
CIVIL PROCEDURE — PERSONAL JURISDICTION — NINTH CIRCUIT HOLDS THAT EXERCISE OF PERSONAL JURISDICTION OVER COMPANY WHOSE WEBSITE CULTIVATES SIGNIFICANT FORUM STATE USER BASE COMPORTS WITH DUE PROCESS. — *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218 (9th Cir. 2011).

Though the internet has long presented serious challenges to existing personal jurisdiction doctrine,¹ these difficulties have only grown with the advent of Web 2.0.² Where a defendant's only contacts with the forum state are through the internet, courts have increasingly relied on the *Calder v. Jones*³ effects test, a highly fact-intensive inquiry,⁴ to determine whether a defendant has purposefully directed tortious activity at the forum.⁵ Recently, in *Mavrix Photo, Inc. v. Brand Technologies, Inc.*,⁶ the Ninth Circuit, relying on *Keeton v. Hustler Magazine, Inc.*,⁷ held that a company that “anticipated, desired, and achieved a substantial California viewer base” on its website was subject to personal jurisdiction in California.⁸ The court's approach was misguided for two reasons: First, *Keeton*'s factual premises do not hold in the internet context. Second, the court's application of *Keeton* relied on faulty inferences about the website's California viewer base and exceeded *Keeton*'s reach by considering the subject matter of the website to reach its result. This approach risks subjecting the operators of popular websites to personal jurisdiction wherever those sites might be accessed.

In April 2008, photographers for Mavrix Photo, Inc., took a series of “candid photographs” of the pop star Fergie, who was vacationing in the Bahamas, and posted them on the internet.⁹ Mavrix subsequently “copyrighted the [photographs] with the intent to exclusively

¹ See, e.g., *Young v. New Haven Advocate*, 315 F.3d 256, 263 (4th Cir. 2002) (describing how other courts have adapted the “traditional standard” for personal jurisdiction to the internet to prevent “traditional due process principles” from being “subverted”).

² See Tim O'Reilly, *What Is Web 2.0: Design Patterns and Business Models for the Next Generation of Software*, O'REILLY (Sept. 30, 2005), <http://oreilly.com/web2/archive/what-is-web-20.html> (describing the advent of social networking and other increasingly interactive online services since the dot-com crash in 2001).

³ 465 U.S. 783 (1984).

⁴ See, e.g., *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1487 (9th Cir. 1993) (noting “*Calder*'s admonishment that the personal jurisdiction inquiry cannot be answered through the application of a mechanical test but instead must focus on the relationship among the defendant, the forum, and the litigation within the particular factual context of each case”).

⁵ See, e.g., *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1156 (9th Cir. 2006).

⁶ 647 F.3d 1218 (9th Cir. 2011).

⁷ 465 U.S. 770 (1984).

⁸ *Mavrix*, 647 F.3d at 1230.

⁹ *Mavrix Photo, Inc. v. Brand Techs., Inc.*, No. CV 09-2729 PSG (JCX), 2009 WL 3063062, at *1 (C.D. Cal. July 17, 2009).

license them to a celebrity news publication.”¹⁰ Shortly thereafter, Mavrix, a Florida corporation, discovered that Brand Technologies, Inc., an Ohio corporation, had posted these photographs on its website, www.celebrity-gossip.net, allegedly without the permission of Mavrix.¹¹ This website, which “has several interactive features,”¹² was ranked by “an Internet tracking service . . . as number 3,622 out of approximately 180 million websites worldwide based on traffic,” making it a remarkably popular website.¹³

Mavrix brought suit against Brand in the Central District of California¹⁴ for misappropriation of its copyrighted photographs under the Copyright Act.¹⁵ Brand moved to dismiss the action for, among other grounds, lack of personal jurisdiction.¹⁶ In opposition to Brand’s motion, Mavrix offered wide-ranging evidence of contacts with California established through the website.¹⁷ The district court engaged in a traditional “minimum contacts” inquiry¹⁸ and concluded that the proffered evidence was insufficient to establish either general or specific jurisdiction.¹⁹ Discussing general jurisdiction, the court discounted several purportedly “continuous and systematic general business contacts”²⁰ on the ground that, to the extent such contacts existed, they were established entirely by third parties to which Brand’s website merely linked.²¹ The court further dismissed what few connections to California it did find as merely Brand’s “doing business *with* California, . . . not . . . doing business *in* California.”²² The court then turned

¹⁰ *Id.*

¹¹ *Id.*

¹² *Mavrix*, 647 F.3d at 1222. Specifically, the Ninth Circuit noted that “[v]isitors . . . may post comments on articles, vote in polls . . . , subscribe to an email [newsletter], join [a] membership club, and submit news tips and photos of celebrities.” *Id.*

¹³ *Id.* The court noted that, “[b]y comparison, the national news website MSNBC.com was . . . ranked number 2,521.” *Id.*

¹⁴ *Mavrix*, 2009 WL 3063062, at *1.

¹⁵ 17 U.S.C. §§ 101–810 (2006).

¹⁶ *Mavrix*, 2009 WL 3063062, at *1.

¹⁷ *See Mavrix*, 647 F.3d at 1222. The court considered the website’s “third-party advertisements for jobs, hotels, and vacations in California,” its link to a third-party vendor selling tickets to events in California, and Brand’s “agreements with several California businesses,” including a California wireless provider, a web-design firm, and a California-based news site. *Id.*

¹⁸ *See Mavrix*, 2009 WL 3063062, at *2 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

¹⁹ *Id.* at *7.

²⁰ *Id.* at *2 (quoting *Helicopteros Nacionales de Colom. v. Hall*, 466 U.S. 408, 416 (1984)) (internal quotation marks omitted).

²¹ *Id.* at *2–3 (noting, for example, that “all of the advertisements” supposedly targeting California residents were “created and controlled by a third-party advertising network agency,” *id.* at *3).

²² *Id.* at *3 (emphasis added) (quoting *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000)) (internal quotation mark omitted) (dismissing, for example, Brand’s contract with a California web designer as doing business “with” but not “in” California).

to the issue of specific jurisdiction, focusing on whether Brand had “purposefully directed [its] activities toward California.”²³ To establish purposeful direction, the court applied the tripartite *Calder* effects test.²⁴ The court focused on the second prong, requiring that the defendant have aimed the tortious conduct “at a known forum resident.”²⁵ Because the record showed that Brand had learned of Mavrix’s California connection only after litigation had commenced,²⁶ the court found that Brand had not expressly aimed its conduct at California and that the exercise of specific jurisdiction would not comport with due process.²⁷ The court rejected Mavrix’s argument that Brand’s activity was inherently directed at California “because California is the epicenter of celebrities and the entertainment industry”; in the court’s view, such a conclusion would conflate express aiming and foreseeability, prongs two and three of the *Calder* test.²⁸

The Ninth Circuit reversed and remanded.²⁹ Writing for the panel, Judge William Fletcher³⁰ agreed with the district court that Brand’s contacts with California were insufficient to sustain general jurisdiction, but he reversed the district court’s finding as to specific jurisdiction.³¹ Like the district court, Judge Fletcher applied the *Calder* effects test to assess purposeful direction.³² The court repeated its refrain that “operating even a passive website in conjunction with ‘something more’ — conduct directly targeting the forum — is sufficient.”³³ The court laid out three factors that might establish the “something more.”³⁴ The second of these, relating to the “geographic scope of the defendant’s commercial ambitions,” received the brunt of

²³ *Id.* at *5.

²⁴ In the Ninth Circuit, “purposeful direction occurs when a non-resident defendant commits (1) an intentional act (2) expressly aimed at the forum state (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at *6–7.

²⁸ *Id.* at *6.

²⁹ *Mavrix*, 647 F.3d at 1232.

³⁰ Judge Fletcher was joined by Judge Wardlaw and District Judge Lynn, sitting by designation.

³¹ *Mavrix*, 647 F.3d at 1232.

³² *Id.* at 1229.

³³ *Id.* (quoting *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1020 (9th Cir. 2002)) (internal quotation marks omitted). The notion of a “passive” website is drawn from *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997), which defined a passive website as one “that does little more than make information available to those who are interested in it.” *Id.* at 1124.

³⁴ *Mavrix*, 647 F.3d at 1229 (noting “several factors, including the interactivity of the defendant’s website; the geographic scope of the defendant’s commercial ambitions; and whether the defendant ‘individually targeted’ a plaintiff known to be a forum resident” (citations omitted)). Of these three, only individual targeting drew extensive consideration from the district court. *See Mavrix Photo, Inc. v. Brand Techs., Inc.*, No. CV 09-2729 PSG (JCX), 2009 WL 3063062, at *6–7 (C.D. Cal. July 17, 2009).

the court's analysis.³⁵ In deciding to rely on this factor, the court placed great weight on *Keeton*, which established that an assertion of specific personal jurisdiction is proper where a defendant "has continuously and deliberately exploited"³⁶ a given market in a manner that cannot "be characterized as random, isolated, or fortuitous."³⁷ The court analogized the "regular monthly sales of thousands of magazines" in the forum state that established express aiming in *Keeton*³⁸ to the "substantial number of hits to Brand's website [that] came from California residents," as these hits directly impacted the revenue Brand received from the third-party advertisements on its site.³⁹ Though the record admittedly did "not reflect how many of the website's visitors are California residents,"⁴⁰ the court found it clear that "Brand anticipated, desired, and achieved a substantial California viewer base" because of the subject matter of the website and the "size and commercial value of the California market."⁴¹ This commercial exploitation established contacts with California sufficient to give rise to personal jurisdiction.

While the Ninth Circuit correctly noted some factual similarities between *Mavrix* and *Keeton*, it failed to consider whether *Keeton*'s logic can properly be extended to the internet context. *Keeton*'s per se test of purposeful direction — if material has been disseminated on a large scale in a particular forum state, that material must have been expressly aimed at the state⁴² — relies on an assumption that the material in question is physical. Since that assumption does not hold in the internet context, the Ninth Circuit should not have applied the *Keeton* test. Moreover, in adapting this rule to the internet context, the court created a hurdle that is too easily surmounted, primarily because the factors it employed to prove "a substantial California viewer base" were both misleading and overbroad. Where the court should have employed, if anything, a more exacting version of the *Keeton* test, it instead crafted a nugatory adaptation. Accordingly, the Ninth Circuit would have better satisfied the requirements of due process had it

³⁵ See *Mavrix*, 647 F.3d at 1229–30.

³⁶ *Id.* at 1229 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 (1984)).

³⁷ *Id.* (quoting *Keeton*, 465 U.S. at 774).

³⁸ *Id.* (quoting *Keeton*, 465 U.S. at 774).

³⁹ *Id.* at 1230. The court further noted two key similarities between the magazine in *Keeton* and Brand's website: both were popular publications with a national audience, and both "could count on reaching consumers in all fifty states." *Id.*

⁴⁰ *Id.* at 1222.

⁴¹ *Id.* at 1230.

⁴² See *Keeton*, 465 U.S. at 773–74. Although *Keeton* did not use *Calder*'s now-pervasive terminology (the two cases were decided on the same day), the clear implication of its claim that Hustler's distribution of magazines in New Hampshire was by no means "random, isolated, or fortuitous" is that the distribution was deliberate and systematic.

engaged in its standard express aiming inquiry in lieu of its resort to the *Keeton* analogy.⁴³

A direct application of the *Keeton* test in the internet context is inappropriate and misguided. Indeed, the Ninth Circuit has previously questioned the extent to which *Keeton* applies to non-print media,⁴⁴ as the holding of *Keeton* was premised on the assumption that thousands of copies of a physical good cannot simply arrive in a locale by chance and thus must have been purposefully directed there.⁴⁵ This conclusion seems self-evident in the case of print media.⁴⁶ When it comes to the internet, however, even large-scale forms of information dissemination do not necessarily imply such deliberate action.⁴⁷ Website content can be accessed globally without the content creator's intending to direct information at any given location.⁴⁸ Even if substantial internet viewership did imply express aiming, *Keeton's* method of determining

⁴³ Compare the *Mavrix* court's approach with that in *Fielding v. Hubert Burda Media, Inc.*, 415 F.3d 419 (5th Cir. 2005), where the court found that, because the "level of circulation" was insufficient to satisfy the "requirement of *Keeton*," the defendant's contacts had to be "analyzed [solely] in terms of the *Calder* effects test." *Id.* at 426.

⁴⁴ See *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 803 (9th Cir. 2004) (narrowly construing *Keeton* as permitting the exercise of jurisdiction in cases involving "the distribution in the forum state of goods originating elsewhere"). The Ninth Circuit's analysis in *Schwarzenegger* appears to relegate *Keeton* to cases involving the physical transportation of goods. See *id.*

⁴⁵ See *Keeton*, 465 U.S. at 774; cf. *Noonan v. Winston Co.*, 135 F.3d 85, 91 (1st Cir. 1998) ("The size of a distribution of . . . material helps determine whether a defendant acted intentionally.").

⁴⁶ Compare *Gordy v. Daily News, L.P.*, 95 F.3d 829, 833 (9th Cir. 1996) (applying *Keeton* in a print media case where only thirteen to eighteen copies of the publication were circulated in California because "mailing to regular subscribers, even though few, is not random or fortuitous" (emphasis added)), with *Noonan*, 135 F.3d at 91 (distinguishing *Gordy* on the ground that the defendant "denie[d] knowing the ultimate destination of the magazines that reached" the forum state, thereby undermining the central *Keeton* assumption regarding express aiming). Thus, although distribution of goods may normally imply express aiming, affirmative evidence to the contrary — such as that considered in *Noonan* — may rebut the *Keeton* presumption and establish that the distribution could well have been fortuitous.

⁴⁷ Cf. *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000) (noting the importance of "individualized targeting" in cases like *Gordy* in which the effects test was found to be satisfied); *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997) (requiring "something more" [than an internet advertisement] to indicate that the defendant purposefully (albeit electronically) directed his activity in a substantial way to the forum state"). But cf. *First Act, Inc. v. Brook Mays Music Co.*, 311 F. Supp. 2d 258, 262 n.5 (D. Mass. 2004) (finding that a "relatively small number of e-mails sent to Massachusetts do not evince a lack of purposeful contact"). In *First Act*, the specific nature of the internet contacts supported the *Keeton* assumption: emails do require express aiming whenever they are sent, so distribution of emails in a forum state cannot be fortuitous. See *id.* at 262–63; see also, e.g., *Edias Software Int'l v. Basis Int'l Ltd.*, 947 F. Supp. 413, 419 (D. Ariz. 1996) (observing that "e-mail does not differ substantially from other recognizable forms of communication, such as traditional mail or phone calls"). Email, of course, is a decidedly different medium from a general website, the dissemination of which does not imply deliberate action. See *Cybersell*, 130 F.3d at 418, 420.

⁴⁸ Cf. Michael A. Geist, *Is There a There There? Toward Greater Certainty for Internet Jurisdiction*, 16 BERKELEY TECH. L.J. 1345, 1347 (2001) ("Since websites are instantly accessible worldwide, the prospect that a website owner might be haled into a courtroom in a far-off jurisdiction . . . is a very real possibility.").

substantiality would not translate to the expanse of the internet. Thus, while print media and the internet do share some similarities,⁴⁹ these similarities do not support blanket application of *Keeton* in the internet context.⁵⁰

Not only did the *Mavrix* court err in transposing *Keeton* onto the analysis of internet contacts, but it also relied on misleading indicia of substantiality to satisfy the *Keeton* criterion. The substantiality criterion looks to absolute numbers, not proportions.⁵¹ However, neither *Keeton* nor *Mavrix* provides a clear threshold for substantiality.⁵² Given the scope of internet viewership, it is hard to imagine any popular website whose viewership does not far exceed the distribution in *Keeton*.⁵³ To establish that a “substantial number of hits” had come from California residents, the court referenced evidence that “Brand’s website had advertisements directed to Californians.”⁵⁴ The court analogized this evidence to the evidence of substantiality present in *Keeton*, namely, the “regular monthly sales of thousands of magazines.”⁵⁵ While the *Mavrix* court appeared to apply the fundamental *Keeton* framework by considering the numerical significance of the California audience, it fundamentally misunderstood the import of this

⁴⁹ The Ninth Circuit has noted “functional similarities between print and Internet publication” but has never before held that these similarities justify applying *Keeton* to internet contacts. *Oja v. U.S. Army Corps of Eng’rs*, 440 F.3d 1122, 1131 (9th Cir. 2006) (noting this similarity only insofar as it concerned the “single publication rule” at work in *Keeton*).

⁵⁰ *Cf.* *Revell v. Lidov*, No. 3:00-CV-1268-R, 2001 WL 285253, at *7 (N.D. Tex. Mar. 20, 2001) (finding, in an internet case, both *Keeton* and *Calder* “distinguishable because they concerned printed media that was knowingly and purposefully sold and circulated in the forums at issue”), *aff’d*, 317 F.3d 467 (5th Cir. 2002) (considering *Calder* but not *Keeton*). See generally *Developments in the Law — The Law of Media*, 120 HARV. L. REV. 990 (2007) (describing how “[c]ourts [have] struggl[ed] to adapt *Calder* and *Keeton* to the Internet,” *id.* at 1036 n.32).

⁵¹ Compare Brief for Respondents, *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984) (No. 82-485), 1983 U.S. S. Ct. Briefs LEXIS 224, at *8–9 (characterizing the magazine’s forum state distribution as constituting “less than one per cent of its total circulation”), with *Keeton*, 465 U.S. at 772 (referring to “the sale of some 10,000 to 15,000 copies” of the magazine). But see *Chaiken v. VV Publ’g Corp.*, 119 F.3d 1018, 1029 (2d Cir. 1997) (distinguishing *Keeton* in part because defendant’s forum state “sales are a tiny fraction of its total circulation”).

⁵² The *Mavrix* court offered no method of conversion between physical copies sold and website hits.

⁵³ In *Mavrix*, for instance, Brand’s website received “more than 12 million unique U.S. visitors . . . per month.” 647 F.3d at 1222. A total of 100,000 individual visits, ten times the distribution in *Keeton*, would account for less than one percent of www.celebrity-gossip.net’s total annual viewership. As such, it is likely both that a website far less popular than Brand’s would still have a significant California viewership and that a website like Brand’s would have significant viewership in any state.

⁵⁴ *Id.* at 1230. The court acknowledged that the advertisements were created by “third-party advertisers” but considered this fact “immaterial.” *Id.* It may be legally correct to say that the distinction is irrelevant insofar as Brand knew, “either actually or constructively,” *id.*, that advertisements were targeting California. However, the distinction is critical for understanding what implications a court may draw about the size of the California user base.

⁵⁵ *Id.* at 1229–31 (quoting *Keeton*, 465 U.S. at 774).

evidence. Though courts have long been in the habit of deeming the internet a boundless expanse without geographical distinction,⁵⁶ particularly in the realm of third-party advertising, this assumption is no longer correct.⁵⁷ Given the ability of third-party advertisers to cater their messages to the location of the recipient, the sort of third-party advertising admitted as evidence in *Mavrix* in no way demonstrates a significant California user base — it merely demonstrates that the website had been accessed in California.⁵⁸

In addition to misconstruing the evidence of the one factor that the *Keeton* court did consider, the court in *Mavrix* considered a speculative factor absent from the *Keeton* analysis: the subject matter of the website. The court argued that the website's economic value depended "in significant measure" on its California audience because of the site's focus on the "celebrity and entertainment industries."⁵⁹ This analysis, which neither requires nor relies on data indicating the economic impact of the California market,⁶⁰ cannot possibly prove the existence of a substantial California viewer base. Courts typically look to the subject matter of disseminated content in an effects test inquiry only when the nature of the content is critical to the merits of the case, as in a defamation suit,⁶¹ or where the subject matter is relevant to a determination of where the brunt of the harm was felt.⁶² By both insert-

⁵⁶ See, e.g., *Am. Libraries Ass'n v. Pataki*, 969 F. Supp. 160, 170 (S.D.N.Y. 1997) ("The Internet is wholly insensitive to geographic distinctions.").

⁵⁷ See, e.g., *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 961–62 (N.D. Cal. 2006) ("Websites can determine the location of a user from information they provide . . . or from the internet service provider an individual uses."); Jack L. Goldsmith & Alan O. Sykes, Essay, *The Internet and the Dormant Commerce Clause*, 110 YALE L.J. 785, 810 (2001) (describing the ability of website owners to "identify the geographical source of a content receiver's IP address"). These so-called geolocation services are typically provided "by a third-party service provider" and thus could easily be used by third-party advertisers to direct advertisements to the user's particular locale. See Andrea M. Matwyshyn, *Of Nodes and Power Laws: A Network Theory Approach to Internet Jurisdiction Through Data Privacy*, 98 NW. U. L. REV. 493, 517 n.136 (2004).

⁵⁸ In fact, the "images" from Brand's website demonstrating the advertisements were no doubt collected by plaintiff's counsel. See *Mavrix Photo, Inc. v. Brand Techs., Inc.*, No. CV 09-2729 PSG (JCS), 2009 WL 3063062, at *2–3 (C.D. Cal. July 17, 2009) (dismissing *Mavrix*'s evidence of ticket sales to California partially because "Plaintiff's counsel is the only person to purchase tickets through this third-party link," *id.* at *2).

⁵⁹ *Mavrix*, 647 F.3d at 1230.

⁶⁰ Compare the *Mavrix* court's approach with that in *CollegeSource, Inc. v. AcademyOne, Inc.*, No. 09-56528, 2011 WL 3437040 (9th Cir. Aug. 8, 2011), in which the court held that there was specific personal jurisdiction based on evidence of "[a]pproximately 26,000 unique California IP addresses . . . , amounting to 19 percent of all visitors to the website." *Id.* at *2. *College-Source*, decided on the same day as *Mavrix*, contained the sort of fact-based inquiry that the *Mavrix* court ought to have conducted.

⁶¹ See, e.g., *Young v. New Haven Advocate*, 315 F.3d 256, 263 (4th Cir. 2002).

⁶² See *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 243 F. Supp. 2d 1073, 1092 (C.D. Cal. 2003) (noting that the defendant knew "that California is the heart of the entertainment industry, and that the brunt of the injuries described in these cases is likely to be felt here").

ing a factor unused by the *Keeton* court and requiring so little proof for its satisfaction, the Ninth Circuit diminished the force of an already easily met standard and further confused a muddled jurisprudence.⁶³

Applying this version of the *Keeton* test to the internet would expand the scope of jurisdiction derived from internet contacts — a result that most courts have already rejected as undesirable.⁶⁴ Courts grappling with internet jurisdiction have claimed that the medium’s nuances should not “vitate long-held and inviolate principles of federal court jurisdiction.”⁶⁵ Because the threshold for establishing substantial viewership is low, most websites would be subject to jurisdiction in California under the *Mavrix* holding. Although the court did rely on the subject matter of the website to narrow the breadth of its holding, it is hard to imagine how that method could be generalized to all websites.⁶⁶

Much has been said about the “[a]mbiguity and incoherence” that permeate the entire minimum contacts inquiry,⁶⁷ and the decision in *Mavrix* is no exception to this pattern. The minimum contacts analysis is, and ought to be, highly fact specific, so it is only natural that its body of case law appears disjointed. Brand likely did expressly aim its tortious conduct at California, but the court could have resolved the issue coherently only by thoughtfully untangling the facts. Resurrecting *Keeton* in the internet context to obviate such factual inquiries creates a precedent that will increase the likelihood of any popular website’s becoming subject to personal jurisdiction wherever it is accessed.

⁶³ See, e.g., *Righthaven LLC v. S. Coast Partners, Inc.*, No. 2:10-CV-01062-LRH-LRL, 2011 WL 534046, at *3 (D. Nev. Feb. 8, 2011) (finding “substantial tension — if not an irreconcilable conflict” — between competing strands of Ninth Circuit personal jurisdiction doctrine). See generally Peter Singleton, Note, *Personal Jurisdiction in the Ninth Circuit*, 59 HASTINGS L.J. 911, 928 n.102 (2008).

⁶⁴ See, e.g., *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 420 (9th Cir. 1997).

⁶⁵ *GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000).

⁶⁶ Consider, for example, a website that focuses on national financial news. Without any further information, a court relying on *Mavrix* could conclude that the website owner should be subject to personal jurisdiction in New York, which has a large population, like California, and is considered to be the financial capital of the United States.

⁶⁷ Recent Case, *Ninth Circuit Holds that Single Sale on eBay Does Not Provide Sufficient Minimum Contacts with Buyer’s State*: *Boschetto v. Hansing*, 122 HARV. L. REV. 1014, 1014 n.1 (2009) (quoting Kevin C. McMunigal, Essay, *Desert, Utility, and Minimum Contacts: Toward a Mixed Theory of Personal Jurisdiction*, 108 YALE L.J. 189, 189 (1998)) (internal quotation mark omitted); see also A. Benjamin Spencer, *Jurisdiction to Adjudicate: A Revised Analysis*, 73 U. CHI. L. REV. 617, 618 (2006) (describing “the law of personal jurisdiction” as “an incoherent and precarious doctrine”).