



Surfing for Personal Jurisdiction from Online Activity

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The internet has made applying the traditional touchstones for personal jurisdiction challenging. Ever so slowly courts have addressed the personal jurisdiction questions in internet cases, to arrive at a point now where there may not be bright lines to guide us; but there are definitely guidelines emerging.

U.S. District Court Judge Edward J. Lodge, *Sky Capital Group, LLC v. Rojas*, 2009 U.S. Dist. LEXIS 37132, 11 (D. Idaho Apr. 30, 2009)

May 13th is the anniversary of *Pennoyer v. Neff*, 95 U.S. 714 (1878), one of the great personal jurisdiction cases, followed by *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987) and *Burnham v. Superior Court of California*, 495 U.S. 604 (1990). It is only appropriate to write about personal jurisdiction on the anniversary of this major decision.

The United States Constitution requires a court to have personal jurisdiction over the parties to decide a case in controversy. U.S. CONST. Amend. XIV. Perhaps it is just guys in bow ties and Civil Procedure professors, but the intersection of online activity and a Court exercising personal jurisdiction is an exciting area of case law. The entire concept of where is it fair to sue someone, or where there are minimum contacts from online business, are topics that could make a law student's head spin.

It is antithetical to our civil justice system to have people sued as a "result of random, fortuitous, or attenuated contacts or on account of the unilateral activity of third parties" due to blogging, Facebook or people simply maintaining a website. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471 (U.S. 1985). Courts have been crafting personal jurisdiction requirements for online contracts and torts for a decade. The following is one of those cases.

Truck Stops & Economic Torts

Sky Capital Group, LLC v. Rojas, 2009 U.S. Dist. LEXIS 37132 (D. Idaho Apr. 30, 2009) is a story of alleged trade secret violations by out-of-state Defendants intentionally accessing the Plaintiffs computer servers. *Sky Capital Group*, 12.

Sky Capital Group, LLC (dba Roady's Truck Stops), an Idaho limited liability company, employed the two Defendants after a business acquisition. One Defendant was based in Florida and the other in Wisconsin.

Roady's sued the Defendants for trade secret violations and economic torts by unlawfully accessing Roady's administrative and email servers located in Idaho after their employment ended.

Roady's sued the Defendants in Idaho and the Defendants sought dismissal for lack of personal jurisdiction.



Short Overview of Personal Jurisdiction Rules

The 9th Circuit requires a three part test to exercise specific personal jurisdiction:

- (A) The nonresident defendant must purposefully conduct activities within the forum;
- (B) The claim must arise or result from forum-related activities; and
- (C) The exercise of jurisdiction must be reasonable. *Sky Capital Group*, 6, citing *Doe*, 248 F.3d at 923.

Knowledge that the plaintiffs are in a specific state is not enough for a court to exercise jurisdiction. Courts require “something more” to show a defendant directed their actions to a specific state. *Sky Capital Group*, 11.

The Court found that the Defendants accessing the Plaintiffs’ servers was the “something more” the Court needed to exercise personal jurisdiction over the Defendants.

Intention Acts: Accessing Servers

The “intentional actions” of accessing the Plaintiffs’ computer serves included logging onto the system, and accessing proprietary information including, “recorded customer lists, vendor lists, pricing information, marketing information and other valuable customer and company information.” *Sky Capital Group*, 12. Such directed activity in accessing the computer systems was such that the Defendants “should have reasonably anticipated being sued in Idaho.” *Sky Capital Group*, 13.



Expressly Aimed at Idaho

The “expressly aimed” requirement is defined as “when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state.” *Sky Capital Group*, 14, citing *Bancroft & Masters, Inc. v. Augusta Nat’l, Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000).

This rule also requires “something more” besides an action having a foreseeable effect in a forum state for personal jurisdiction. *Sky Capital Group*, 14.

The defendant had to knowing a plaintiff is a resident of “the forum state and that the harm resulting from the intentional act will be suffered in the forum state.” *Sky Capital Group*, 14-15.

The fact the out-of-state Defendants knew Roady’s was located in Idaho, coupled with the allegation of taking proprietary business information to compete directly with the Roady’s, was a sufficient showing to meet the expressly aimed requirement. *Sky Capital Group*, 15.

Causing Harm in Idaho

The Court found the “harm in the forum state” also met, based on the fact the Defendants knew the Plaintiff was located in Idaho and their conduct would cause the Plaintiff harm. *Sky Capital Group*, 16-17.

Lessons Learned

Way back when I had Civil Procedure in 1998, the course books had not even touched personal jurisdiction from online activity. This will become standard analysis as Generation X lawyers become partners and Net Geners become associates. The volume of online business, Web 2.0 activity, let alone continued advancements of iPhones and BlackBerries, will ensure these issues continue to develop.

I'd just like to avoid a giant split Supreme Court decision like *Asahi Metal Industry Co. v. Superior Court* when the Courts determine bright lines for personal jurisdiction from online activity.