

Coupled with the Internet's advantages for business and communication is a corresponding risk of being drawn into legal disputes in distant jurisdictions. While domestic Internet jurisdiction law is fairly well defined, the contours of international Internet jurisdiction law have yet to solidify. Recent decisions suggest that American companies must be vigilant —

### U.S. Court Declines Jurisdiction Over Spanish Company

In *Toys "R" Us, Inc. v. Step Two, S.A.* (3d Cir. 2003), the famous toy retailer brought a trademark infringement action against a Spanish corporation that allegedly maintained an infringing web site. The 3rd Circuit found that:

the mere operation of a commercially interactive web site should not subject the operator to jurisdiction anywhere in the world. Rather, there must be evidence that the defendant purposefully availed itself of conducting activity in the forum state, by directly targeting its web site to the state, knowingly interacting with residents of the forum state via its web site, or through sufficient other related contacts.

The Court concluded the Spanish company had not purposefully availed itself of the forum. Its web site, commercial and interactive, was not designed or intended to reach customers in New Jersey; the web sites were in Spanish, prices were in pesetas, and merchandise could only be shipped within Spain.

### But There Is International *In Rem* Jurisdiction Over Domain Names

The Anti-Cybersquatter Consumer Protection Act prohibits the bad faith registration, trafficking or use of a domain name that is either "identical or confusingly similar to" a distinctive or famous mark. It provides for *in rem* jurisdiction over the domain name itself in the judicial district in which the domain name registrar, domain name registry, or other domain name authority that registered or assigned the domain name is located.<sup>1</sup> In *Harrods Ltd. v. Sixty Internet Domain Names*, (4th Cir. 2002), the 4th Circuit held this exercise of *in rem* jurisdiction constitutional, even if the owner of the domain name resides in a foreign jurisdiction, because **domain names are property** and it was well-settled that the state where property is located has jurisdiction over claims to the property itself.

### French Exercise of Jurisdiction Blocked

In 2000, a French court fined Yahoo! for hosting auctions of Nazi paraphernalia on its web sites, and ruled the company must block French users from viewing and buying Nazi memorabilia on its American auction site. In *Yahoo! Inc. v. La Ligue Contre Le Racisme et L'antisemitisme* (N.D. Cal. 2001), a California district court declined to recognize the French court's judgment because it was inconsistent with the free speech rights guaranteed by the First Amendment to the U.S. Constitution. The Court explained that "[a]lthough France has the sovereign right to regulate what speech is permissible in France, this Court may not enforce a foreign order that violates the protections of the United States' Constitution by chilling protected speech that occurs simultaneously within our borders."

### Dow Jones Goes Down Under

In *Dow Jones & Company Inc. v. Gutnick*, the High Court of Australia held that it had jurisdiction over a defamation claim brought by an Australian resident against New York-based Dow Jones on the basis of an allegedly defamatory news article on its Baron's web site. Dow Jones argued that in the Internet era jurisdiction in litigation over the content of Internet postings should be limited to the place where the web server is located or where the publisher principally does business, to avoid the risk of worldwide jurisdiction for Internet postings. The Australian court rejected the argument, finding that the defamation arises – and jurisdiction exists – in the jurisdiction in which the damage to the plaintiff's reputation occurs. The Court explained that "[i]n the case of material on the World Wide web it is not available in comprehensible form, until downloaded on the computer of a person who has a web browser to pull the material from the web server. It is where that person downloads the material that the damage to reputation may be done." Ordinarily then, that will be the place where the tort of defamation is committed.

It remains to be seen whether American courts will recognize such an extraordinary exercise of worldwide jurisdiction. Until then, American companies should exercise extreme caution in navigating the net.

<sup>1</sup> See 15 U.S.C. § 1125(d)(2)(A)&(C).

**International Internet Jurisdiction:  
How Far An Outfall?**  
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