In light of modern technological advancements, courts across the country are faced with a unique challenge that will have far-reaching ramifications. The challenge comes from the realm known as "cyberspace." The issue to be addressed is inherently difficult given the distinct nature of cyberspace and the Internet, the medium through which it is accessed. Users of the Internet benefit from the medium's ability to reach large audiences. However, this benefit gives rise to one of the most legally troubling features of cyberspace, which is the ability of computer users to transcend physical borders without ever leaving their homes or places of business. Computer users who interact in cyberspace are not likely to be aware of the implications of being in a borderless, technological forum. In effect, they lack the requisite notice of which laws and customs may govern their activity in cyberspace.

As with all media of communication, cyberspace may be the site for violations of personal and commercial rights. The pertinent issue concerns the judiciary's assertion of personal jurisdiction over non-domiciliary defendants who interact with other computer users over the Internet. Courts must decide whether to address these violations under the traditional doctrines of personal jurisdiction or to create a virtual body of law to deal with infractions that occur in a "fictional" place. Many courts have chosen the former over the latter, and in doing so, have arrived at incon-
The traditional test for determining whether a court has personal jurisdiction over an out-of-state defendant requires consideration of the forum state's long-arm statute and the constitutional requirements of due process. In particular, courts must evaluate whether the activity in cyberspace is purposefully directed towards the forum state such that the assertion of jurisdiction would not violate a defendant's due process rights. All states have enacted long-arm statutes which enable a court to exercise its jurisdiction out of the forum state and to bring a nonresident defendant into the state to defend a lawsuit. A number of long-arm statutes provide for the exercise of personal jurisdiction over a non-domiciliary defendant, or a representative of a non-domiciliary defendant, who transacts any business within the state or commits a tortious act within the state. Application of a long-arm statute usually involves consideration of whether or not the non-domiciliary regularly conducts or solicits business in the forum state and whether or not substantial revenues are generated through such interaction.

Courts that have applied long-arm statutes have broadly interpreted such statutes to enhance their powers and permit the exercise of their jurisdiction. The second requirement for the proper exercise of personal jurisdiction is that it be consistent with the notions of due process as provided in the Constitution of the United States. Due process requires a non-domiciliary defendant to have sufficient "minimum contacts" with the forum state such that he/she could reasonably anticipate being haled into court there. Although courts vary in their approaches, satisfaction of the minimum contacts requirement usually involves an analysis of the quality and nature of the defendant's contacts with the state seeking to invoke its jurisdiction over the defendant. General jurisdiction is evidenced by "continuous, systematic and substantial" contacts between the defendant and the forum state. To hold that sufficient minimum contacts exist, a court must find that the nonresident defendant purposefully availed himself to the forum state and that the exercise of jurisdiction is reasonable. By contrast, specific jurisdiction exists when a court has personal jurisdiction over an out-of-state defendant requires consideration of the forum state's long-arm statute and the constitutional requirements of due process. In particular, courts must evaluate whether the activity in cyberspace is purposefully directed towards the forum state such that the assertion of jurisdiction would not violate a defendant's due process rights. All states have enacted long-arm statutes which enable a court to exercise its jurisdiction out of the forum state and to bring a nonresident defendant into the state to defend a lawsuit. A number of long-arm statutes provide for the exercise of personal jurisdiction over a non-domiciliary defendant, or a representative of a non-domiciliary defendant, who transacts any business within the state or commits a tortious act within the state. Application of a long-arm statute usually involves consideration of whether or not the non-domiciliary regularly conducts or solicits business in the forum state and whether or not substantial revenues are generated through such interaction.

10 See CompuServe Inc. v. Patterson, 89 F.3d 1257,1260 (6th Cir. 1996) (holding that Ohio court could properly exercise personal jurisdiction over Texas resident based on use of Internet database); Hearst Corp. v. Goldberger, No. 96 Civ. 3620, 1997 WL 97097 at *1 (S.D.N.Y. Feb. 26, 1997) (holding that defendant from New Jersey is not subject to jurisdiction of New York courts based on Internet web site); Digital Equip., 960 F. Supp. at 466 (holding that Massachusetts' court could exercise jurisdiction over California defendant for alleged trademark infringement involving the Internet); Maritz, Inc. v. CyberGold, Inc., 947 F. Supp. 1328 (E.D. Mo. 1996) (finding that California user was properly subject to jurisdiction in Missouri based on Internet activity); Bensussen Restaurant Corp. v. King, 957 F. Supp. 295 (S.D.N.Y. 1996) (finding that Missouri defendant is not subject to exercise of jurisdiction by New York court based on its web site), aff'd, 126 F.3d 25 (2d. Cir. 1997); and Inset Systems, Inc. v. Instruction Set, Inc., 937 F. Supp. 161 (D. Conn. 1996) (holding that Connecticut court could exercise jurisdiction over Massachusetts defendant as a result of trademark dispute on the Internet).

11 See JAMES Wm. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 108.60[1] (3d ed. 1997). Defines "long-arm statute" as "statutory limits on the exercise of jurisdiction over nonresident defendants." Id.


13 See Moore et al., supra note 11, § 108.60[1].

14 See CONN. GEN. STAT. ANN. § 33-411(c) (West 1958) ( Connecticut long-arm statute); MASS. GEN. LAWS ANN. ch.223A, 3 (West 1985) (Massachusetts's long-arm statute), MO. ANN. STAT. 506.500 ( West 1952) (Missouri's long-arm statute); OHIO REV. CODE ANN. 2307.382(A) (Anderson 1995) (Ohio's long-arm statute).


16 See Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119, 1122 (W.D. Pa. 1997) (noting that even if conduct did not violate a specific provision of the long-arm statute, the court was authorized to exercise its jurisdiction to the "fullest extent" allowed under the Constitution); Maritz, 947 F. Supp. at 1331 (reasoning that although infringing activities occurred "wholly" outside the forum state, the long-arm statute could be properly invoked because the activities had produced an effect in the state).

17 See International Shoe Co. v. Washington, 326 U.S. 310, 315 (1945). Courts must consider whether the state can exact the desired remedy consistently with the due process clause of the Fourteenth Amendment. See id.

18 World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297-98 (1980) (holding that an Oklahoma court does not have personal jurisdiction over a nonresident automobile retailer and its distributor when the defendant's only connection with the forum state was the fact that an automobile sold in New York to New York residents became involved in an accident in Oklahoma).

19 See Bell Paper Box, Inc. v. U.S. Kids, Inc., 22 F.3d 816 (8th Cir. 1994). The Eighth Circuit has set forth a five-part test for measuring minimum contacts: (1) the nature and quality of the contacts with the forum state; (2) the quantity of those contacts; (3) the relation of the cause of action to the contacts; (4) the interest of the forum state in providing a forum for its residents; and (5) the convenience of the parties. See id. at 819 (citing Land-O-Nod Co. v. Bassett Furniture Indus., Inc., 708 F.2d 1388, 1340 (8th Cir. 1987)).


21 Reynolds v. International Amateur Athletic Fed'n, 23
ists if the claim results specifically from the defendant’s contacts with the forum state. Regardless of the distinction, courts must ensure compliance with “traditional notions of fair play and substantial justice.”

Jurisdictional issues involving the use of the Internet create a more difficult problem. As previously suggested, in most instances computer users are unaware that they have transcended physical borders and are subject to the jurisdiction of any state in which their message is received. Hence, application of a state’s long-arm statute to Internet users may not comply with the notion of due process since a user cannot purposefully avail himself of a particular jurisdiction if he has no indication where he is in cyberspace. The confusion which Internet users experience is exacerbated by the different approaches of district courts to the issue of personal jurisdiction. This inconsistency has continued at the appellate level. In this technological era, the courts need to develop a consistent approach for the exercise of personal jurisdiction in causes of action involving the Internet, while simultaneously adhering to the traditional standards of due process.

This Note begins with a brief explanation of the Internet and how personal jurisdiction issues arise. Part II focuses on the early cases involving interactions in cyberspace, and the initial findings by some courts that their exercise of jurisdiction would be inappropriate. Part III examines how courts overcame their resistance and began to take a more assertive approach towards the exercise of their jurisdiction. Part IV addresses the future of personal jurisdiction over users of the Internet. The Note concludes by suggesting the adoption of a flexible standard that is consistent with the traditional notions of fair play and substantial justice required by the Due Process clause.

I. THE INTERNET AND INTERACTIONS IN CYBERSPACE.

The Internet is a global communications network linked principally by modems which transmit electronic data over telephone lines. Physical access to the Internet is established through use of a computer that is directly connected to a computer network (which is itself connected to the Internet) or use of a personal computer with a modem. When Internet users interact in cyberspace, their behavior is likely to give rise to typical legal disputes, such as those involving “promotional sales, breaches of contract, and tortious conduct.” Consequently, there is a question of authority to determine which state court has personal jurisdiction over the actors involved.

F.3d 1110 (6th Cir. 1994). The courts have established a three-part test for minimum contacts to determine whether jurisdiction may be exercised: (1) the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. (2) the cause of action must arise from the defendant’s activities in the forum state. (3) the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum to make the exercise of jurisdiction over the defendant reasonable. See id. at 1116 (citation omitted).

22 See JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE § 108.42[1] (3d ed. 1997). Claims must arise from or be related to defendant’s activities within the state. See id.

23 International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478 (1985). The Supreme Court identified the following factors to consider when evaluating fairness: (1) the burden on the defendant; (2) the forum state’s interest in adjudicating the dispute; (3) the plaintiff’s interest in obtaining convenience and effective relief; (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several States in furthering fundamental substantive policies. See id. (citing World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980)).

24 See Johnson & Post, supra note 6, at 1371. “The Net enables transactions between people who do not know, and in many cases cannot know, each other’s physical location.” Id.


26 See CompuServe, Inc. v. Patterson, 89 F.3d 1257 (6th Cir. 1996). But see Bensusan, 126 F.3d 25.


29 Zembek, supra note 2, at 345-346. "As would be expected, cyber-relationships give rise to legal disputes... One quickly realizes that the actors and activities are real upon examining the underlying facts of typical cyber-actions—promotional sales, breaches of contract, and tortious conduct." (The author gives examples of each of these situations). Id.
II. THE INITIAL RESISTANCE TO EXTEND JURISDICTION

Initially, courts were hesitant to expand their power into the vast world of cyberspace, and therefore, tended to conclude that the exercise of jurisdiction with respect to Internet users would be unreasonable. For instance, when the federal district court in Ohio first grappled with the issue of jurisdiction in *CompuServe, Inc. v. Patterson*, the court determined that enabling the user's contacts with the forum to subject the user to personal jurisdiction in the forum where the service provider is located would be "manifestly unreasonable." The issue arose as the result of a dispute between a Houston, Texas resident, Richard Patterson, who entered into software agreements with CompuServe, which was then located in Columbus, Ohio, via his computer. CompuServe provided Internet access on its network to subscribers who entered the system through their own hardware and telephone line. The agreements provided a means by which Patterson could distribute his software programs to other Internet users. Patterson eventually became disgruntled when CompuServe began to market its own comparable program, and a dispute alleging trademark infringement ensued. CompuServe brought a declaratory judgment action in Ohio's Southern District, and Patterson subsequently moved to dismiss the complaint based on lack of personal jurisdiction.

In support of Ohio's jurisdiction, CompuServe argued that the Agreement was made and performed in Ohio, the product's locus was in its server in Columbus, Ohio, and that Patterson had sufficient contacts with the forum state. Despite CompuServe's assertions, the court noted that the nature of Patterson's contacts with Ohio residents was not sufficient enough to establish that Patterson had purposefully availed himself to the laws of the state. In doing so, the court reiterated that physical entry into the state was not necessary to the assessment of whether the nonresident purposefully availed himself. The court further ruled that Ohio courts lacked jurisdiction since Patterson's contacts did not even give rise to the cause of action. Finally, in holding that Patterson's contacts with Ohio were too tenuous to establish jurisdiction, the court acknowledged that to hold otherwise would simply be unfair.

Another instance where a court was hesitant to conclude that it had jurisdiction over a conflict arising out of dealings involving computer networks was *Pres-Kap, Inc. v. System One, Direct Access, Inc.* In *Pres-Kap*, the non-domiciliary defendant was a business owned and operated in New York.

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31 Id. at *20-21. (noting that this issue does not differ from the standard out of state customer dispute and that any court would have a difficult time concluding the exercise of personal jurisdiction was proper).
32 See id. at *4.
33 See id. at *2.
34 Id. Patterson and CompuServe entered into a user Agreement which provided that: "The CompuServe information service . . . consists of computing and information service and software, information and other content provided by CompuServe Incorporated ("CompuServe"). In addition, third parties provide information, software, and other content . . . which may be accessed over the Service." Id.
35 CompuServe, 1994 U.S. Dist. Lexis 20352 at *3. "This lawsuit arises out of certain software which Patterson claims to have developed, and which is entitled "WinNav," "Windows Navigator," and "FlashPoint Windows Navigator." Id. Sometime in late 1993, CompuServe announced to its users that it had developed, and would soon be releasing, a Windows version of a program to be entitled "CompuServe Navigator." Id. As a result of this announcement, Patterson advised CompuServe of his claim to a common law trademark in the names "WinNav," "Windows Navigator," and "FlashPoint Windows Navigator," and suggested that if CompuServe released its software, it would be violating his trademark rights." Id.
36 See id. at *3-4.
37 See id.
38 CompuServe, 1994 U.S. Dist. Lexis 20352 at *16-17 (characterizing the relationship as a "minimal course of dealing" since an independent, ongoing relationship was not contemplated).
39 See id. at *11. Although physical entry into the forum state is not necessary in order for the Court to find that a defendant has purposefully availed himself of the privilege of conducting business there, there is a requirement that the connection between the defendant's activities and the forum state be more than incidental before jurisdiction can constitutionally be exercised. See id. (citation omitted).
40 See id. at *18 (noting that CompuServe relied on defendant's status as a CompuServe user, when in fact, the use of the network is incidental to the trademark dispute between the parties).
41 See id. at *20-21. It would be manifestly unreasonable for this or any Ohio court to exercise jurisdiction over this case. Id.
43 See id. at 1952.
Pres-Kap, the plaintiff, was headquartered in Miami, Florida, but maintained a branch office in New York. The defendant contracted with representatives of Pres-Kap in its New York offices to lease computer terminals which accessed the main computer base in Miami. Despite the facts that the payments were made to the Miami office and the computer database accessed by the defendant was located in Miami, the state trial court in Florida found that there were not sufficient minimum contacts for System One, Direct Access to expect to have to defend against suit in Florida.

In its analysis, the Florida court suggested that the nature of "on-line" computer services is such that to bring suit at the site of the central database would be inefficient. The court also noted the recent flourish in contractual arrangements entered into on-line, and the unreasonableness of subjecting users to the jurisdiction of the database's location. Of particular importance was the potential detriment to commercial transactions and research efforts that are conducted on-line. For example, the costs of defending against litigation in numerous states may make the operation of a web site more expensive. Similarly, access to the Internet is indispensable to the research efforts of educational institutions and manufacturers.

III. THE RECOGNITION THAT JURISDICTION EXISTS: THE TRANSITION FROM AN ASSERTIVE APPROACH TO ADOPTION OF REASONABLE STANDARDS.

Despite the initial resistance of the CompuServe and Pres-Kap courts to exercise personal jurisdiction over Internet users, other courts began to approach the issue of jurisdiction differently as the number of Internet controversies increased. Some courts were not in awe of the technological prowess of the Internet and dispelled with the notion that the exercise of jurisdiction would be tantamount to a claim of worldwide jurisdiction. These courts realized that, inevitably, the exercise of judicial power can provide Internet users with a sense of security and enable users to take advantage of the technological phenomenon. The following section outlines this approach.

A. Violations of Federal Statute

The first case of note is United States v. Thomas, in which the defendant was found guilty of advertising and displaying sexually explicit materials on his electronic bulletin board. Among defendant's arguments was his claim the exercise of jurisdiction was improper based on the fact that he did not have knowledge of the transmissions of phone lines linked to supplier databases located in other states. See id.

See id. at 1351.

See id. at 1352.

See id.

See id. at 1353. "It is settled law that an individual's contract with an out-of-state party can[not] automatically establish sufficient minimum contacts in the other party's home forum to support an assertion of in personam jurisdiction against the out-of-state defendant." Pres-Kap, 636 So. 2d at 1353 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478 (1985)).

See supra, note 42 and accompanying text. "The additional factor in this case that the computer database for the contracted-for information happens to be located in Florida cannot change this result." Pres-Kap, 636 So. 2d at 1353.

See Pres-Kap, 636 So. 2d at 1353. The court expressed dismay that users of such "on-line" services could be haled into court in the state in which a supplier's billing office and database happen to be located. Id.

See id. "Across the nation, in every state, customers of "on-line" computer information networks have contractual arrangements with out-of-state supplier companies . . . Lawyers, journalists, teachers, physicians, courts, universities, and business people throughout the country daily conduct various types of computer-assisted research over tele-

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44 See id. at 1351.
45 See id. at 1352.
46 See id.
47 See id. at 1353. "It is settled law that an individual's contract with an out-of-state party can[not] automatically establish sufficient minimum contacts in the other party's home forum to support an assertion of in personam jurisdiction against the out-of-state defendant." Pres-Kap, 636 So. 2d at 1353 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478 (1985)).
48 See supra, note 42 and accompanying text. "The additional factor in this case that the computer database for the contracted-for information happens to be located in Florida cannot change this result." Pres-Kap, 636 So. 2d at 1353.
49 See Pres-Kap, 636 So. 2d at 1353. The court expressed dismay that users of such "on-line" services could be haled into court in the state in which a supplier's billing office and database happen to be located. Id.
50 See id. "Across the nation, in every state, customers of "on-line" computer information networks have contractual arrangements with out-of-state supplier companies . . . Lawyers, journalists, teachers, physicians, courts, universities, and business people throughout the country daily conduct various types of computer-assisted research over tele-
51 See id. at 1351.
52 See id. at 1353. The court expressed dismay that users of such "on-line" services could be haled into court in the state in which a supplier's billing office and database happen to be located. Id.
obscene materials at the time they occurred.\textsuperscript{55} However, in this instance, the defendant was violating a federal statute which made it \textit{per se} illegal to transmit obscene material.\textsuperscript{56} Accordingly, the Sixth Circuit determined that jurisdiction was proper in every judicial district from, through, or into which the obscene material moved.\textsuperscript{57} Although \textit{Thomas} was significant because a federal statute was involved, the holding at that time represented a clear shift towards more assertive exercises of jurisdiction.

B. The Trademark Examples

Other examples of cases in which courts exercised their personal jurisdiction over nonresident defendants continued to emerge. For example, in \textit{Inset Systems, Inc. v. Instruction Set, Inc.},\textsuperscript{58} the United States District Court in Connecticut determined that the Internet advertisements of a Massachusetts corporation which solicited business in Connecticut were of a sufficient nature to invoke the Connecticut long-arm statute.\textsuperscript{59} The court also held that the Massachusetts corporation’s advertisements were sufficient minimum contacts to support the exercise of jurisdiction.\textsuperscript{60} Inset, which is located in Connecticut, developed and marketed computer software on a global basis.\textsuperscript{61} Instruction Set, which was located in Massachusetts, provided computer technology and support to organizations throughout the world.\textsuperscript{62} Inset registered the name “INSET” as its trademark.\textsuperscript{63} Meanwhile, Instruction obtained the name “INSET.COM” as its Internet domain address.\textsuperscript{64} Inset’s main concern was that since the domain name was identical to the trademark name, users might inadvertently contact an unintended company and the result would be “confusion in the marketplace.”\textsuperscript{65}

The court reached its decision regarding the applicability of the long-arm statute despite the fact that the defendant did not have any employees or offices in Connecticut and the finding that it did not conduct business in Connecticut on a regular basis.\textsuperscript{66} The basis for the court’s conclusion was its reliance on a provision of the Connecticut long-arm statute which provides that an out-of-state defendant will be subject to suit in the state if a cause of action arises out of business which has repeatedly been solicited in the state.\textsuperscript{67} Solicitation of a sufficient repetitive nature was found to exist based on the number of Internet access sites in Connecticut.\textsuperscript{68} Of particular importance was the observation that, unlike hard-copy advertisements, Internet advertisements are not easily disposed of and can be accessed repeatedly by potential consumers.\textsuperscript{69} As a result, once the contacts are initiated they are continually maintained.

In its minimum contacts analysis, the \textit{Inset} court focused on whether or not the defendant could reasonably anticipate being haled into court in

\textsuperscript{55} See \textit{Thomas}, 74 F.3d at 709. Defendants argued that government agent, without their knowledge, accessed and downloaded the files at issue. \textit{See id.}

\textsuperscript{56} See 18 U.S.C.A. \S 1465 (West 1995 Supp.) and \textit{Thomas}, 74 F.3d at 709. “To establish a Section 1465 violation, the Government must prove that a defendant knowingly used a facility or means of interstate commerce for the purpose of transmitting obscene materials... Section 1465 does not require the Government to prove that Defendants had specific knowledge of the destination of each transmission at the time it occurred.” \textit{Thomas}, 74 F.3d at 709.

\textsuperscript{57} See \textit{Thomas}, 74 F.3d at 709.


\textsuperscript{59} \textit{See id.}

\textsuperscript{60} \textit{See id.} at 164-65. “Solicitation of business” was found to exist because defendant had repeatedly solicited business within the forum state via its internet advertisement and the availability of its toll-free number. \textit{Id.}

\textsuperscript{61} \textit{See id.} at 162.

\textsuperscript{62} \textit{See id.}

\textsuperscript{63} Inset Systems, 937 F. Supp. at 163.

\textsuperscript{64} \textit{Id.}

\textsuperscript{65} \textit{Id.}

\textsuperscript{66} \textit{See id.} at 162-164.

\textsuperscript{67} \textit{See id.} at 164. The Connecticut long-arm statute, C.G.S. \S 33-411(c)(2) states that: Every foreign corporation shall be subject to suit in this state, by a resident of this state... on any cause of action arising... (2) out of any business solicited in this state... if the corporation has repeatedly solicited business, whether the orders or offers relating thereto were accepted within or without the state....


\textsuperscript{68} \textit{See id.} “[Defendant] has been continuously advertising over the Internet, which includes at least 10,000 access sites in Connecticut.” \textit{Id.}

\textsuperscript{69} \textit{See id.} (noting that Internet advertisements are unique because they are in electronic printed form).
Connecticut. The court found that the Massachusetts corporation had purposefully availed itself of the privilege of doing business in Connecticut, and therefore could reasonably anticipate having to defend against a lawsuit there, primarily because it had established a toll-free number in conjunction with its Internet advertisements. The implication of this conclusion is obvious; such reasoning would subject the defendant to jurisdiction not only in Connecticut but potentially in all fifty states. In *Inset*, the court also assumed that the traditional notions of fair play and substantial justice would not be compromised if the case were to be adjudicated in Connecticut because the distance between the forum state and the defendant’s home state was “minimal.”

In *Maritz, Inc. v. CyberGold, Inc.*, a United States District Court for the Eastern District of Missouri likewise held that a forum state could properly exercise jurisdiction over a defendant who had advertised over the Internet. In this instance, the non-domiciliary defendant operated an Internet server in California, which allowed users to sign onto a mailing list to receive advertisements. The site was not yet operational; it merely promoted the upcoming service to be provided. The plaintiff, a corporation located in Missouri, filed suit claiming trademark infringement and unfair competition. In response, CyberGold argued that the only alleged contact with the state of Missouri resulted from the mere fact that its web site was accessible to Missouri residents. Furthermore, Cybergold argued, the number of times Missouri residents had accessed the site was only 311, and 180 of those times were by the plaintiff and its employees. The court reasoned that Missouri’s long-arm statute was applicable because Maritz had suffered economic harm and injury in the state of Missouri as a result of the defendant’s behavior.

The court’s evaluation of due process focused on the quality and nature of CyberGold’s contacts. Although CyberGold sought to characterize its web site as merely “passive,” the district court found otherwise. The court’s conclusion that CyberGold “consciously” decided to transmit its advertisement appeared to satisfy the requirement of purposeful availment. Yet, in the same breath, the court acknowledged that CyberGold’s web site “automatically and indiscriminately” responded to each user who accessed the web site. The court offered no explanation as to how a defendant can purposefully avail himself of the benefits of a jurisdiction when he has no discretion or control as to where the site will be accessed. The only support is found in the court’s suggestion that since technology has made transactions simpler and more feasible, the permissible scope of jurisdiction exercisable by the courts must be enhanced in order to keep pace.

C. Reversal of *CompuServe, Inc. v. Patterson*

The view that a more expansive exercise of jurisdiction over Internet activity is necessary lead the United States Court of Appeals for the Sixth Circuit to reverse the holding of *CompuServe, Inc. v. Patterson*. In its opinion, the court held that the non-domiciliary defendant had purposefully availed himself of the benefits of doing business outside of Missouri, because the allegedly infringing activities have produced an effect in Missouri as they have allegedly caused Maritz economic injury. The website invites internet users to use CyberGold’s new service when it becomes operational. This service and the promotional efforts that CyberGold is employing by posting the information on its website are allegedly infringing on plaintiff’s alleged trademark. Through its website, CyberGold had consciously decided to transmit advertising information to all internet users, knowing that such information will be transmitted globally.

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70 See *id.* (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). “[Due Process] limitations require that a nonresident corporate defendant have ‘minimum contacts’ with the forum state such that it would reasonably anticipate being haled into court there.” *Id.*
71 See *Inset Systems*, 937 F. Supp. at 165.
72 See *id.*
74 See *id.*
75 See *id.* at 1330.
76 See *id.*
77 See *id.* at 1329. Maritz, Inc. asserts that CyberGold’s web site acts as a state-wide advertisement for CyberGold’s forthcoming service, and through the web site, CyberGold is “actively soliciting” customers from Missouri. *Id.*
78 See *Maritz*, 947 F. Supp. at 1330.
79 See *id.*
80 See *id.* at 1331. “[T]he court concludes that Missouri’s long-arm statute reaches the defendants, even assuming CyberGold’s allegedly infringing activities were wholly
81 Id. at 1333. “The website invites internet users to use CyberGold’s new service when it becomes operational. This service and the promotional efforts that CyberGold is employing by posting the information on its website are allegedly infringing on plaintiff’s alleged trademark.” *Id.*
82 *Maritz*, 947 F. Supp. at 1330. “Through its website, CyberGold had consciously decided to transmit advertising information to all internet users, knowing that such information will be transmitted globally.” *Id.*
83 See *id.*
84 See *id.* at 1334 (quoting California Software Inc. v. Reliability Research, Inc., 631 F. Supp. 1356, 1363 (C.D. Cal. 1986) (suggesting that the scope of courts should be broadened in response to technological advancements)).
in the forum state, that the cause of action arose from the defendant’s contacts with the forum state, and that the subsequent exercise of jurisdiction was reasonable.86

In its approach, the Sixth Circuit Court focused on whether Patterson’s contacts with the state where the computer network service was headquartered were “substantial.”87 Of particular importance was Patterson’s written contract with CompuServe which specified that the transactions would be governed by Ohio law.88 But the contract alone was not the decisive factor. The court’s finding of minimum contacts was also based on Patterson’s injection of his software into the stream of commerce.89 Beyond finding that Patterson had “consciously” reached out from Texas to Ohio to subscribe to CompuServe,90 the court emphasized that Patterson had “originated and maintained” his contacts with CompuServe.91 The court also determined that Ohio’s exercise of jurisdiction was reasonable because, although defending the suit in Ohio would be burdensome to Patterson, he did voluntarily place his software on CompuServe’s Ohio-based system.92

D. Pulling Back the Reins—The Search for a More Reasonable Approach

In the past year, the approaches to jurisdiction implemented by courts have demonstrated more reasoned analysis and greater consistency. The United States District Court for the Southern District of New York has been very successful in developing a thoughtful, reasoned framework to determine the proper exercise of jurisdiction. Among the district court’s opinions setting forth a concise analysis is Hearst Corp. v. Goldberger.93 In Hearst, the court determined that New York courts lacked jurisdiction over a non-domiciliary defendant whose Internet web site was merely accessible to New York residents.94 The defendant in Hearst was an attorney who lived in New Jersey and worked as an associate at a law firm in Philadelphia.95 Goldberger developed a network, accessible by computer, to provide legal support services to individual attorneys.96 At the time of the proceeding, the web site was not yet operational, but merely consisted of a home page that briefly described the services Goldberger planned to offer.97 Hearst, which publishes the ESQUIRE magazine, argued that Goldberger’s domain name, “ESQUIRE.COM,” infringed on its trademark.98

In its opinion, the Hearst court acknowledged that the issue of personal jurisdiction based solely on plaintiffs accessing a web site from their jurisdiction has split the federal district courts.99 The court adopted the approach that resolution of the issue must be made by analogy to existing, non-Internet case law.100 The relevant portion of the New York long-arm statute requires that the non-domiciliary defendant transact business in the state and the cause of action must arise out of such a transaction for jurisdiction to lie in New York.101 While considering the nature and quality of Goldberger’s contacts, the court noted that the web site at issue was not targeted at the residents

86 See id.
87 Id. at 1264.
88 Id.
89 Id. at 1265, citing Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102 (1987) (“The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.”).
90 See id. at 1266. “Patterson consciously reached out from Texas to Ohio to subscribe to CompuServe, and to use its service to market his computer software on the Internet.” CompuServe, 89 F.3d at 1266.
91 Id. (focusing on defendant’s repeated use of electronic and regular mail for messages to CompuServe and the posting of a message on one of CompuServe’s electronic forums).
92 See id. at 1267. Someone like Patterson who employs a computer network service like CompuServe to market a product can reasonably expect disputes with that service to yield lawsuits in the service’s home state. See id. at 1268.
94 See id. at *1 (finding that defendant has not contracted to sell or actually sold any products or services to computer users in the forum state).
95 See id. at *3.
96 See id. Goldberger came up with the idea to "create an electronic law office infrastructure network that would provide individual attorneys, via computer, with legal support services equivalent to those available to lawyers practicing in large law firms." Id.
97 See id. at *4.
98 Hearst, 1997 WL 97097, at *3. The complaint alleges that Hearst’s ESQUIRE and ESQ marks “have acquired tremendous secondary meaning” and that those marks are “inherently distinctive, nonfunctional, strong and famous marks entitled to a very broad scope of protection.” See id.
99 See id. at *7.
100 See id.
101 See id. at *8 (quoting Rolls-Royce Motors, Inc. v. Charles Schmitt & Co., 657 F. Supp. 1040, 1051 (S.D.N.Y. 1987)).
of New York or any other particular state. The court referred to previous instances which held that advertisements directed towards the New York market and the use of an 800 number were insufficient to satisfy the transaction of business requirement. Goldberger’s contacts were even less intrusive since he had not sold any products; the site was merely an announcement. The court reasoned that since the web site was “analogous to an advertisement in a national publication,” it did not constitute sufficient contacts with New York to provide the court with jurisdiction. The court also rejected Hearst’s argument that Goldberger’s contacts with New York residents by e-mail were sufficient to establish jurisdiction. In doing so, the court compared the transmittal of e-mail messages to a resident in New York to the act of sending a single letter or engaging in a telephone conversation. The court reasoned that the mere creation of a web site accompanied by a telephone number to order the advertised product was an offer to sell directed to the forum state. In denying the assertion of jurisdiction, the court focused on whether the creation of a web site accompanied by a telephone number to order the advertised product was an offer to sell directed to the forum state. In denying the assertion of jurisdiction, the court focused on the fact that it takes several affirmative steps by the New York residents to obtain access to the web site and to use the information there. Furthermore, “the mere fact that a person can gain information on the allegedly infringing product is not the equivalent of a person advertising, promoting, selling or otherwise making an effort to target its product in New York.” While focusing on the quality and nature of the defendant’s contacts, the court concluded that the mere creation of the web site does not constitute sufficient minimum contacts.

The appellate court acknowledged that flexible application of the traditional standards for personal jurisdiction was necessary to establish precedent with regard to the Internet. The court strictly construed New York’s long-arm statute to require that the non-domiciliary defendant or his agent must commit a tortious act in New York for jurisdiction to apply. The court further declared that mere injury in New York would not suffice. With regard to foreseeability, the court

See id. at *10.

See id. at *12.

See id. at *13. "In short, neither Goldberger’s ES-QWIRE Internet web site, which is the equivalent of an advertisement in a national publication, nor his e-mails, which are equivalent to letters or telephone calls, are sufficient to provide this Court with personal jurisdiction over Goldberger under CPLR § 302 (a)(1).” Id. (emphasis added).

See id. at *12. “Letters and telephone calls from outside New York to people in New York are not sufficient to establish personal jurisdiction under CPLR § 302(a)(1) or the due process clause.” Id. (citations omitted).

See Hearst, 1997 WL 97097, at *16. “Because the Web enables easy worldwide access, allowing computer interaction via the web to supply sufficient contacts to establish jurisdiction would eviscerate the personal jurisdiction requirement as it currently exists.” Id. (citing McDonough v. Fallon McElligott, Inc., No.95-4037, slip op. (S.D. Cal. Aug. 6, 1996)).

See id. at *13. "In short, neither Goldberger’s ES-QWIRE Internet web site, which is the equivalent of an advertisement in a national publication, nor his e-mails, which are equivalent to letters or telephone calls, are sufficient to provide this Court with personal jurisdiction over Goldberger under CPLR § 302 (a)(1).” Id. (emphasis added).

See Hearst, 1997 WL 97097, at *16. “Because the Web enables easy worldwide access, allowing computer interaction via the web to supply sufficient contacts to establish jurisdiction would eviscerate the personal jurisdiction requirement as it currently exists.” Id. (citing McDonough v. Fallon McElligott, Inc., No.95-4037, slip op. (S.D. Cal. Aug. 6, 1996)).

“Even if Bensusan suffered injury in New York, that does not establish a tortious act in the state of New York within the meaning of § 302 (a)(2).” Id.
reasoned that King did not derive substantial revenues from the interstate commerce, and that the business operation was essentially of a "local character."  

IV. THE FUTURE OF PERSONAL JURISDICTION IN CYBERSPACE

As alluded to earlier, one of the most difficult issues posed by cyberspace is determination of the applicable laws and customs. The fact that online users are "real" people engaging in "real" transactions draws the obvious conclusion that traditional legal doctrines for personal jurisdiction are applicable. Even those who argue that traditional legal paradigms should not apply to cyberspace communities acknowledge that interactions in cyberspace have effects in real world jurisdictions. Consequently, the United States District Court for the Eastern District of Missouri was mistaken when it determined that analogies to existing legal notions were not sufficient. The District Court for the Southern District of New York properly recognized in *Hearst* that the more reasonable approach is to analogize cyberspace jurisdictional issues with traditional case law. In following this approach, the courts will be able to maintain consistent standards and avoid punishing the Internet for its utility.

Consider, for example, the striking similarities between the facts of *Maritz* and *Hearst*. Both instances involved a web site which was not yet operational and provided a telephone number for further information. The court in *Maritz* decided that CyberGold's decision to transmit its advertisement in cyberspace, coupled with the knowledge that it will be transmitted globally, was enough to establish "purposeful availment." However, by comparing advertisements in cyberspace to the traditional realm of advertising in a publication, the *Hearst* opinion suggests that the scope of an advertisement is usually not critical to the determination of jurisdiction. Furthermore, the web sites at issue in both *Maritz* and *Hearst* merely advertised services to be provided in the future and allowed Internet users to sign-up to receive the services. Such activity can hardly be characterized as "solicitation" of such a nature so as to constitute the transaction of business.

While the differences in opinions might be most recognizable in the decisions regarding advertising on the Internet, the proper analysis for whether personal jurisdiction exists is best exemplified by comparing the advertising cases to a case involving contractual relations. Close examination of the nature of contacts reveals a critical distinction. For instance, the court in *Maritz* rejected CyberGold's claim that it merely maintained a "passive" web site. The court's ruling that the mere transmission of advertising informa-

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120 See *id.

121 See Zembek, *supra* note 2, at 346. "Some commentators clearly believe a new body of jurisprudence is required to address the emerging cyber-action. The commentators go so far as to argue that both electronic communities and entities, so called "virtual communities" and "e-persons," have bred from the free flow of information and compilation of cyber-relationships. *Id.* The basic premise underlying these unprecedented communities and persons is that cyberspace is a world unto itself, and because cyberspace is a fictional world, it can have only fictional actions and places. *Id.* There is no need to waste time with these unnecessary, albeit creative, fictional legal models. *See id.* Traditional legal notions do fit complex cyberspace questions once one realizes that both the actors and activities are real. *Id.* (citations omitted).

122 See Byassee, *supra* note 8, at 199. "The interactions between users in cyberspace have effects in real world jurisdictions, and the inhabitants of cyberspace are also citizens of a physical jurisdiction." *Id.*

123 See *Maritz*, Inc. v. CyberGold, Inc., 947 F. Supp. 1328, 1332 (E.D. Mo. 1996). "Because the internet is an entirely new means of information exchange, analogies to cases involving the use of mail and telephone are less than satisfactory in determining whether the defendant has "purposefully availed" itself to this forum." *Id.*

124 See *Hearst Corporation* v. Goldberger, No. 96 Civ. 3620, 1997 WL 97097, at *7 (S.D.N.Y. Feb. 26, 1997). "Unless and until Congress or the New York legislature enacts Internet specific jurisdictional legislation, however, the Court must employ New York's existing jurisdictional statutes, CPLR § 301 and 302, and analogize to presently existing, traditional, non-Internet personal jurisdiction case law." *Id.*

125 See *Maritz*, 947 F. Supp. at 1332. "Unlike the use of the mail, the internet, with its electronic mail, is a tremendously more efficient, quicker, and vast means of reaching a global audience." *Id.*

126 See *id.* at 1328; *Hearst Corp.*, 1997 WL 97097.

127 See *Maritz*, 947 F. Supp. at 1333. "Through its web site, CyberGold has consciously decided to transmit advertising information to all internet users, knowing that such information will be transmitted globally." *Id.*

128 See *Hearst Corp.*, 1997 WL 97097 at *10 (noting that under New York law, advertisements in national publications are not sufficient to provide personal jurisdiction under the relevant long-arm statute).

129 See *Maritz*, 947 F. Supp. at 1333 (noting that the web sites "invites" internet users to use the service when it becomes operational); and *Hearst*, 1997 WL 97097 at *4 (describing web site consisting of brief description of services non-domiciliary plans to offer).

130*Id.*
tion is contact of a sufficient nature to warrant jurisdic-
tion is logical in the modern era of computerization.\textsuperscript{131} The court ignores that one of the features of the Internet is the global availability of information at the time it is posted in cyberspace.\textsuperscript{132} The court in \textit{Bensusan} was faced with similar facts, but there the court held that the nature of the advertisement on the Internet was passive since it required “affirmative steps” by the residents of the forum state.\textsuperscript{133}

\textit{CompuServe, Inc. v. Patterson} marks a departure from previous cases concerning advertising.\textsuperscript{134} The activity in \textit{CompuServe} can accurately be described as active, since the non-domiciliary defendant entered into contractual agreements with the plaintiff in the forum state and repeatedly sent his software to the servers there.\textsuperscript{135} The distinguishing feature in \textit{CompuServe} is the fact that the defendant sought out the Ohio server and engaged in a contract to be governed by Ohio law.\textsuperscript{136} Justification of the decision in \textit{CompuServe} lies in the court’s reasonable interpretation of the term “transaction of business.” In particular, the analysis is whether the non-domiciliary contracted for the sale of goods, transmitted the goods, or engaged in correspondence of a nature more intrusive than a single telephone call or a letter via mail.

Analysis of the second requirement for personal jurisdiction, that is, compliance with the provisions of due process, is simplified if a more objective standard of transacting business is adopted. The most obvious provision is whether the non-domiciliary could reasonably anticipate being haled into the court of a given jurisdiction.\textsuperscript{137} As previously suggested, cyberspace is all-encompassing and, therefore, makes it difficult for users to know with whom or where they are interacting.\textsuperscript{138} At least one court has determined that the exercise of jurisdiction is proper only when the nonresident expects or “should reasonably expect the tortious act to have consequences in the state.”\textsuperscript{139} Adoption of a clearer meaning of the term “transaction of business” would eliminate the subjectiveness of this evaluation.

Furthermore, it has been acknowledged that a finding of jurisdiction based solely on maintenance of a web site would mean there would be worldwide jurisdiction over anyone who establishes a web site.\textsuperscript{140} Courts have held that merely placing an item into the “stream of commerce” is sufficient to support the exercise of jurisdiction.

\begin{itemize}
\item \textsuperscript{131} \textit{See} \textit{Maritz}, 247 F.Supp. at 1333. “Thus, CyberGold’s contacts are of such a quality and nature, albeit a very new quality and nature for personal jurisdiction jurisprudence, that they favor the exercise of personal jurisdiction over defendant.” \textit{Id.}
\item \textsuperscript{132} \textit{See} David L. Stott, \textit{Personal Jurisdiction in Cyberspace: The Constitutional Boundary of Minimum Contacts Limited to a Web Site}, 15 J. MARSHALL J. COMPUTER & INFO. L. 819 (1997). “Additional activity beyond a product entering a forum through the stream of commerce is an important requirement for the minimum contacts analysis because of the very nature of the Internet. By nature, once information is posted on the Internet, that information is instantly in the stream of commerce on a world-wide basis.” \textit{Id.} at 840.
\item \textsuperscript{133} \textit{Bensusan Restaurant Corp. v. King}, 937 F. Supp. 295, 299 (S.D.N.Y. 1996). It takes several affirmative steps by the New York resident, however, to obtain access to the Web site and utilize the information there. \textit{See id.} \textit{See also} ACLU v. Reno, 929 F. Supp. 824, 845 (E.D. Pa. 1996). “Although content on the Internet is just a few clicks of a mouse away from the user, the receipt of information on the Internet requires a series of affirmative steps more deliberate than merely turning a dial.” \textit{Id.}
\item \textsuperscript{134} \textit{See generally} \textit{CompuServe, Inc. v. Patterson}, 89 F.3d at 1257 (6th Cir. 1996).
\item \textsuperscript{135} \textit{Id.} at 1264. \textit{See also} Stott, \textit{supra} note 132, at 839-840. “Thus, Patterson’s shareware contract with CompuServe was the additional action required to meet the purposeful availment requirement for minimum contacts.” \textit{Id.}
\item \textsuperscript{136} \textit{See} \textit{CompuServe}, 89 F.3d at 1260. “Both the SRA (Shareware Registration Agreement) and the Service Agreement expressly provide that they are entered into in Ohio, and the Service Agreement further provides that it is to “be governed by and construed in accordance with” Ohio law.” \textit{Id.}
\item \textsuperscript{137} \textit{See} World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).
\item \textsuperscript{138} \textit{See} Stott, \textit{supra} note 132, at 826. “[T]he nature of cyberspace allows Internet users to access a Web site without any awareness of the jurisdiction in which the Web site resides.” \textit{Id.} \textit{See also} Johnson & Post, \textit{supra} note 6, at 1371. “The Net enables transactions between people who do not know, and in many cases cannot know, each other’s physical location.” \textit{Id.}
\item \textsuperscript{139} \textit{Bensusan Restaurant Corp. v. King}, No. 96-9344, 1997 WL 560048, at *4 (2d Cir. Sept. 10, 1997).
\item \textsuperscript{140} \textit{See} Playboy Enterprises, Inc. v. Chuckleberry Pub., Inc., 939 F. Supp. 1052, 1059-1040 (S.D.N.Y. 1996). [Defendant] cannot be prohibited from operating its Internet site merely because the site is accessible from within one country in which its product is banned. To hold otherwise would be tantamount to a declaration that this Court, and every other court throughout the world, may assert jurisdiction over all information providers on the global World Wide Web. \textit{Id.} (citations omitted). \textit{See also} Johnson & Post, \textit{supra} note 6, at 1375 (arguing that territorial regulation of online activities serves neither the legitimacy nor the notice justifications).
\end{itemize}
under the Due Process Clause. In accordance with this overly expansive approach, it is argued that in cyberspace, the creation of a web site is equivalent to the placing of a product into the stream of commerce. However, the creation of a web site alone does not constitute a requisite physical act, and consequently, there is no such placement into the stream of commerce. Likewise, the view that awareness that a product is marketed in a forum eliminates any unfairness and is sufficient to warrant the exercise of jurisdiction is inappropriate given the accessibility of the Internet.

IV. CONCLUSION

Since the Internet is a relatively new medium that is constantly expanding, flexible application of the traditional notions of personal jurisdiction is necessary to ensure that justice is served. Specifically, long-arm statutes and the requirements of due process must be applied not with blinders, but rather with a degree of creativity that enables courts to properly evaluate whether they have personal jurisdiction over a non-domiciliary defendant. To do so, the term “transaction of business” must be applied with consistency and should only include those activities which objective, reasonable persons would expect it to include.

Despite the potential for widespread abuse, courts must realize that extension of jurisdiction will hinder the free flow of commerce and discourage technological advancements. This is not to suggest that improper contacts or tortious conduct should be tolerated. Parties should not be free to commit tortious acts in cyberspace under the claim that their behavior cannot be challenged in the home jurisdiction of the person harmed. On the contrary, there should be a duty of disclosure to inform computer users who interact in cyberspace of the laws and customs to which they are subject. For example, businesses should have a duty of inquiry before entering into commercial transactions over the Internet, and should stipulate as to what law governs.

Finally, courts must realize that the posting of a web page is not “purposeful availment,” and that mere accessibility in the forum state without more should not constitute the requisite nexus between the harmful behavior complained of and the resultant injury. Courts must be wary that if they assert their jurisdiction over transactions which arise in cyberspace, they are arguably threatening to subject all Internet users to their jurisdiction. There is the risk that the unsettled nature of cyberspace law will cause businesses and educational institutions to refrain from using the Internet and, as a result, stifle the ability of the Internet to prosper as an effective method of communication. The United States District Court for the Southern District of New York has set forth the seminal approach by applying current legal standards in a clear and consistent manner. The Court has addressed the issues associated with the exercise of personal jurisdiction over Internet users and has set forth precedent that is likely to ensure a smooth transition into the cyberspace era.

\[\text{141 Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102 (1992).}\]

\[\text{142 See Bensusan, 937 F. Supp. at 301. Creating a site, like placing a product into the stream of commerce, may be felt nationwide—or even worldwide—but, without more, it is not an act purposefully directed toward the forum state. See id. (citations omitted).}\]

\[\text{143 See Byassee, supra note 8, at 211. A remote transaction in the physical analogue of a cyber-space transaction requires a person to place the material at issue physically into the stream of commerce. A cyber-space transaction dispenses with this requirement. From thousands of miles away, the customer may simply reach out and complete the transaction herself. The transportation is entirely self-service.}\]

\[\text{Id.}\]

\[\text{144 See Asahi Metal, 480 U.S. at 117 (suggesting that as long as the defendant has knowledge that the product is marketed in the forum, "the possibility of a lawsuit there cannot come as a surprise.").}\]