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PERSONAL JURISDICTION — MINIMUM CONTACTS ANALYSIS —  
NINTH CIRCUIT HOLDS THAT SINGLE SALE ON EBAY DOES NOT  
PROVIDE SUFFICIENT MINIMUM CONTACTS WITH BUYER'S  
STATE. — *Boschetto v. Hansing*, 539 F.3d 1011 (9th Cir. 2008).

Scholars have criticized the minimum contacts test for personal jurisdiction for its ambiguity, vagueness, and unpredictability.<sup>1</sup> Such criticisms have been especially relevant to issues of personal jurisdiction arising out of cases involving the internet.<sup>2</sup> As these cases have become more common, some courts have adapted traditional jurisdictional analyses, while others have created new tests altogether.<sup>3</sup> The resulting picture of internet personal jurisdiction is muddled and confused. Recently, in *Boschetto v. Hansing*,<sup>4</sup> the Ninth Circuit held that a single sale made through the eBay online auction site did not constitute minimum contacts between the seller, a Wisconsin man, and the state of California.<sup>5</sup> By returning to the original minimum contacts test, refusing to use a special test for internet contacts, and avoiding ensnarement in the technologically detailed facts of the case, the panel offered a means of simplifying and clarifying the tangled law dealing with jurisdiction over internet commercial transactions. Even though this solution relies on the imperfect minimum contacts test, the long history of that test and the Ninth Circuit's clear application of it provide more consistency and predictability than a system of flawed, situation-specific tests and confused, internet-dependent analyses when dealing with cases involving long-range commercial transactions.

On August 1, 2005, Jeffrey D. Hansing, a resident of Milton, Wisconsin, listed a 1964 Ford Galaxie for sale on eBay.<sup>6</sup> Paul Boschetto, a resident of California, won the auction<sup>7</sup> and arranged to have a deliv-

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<sup>1</sup> See, e.g., Kevin C. McMunigal, Essay, *Desert, Utility, and Minimum Contacts: Toward a Mixed Theory of Personal Jurisdiction*, 108 YALE L.J. 189, 189 (1998) ("Ambiguity and incoherence have plagued the minimum contacts test for the more than five decades during which it has served as a cornerstone of the Supreme Court's personal jurisdiction doctrine."); Rex R. Perschbacher, *Foreword*, 28 U.C. DAVIS L. REV. 513, 514 (1995) ("*International Shoe*'s approach has never fully overcome the vagueness of the minimum-contacts general principle. In addition, the meaning and relevance of 'how contacts count' has never fully been resolved." (footnotes omitted) (quoting Lea Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77)).

<sup>2</sup> See, e.g., Arthur R. Miller, *The Emerging Law of the Internet*, 38 GA. L. REV. 991, 995–99 (2004) (discussing the difficult issues surrounding personal jurisdiction in internet cases); Joel R. Reidenberg, *Technology and Internet Jurisdiction*, 153 U. PA. L. REV. 1951, 1954 (2005).

<sup>3</sup> See C. Douglas Floyd & Shima Baradaran-Robison, *Toward a Unified Test of Personal Jurisdiction in an Era of Widely Diffused Wrongs: The Relevance of Purpose and Effects*, 81 IND. L.J. 601, 602–03 (2006).

<sup>4</sup> 539 F.3d 1011 (9th Cir. 2008).

<sup>5</sup> *Id.* at 1020.

<sup>6</sup> *Id.* at 1014.

<sup>7</sup> *Id.*

ery company bring the car to California.<sup>8</sup> Upon receiving the car, Boschetto discovered a number of problems with it.<sup>9</sup> After attempting and failing to rescind the purchase, Boschetto filed suit in the United States District Court for the Northern District of California against Hansing and two car dealerships for which Hansing was allegedly working.<sup>10</sup>

The district court granted the defendants' motions to dismiss for lack of personal jurisdiction.<sup>11</sup> After quickly rejecting Boschetto's argument that the court had general jurisdiction over the defendants,<sup>12</sup> the district judge analyzed the case according to a three-prong test for minimum contacts established by the Ninth Circuit: the nonresident must have purposefully availed himself of the benefits and protections of the forum's laws, the claim must arise out of the defendant's activities related to the forum, and the exercise of jurisdiction must not offend notions of fair play and substantial justice.<sup>13</sup> He also discussed the Ninth Circuit's main internet jurisdiction precedent, *Cybersell, Inc. v. Cybersell, Inc.*,<sup>14</sup> in which the Ninth Circuit adopted the sliding scale test for internet jurisdiction based on the interactivity of the website established in *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*<sup>15</sup> The district judge noted that even though the present case was not concerned with jurisdiction over the owner of the eBay website, *Cybersell* provided "a useful framework" for the present analysis.<sup>16</sup> In concluding that Hansing had not purposefully availed himself of the benefits of doing business in California, the court noted that Hansing did not regularly do business over the internet,<sup>17</sup> that eBay acted as a "virtual forum"<sup>18</sup> for the sale rather than as a "distribution center,"<sup>19</sup> that the choice of the winning bidder was beyond Hansing's control,<sup>20</sup> and that Boschetto, not Hansing, had made arrangements to ship the

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<sup>8</sup> *Boschetto v. Hansing*, No. C-06-1390 VRW, 2006 WL 1980383, at \*1 (N.D. Cal. July 13, 2006).

<sup>9</sup> *Boschetto*, 539 F.3d at 1015. Boschetto alleged that the car was not the correct model, that the body was rusty and dented, and that the motor would not turn over. *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Boschetto*, 2006 WL 1980383, at \*5. The district court also denied Boschetto's request for jurisdictional discovery. *Id.*

<sup>12</sup> *See id.* at \*2. Boschetto's general jurisdiction argument failed because he presented no evidence that the defendants had ever conducted business in California prior to this sale. *Id.*

<sup>13</sup> *Id.* (citing *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)).

<sup>14</sup> 130 F.3d 414 (9th Cir. 1997).

<sup>15</sup> 952 F. Supp. 1119 (W.D. Pa. 1997).

<sup>16</sup> *Boschetto*, 2006 WL 1980383, at \*3.

<sup>17</sup> *Id.* at \*4.

<sup>18</sup> *Id.* at \*3.

<sup>19</sup> *Id.* (quoting *Cybersell*, 130 F.3d at 417) (internal quotation marks omitted).

<sup>20</sup> *Id.* at \*4.

car to California.<sup>21</sup> Finally, the court noted that the opposite result would likely have a chilling effect on electronic commerce.<sup>22</sup>

The Ninth Circuit affirmed. Writing for the panel, Judge Betty Fletcher<sup>23</sup> applied the same three-part test as the district court and concluded that “the lone transaction for the sale of one item does not establish that [Hansing] purposefully availed [himself] of the privilege of doing business in California.”<sup>24</sup> Hansing created no ongoing obligations in California and did not do substantial business there.<sup>25</sup> A contract alone was insufficient to create minimum contacts.<sup>26</sup>

The panel refused to apply the *Cybersell* sliding scale test, noting that because eBay was not the defendant, that test was “largely inapplicable in this case.”<sup>27</sup> Judge Fletcher noted that unlike the typical *Cybersell*-type website-owner defendant, whose contacts with states were continuous, Hansing had only one contact with California, which ceased as soon as his auction closed.<sup>28</sup> Because of this lack of ongoing contacts,<sup>29</sup> Hansing’s interaction with California was truly a “one-shot affair” and was insufficient to establish minimum contacts.<sup>30</sup>

Judge Rymer concurred. She emphasized that Hansing did not purposefully avail himself of the benefits of doing business in California because he did not establish any ongoing contacts with California and did not even truly choose to do business there. She also noted that allowing Hansing to be haled into court in California would render eBay sellers vulnerable to suit in any state.<sup>31</sup> The location of the winning bidder was a “fortuity” beyond Hansing’s control.<sup>32</sup>

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<sup>21</sup> *Id.* at \*5.

<sup>22</sup> *See id.*

<sup>23</sup> Judge Fletcher was joined on the panel by Judge Rymer and Judge Duffy, Senior U.S. District Judge for the Southern District of New York.

<sup>24</sup> *Boschetto*, 539 F.3d at 1017.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* (citing *Burger King v. Rudzewicz*, 471 U.S. 462, 478 (1985)).

<sup>27</sup> *Id.* at 1018.

<sup>28</sup> *Id.*

<sup>29</sup> There was no evidence that Hansing regularly used eBay to conduct business. *Id.* at 1018–19.

<sup>30</sup> *Id.* at 1017 (quoting *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1265 (6th Cir. 1996)) (internal quotation marks omitted). Surveying cases involving eBay, the court noted that almost all courts that had found jurisdiction over eBay buyers or sellers had “relied heavily on the fact that the defendant was using the platform as a broader vehicle for commercial activity.” *Id.* at 1019. If a defendant were to use eBay to conduct “regular business with a remote forum,” *id.*, jurisdiction might comport with “traditional notions of fair play and substantial justice,” *id.* (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)) (internal quotation marks omitted). The court also held that the district court had not abused its discretion in denying *Boschetto*’s request for limited jurisdictional discovery. *Id.* at 1020.

<sup>31</sup> *See id.* at 1021–22 (Rymer, J., concurring).

<sup>32</sup> *Id.* at 1022.

The Ninth Circuit's panel opinion is notable for its simplicity and focus on the principles laid out in *International Shoe*<sup>33</sup> for determining personal jurisdiction in long-range commercial transaction cases. Instead of applying a personal jurisdiction test developed specifically to deal with the internet, the panel conducted a traditional minimum contacts analysis to hold that a single sale was not enough to expose the seller to suit in California. When compared to the muddled approaches to internet jurisdiction taken by other courts, the Ninth Circuit's opinion is noteworthy. The traditional minimum contacts test may be flawed and vague, but its familiarity and uniformity provide a means of avoiding the inconsistency and confusion of internet-specific jurisdictional approaches to internet commercial transaction cases.

The minimum contacts test has been criticized for its overcomplexity<sup>34</sup> and inability to provide definite answers in certain commonplace situations.<sup>35</sup> Additionally, in the six decades of its existence, courts have struggled to adapt the minimum contacts test to ever-changing technology.<sup>36</sup> The Supreme Court has warned against allowing technology to destroy traditional notions of personal jurisdiction<sup>37</sup> but has provided minimal guidance to lower courts dealing with new technologies. The Court's inability to reach agreement on the jurisdictional ramifications of placing a product in the stream of commerce<sup>38</sup> is emblematic of the difficulty courts face in applying established rules to novel situations.

The internet has magnified the flaws of the minimum contacts test because cyberspace lacks the territorial boundaries that form the backbone of traditional personal jurisdictional analyses.<sup>39</sup> Websites and email allow people to transact business anywhere in the world. Lower courts have struggled when faced with cases involving such transactions, and the Supreme Court has not yet examined personal

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<sup>33</sup> *Int'l Shoe Co. v. Washington*, 326 U.S. 310.

<sup>34</sup> See McMunigal, *supra* note 1, at 195 (criticizing the addition of numerous new factors to the minimum contacts test and likening it to "an old house whose owners continually added furniture over the years without discarding any old items"); see also *id.* at 195-99.

<sup>35</sup> See Perschbacher, *supra* note 1, at 518-19. For example, courts have varied widely on what percentage of a company's business must be transacted with residents of a certain state in order to justify that state's courts exercising personal jurisdiction over the company. See Linda Sandstrom Simard, *Meeting Expectations: Two Profiles for Specific Jurisdiction*, 38 *IND. L. REV.* 343, 344 & n.9 (2005).

<sup>36</sup> See generally Reidenberg, *supra* note 2, at 1954-56, 1961-62.

<sup>37</sup> See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980) (noting that, despite historical developments that have enabled much more interstate communication and transportation, "we have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution").

<sup>38</sup> See *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987).

<sup>39</sup> See Susan Nauss Exon, *A New Shoe Is Needed To Walk Through Cyberspace Jurisdiction*, 11 *ALB. L.J. SCI. & TECH.* 1, 8 (2000).

jurisdiction in the internet context.<sup>40</sup> Thus, it is not surprising that no uniform test has emerged for personal jurisdiction in internet cases.<sup>41</sup>

Among the tests devised by various courts, the most widely used was announced in *Zippo*.<sup>42</sup> The *Zippo* test uses the degree of interactivity of the website — whether the site is passive, interactive, or active — in determining whether the website owner is subject to jurisdiction.<sup>43</sup> This test has been endorsed and adopted by several federal courts of appeals, including the Ninth Circuit.<sup>44</sup> However, despite its popularity, *Zippo* has faced criticism. Professor Allan Stein, for instance, argues that the test creates an “arbitrary ‘sliding scale,’” “represents an egregious failure of legal imagination,”<sup>45</sup> and creates “bizarre incentives” for internet merchants to make their websites less sophisticated in order to avoid jurisdictional exposure.<sup>46</sup> Other scholars have criticized *Zippo* for being difficult to apply and providing little guidance in many cases, thereby generating inconsistent results.<sup>47</sup>

As if determining whether courts have personal jurisdiction over websites and their owners were not difficult enough, certain cases — such as *Boschetto* — present the question of jurisdiction over users, rather than owners, of websites like eBay.<sup>48</sup> In such cases, most courts have held that a one-time eBay user does not satisfy the minimum contacts test but that a regular user does.<sup>49</sup> However, courts have pre-

<sup>40</sup> See Miller, *supra* note 2, at 996.

<sup>41</sup> See Floyd & Baradaran-Robison, *supra* note 3, at 602–03 (explaining that when confronted with an internet case, courts are divided among using the effects test from *Calder v. Jones*, 465 U.S. 783 (1984), using the *World-Wide Volkswagen* purposeful availment test, or creating a new test entirely); see also Paul Schiff Berman, *Conflict of Laws, Globalization, and Cosmopolitan Pluralism*, 51 WAYNE L. REV. 1105, 1107 n.9 (2005) (discussing eight types of tests that have emerged for internet jurisdiction).

<sup>42</sup> For a discussion of alternatives to *Zippo* and an argument that courts have recently been shifting away from *Zippo*, see Michael A. Geist, *Is There a There There? Toward Greater Certainty for Internet Jurisdiction*, 16 BERKELEY TECH. L.J. 1345, 1371–80 (2001).

<sup>43</sup> See *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

<sup>44</sup> See *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419 (9th Cir. 1997); see also, e.g., *Toys “R” Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 452 (3d Cir. 2003) (“[*Zippo*] has become a seminal authority regarding personal jurisdiction based upon the operation of an Internet web site.” (citation omitted)); *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 713 (4th Cir. 2002).

<sup>45</sup> Allan R. Stein, *Personal Jurisdiction and the Internet: Seeing Due Process Through the Lens of Regulatory Precision*, 98 NW. U. L. REV. 411, 430 (2004).

<sup>46</sup> *Id.* at 431.

<sup>47</sup> See, e.g., Geist, *supra* note 42, at 1348–49; Brian D. Boone, Comment, *Bullseye! Why a “Targeting” Approach to Personal Jurisdiction in the E-Commerce Context Makes Sense Internationally*, 20 EMORY INT’L L. REV. 241, 257–59 (2006).

<sup>48</sup> Professor Arthur Miller has suggested that eBay might be subject to general jurisdiction in every state since it is “continuously and systematically in every state of the Union.” Miller, *supra* note 2, at 997. However, jurisdiction over eBay users has been a much more difficult issue.

<sup>49</sup> Compare, e.g., *Gossett v. HBL, LLC*, No. 2:06-123-CWH, 2006 WL 1328757, (D.S.C. May 11, 2006) (one-time user), *Metcalf v. Lawson*, 802 A.2d 1221, 1226 (N.H. 2002) (same), and *Karstetter v. Voss*, 184 S.W.3d 396, 405 (Tex. App. 2006) (same), with *Dedvukaj v. Maloney*, 447 F.

sented a confused picture of the proper way to approach these cases. Although *Zippo* would seem to offer little aid since eBay users do not actually own or design the eBay website,<sup>50</sup> several courts and parties have still attempted to use that test.<sup>51</sup> By stretching to apply an unrelated test, these courts have introduced unnecessary complexity and confusion into jurisdictional analyses involving eBay. Other courts have added to the confusion by relying on different specific aspects of the cases: some have emphasized that the seller had no control over the winning bidder,<sup>52</sup> some have analogized the case to long-range advertising,<sup>53</sup> and some have discussed technical aspects of eBay.<sup>54</sup> Similarly, other opinions discussed a number of factual and theoretical rationales without specifying which were determinative in the case.<sup>55</sup> Future litigants thus have little guidance as to what will ultimately determine the outcome of a jurisdictional dispute.<sup>56</sup>

In *Boschetto*, both the district court opinion and Judge Rymer's concurring opinion in the Ninth Circuit provide additional examples of this lack of clarity. The district judge relied at least in part on the *Zippo* test as adapted in *Cybersell*, which he deemed a "useful framework" despite Hansing's lack of control over eBay's interactivity.<sup>57</sup> The district court also recited a number of specific factual circumstances but gave little indication as to their relative importance to the ultimate outcome.<sup>58</sup> Likewise, Judge Rymer's concurring opinion

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Supp. 2d 813, 823 (E.D. Mich. 2006) (regular user), and *Malcolm v. Esposito*, No. 215392, 2003 WL 23272406, at \*3-4 (Va. Cir. Ct. Dec. 12, 2003) (same).

<sup>50</sup> See *Action Tapes, Inc. v. Weaver*, No. Civ. 3:05-CV-1693-H, 2005 WL 3199706, at \*2 (N.D. Tex. Nov. 23, 2005) ("The sellers and buyers who connect through eBay cannot be said themselves to control eBay's degree of commercial interactivity any more than a buyer and seller at Sotheby's can be said to be responsible for the premises or to control the auctioneer.")

<sup>51</sup> See, e.g., *McGuire v. Lavoie*, No. Civ.A 3:03-CV-0161-BH, 2003 WL 23174753, at \*3 (N.D. Tex. Aug. 19, 2003).

<sup>52</sup> See, e.g., *United Cutlery Corp. v. NFZ, Inc.*, No. CIV. CCB-03-1723, 2003 WL 22851946, at \*4 (D. Md. Dec. 1, 2003).

<sup>53</sup> See, e.g., *Ex parte Harrison*, No. 2070850, 2008 WL 4684156, at \*6 (Ala. Civ. App. Oct. 24, 2008).

<sup>54</sup> See, e.g., *Foster-Gwin, Inc. v. Fallwell*, No. C 01-03068 WHA, 2001 WL 1382069, at \*2-4 (N.D. Cal. Nov. 5, 2001) (discussing eBay's user agreement).

<sup>55</sup> See, e.g., *Malone v. Berry*, 881 N.E.2d 283, 287-89 (Ohio Ct. App. 2007) (noting that the auction website was not interactive, that the defendant did not operate the website, that the defendant had no control over the winning bidder, and that the defendant had not targeted the forum state — all before concluding that the court lacked personal jurisdiction).

<sup>56</sup> One court, without analysis, even ruled that a single sale of a car on eBay was sufficient to establish minimum contacts. See *Tindall v. One 1973 Ford Mustang*, No. 05-73467, 2006 WL 1329168, at \*4 (E.D. Mich. May 16, 2006).

<sup>57</sup> *Boschetto v. Hansing*, No. C-06-1390 VRW, 2006 WL 1980383, at \*3 (N.D. Cal. July 13, 2006).

<sup>58</sup> See *id.* at \*3-5. Judge Walker noted that the negotiations for the sale took place only over the internet, that the sale was a one-time occurrence, that Hansing had no control over who would be the highest bidder, and that *Boschetto* was responsible for retrieving the car. *Id.* He

lacked a clear guiding principle. Instead, in refusing jurisdiction, she relied on a number of metrics for establishing minimum contacts without explaining which were most important: Hansing did not create ongoing obligations in California, the location of the winning bidder was fortuitous, the foreseeability that a California resident might be the auction winner alone was insufficient to establish minimum contacts with the state, and so on.<sup>59</sup> Citing a list of justifications without prioritizing them or noting the relevance of their cumulative weight offers little help to either lower courts grappling with this issue or future litigants attempting to predict the outcome of disputes.

By contrast, the Ninth Circuit's panel opinion provided a much clearer picture of what can be expected in jurisdictional disputes involving internet commercial transactions. Rejecting the *Zippo* approach as inapplicable to a case where the defendant does not operate the website in question,<sup>60</sup> the panel explicitly discounted the internet dimension and treated the case like any other involving a sale. The court noted, "At bottom, the consummation of the sale via eBay here is a distraction from the core issue: This was a one-time contract for the sale of a good that involved the forum state only because that is where the purchaser happened to reside . . ."<sup>61</sup> Instead of trying to apply an internet-specific test or becoming distracted by the role of the internet in the case, the panel's analysis focused on the underlying sale and applied the minimum contacts test in the same way it has been applied to long-range commercial transactions since 1945.

Although a more mechanical formulation — such as *Zippo* — might be expected to produce more predictable and consistent results than a general test,<sup>62</sup> those relative benefits are largely lost in the case of internet commercial transaction jurisdiction. *Zippo* properly applies to only a narrow subset of such cases, whereas courts have spent six decades developing a body of minimum contacts jurisprudence for long-range commercial transactions.<sup>63</sup> Despite not being as specific as *Zippo*, the traditional application of the minimum contacts test

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also considered the probable negative effects on e-commerce if internet sellers were liable to be sued anywhere in the United States. *Id.* at \*5.

<sup>59</sup> *Boschetto*, 539 F.3d at 1021–23 (Rymer, J., concurring). Judge Rymer also analogized the case to one involving untargeted advertising and echoed the district court's policy argument. *Id.* at 1022–23 & n.2.

<sup>60</sup> *Id.* at 1018 (majority opinion).

<sup>61</sup> *Id.* at 1019.

<sup>62</sup> *Cf.*, e.g., Edward Lee, *Rules and Standards for Cyberspace*, 77 NOTRE DAME L. REV. 1275 (2002) (discussing the relative benefits of rules and standards in dealing with technological change); Kathleen M. Sullivan, *The Supreme Court, 1991 Term—Foreword: The Justices of Rules and Standards*, 106 HARV. L. REV. 22, 62–63 (1992).

<sup>63</sup> *Cf.* *Kungys v. United States*, 485 U.S. 759, 772 (1988) ("Though this formulation may seem less verbally precise[,] . . . in application it may well produce greater uniformity, since judges are accustomed to using it, and can consult a large body of case precedent.").

achieves many of the benefits commonly associated with more precise approaches. Improvements in predictability in personal jurisdiction brought by a more consistent judicial approach will prevent the fear of suit in far-off fora from having a chilling effect on electronic commerce,<sup>64</sup> a concern noted in *Boschetto* by both the district court and Judge Rymer. Ultimately, more consistent application of personal jurisdiction will enable parties to establish better informed expectations as they order their transactions.<sup>65</sup>

However, the Ninth Circuit's traditional minimum contacts approach is limited to the category of cases to which *International Shoe* most directly applied: long-range commercial transactions. Cases such as *Calder*<sup>66</sup> and *World-Wide Volkswagen*<sup>67</sup> revealed that the basic minimum contacts test was not well-suited to dealing with situations involving remote torts or goods that were moved after purchase. Similarly, the Ninth Circuit's approach will likely be largely unhelpful in internet defamation and other noncommercial transaction cases.<sup>68</sup>

Nonetheless, for the situations to which the original *International Shoe* minimum contacts test best applies — long-range commercial transactions — this approach remains valuable. Although vagueness in the law is often maligned, the Ninth Circuit's decision in *Boschetto* demonstrates that in certain situations an imprecise test can lead to more consistent and predictable results than attempts to create a definitive legal test for ever-changing circumstances. Instead of continuing the struggle to create the perfect all-purpose internet jurisdiction test, the Ninth Circuit offered a reprieve: a way to clarify a portion of the internet jurisdiction landscape and to remove a potential obstacle to the full realization of the benefits of electronic commerce.

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<sup>64</sup> See Geist, *supra* note 42, at 1347 (explaining that in the face of uncertainty, internet entrepreneurs must factor in the costs of potential liability in many states); see also *id.* at 1362 (arguing that a large expansion of jurisdiction in the internet context would stifle future internet growth).

<sup>65</sup> See Samuel Issacharoff, *Settled Expectations in a World of Unsettled Law: Choice of Law After the Class Action Fairness Act*, 106 COLUM. L. REV. 1839, 1852 (2006) ("If the point of clear legal rules is to allow the expectations of parties to settle, then private ordering is compromised to the extent that imprecise legal rules defeat the needed predictability for parties to make informed assessments of their rights and responsibilities.")

<sup>66</sup> *Calder v. Jones*, 465 U.S. 783 (1984) (confronting the issue of personal jurisdiction over a defendant alleged to have libeled the plaintiff in a nationally circulated magazine article).

<sup>67</sup> *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) (confronting the issue of Oklahoma's personal jurisdiction over defendant car sellers when car purchased in New York was alleged to have been defective in Oklahoma).

<sup>68</sup> See, e.g., *Revell v. Lidov*, 317 F.3d 467 (5th Cir. 2002) (addressing alleged defamation over the internet); *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316 (9th Cir. 1998) (confronting the issue of personal jurisdiction over a "cybersquatter" — someone who has claimed as a domain name another person's trademark).