

## JURISDICTION IN CYBERSPACE

William Gibson, the hip science fiction author, supposedly coined the term "cyberspace." According to Gibson, cyberspace is the "place" between two modems. In other words, cyberspace is where the Internet is "located." This electronic "realm" does not occupy any corporeal area, except perhaps to the extent that it relies on hardware such as computer equipment and telephone wires. Whether or not you consider cyberspace a "real" place, many business owners are finding that there is much money to be made through Internet commerce.

Unfortunately, cyberspace is not Eden. Instead, the Internet is frequented by people, and wherever you find people, you are bound to find disputes. Our American system of jurisprudence uses lawsuits as one method of resolving disputes. This method includes a concept known as jurisdiction.

Most often, lawsuits are still conducted the old-fashioned way, which means that the parties physically appear in court to present their case. Generally, cases are not yet presented in cyberspace. Someday, that will probably change. Until then, if you are conducting business outside your home state, whether in cyberspace or otherwise, you need to know about jurisdiction.

*Jurisdiction* refers to a court's power to compel you to physically appear in a distant forum to defend or prosecute a lawsuit. In America, all courts' jurisdictional powers are limited in two ways--by due process and by state statutes known as Long-Arm Acts.

*Due Process* is embodied in the United States Constitution and in the constitutions of all the states, including Illinois. Basically, due process provides that a court cannot force people (or businesses) to physically appear in a state to defend a lawsuit unless it would be fair to make them

do so. Whether it would be fair depends on several factors, including (1) the relationship between the dispute and the parties' contacts with the state where the lawsuit is pending and (2) whether, under the circumstances, the defendants reasonably should have expected that they might have to appear in that state to defend a lawsuit.

As mentioned above, Long-Arm Acts are the second check on a court's jurisdictional power. Long-Arm Acts (as in "the long arm of the law") specify the kind of conduct for which a nonresident defendant might have to appear in court and defend. Usually, this conduct includes soliciting or transacting business within the state or committing a wrongful, harmful act within the state. Because widespread use of the Internet for business is a relatively

new phenomenon, the courts are now just starting to decide whether business solicited or conducted entirely in cyberspace (such as by email or through a Web site) is conducted "within" a state as defined by a state's Long-Arm Act, and if so, whether a court may fairly exercise its jurisdictional power consistent with due process.

Whether someone's conduct could enable a court to exercise its jurisdictional power (in cyberspace or otherwise) may be difficult to determine. Just as no two deals are necessarily identical, each case involving jurisdiction depends on its particular facts. Even worse, different courts sometimes reach different conclusions when presented with similar or identical facts. Therefore, you need to analyze the outcomes of past cases within specific states to predict whether your conduct in cyberspace could give a distant court power over you. Here are some examples:

*The Blue Note Case.* The Blue Note jazz club in Missouri maintains a Web site that only gives viewers information about the club. (In other words, the site is passive, rather than interactive. An interactive site might, for example, enable viewers to download information or buy tickets.) The site also states that it is intended for use only by Missouri residents. Nevertheless, a New York club filed suit in New York against the Missouri club, claiming that the Missouri club's use of the name "Blue Note" infringed on the New York club's trademark rights in that same name. A New York court held that it did not have jurisdiction over the Missouri club because the Missouri club's Web site was passive and was expressly intended only for use by Missouri residents.

*The Inset Case.* When analyzing a passive Web site, the court in this case reached a conclusion that was the opposite of *Blue Note* (that is, the distant forum state could have jurisdiction over the nonresident business that owned the Web site). The only difference was that in *Inset*, the Web site was not expressly limited to local residents and listed a national toll-free telephone number.

*The Maritz Case.* In this trademark infringement case, a court decided that the nonresident defendant's establishment of its interactive Web site constituted a wrongful, harmful act within Missouri because there were 131 separate transmissions from that site onto computer terminals located in Missouri.

*The Zippo Case.* Like *Maritz*, a court in a trademark case decided that a nonresident defendant's establishment of its interactive Web site constituted a wrongful, harmful act within Pennsylvania because viewers could purchase goods and services through the site.

*The American Network Case.* In another trademark infringement case, a court held that a nonresident defendant's establishment of a passive Web site constituted a wrongful, harmful act in New York because the defendant had six New York subscribers out of a base of 7,500 customers.

*The Telco Case.* In this libel case, a Pennsylvania court determined that a nonresident defendant's passive Web site caused harm within Pennsylvania because the site specifically mentioned the plaintiff by name.

*The Granite Gate Resorts Case.* This case shows that government agencies are starting to attempt to enforce their local laws against nonresidents who conduct business on the Internet. Gambling is illegal in Minnesota. Granite Gate Resorts, which has no physical presence in Minnesota, operates an online gambling service that is accessible to Minnesota residents over the Internet. The Minnesota Attorney General recently convinced a Minnesota court to exercise jurisdiction over Granite Gate Resorts, claiming that, by establishing its gambling Web site, Granite Gates has violated Minnesota's anti-gambling law.

*Cases Brought By Foreign Governments.* Georgia Tech University (GTU) operates online classes about France. These classes are accessible to Canadian citizens over the Internet. GTU is in hot water with the Quebec government even though GTU has no physical campus in Canada. The Quebec government claims that GTU's classes, which are only in English, violate Quebec's requirement that sales of goods and services in Quebec must be presented in both French and English. Similarly, a professor at an American University has run afoul of a town in England. The professor's online information about that town is available to English subjects over the Internet. That town claims that his reports, which mention that town, violate the United Kingdom's copyright laws.

### Some Suggestions

Until better, more predictable laws regarding jurisdiction in cyberspace are enacted (if ever), business owners face a conundrum. On the one hand, if you do not conduct business on the Internet, you risk being left behind by your competitors. On the other hand, using the Internet for business may empower a court in a distant place to acquire jurisdiction over you. You also risk violating laws that you could not easily know even exist.

Based on the cases decided to date, if you take some or all of the following steps you might avoid a court's jurisdictional power at least in certain instances:

- Use a passive rather than an interactive Web site.
- Place a notice on your Web site stating that it is only for use by residents in certain identified states (such as the states in which you are willing to defend or prosecute a lawsuit).
- Place a notice on your Web site which states that by viewing or using your site, the user consents to the exclusive jurisdiction and venue of a court in your home county and your home state (such as Cook County, Illinois) and to the exclusive use of the laws of your home state (such as Illinois).
- Limit your solicitation of business by traditional methods (such as advertising) to those states in which you are prepared to defend or prosecute a lawsuit.

These suggestions are contrary to the purpose of the Internet, which is to promote the easy flow of information and business through cyberspace. Unfortunately, like the Wild West in the 1800s, venturing onto the Internet is not without its hazards.