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Roche v. Worldwide Media, Inc.: Evaluating Where Minimum Contacts Meets Cyberspace

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NOTE

ROCHE v. WORLDWIDE MEDIA, INC.: EVALUATING WHERE MINIMUM CONTACTS MEETS CYBERSPACE

I. INTRODUCTION

In *Roche v. Worldwide Media, Inc.*,¹ the United States District Court for the Eastern District of Virginia discussed the issue of personal jurisdiction in the context of cyberspace.² The court determined that Worldwide Media's web site was passive³ and that asserting personal jurisdiction based solely on the maintenance of a web site, without more, would violate the Due Process clause of the Fourteenth Amendment.⁴

The *Roche* decision reaffirmed the Eastern District of Virginia's position on personal jurisdiction in the context of cyberspace.⁵ Specifically, this decision applies the logic of the "sliding scale"⁶ test borrowed from the United States District Court for the Western District of Pennsylvania and adopted by the Eastern District of Virginia.⁷ The "sliding scale" test incorporates the spirit and intent of the *International Shoe* "minimum contacts" test to address whether the exercise of personal jurisdiction over a defendant based on the operation

¹ *Roche v. Worldwide Media, Inc.*, 90 F. Supp. 2d 714 (E.D. Va. 2000).

² *See Roche*, 90 F. Supp. 2d at 717.

³ *See infra* note 75 and accompanying text.

⁴ *See Roche*, 90 F. Supp. 2d at 718.

⁵ *See id.* at 717.

⁶ *See infra* note 69.

⁷ *See Roche*, 90 F. Supp. 2d at 717-718. *See also Rannoch, Inc. v. The Rannoch Corp.*, 52 F. Supp. 2d 681, 683 (E.D. Va. 2000).

of a web site alone is consistent with due process.⁸

II. FACTS

Brien Roche, hereinafter “Roche”, is a trial attorney and a citizen of Virginia.⁹ Roche registered and received confirmation that Network Solutions, Inc. reserved the domain name “triallawyer.com” in his name.¹⁰ Some time after receipt of this confirmation, Roche visited “traillawyer.com” expecting to see an “under construction” notation on the web site.¹¹ Instead, Roche found that Worldwide Media, Inc, a Florida corporation, and Michael Howard Berkens, a Florida resident, collectively “Worldwide”, were already operating “trail-lawyer.com” as an adult pornographic web site.¹² Roche alleged that he was deeply offended and disgusted by his inadvertent viewing of the pornographic images portrayed on the “traillawyer.com” site.¹³

In actuality, Worldwide operated “triallawyer.com” as an advertising venue for other Internet web site operators.¹⁴ In exchange for a fee,¹⁵ Worldwide placed advertising banners with images depicting a variety of explicit sexual acts and behaviors on the “triallawyer.com” web site.¹⁶ Visitors to “trial-lawyer.com” were prompted to click on a banner if they wished to view more material.¹⁷ Each banner contained links

⁸ See *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1126 (W.D. Pa. 1997). See also *International Shoe Co. v. Washington*, 326 U.S. 320 (1945).

⁹ See *Roche*, 90 F. Supp. 2d at 715.

¹⁰ See *id.* at 716. Network Solutions, Inc. is a domain name registry service where an individual can purchase the rights to a given domain name on a first-come, first-served basis for a \$100 registration fee. See *Panavision Int'l v. Toeppen*, 141 F.3d 1316, 1318 (1998).

¹¹ See *Roche*, 90 F. Supp. 2d at 716.

¹² See *id.* at 716.

¹³ See *id.*

¹⁴ Telephone interview with Alexander Rhodes, Attorney for Worldwide Media, Inc., Associate, Annis, Mitchell, Cockey, Edwards, & Roehn, P.A. (October 5, 2000). Worldwide also maintained three other Internet web sites, “triallawyers.com”, “trialattorney.com”, and “trialattorneys.com”, that operated in a similar fashion. See *id.*

¹⁵ See *id.*

¹⁶ See Complaint of Plaintiff at ¶10, *Roche* 90 F. Supp. 2d (E.D. Va. 2000) (No. 99-1534-A). The web site “triallawyer.com” contained explicit images of oral, anal, and group sex, and solicited the display of other forms of sexual behavior. See *id.*

¹⁷ See Telephone interview with Alexander Rhodes, *supra* note 14.

to other pornographic web sites operated by independent third parties.¹⁸ The web site “triallawyer.com”, however, did not solicit visitor’s credit card information, or provide visitors with Worldwide’s contact information such as telephone number or email address.¹⁹ Moreover, visitors could not send comments to Worldwide or submit classified ads to be posted on the “traillawyer.com” web site.²⁰ In short, “traillawyer.com” was nothing more than a conduit responsible for redirecting Internet traffic to other pornographic web sites.²¹

III. PROCEDURAL HISTORY

On October 15, 1999,²² Roche filed a five-count complaint against Worldwide in the United States District Court for the Eastern District of Virginia.²³ The complaint alleged actual and constructive fraud, negligent misrepresentation, and intentional infliction of emotional distress.²⁴ Roche, however, was unable to dispute Worldwide’s ownership of the domain name since he and Worldwide had each registered the domain name “triallawyer.com” with separate yet equally legitimate domain name registry services.²⁵ Roche’s complaint also included a prayer for declaratory and injunctive relief to enjoin Worldwide from continuing to operate the site.²⁶

On December 1, 1999,²⁷ Worldwide filed a motion to dismiss Roche’s complaint alleging that the Eastern District of Virginia lacked personal jurisdiction over Worldwide.²⁸ The court granted the motion and the Eastern District of Virginia

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See id.*

²¹ *See* Complaint, 90 F. Supp. 2d (E.D. Va. 2000) (No. 99-1534-A).

²² *See Roche*, 90 F. Supp. 2d at 714-715.

²³ *See id.* at 714.

²⁴ *See* Complaint, *Roche* 90 F. Supp. 2d (E.D. Va. 2000) (No. 99-1534-A).

²⁵ *See* Telephone interview with Alexander Rhodes, *supra* note 14.

²⁶ *See* Complaint, *Roche* 90 F. Supp. 2d (E.D. Va. 2000) (No. 99-1534-A).

²⁷ *See* Defendant’s Motion to Dismiss, *Roche* 90 F. Supp. 2d (E.D. Va. 2000) (No. 99-1534-A).

²⁸ *See id.* at 715. Worldwide Media, Inc. made the motion to dismiss pursuant to F.R.C.P. 12(b)(2). Because the Eastern District lacked personal jurisdiction over Worldwide, the court did not discuss the merit of the allegations in the complaint. *See id.*

296 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 31:3

dismissed Roche's complaint on January 4, 2000.²⁹ On March 27, 2000, the Eastern District of Virginia issued its Memorandum Opinion.³⁰

IV. BACKGROUND

A. HISTORICAL JURISDICTIONAL ANALYSIS UNDER *PENNOYER V. NEFF*

Before a court can hear a case, the court must have jurisdiction over the subject matter of the suit and the parties to the action.³¹ Personal jurisdiction refers to the court's ability to assert jurisdiction over the parties to the action.³² Historically, personal jurisdiction was governed by the strict physical presence requirements of *Pennoyer v. Neff*.³³ In *Pennoyer*, the United States Supreme Court limited personal jurisdiction of a state court to instances where a non-resident defendant owned property within the forum state or was served within the forum state.³⁴ However, these limitations eventually proved too rigid as advances in communication, technology, and the advent of the corporation as a legal entity obviated the need for parties in a commercial transaction to share the same physical location.³⁵

B. MODERN JURISDICTIONAL ANALYSIS UNDER *INTERNATIONAL SHOE V. WASHINGTON*

In 1945, the Supreme Court abandoned the strict physical presence requirements of *Pennoyer* in favor of a more flexible approach with its decision in *International Shoe v. Washington*.³⁶ In *International Shoe*, a non-resident corporation was subjected to the jurisdiction of a Washington state court even

²⁹ See *id.* at 719.

³⁰ See *id.* at 714.

³¹ See JOHN J. COUND ET AL., CIVIL PROCEDURE 4 (West Publishing Company, 6th ed. 1993).

³² See *id.*

³³ *Pennoyer v. Neff*, 95 U.S. 714 (1877). See also *Hanson v. Denckla*, 357 U.S. 235, 251 (1958).

³⁴ See *Pennoyer* at 717.

³⁵ See *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222 (1957).

³⁶ *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

though its state of incorporation and principal place of business was outside of the forum state.³⁷ Asserting personal jurisdiction under *International Shoe* requires a two-step analysis.³⁸ First, the defendant must have “minimum contacts” with the forum state.³⁹ Second, the exercise of jurisdiction must not offend “traditional notions of fair play and substantial justice.”⁴⁰

In establishing “minimum contacts,” the non-resident defendant must fall under the reach of the forum state’s long-arm statute.⁴¹ Typically, if the defendant has sufficient “minimum contacts” with the forum state to satisfy due process then those activities will also bring the defendant under the jurisdiction of the state’s long-arm statute.⁴² The Virginia long-arm statute, for example, authorizes jurisdiction to the fullest extent permitted by due process.⁴³

C. JURISDICTIONAL ANALYSIS AFTER *INTERNATIONAL SHOE*

Since *International Shoe*, several cases have presented the Supreme Court with the opportunity to clarify and elaborate on the meaning of “minimum contacts” and “traditional notions of fair play and substantial justice.”⁴⁴ The line of cases following *International Shoe* has shown a clear trend toward expanding jurisdiction.⁴⁵ Nevertheless, these decisions have remained in line with the policy goals of *International Shoe* of preventing a state from extending its authority beyond permissible boundaries and preventing a defendant from litigating in a distant or inconvenient forum.⁴⁶

³⁷ See *id.* at 310.

³⁸ See *Rannoch, Inc. v. The Rannoch Corp.*, 52 F. Supp. 2d 681, 684 (E.D. Va. 1999).

³⁹ See *International Shoe*, 326 U.S. at 320.

⁴⁰ See *id.*

⁴¹ See *Rannoch*, 52 F. Supp. 2d at 684.

⁴² See George B. Delta & Jeffrey H. Matsuhara, *Law of the Internet*, §3.02[A] (2000).

⁴³ See *Roche*, 90 F. Supp. 2d at 716.

⁴⁴ See, e.g., *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

⁴⁵ See *McGee*, 355 U.S. at 223. See also *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

⁴⁶ See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

298 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 31:3

In *World-Wide Volkswagen Corp. v. Woodson*,⁴⁷ the United States Supreme Court overturned an Oklahoma Supreme Court ruling that held a New York automobile retailer subject to the jurisdiction of an Oklahoma court based on the foreseeability that the car would enter Oklahoma.⁴⁸ In ruling that foreseeability alone is not sufficient to confer personal jurisdiction, the Supreme Court held that the defendant's conduct and connection with the forum state should be such that he reasonably anticipates being haled into court in the forum state.⁴⁹

In *Burger King Corp. v. Rudzewicz*,⁵⁰ a Michigan resident entered into a fast-food restaurant franchise agreement with a Florida corporation.⁵¹ Throughout the franchise relationship, all agreements, negotiations and contracts between the parties were executed by telephone or mail.⁵² Nevertheless, the Supreme Court held that the franchisee was subject to Florida jurisdiction because he had purposely availed himself of the benefits and protections of Florida laws when he entered into the franchise agreement.⁵³ In other words, the absence of physical contacts was not enough to defeat Florida's assertion of personal jurisdiction.⁵⁴

D. PERSONAL JURISDICTION AND CYBERSPACE

In 1996, due process made a leap into cyberspace in *CompuServe, Inc. v. Patterson*.⁵⁵ In *CompuServe*, Patterson, a Texas resident, entered into a contractual relationship with CompuServe,⁵⁶ an Ohio corporation, which allowed Patterson to transmit and post his software product on the CompuServe

⁴⁷ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

⁴⁸ *See id.* at 297-298.

⁴⁹ *See id.*

⁵⁰ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985).

⁵¹ *See Burger King*, 471 U.S. at 466.

⁵² *See id.* at 481.

⁵³ *See id.* at 482.

⁵⁴ *See id.* at 476, 487.

⁵⁵ *CompuServe, Inc. v. Patterson*, 89 F.3d 1257 (1996).

⁵⁶ CompuServe is a computer information service that contracts with individuals to provide computing and information services to subscribers via the Internet. *See id.* at 1260.

system for other subscribers to use and purchase.⁵⁷ When CompuServe began marketing a similar product, Patterson threatened suit.⁵⁸ In response, CompuServe filed an action in an Ohio federal court seeking a declaration that it had not infringed upon Patterson's trademark.⁵⁹ Consequently, Patterson moved to dismiss CompuServe's action for lack of personal jurisdiction.⁶⁰ The trial court granted Patterson's motion to dismiss stating that Patterson's contacts with Ohio were too tenuous.⁶¹ The Sixth Circuit Court of Appeals reversed.⁶²

The Sixth Circuit Court of Appeals reached its opinion by meshing the traditional "minimum contacts" analysis with the unique set of circumstances presented by activities conducted in cyberspace.⁶³ Citing *McGee v. International Life Insurance Company*,⁶⁴ the court determined that Patterson, like International Life Insurance Company, had established a connection with Ohio when he 1) entered into the Shareware Agreement with CompuServe, and 2) repeatedly transmitted computer files from his computer to the CompuServe system.⁶⁵ The court concluded that Patterson created a purposeful and ongoing relationship with CompuServe and, as a result, he should have reasonably foreseen that doing so would have consequences in Ohio.⁶⁶ Finding the record replete with ways in which Patterson purposely availed himself to the benefits and protections of Ohio law, the court determined that Ohio's assertion of jurisdiction over Patterson did not violate due process.⁶⁷

Just six months after *CompuServe, Zippo Mfg. Co. v. Zippo Dot Com*⁶⁸ provided another significant development in personal jurisdiction in cyberspace. In that case, Zippo Manufacturing, a Pennsylvania corporation, sued Zippo Dot Dom, a

⁵⁷ See *id.* at 1260.

⁵⁸ See *id.* at 1266.

⁵⁹ See *id.* at 1266.

⁶⁰ See *CompuServe*, 89 F.3d at 1261.

⁶¹ See *id.*

⁶² See *id.* at 1268-1269.

⁶³ See *id.* at 1262-1263.

⁶⁴ See *id.* at 1266, citing *McGee*, 355 U.S. 220 (1957).

⁶⁵ See *id.*

⁶⁶ See *CompuServe*, 89 F.3d at 1265.

⁶⁷ See *id.* at 1266.

⁶⁸ *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W. D. Pa. 1997).

300 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 31:3

California Internet-based news subscription service, in Pennsylvania District Court for trademark dilution, trademark infringement, and false designation.⁶⁹ Zippo Dot Com moved to dismiss the action for lack of personal jurisdiction.⁷⁰ The District Court denied the motion.⁷¹

In its opinion, the court fashioned a “sliding scale” test to determine whether the exercise of personal jurisdiction based on the operation of an Internet web site alone is consistent with due process.⁷² The test is premised on the theory that whether a forum state’s exercise of personal jurisdiction over a non-resident defendant is consistent with due process is directly proportionate to the nature and quality of the commercial activity that an entity conducts over the Internet.⁷³ In other words, the greater the commercial activity over the Internet the more likely it will be that the assertion of personal jurisdiction will be consistent with due process.⁷⁴

The “sliding scale” test posits three points along a continuum.⁷⁵ At one end of the spectrum the defendant clearly conducts business over the Internet.⁷⁶ For example, personal jurisdiction is proper in cases like *CompuServe v. Patterson* where the defendant knowingly enters into contracts with residents of a foreign jurisdiction via the Internet.⁷⁷ At the opposite end of the spectrum a defendant has only posted information on a “passive” web site that is accessible to users in a foreign jurisdiction.⁷⁸ The exercise of personal jurisdiction in

⁶⁹ See *id.* at 1121. Zippo Dot Com registered the domain names “zippo.com”, “zippo.net”, and “zipponews.com” with Network Solutions, Inc., an Internet domain name registry service. See *id.* at 1121, 1121 n.3.

⁷⁰ See *id.* at 1121.

⁷¹ See *id.*

⁷² See *id.* at 1124.

⁷³ See *id.* at 1124. See *Zippo*, 952 F. Supp. at 1127.

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See *id.*

⁷⁷ See *id.* See also *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295 (S.D.N.Y. 1996) where the plaintiff’s trademark action was dismissed for lack of personal jurisdiction after the court determined that defendant’s web site was passive because it did nothing more than provided users information about the defendant’s jazz club. If a user wanted to visit the defendant’s club, he would have to call or visit a ticket outlet and pick up the ticket at the club on the night of the show. See *id.*

⁷⁸ See *Zippo*, 952 F. Supp. at 1122.

these instances violates due process.⁷⁹ Finally, in the middle are situations where the user can only exchange information with a host computer.⁸⁰ In those situations, the court evaluates the commercial nature and level of interactivity of the information exchanged between the user and host computer to determine whether an assertion of personal jurisdiction is proper.⁸¹

Zippo Dot Com, in the opinion of the court, did more than advertise or post information on a web site.⁸² The record before the court clearly indicated that they were doing business in Pennsylvania over the Internet.⁸³ Citing *International Shoe*, the court stated “the test has always focused on the nature and quality of the contacts with the forum state and not the quantity of those contacts.”⁸⁴ As a result, the court determined that Zippo Dot Com’s activities were of a nature and quality that the assertion of personal jurisdiction by the Western District would not violate due process.⁸⁵

Applying similar logic, the same district court that decided *Roche* reached an opposite conclusion in *Rannoch, Inc. v. The Rannoch Corp.*⁸⁶ Rannoch, Inc., hereinafter “Rannoch-Va,” a Virginia corporation, provided engineering and computer services to firms in the aviation, communications and navigation businesses.⁸⁷ The Rannoch Corporation, hereinafter “Rannoch-Tx,” a Texas corporation, arranged steam railroad train vacations for individuals as a way of promoting the hobby of

⁷⁹ See *Roche*, 90 F. Supp. at 718.

⁸⁰ See *Zippo*, 952 F. Supp. at 1124.

⁸¹ See *id.* See also *Maritz v. Cybergold, Inc.*, 947 F. Supp. 1328 (E.D. Mo. 1996). In *Maritz*, the court provides a good analysis of a case in which the court had to evaluate the level of interactivity between the host and user to determine whether the exercise of personal jurisdiction was consistent with due process. See *id.*

⁸² See *Zippo*, 952 F. Supp. at 1125.

⁸³ See *id.* The facts before the court indicated that 2% of Zippo Dot Com’s subscribers were Pennsylvania residents, Zippo Dot Com actively solicited user names, addresses, and credit card information from subscribers, and that Zippo Dot Com had contracted with seven Internet service providers in Pennsylvania to furnish their services to its Pennsylvania customers. See *id.* at 1121.

⁸⁴ See *id.* at 1127.

⁸⁵ See *id.* 1126.

⁸⁶ See *Rannoch*, 52 F. Supp. 2d 681.

⁸⁷ See *id.* at 682. Rannoch-Va owned federal trademarks for different variations of the term “Rannoch” including “Rannoch” combined with a fanciful “R”, “Rannoch Corporation”, and “Rannoch”. See *id.*

302 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 31:3

steam railroading.⁸⁸ Rannoch-Va sued Rannoch-Tx in the District Court for the Eastern District of Virginia alleging trademark infringement and unfair competition.⁸⁹

The court granted the defendant's motion to dismiss for lack of personal jurisdiction, citing that there was no evidence that Rannoch-Tx was conducting business over the Internet in Virginia.⁹⁰ Instead, the court noted that all Rannoch-Tx had done was post a web page on the Internet with the possibility that someone in Virginia might access it.⁹¹ Under these circumstances, the court said, without more, the exercise of jurisdiction is not consistent with due process.⁹²

V. COURT'S ANALYSIS

The task before the United States District Court for the Eastern District of Virginia in *Roche v. Worldwide Media, Inc.* was to determine whether the court could assert personal jurisdiction over Worldwide based exclusively on its operation of the "triallawyer.com" web site.⁹³ To permit personal jurisdiction, Worldwide must first fall under the long-arm statute jurisdiction of the Eastern District of Virginia.⁹⁴ Virginia law extends long-arm statute jurisdiction to the fullest extent

⁸⁸ *See id.*

⁸⁹ *See id.* Rannoch-Va alleged that the Eastern District of Virginia had jurisdiction over the defendant based on its operation of two web sites, "rannoch.org" and "steam-training.com", which were accessible in Virginia. The web sites provided ways to contact the defendant, including telephone and fax numbers, mailing address and email address. *See id.* at 682-683. The sites also provide spaces for potential advertisers to submit their classified listings. *See id.* at 682. Finally, Rannoch-Va alleged that the defendant's advertisements in a nationally circulated magazine called "Trains" also subject it to the jurisdiction of the Virginia court. *See id.* at 683 n.3.

⁹⁰ *See id.* at 683. The court found there was no evidence that Rannoch-Tx assisted or made travel arrangements for any person in Virginia, placed any classified ads on its web sites for products or persons in Virginia, had done business in Virginia, had sold products in Virginia, had held meetings in Virginia, or conducting any advertising specifically directed to Virginia. *See id.* Furthermore, Rannoch-Tx was not authorized to do business in Virginia, owned no property in Virginia, had no bank accounts in Virginia, had no telephone listings in Virginia, had no employees in Virginia, and did not maintain records in Virginia. *See id.*

⁹¹ *See Rannoch*, 52 F. Supp. 2d at 683.

⁹² *See id.* at 687.

⁹³ *See Roche*, 90 F. Supp. 2d at 714, 716.

⁹⁴ *See id.* at 716.

permitted by due process.⁹⁵ Due process requires that a non-resident defendant maintain “minimum contacts” with the forum state before the forum state may assert jurisdiction over him.⁹⁶ The essence of the analysis, therefore, merges into the single question of whether the assertion of personal jurisdiction over Worldwide is consistent with due process.⁹⁷ If it is, then long-arm statute jurisdiction is permissible over Worldwide and the suit may proceed.⁹⁸

Since Worldwide’s only contact with Virginia was its web site, the court had to determine whether the nature and quality of those contacts were enough to establish “minimum contacts” and, therefore, be consistent with due process.⁹⁹ To do so, the court applied the reasoning of the “sliding scale” test borrowed from *Zippo*.¹⁰⁰ The nexus of this court’s analysis was to evaluate the facts of this case in light of the three points along the “sliding scale” continuum,¹⁰¹ and characterize the site as active or passive.¹⁰²

The record before the court lacked any evidence to establish that the Worldwide web site was an “active” web site.¹⁰³ Analogizing Worldwide to Rannoch-Tx in *Rannoch*, the court noted that there was no evidence that Worldwide had employees in Virginia, held meetings in Virginia, or sold products in Virginia.¹⁰⁴ Furthermore, there was no evidence that Worldwide conducted advertising or promotional activity that was directed specifically to Virginia.¹⁰⁵ In short, the court con-

⁹⁵ *See id.*

⁹⁶ *See id.* at 717.

⁹⁷ *See id.* at 716.

⁹⁸ *See Roche, 90 F. Supp. 2d* at 716.

⁹⁹ *See id.* at 715.

¹⁰⁰ *See id.* at 717-718. *See also Zippo, 952 F. Supp.* at 1125-1126.

¹⁰¹ A web site can occupy one of three spaces along the “sliding scale” continuum—passive, active or in between. *See Roche, 90 F. Supp. 2d* at 717-718. The assertion of jurisdiction over operators of active web sites is consistent with due process. *See id.* at 718. The operators of passive web sites are not subject to jurisdiction in the forum state because the characteristics of the web site do not satisfy minimum contacts. *See id.* Finally, jurisdiction in the instances when the contacts fall somewhere in between these two positions is determined by looking to the commercial nature and level of interactivity that occurs on the web site. *See id.*

¹⁰² *See id.*

¹⁰³ *See id.*

¹⁰⁴ *See id.*

¹⁰⁵ *See id.*

304 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 31:3

cluded, there was no evidence that Worldwide did anything more than post information on a web site with knowledge that someone in Virginia may access the site.¹⁰⁶ Numerous cases have held that this, without more, is not grounds for the exercise of jurisdiction.¹⁰⁷ Doing so, could lead to nationwide jurisdiction over anyone who posts a web page.¹⁰⁸ Therefore, concluding that Worldwide did nothing to avail themselves of the benefits of Virginia law or purposely direct their activities at Roche, the court determined that the Eastern District's exercise of jurisdiction over Worldwide would violate due process.¹⁰⁹

VI. CRITIQUE

The Eastern District of Virginia correctly dismissed Roche's complaint for lack of personal jurisdiction.¹¹⁰ Once the defendant raises the issue of personal jurisdiction, the plaintiff carries the burden of proving its existence by a preponderance of the evidence.¹¹¹ The court, in its determination of whether personal jurisdiction comports with due process, should construe all allegations in the light most favorable to the plaintiff and draw the most favorable inferences in favor of asserting jurisdiction.¹¹² Even construing Roche's complaint liberally, however, there is no evidence that Worldwide purposely availed itself to the benefits of Virginia law.¹¹³ As a result, the assertion of personal jurisdiction by the Eastern District of Virginia would violate due process.¹¹⁴

In light of the limited information provided in the pleadings, there was no evidence to support the Eastern District's exercise of jurisdiction. Clearly, the major fatal error of this case was deficient pleadings. That is not to say, however, that a better set of facts would have led to a different outcome. A

¹⁰⁶ See *Roche*, 90 F. Supp. 2d at 718.

¹⁰⁷ See, e.g., *Rannoch*, 52 F. Supp. 2d at 684.

¹⁰⁸ See *Roche*, 90 F. Supp. 2d at 719.

¹⁰⁹ See *id.* at 718-719.

¹¹⁰ See *id.* at 719.

¹¹¹ See *id.* at 716.

¹¹² See *Roche*, 90 F. Supp. 2d at 718.

¹¹³ See *id.* at 718.

¹¹⁴ See *id.* at 719.

better set of facts may certainly have allowed the case to survive beyond the motion to dismiss.

Better facts and pleadings may have allowed this action to survive a motion to dismiss because there is something intangible that distinguishes this case from *Rannoch* or *CompuServe*. This court based its dismissal on the fact that, in sum, Worldwide had done nothing to purposely avail itself of the benefits of Virginia law or purposely direct its activities towards Roche.¹¹⁵ In effect, this decision means that only a Florida court may exercise personal jurisdiction over Worldwide. This position is logically inconsistent with the idea that an individual can place a web site on the Internet with the knowledge, and perhaps specific intent, that anyone anywhere in the world that is connected to the Internet may access the site and nevertheless be insulated from the jurisdiction of most of the courts where the site is accessed. In fact, it seems that what makes the Internet such an attractive commercial vehicle is its ability to reach such a wide audience. The incongruity lies in the fact that by achieving its apparent purpose of mass exposure, the Worldwide web site becomes immune from the jurisdiction of most state courts.

On the other hand, the potential for nationwide or worldwide jurisdiction is equally as troubling. The “sliding scale” test, like the “minimum contacts” test, attempts to incorporate both the quality and quantity of a defendant’s contacts with the forum state into the analysis. Nevertheless, there seems to be the element of the intent of an Internet web site that is not captured by the quality and quantity analysis of the “sliding scale” test. As a result, this case could spawn a debate about the propriety of the “sliding scale” test as a method of due process analysis and whether it leads to just results. Perhaps the answer is that the underlying constitutional guarantees of due process are so important that we would rather have a plaintiff take his case elsewhere than have a defendant litigate in a distant or inconvenient forum.

¹¹⁵ See *id.* at 718.

306 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 31:3

VII. CONCLUSION

Personal jurisdiction and the Internet is an evolving area of law.¹¹⁶ Nevertheless, the jurisdictional issues that have surfaced by the advent of the Internet are reoccurring ones. Since *International Shoe*, the traditional and, more recently, the cyberspace line of jurisdictional cases have all struggled with how much contact is necessary for the forum state to justify its exercise of jurisdiction.¹¹⁷ Whether its phrased as the "sliding scale" or "minimum contacts," *CompuServe*, *Zippo*, *Rannoch*, and now *Roche*, all demonstrate that courts are still concerned with purposeful availment, "minimum contacts", and "traditional notions of fair play and substantial justice." Clearly, while the Internet has pushed the boundary of these concepts the fundamental concerns remain the same.

Indeed, technological innovation will continue to put pressure on well-established principles of due process. Fortunately, the legal community is well aware of the difficulties that the Internet presents. In July 2000, the American Bar Association issued a report entitled "Achieving Legal and Business Order in Cyberspace: A Report on Global Jurisdiction Issues Created by the Internet."¹¹⁸ While offering some solutions, the report cautions that its propositions are not absolute answers.¹¹⁹ Instead, the authors of the study, the ABA Global Cyberspace Jurisdiction Project, intend for the report to be the beginning of an ongoing dialogue on the issue.¹²⁰

*Ryan Thomas**

¹¹⁶ See *id.* at 717.

¹¹⁷ See Delta, *supra* note 39, at §3.02.

¹¹⁸ James Podgers, *Adapting to a New World*, A.B.A. Journal, November 2000 at 98.

¹¹⁹ See *id.*

¹²⁰ See *id.*

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