

American and European Approaches to Personal Jurisdiction Based Upon Internet Activity

Richard D. Freer has posted “**American and European Approaches to Personal Jurisdiction Based Upon Internet Activity**” on SSRN. The abstract reads:

The law of personal jurisdiction determines what states or countries may enter a binding judgment against a civil defendant. Without personal jurisdiction over the defendant, a court is powerless to act.

While principles of personal jurisdiction are well established in the United States and the European Union (EU), these principles were developed before the widespread use of the Internet, and neither the Supreme Court nor the European Court of Justice has spoken on how the established principles apply in the context of the Internet.

American law requires that a defendant engage in purposeful availment of the forum where she is sued, so a defendant is subject to suit only in a forum with which she has established purposeful ties. In contrast, the EU grants personal jurisdiction where the injury occurred, regardless of whether the defendant purposefully availed itself of that place.

The difference in approach will prove to be most important in cases involving relatively passive Web site use. So if a defendant posts something on a Web site in State A, which is accessible around the world, and a plaintiff is hurt in some way by that posting in State B, may the plaintiff sue the defendant in State B? EU law should provide a positive answer, because their focus is on accessibility and where the harm occurs. In the United States, lower courts have reached inconsistent results, mainly because of the Supreme Court’s failure to resolve an important jurisdiction question in a 1987 case involving the “stream of commerce.” The Web site case is the modern technological iteration of the stream of commerce which the Court failed to resolve in 1987.

The article is available to download, for free, from **here**.