

Presented:36th Annual Page Keeton Civil Litigation ConferenceOctober 25-26, 2012
Austin, TX**Personal Jurisdiction in the Internet Age****Karen C. Burgess
&
Credence Fogo Sol**Author contact information:
Karen C. Burgess
Richardson + Burgess LLP
Austin, TXkburgess@richardsonburgess.com
512-482-8808

Personal Jurisdiction in the Internet Age

Karen C. Burgess & Credence Fogo Sol
Richardson + Burgess LLP
Austin, TX

I. INTRODUCTION

*“When I took office [in 1993], only the high energy physicists had ever heard of what is called the World Wide Web ... Now even my cat has its own web page.”*¹

In today’s world, companies can and do sell products, order materials, store data, conduct meetings, and even hire and supervise company employees over the internet, with no face-to-face (or even voice-to-voice) interaction required.²

A jurisdictional conundrum arises, however, when virtual interactions have real-world consequences, and a party injured either by activity that has taken place over the internet, or in the course of a commercial relationship conducted online, seeks recourse. The traditional indices of the jurisdictional analysis have focused almost exclusively on “physical” contacts like the existence of real property in the state or in-person meetings between the plaintiff and defendant in the forum.

Courts in Texas and around the country have struggled to apply these concepts to the virtual world. So far, most have opted to retain a fairly traditional jurisdictional analysis that “should not be different at its most basic level” from a personal jurisdiction case involving contacts that are truly “personal.”³ At this point, practitioners should avoid relying wholly on internet contacts; wherever possible, they should seek to augment existing internet contacts with contacts of a more traditional nature.

¹ Former President Bill Clinton, announcing the Next Generation Internet Initiative in 1996.

² *Jones v. Beech Aircraft Corp.*, 995 S.W.2d 767, 772 (Tex. App.—San Antonio 1999, pet. dismiss’d. w.o.j.) (“The [i]nternet is a global communications network that makes it possible to conduct business throughout the world entirely from a desktop.”) (*disapproved on other grounds BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 n.1 (Tex. 2002)), *cited in* 2 TEX. PRAC. GUIDE PERS. INJ. 2d 7:234 (2012).

³ *Pervasive Software, Inc. v. Lexware GmbH & Co. KG*, 688 F.3d 214 (5th Cir. 2012), citing 4A Wright & Miller, FED. PRAC. & PROC. § 1073.1, at 322, 327 (3d ed. 2002); *see also Johnston v. Multidata Sys. Intern. Corp.*, 523 F.3d 602, 612-613 (5th Cir. 2008) (no general jurisdiction over company whose two Texas employees worked from home).

II. PERSONAL JURISDICTION PRINCIPLES IN CASES INVOLVING INTERNET CONTACTS

A. General Jurisdiction

1. *General principles*

Before asserting general jurisdiction, the court will make a searching inquiry into a defendant's ties with Texas, and require that the defendant have a conscious and systematic relationship with Texas, in order to hale her into a Texas court to account for actions that took place elsewhere. To put it succinctly, a defendant must have deep, strong ties to Texas, such that anyone could sue her in Texas.

General jurisdiction, unlike specific jurisdiction, does not depend on the claims asserted—it depends on the defendant's long-standing ties to Texas:

A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so “conscious and systematic” as to render them essentially at home in the forum state.⁴

The “continuous corporate operations within a state [must be] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.”⁵ For example, if the Texas court has general jurisdiction over a defendant, a Floridian could sue her in Texas for running a stop sign near Disney World.

There are no cases in which the Texas courts have found the existence of general jurisdiction based solely on internet contacts.⁶ In some other jurisdictions, there are cases that come close, but none that ground general jurisdiction *exclusively* on a defendant's internet contacts.⁷ For example, in *Gator.com Corp. v. L.L. Bean*,⁸ the Ninth Circuit held that the famous Maine retailer L.L. Bean had sufficient contacts with California to permit the exercise of general personal jurisdiction, given its interactive website and extensive marketing and sales in the state. However, in that case, not only

⁴ *Pervasive Software*, 688 F.3d at 230, citing *Goodyear Dunlop Tires Ops., S.A. v. Brown*, ___ U.S. ___, 131 S.Ct. 2846, 2851, 180 L.Ed.2d 796 (2011).

⁵ *Pervasive Software*, 688 F.3d at 221, citing *Int'l. Shoe Co. v. Washington*, 326 U.S. 310, 318, 66 S.Ct. 154, 90 L.Ed. 95 (1945); *see also Johnston*, 523 F.3d at 612-613.

⁶ *See, e.g., Weldon-Francke v. Fisher*, 237 S.W.3d 789 (Tex. App.—Houston [14th Dist.] 2007, no pet.); *Carpenter v. Exelon Corp.*, 2007 WL 3071998 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

⁷ *See also Wright & Miller*, 4A FED. PRAC. & PROC. CIV. § 1073.1 (3d ed. 2012) (noting that no federal district court has found general jurisdiction to exist “based merely upon a defendant's internet contacts”).

⁸ 341 F.3d 1072 (9th Cir. 2003).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Personal Jurisdiction in the Internet Age

Also available as part of the eCourse

[Litigation and Advocacy Bundle 2012](#)

First appeared as part of the conference materials for the
36th Annual Page Keeton Civil Litigation Conference session
"Personal Jurisdiction in the Internet Age"