

Personal Jurisdiction

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Internet Law

Fall 2007

Class 6

Where We Are

- Introduction
- Part I: Public Law
 - Jurisdiction
 - Free Speech
 - Intermediaries
 - Privacy
- Part II: Private Law

Where We Are (zoomed in)

- Jurisdiction

- Where is Cyberspace?
- No Government?
- Which Government?
- Personal Jurisdiction

In today's class

- Quick review of personal jurisdiction
- *Inset*
- *Zippo*
- *ALS Scan*
- *Westside Story Newspaper*

Review of Jurisdiction

Where can you be sued?

- Do you ?

Choice of Law and Forum. The TOS and the relationship between you and Yahoo! shall be governed by the laws of the State of California without regard to its conflict of law provisions. You and Yahoo! agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara, California.

- Sell things on ?

- Have a  profile?

Personal Jurisdiction

- Absolute prerequisite to suit
- Due Process requires “minimum contacts”
- Comes in general and specific flavors
- Some tests for specific jurisdiction:
 - “purposeful availment”
 - “wrongdoing intentionally directed at”

Inset Systems v. Instruction Set

Inset (1996)

- Inset Systems is a CT corporation
- Instruction Set (ISI) is a MA corporation
 - Instruction + Set = In-set
- Inset registers the INSET trademark
- But ISI gets the Inset.com domain name

Does CT have jurisdiction over ISI?

- The relevant contact is Inset.com itself
 - (Why doesn't 1-800-US-INSET suffice?)
- It's not much of a web site, but it's enough
 - “directed its advertising toward CT”
 - “purposefully availed itself of the privilege of doing business within CT”

The *Inset* test

- Web site = jurisdiction in any state
- At least it has the virtue of being clear
- Too bad it's otherwise utterly untenable

Inset.com today

INSET s.r.o.

<http://inset.com/> Google









► PROFIL SPOLEČNOSTI

► OBORY ČINNOSTI

► CÍLOVÉ OBLASTI

► AKREDITACE

► ZÁKAZNICKÁ ZÓNA

► PROSPEKTY

OBORY ČINNOSTI

ČÍM SE ZABÝVÁME



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- [Geologický a geofyzikální průzkum](#)
- [Diagnostika stavebních konstrukcí](#)
- [Diagnostika zatížení životního prostředí](#)
- [Servis trhačích prací](#)
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AKTUÁLNĚ

14.05.2007
Světový tunelářský kongres
Společnost INSET s.r.o. se zúčastnila světového tunelářského kongresu "ITA/ITES" World Tunnel Congress 2007, který se konal 5.-10. května 2007 v Kongresovém centru v Praze.

02.05.2007
Nové webové stránky
Dnes jsme spustili nové, přehlednější webové stránky. Věříme, že na nich mnohým líbí.

Inset.com today



Zippo Manufacturing v. Zippo Dot Com

Zippo (1997)

- Zippo Manufacturing is a PA company
 - It makes lighters
- Zippo Dot Com is a CA company
 - It sells access to USENET
 - Think of Dot Com as a cross between an ISP and a gigantic discussion board
- They fight over, guess what, Zippo.com



Does PA have jurisdiction?

- Zippo Dot Com has 140,000 subscribers
 - 3,000 (~2%) are Pennsylvanians
 - It has contracts with seven ISPs in Pennsylvania to serve their customers
- Under the *Inset* test, is there jurisdiction?
 - Yes: the right result for the wrong reason

The sliding-scale test

- More interactive = more contacts
- It's an improvement over *Inset*
- Still, it's measuring the wrong thing

Does business

Interactive

Passive



Zippo.com today

Zippo Manufacturing Company

←

→

↺

http://zippo.com/index.aspx

Google

zippo | The name in flame™

Products

Corporate Info

News & Events


Zippo/Case Visitors Center

Repairs

Fun Center

Mini MPL™
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Zippo Lighters Back on Board


U.S. Vintage Grand Prix

ALS Scan v. Digital Service Consultants

ALS Scan . . .

Redacted


Welcome!

http://www.alsscan.com/

ALS Scan
-INCORPORATED-

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>>> members entrance <<<



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- I believe in the principles of the First Amendment which holds that free adults have


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... vs. Digital Service Consultants




Atlanta Georgia ISP - ADSL, SDSL, T1, T3, VPN, COLO, FIREWALL, Web Design/Hosting!

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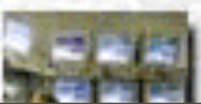
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NETWORK



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Keeping Your Business

What's New

-  [The Gwinnett Business Journal](#) features an article on Digital Service Consultants' affordable high speed **Premium Metro Ethernet** service. Click [HERE](#) to view the article.
- August 6th, 2007
-  DSC is now blocking even **MORE** spam! DSC is cracking down on spam with a variety of tactics in 2007! Some of those features are:

ALS Scan (2002)

- ALS sues Alternative for © infringement
 - The infringement is on Alternative's site
 - Digital is Alternative Products' ISP
- ALS Scan is in Maryland; Alternative and Digital are in Georgia
- Does a Maryland court have jurisdiction over *Digital*?

The *ALS Scan* test:

“[W]e conclude 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.”

Is this a good test?

- How would Alternative have fared under this test? Under *Inset*? Under *Zippo*?
- How would this case have come out under the *Inset* test? Under the *Zippo* test?
- How would this test have handled *Inset*? *Zippo*?
- As jurisdictional tests go, it's not bad, is it?

	ISI	Zippo	Alternative	Digital
Should there be?	Maybe	Yes	Yes	No
Inset	Yes	Yes	Yes	????
Zippo test	No	Yes	Yes	????
ALS test	Maybe	Yes	Yes	No

*Amberson Holdings LLC v.
Westside Story Newspaper*

Westside Story Newspaper

- In this corner, the famous musical.
- And in that corner, a local California newspaper . . .
 - . . . with westsidestory.com . . .
 - . . . hosted on a New Jersey server
- New Jersey obviously has jurisdiction over the hosting company, but over Westside Story? Nuh-uh.

westsidestory.com



westsidestorynewspaper.com

Westside Story Newspaper Online

<http://www.westsidestorynewspaper.com/>

Google

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Personal jurisdiction wrap-up

- Forget *Inset*. In a few years, forget *Zippo*, too. *ALS Scan* is the wave of the future.
- The hard (?) question: when is Internet activity directed “into” a state?
- Not quite internal; not quite external
- ISPs and intermediaries play a major role
- Not a coincidence that 3 / 4 cases involve contested domain names

Next time

The First Amendment saves the Internet