars.

This is a distinction with a difference, as the cases that have found that jurisdiction was proper based on eBay sales relied heavily on the fact that the defendant was using the platform

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[2] Under a traditional jurisdictional analysis, advertising in a forum state does not typically suffice to establish personal jurisdiction.

as a broader vehicle for commercial activity. See, e.g., *Dedvukaj v. Maloney,* 447 F. Supp. 2d 813, 822-23 (E.D. Mich. 2006) ("Although the Court's research has not disclosed any personal jurisdiction cases involving the use of eBay auctions as a commercial seller's primary marketing vehicle, it is clear from the record that Defendants' use of eBay is regular and systemic."); *Malcolm v. Esposito,* 63 Va. Cir. 440, 2003 WL 23272406 at *4 (Va. Cir. Ct. 2003) ("Defendants are commercial sellers of automobiles who, at the time the BMW was sold, were represented on eBay as 'power sellers' with 213 transactions.").

At bottom, the consummation of the sale via eBay here is a distraction from the core issue: This was a one-time contract for the sale of a good that involved the forum state only because that is where the purchaser happened to reside, but otherwise created no "substantial connection" or ongoing obligations there. The Supreme Court has, in the past, sounded a note of caution that traditional jurisdictional analyses are not upended simply because a case involves technological developments that make it easier for parties to reach across state lines. *World Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 293 (1980) ("[W]e have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution."). The use of eBay no doubt made it far easier to reach a California buyer, but the ease with which Boschetto was contacted does not determine whether the nature and quality of the Defendants' contacts serve to support jurisdiction. That is not to say that the use of eBay digs a virtual moat around the defendant, fending off jurisdiction in all cases. Where eBay is used as a means for establishing regular business with a remote forum such that a finding of personal jurisdiction comports with "traditional notions of fair play and substantial justice," *International Shoe Co.,* 326 U.S. at 316, then a defendant's use of eBay may be properly taken into account for purposes of establishing personal jurisdiction. But on the facts of this case--a one-time transaction--the use of eBay as the conduit for that transaction does not have any dispositive effect on jurisdiction.[3]

III. CONCLUSION

The sale of one automobile via the eBay website, without more, does not provide sufficient "minimum contacts" to establish jurisdiction over a nonresident defendant in the forum state.

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[3] We note that our affirmance of the district court's dismissal is in-line with a number of state court decisions that have addressed whether personal jurisdiction can be established by way of a single eBay transaction with a forum plaintiff. *See e.g., Sayeedi v. Wasler,* 15 Misc. 3d 621, 628, 835 N.Y.S.2d 840, 2007 WL 623521 (N.Y. Civ. Ct. 2007) ("No evidence was provided by Plaintiff as to Defendant's overall eBay statistics, experience, or any marketing directed at potential customers, designed for instance, to welcome bids from New Yorkers or any other acts that indicate Defendant may be purposely availing himself specifically to the business of New Yorkers or any desire to take advantage of New York law."); *Gossett v. HBL, LLC,* 2006 U.S. Dist. LEXIS 30435, 2006 WL 1328757 at *2 (D.S.C. 2006 May 11, 2006) ("[Defendant's] mere listing on eBay is not enough to invoke jurisdiction in South Carolina."); *Metcalf v. Lawson,* 802 A.2d 1221, 1227 (N.H. 2002) ("Finally, what appears to be the isolated nature of this transaction and the absence of any evidence that the defendant was a commercial seller militate against a finding of jurisdiction.").

RYMER, Circuit Judge, concurring:

I agree that jurisdiction is lacking. I write separately to underscore my disagreement with Boschetto's argument that Hansing, as a seller on eBay, necessarily availed himself of the privilege of doing business in each state across the nation. I believe that a defendant does not establish minimum contacts nationwide by listing an item for sale on eBay; rather, he must do "something more," such as individually targeting residents of a particular state, to be haled into another jurisdiction.

The "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts. A defendant "purposefully avails" himself of a forum when he acts in a way that creates a "substantial connection" with the state, as where he deliberately engages in significant activities there, or creates "continuing obligations" between himself and its residents. In return for taking advantage of the forum state's "benefits and protections," the defendant must submit to being sued there.

In my view, Hansing did not purposefully avail himself of California. Hansing created no continuing obligations to California residents by selling his car on eBay. His only obligation was to complete the sale with the highest bidder, whoever and wherever he might be. Nor did Hansing's eBay auction establish a substantial connection between himself and California such that he invoked the benefits and protections of its laws. There is no suggestion that he is engaged in ongoing business activities there, and though a Californian ultimately made the highest of fifty bids, this was a fortuity.

I also do not think that Hansing purposefully directed any activity at California. Boschetto argues that Hansing directed his eBay auction at the state by failing to bar Californians from bidding. By accepting bids from all states, he contends, Hansing offered to sell the subject vehicle to residents of each state, including California. I disagree that allowing eBay users throughout the United States to bid on an auction subjects the seller to nationwide jurisdiction. As we have previously held, merely advertising over the Internet is not sufficient to confer jurisdiction throughout the United States, even though the advertisement or website at issue may be viewed nationwide.[1] The defendant must do "something more" to aim activity expressly at a state, and Boschetto has not shown either that Hansing tailored his auction to the residents of any state in particular, or that he sent or advertised his auction to any state in particular, much less California. Arguably, Hansing could foresee that California residents would bid on his auction, and that he would benefit from their participation, but foreseeable participation by Californians is not enough. Hansing must have done something more to aim his auction expressly at the state, such as individually targeting California residents. On the facts of this case, he did nothing more.

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[1] Boschetto argues that Hansing should not be allowed to take advantage of modern technology while simultaneously escaping traditional notions of jurisdiction. I am not persuaded by Boschetto's characterization of Hansing's use of the Internet to sell his car as "taking advantage." Allowing sellers to hold nationally available auctions without requiring them to submit to jurisdiction nationwide is beneficial to buyers as well. A less-burdensome jurisdictional rule encourages sellers to hold auctions, thereby creating opportunities for buyers to find items they want and to decide for themselves whether they want to place a bid.

TAMBURO v. DWORKIN
601 F.3d 693 (7th Cir.), *cert. denied*, 131 S. Ct. 567 (2010)

SYKES, *Circuit Judge*.

I. Background

John Tamburo, doing business as Man's Best Friend Software, lives and operates his business in Illinois. He designs software for use by dog breeders and noncommercial dog enthusiasts. One of his products, an online database called The Breeder's Standard, provides customers with access to dog-pedigree information. To create the database, Tamburo developed an automated computer program that scanned the Internet for information about dog pedigrees. He then incorporated the data he retrieved into The Breeder's Standard.

Defendants Kristen Henry, Roxanne Hayes, Karen Mills, and Steven Dworkin are proprietors of public websites that provide free access to dog-pedigree information. Henry, a Colorado citizen and resident, also breeds and shows dogs. Hayes, a Michigan citizen and resident, raises, shows, and "places" dogs but does not commercially breed them. Mills, a citizen and resident of Ohio, raises and shows dogs. Dworkin, a Canadian citizen, also raises and shows dogs.

Tamburo pulled much of the information included in The Breeder's Standard from the websites operated by Henry, Hayes, Mills, and Dworkin. In retaliation Henry, Hayes, and Mills posted statements on their websites accusing Tamburo of "theft," "hacking," and "selling stolen goods," and calling on readers to boycott his products. They also posted Tamburo's Illinois address on their websites and urged readers to contact him to harass him and otherwise complain. Dworkin retaliated in a different way. First, he emailed Tamburo and demanded that he remove the "blatent [sic] theft of data" from The Breeder's Standard "within 5 days." If Tamburo failed to do so, Dworkin threatened to "publish to each and every dog[-]based list the sleazy methods" of Tamburo's operation. When Tamburo did not comply, Dworkin emailed "all persons who had a free online database of dog pedigrees on the Internet" saying that Tamburo's product contained pedigree data that was "stolen," "mined," and "harvested" for improper "commercial use," and suggested that all proprietors of online dog-pedigree databases "band together to stop this theft" of their data.

The fifth defendant is Wild Systems Pty Ltd., an Australian software company that offers a pedigree software program called Breedmate. Wild Systems also runs a private online Yahoo! email listserve for customers who have purchased the Breedmate software. Ronald DeJong, the owner and president of Wild Systems, manages this email list and must approve any message sent to it. The individual defendants sent DeJong messages for posting on the Breedmate listserve; these messages, like the others, protested that Tamburo had stolen their data. DeJong in turn transmitted these messages to the Breedmate listserve. Later, DeJong and the individual defendants organized a closed Internet chat group--called the "APDUG Group"--for users of Alfirin software, a product used to manage dog-pedigree databases. In messages posted to the APDUG Group, the individual defendants again accused Tamburo of "theft," "selling stolen goods," and "hacking."

Tamburo sued the five defendants in the Northern District of Illinois, seeking a declaratory judgment that he did not violate any federal law by incorporating the defendants' databases into

his software. He also asserted claims for defamation, tortious interference with existing contracts and prospective economic advantage, trade libel, and civil conspiracy under Illinois law. The defendants moved to dismiss the complaint for lack of personal jurisdiction and failure to state a claim. *See* FED. R. CIV. P. 12(b)(2), 12(b)(6). The district court concluded that personal jurisdiction was lacking as to all defendants and dismissed the case. Tamburo appealed.

II. Discussion

Personal Jurisdiction

Where no federal statute authorizes nationwide service of process, personal jurisdiction is governed by the law of the forum state. A court's exercise of personal jurisdiction may be limited by the applicable state statute or the federal Constitution; the Illinois long-arm statute permits the exercise of jurisdiction to the full extent permitted by the Fourteenth Amendment's Due Process Clause, so here the state statutory and federal constitutional inquiries merge. The key question is therefore whether the defendants have sufficient "minimum contacts" with Illinois such that the maintenance of the suit "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

1. General Personal Jurisdiction

The nature of the defendant's contacts with the forum state determines the propriety of personal jurisdiction and also its scope--that is, whether jurisdiction is proper at all, and if so, whether it is general or specific to the claims made in the case. A defendant with "continuous and systematic" contacts with a state is subject to general jurisdiction there in any action, even if the action is unrelated to those contacts. The threshold for general jurisdiction is high; the contacts must be sufficiently extensive and pervasive to approximate physical presence. As such, isolated or sporadic contacts--such as occasional visits to the forum state--are insufficient for general jurisdiction. Nor is the maintenance of a public Internet website sufficient, without more, to establish general jurisdiction.

Illinois cannot exercise general personal jurisdiction over any of the defendants in this case. Henry has been to Illinois only twice in ten years. Hayes has been to Illinois approximately 5 times and has placed 13 dogs with families in Illinois but did not receive any profits from these placements. She sold three copies of her book to individuals in Illinois through her website. Mills grew up in Illinois but moved away in 1979 and has only traveled back twice since then. Dworkin, the Canadian defendant, has never "been to, stopped in or passed through" Illinois. Each of the individual defendants maintains a public website obviously accessible by Illinois residents, but that is not enough to establish general personal jurisdiction. Finally, Wild Systems is an Australian company located in New South Wales, Australia. It has no offices in Illinois (or anywhere in the United States), nor has it ever had a distributor in Illinois. Since it was incorporated in 1996, Wild Systems has had a total of $ 8,634 in sales to customers in Illinois. These sporadic contacts with Illinois do not approach the level of "continuous and systematic" contacts necessary to establish general personal jurisdiction.

2. Specific Personal Jurisdiction

The question of specific personal jurisdiction is much more difficult. To support an exercise of specific personal jurisdiction, the defendant's contacts with the forum state must directly relate

to the challenged conduct or transaction; we therefore evaluate specific personal jurisdiction by reference to the particular conduct underlying the claims made in the lawsuit. Specific personal jurisdiction is appropriate where (1) the defendant has purposefully directed his activities at the forum state or purposefully availed himself of the privilege of conducting business in that state, and (2) the alleged injury arises out of the defendant's forum-related activities. *Burger King*, 471 U.S. at 472. The exercise of specific personal jurisdiction must also comport with traditional notions of fair play and substantial justice as required by the Fourteenth Amendment's Due Process Clause. This case primarily concerns the question whether the defendants "purposefully directed" their conduct at the forum state.

a. Conduct "purposefully directed" at the forum state

The purposeful-direction inquiry "can appear in different guises." Personal jurisdiction in breach-of-contract actions often turns on whether the defendant "purposefully availed" himself of the privilege of conducting business or engaging in a transaction in the forum state. But where, as here, the plaintiff's claims are for intentional torts, the inquiry focuses on whether the conduct underlying the claims was purposely directed at the forum state. Calder v. Jones, 465 U.S. 783, 790 (1984). In all cases the point of the purposeful-direction requirement is to "ensure that an out-of-state defendant is not bound to appear to account for merely 'random, fortuitous, or attenuated contacts' with the forum state."

The Supreme Court's decision in *Calder* provides some contours for the "purposeful direction" requirement in the context of a suit alleging intentional torts. *Calder* gave significant weight to the "effects" of a foreign defendant's conduct within the forum state: "[P]etitioners are not charged with mere untargeted negligence. Rather, their intentional, and allegedly tortious, actions were expressly aimed at California." As the Court explained,

> Petitioner South wrote and petitioner Calder edited an article that they knew would have a potentially devastating impact upon [Jones]. And they knew that the brunt of that injury would be felt by respondent in the State in which she lives and works and in which the *National Enquirer* has its largest circulation. Under these circumstances, petitioners must reasonably anticipate being haled into court there to answer for the truth of the statements made in their article. An individual injured in California need not go to Florida to seek redress from persons who, though remaining in Florida, knowingly cause[d] the injury in California.

Calder thus suggests three requirements for personal jurisdiction in this context: (1) intentional conduct (or "intentional and allegedly tortious" conduct); (2) expressly aimed at the forum state; (3) with the defendant's knowledge that the effects would be felt--that is, the plaintiff would be injured--in the forum state. Extracting these requirements from Calder is reasonably straightforward; applying them in specific cases--especially cases like this one alleging tortious acts committed over the Internet--is more challenging.[1]

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[1] The parties and the district court have approached the jurisdictional question in this case by reference to the specialized framework proposed in *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997), for cases in which the challenged conduct occurs over the Internet. *Zippo* devised an alternative minimum-contacts test for Internet-based claims.

1. "Intentional" acts or "intentional and allegedly tortious" acts

The circuits are divided over whether *Calder's* "express aiming" inquiry includes *all* jurisdictionally relevant intentional acts of the defendant or only those acts that are intentional *and* alleged to be tortious or otherwise wrongful. We need not take sides in this debate. Tamburo alleges that the individual defendants intentionally published defamatory statements on their websites or in blast emails. He further alleges that this conduct tortiously interfered with his business, constituted a trade libel, and that the defendants entered into a conspiracy to commit these wrongful acts against him. These are intentional-tort allegations, bringing this case squarely within the *Calder* formula even if the scope of the inquiry is more narrowly focused on the alleged tortious acts.

2. "Express aiming" and knowledge that plaintiff would be injured in forum state

In *Calder* the Supreme Court emphasized that the defendants were not "charged with mere untargeted negligence," but instead had "expressly aimed" their alleged libel at California, where they knew Jones lived and worked and would suffer the "brunt of th[e] injury." As an analytical matter, *Calder's* "express aiming" inquiry overlaps with the question whether the defendant knew the plaintiff would suffer the injury in the forum state, so we consider the two requirements together.

Some circuits have read *Calder's* "express aiming" requirement fairly broadly, requiring only conduct that is "targeted at a plaintiff whom the defendant knows to be a resident of the forum state." *Bancroft & Masters, Inc. v. Augusta Nat'l Inc*., 223 F.3d 1082, 1087 (9th Cir. 2000). Others have read it more narrowly to require that the forum state be the "focal point of the tort." *ESAB Group, Inc. v. Centricut, Inc*., 126 F.3d 617, 625 (4th Cir. 1997). Our circuit hasn't firmly settled on either of these understandings of *Calder's* "express aiming" requirement.

Zippo suggested that "the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet." More specifically, the court articulated a sliding-scale analysis that considers the degree of "interactivity" of a website to determine whether the electronic contacts with the forum are sufficient to satisfy *International Shoe's* standard.

Some circuits have followed *Zippo* when "electronic contacts" over the Internet are at issue. *See, e.g., Revell v. Lidov*, 317 F.3d 467, 470 (5th Cir. 2002) ("This circuit has drawn upon the approach of *Zippo* in determining whether the operation of an internet site can support the exercise of personal jurisdiction."); *ALS Scan, Inc. v. Digital Serv. Consultants, Inc*., 293 F.3d 707, 713 (4th Cir. 2002) ("we adopt the model developed in Zippo"); *Cybersell, Inc. v. Cybersell, Inc*., 130 F.3d 414, 418 (9th Cir. 1997) (examining a website's level of interactivity in order to conduct the minimum-contacts analysis). We have not specifically done so. As a general matter, we hesitate to fashion a special jurisdictional test for Internet-based cases. *Calder* speaks directly to personal jurisdiction in intentional-tort cases; the principles articulated there can be applied to cases involving tortious conduct committed over the Internet. *See Hy Cite Corp. v. Badbusinessbureau.com, L.L.C*., 297 F. Supp. 2d 1154, 1161 (W.D. Wis. 2004) (declining to adopt *Zippo* as a substitute for the traditional minimum-contacts analysis).

This case involves both a forum-state injury *and* tortious conduct specifically directed at the forum, making the forum state the focal point of the tort--at least with respect to the individual defendants. More specifically, Dworkin, Henry, Hayes, and Mills are each alleged to have published false and defamatory statements about Tamburo, either on their public websites or in blast emails to other proprietors of online dog-pedigree databases. In some of these messages, readers were encouraged to boycott Tamburo's products; in others, Tamburo's Illinois address was supplied and readers were urged to contact and harass him. The complaint also alleges that Dworkin personally contacted Tamburo by email, accusing him of "theft" and demanding that he remove the "stolen" data from The Breeder's Standard. Dworkin threatened to expose Tamburo's "theft" to the online dog-pedigree community if he did not comply. Dworkin, Henry, Hayes, and Mills engaged in this conduct with the knowledge that Tamburo lived in Illinois and operated his business there. Thus, although they acted from points outside the forum state, these defendants specifically aimed their tortious conduct at Tamburo and his business in Illinois with the knowledge that he lived, worked, and would suffer the "brunt of the injury" there.[2] These allegations suffice to establish personal jurisdiction over these defendants under either a broad *or* a more restrictive view of *Calder*.

The Tenth Circuit's decision in *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1071 (10th Cir. 2008), supports this conclusion. In *Dudnikov* a Connecticut-based company notified the online auction host eBay, based in California, that a line of prints featured in an eBay auction infringed its copyright. eBay responded by cancelling the auction for the prints. The online sellers of the prints lived and operated their business in Colorado; they filed a copyright suit in Colorado against the Connecticut-based company. The district court dismissed the case for lack of personal jurisdiction. In a comprehensive decision, the Tenth Circuit reversed. Although the Connecticut company's conduct originated outside of Colorado and was technically directed at eBay in California, its express goal was to halt sales of an online auction item originating in Colorado. This satisfied *Calder's* "express aiming" requirement and was sufficient to establish personal jurisdiction over the Connecticut company in Colorado. The court offered the following analogy to help explain its decision:

> [The defendant's conduct] is something like a bank shot in basketball. A player who shoots the ball off of the backboard intends to hit the backboard, but he does so in the service of his further intention of putting the ball into the basket. Here,

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[2] We note the circuits are also divided on the proper way to understand *Calder's* emphasis on the defendant's knowledge of where the "brunt of the injury" would be suffered. *Compare Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1072 (10th Cir. 2008) (requiring the defendant to have "knowledge that the brunt of the injury would be felt in the forum state"), *with Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1207 (9th Cir. 2006) (en banc) ("[T]he 'brunt' of the harm need not be suffered in the forum state. If a jurisdictionally sufficient amount of harm is suffered in the forum state, it does not matter that even more harm might have been suffered in another state."). Again, we need not enter the fray; here, the whole of the injury was suffered in Illinois, and the individual defendants knew that would be the case. As we explain later, however, the same cannot be said of Wild Systems, the Australian corporate defendant.

> defendants intended to send the [copyright notice] to eBay in California, but they did so with the ultimate purpose of cancelling plaintiffs' auction in Colorado. Their "express aim" thus can be said to have reached into Colorado in much the same way that a basketball player's express aim in shooting off of the backboard is not simply to hit the backboard, but to make a basket.

Although the circumstances here are not easily analogized to a basketball bank shot, we take the Tenth Circuit's point and agree with its analysis. Here, the individual defendants purposely targeted Tamburo and his business in Illinois with the express goal of inflicting commercial and reputational harm on him there, even though their alleged defamatory and otherwise tortious statements were circulated more diffusely across the Internet.[3] Tortious acts aimed at a target in the forum state and undertaken for the express purpose of causing injury there are sufficient to satisfy *Calder's* express-aiming requirement. *See Dudnikov*, 514 F.3d at 1078 ("actions that 'are performed for the very purpose of having their consequences felt in the forum state' are more than sufficient to support a finding of purposeful direction under *Calder*"). Accordingly, we conclude that Dworkin, Henry, Hayes, and Mills "purposefully directed" their activities at Illinois; this prerequisite for the exercise of personal jurisdiction in Illinois has been met.

The same is not true, however, of Wild Systems, the Australian corporate defendant. Recall that DeJong, the owner and president of Wild Systems, allegedly facilitated the posting of some of the individual defendants' tortious messages on the company's private Breedmate Yahoo! email listserve. The complaint does not say how many, nor does it describe the content of the messages that were reposted onto the listserve. It does not allege, for example, that DeJong reposted emails specifically calling for a boycott of Tamburo's Illinois-based business. And unlike the individual defendants, there are no allegations that DeJong or anyone else associated with Wild Systems acted with the knowledge that Tamburo operated his business in Illinois or with the specific purpose of inflicting injury there. In short, we cannot conclude that DeJong's reposting of an unspecified number of messages of unspecified (but tortious) content to a private listserve of unspecified scope and reach is enough to establish that Wild Systems "expressly aimed" its allegedly tortious conduct at Illinois. As such, the claims against Wild Systems were properly dismissed for lack of personal jurisdiction.

b. Injury "arises out of" the defendants' contacts with forum state

Our conclusion that the individual defendants' conduct was "purposely directed" at the forum state does not end the jurisdictional inquiry. Tamburo's injury must "arise out of" or "relate to" the conduct that comprises the defendants' contacts with the forum. The Supreme Court has not elaborated on this requirement, and the occasional difficulty in applying it has led to conflict

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[3] In a case involving a stand-alone Internet-based defamation, Calder might require a showing that the defendant intended to reach forum-state readers. *See Young v. New Haven Advocate*, 315 F.3d 256, 263 (4th Cir. 2002). Because the newspaper in *Young* clearly targeted a local audience, the case suggests that when a local publication posts an article on its website, jurisdiction in another state may be proper only if the publication specifically targets forum-state readers. But the analysis may be more complex when, for example, a truly national publication is sued for defamation arising out of an article on its website.

among the circuits.

The First Circuit has held that at least with respect to intentional tort claims, the defendant's contacts with the forum must constitute both the cause in fact and the proximate cause of the injury. The Ninth and Fifth Circuits, on the other hand, require only that the contacts constitute a but-for cause of the injury. The Third Circuit has taken a middle-ground approach, holding that "specific jurisdiction requires a closer and more direct causal connection than that provided by the but-for test," but has not adopted a precise rule, opting instead to proceed on a case-by-case basis. Because personal jurisdiction can be conceptualized as a quid pro quo by which the defendant submits to the forum's jurisdiction in exchange for the benefit of its laws, the Third Circuit suggests that "[t]he causal connection can be somewhat looser than the tort concept of proximate causation, but it must nonetheless be intimate enough to keep the quid pro quo proportional and personal jurisdiction reasonably foreseeable."

We have not weighed in on this conflict and need not do so here. Under even the most rigorous approach to the determination of whether the plaintiff's injury "arises out of" the defendant's contacts with the forum state, Tamburo's injury clearly does. Dworkin, Henry, Hayes, and Mills expressly aimed their allegedly tortious conduct at Tamburo and his Illinois-based business for the purpose of causing him injury there; these "contacts" with the forum state are the cause in fact and the legal cause of Tamburo's injury. That is, Tamburo's claims arise directly out of the individual defendants' contacts with Illinois.

c. Traditional notions of fair play and substantial justice

Our final inquiry is whether Illinois' exercise of personal jurisdiction over Dworkin, Henry, Hayes, and Mills would offend traditional notions of fair play and substantial justice. *Int'l Shoe*, 326 U.S. at 316. The following factors are relevant: "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies." *Burger King*, 471 U.S. at 477. Applying these factors, we see no unfairness in permitting this suit to proceed against the individual defendants in Illinois.

First, Illinois has a strong interest in providing a forum for its residents and local businesses to seek redress for tort injuries suffered within the state and inflicted by out-of-state actors. Although Tamburo could have sued the individual defendants in their home jurisdictions, that would have been cumbersome and impractical; the American defendants live in separate states and Dworkin lives in Canada. Neither Canada nor any of the states where the American defendants live has a substantial interest at stake here. Under these circumstances, it is far more reasonable to conclude that the defendants should anticipate being haled into court in Tamburo's home state. A single suit in Illinois also promotes the most efficient resolution of these claims. Accordingly, we conclude that the exercise of personal jurisdiction in Illinois over Dworkin, Henry, Hayes, and Mills comports with traditional notions of fair play and substantial justice.

For the foregoing reasons, we AFFIRM the district court's order dismissing all counts against Wild Systems for lack of personal jurisdiction. We REVERSE the district court's order dismissing the state-law tort claims against Dworkin, Henry, Hayes, and Mills for lack of personal jurisdiction and REMAND the case for further proceedings.