

Jurisdiction over E-Commerce Transactions: United States Law
The Uniform Computer Information Transactions Act
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Jurisdiction

1. My topic is personal jurisdiction; distinguish from subject-matter jurisdiction.
2. Basic rule under U.S. law: assertion of personal jurisdiction must be consistent with the constitutional requirement of due process; "minimum contacts" criterion.
3. Application to online conduct
 - a. The issue: Under what circumstances may a court, consistently with due process, assert jurisdiction over a person located outside the territory where the court sits, based on contacts that the person has with the forum territory via use of the Internet?
 - b. Two approaches that are dominant in U.S. law:
 - i. The three-category approach set forth in *Zippo Manufacturing. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997).
 1. Dissatisfaction with *Zippo* led to revision to make it more consistent with the minimum contacts criterion. *ALS Scan, Inc. v. Digital Service Consultants, Inc.*, 293 F.3d 707 (4th Cir. 2002).
 - ii. The effects test. *Panavision International, L.P. v. Toeppen*, 141 F.3d 1316 (9th Cir.1998).
 1. Potentially an extremely broad ground for jurisdiction; some courts have narrowed its scope. *Revell v. Lidov*, 317 F.3d 467 (5th Cir. 2002); *Young v. New Haven Advocate*, 315 F.3d 256 (4th Cir. 2002).
 - c. Recent decisions may herald a convergence between the *Zippo* approach and the effect test. *ALS Scan v. Digital Service Consultants, supra*.
4. Application of these principles internationally:
 - a. These same principles apply in determining whether a U.S. court can assert authority over a defendant who is not a resident of the U.S.
 - i. But a special rule makes it easier to find minimum contacts by non-U.S. defendants: Rule 4(k)(2) of the Federal Rules of Civil Procedure.
 - b. Examples of how these rules on personal jurisdiction have been applied to non-U.S. defendants: *Graduate Management Admission Council v. Raju*, 241 F. Supp. 2d 589 (E.D. Va. 2003); *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 243 F. Supp. 2d 1073 (C.D. Cal. 2003); *Yahoo! Inc. v. La Ligue Contre le Racisme et l'Antisemitisme*, 379 F.3d 1120 (9th Cir. 2004).

UCITA

1. UCITA is a model state law developed by the National Conference of Commissioners on Uniform State Laws ("NCCUSL").
 - a. Many NCCUSL model laws are widely adopted by the states: e.g., the Uniform Commercial Code, and the Uniform Electronic Transactions Act.
2. Purpose of UCITA: update the law of contracts for application to transactions in which the product is information, rather than traditional tangible goods.
3. UCITA has been extremely controversial, on several grounds, principally:
 - a. Endorses shrink-wrap contracts.
 - b. Interferes with consumer protection.
4. UCITA did not meet with much success in state legislatures:
 - a. Enacted by two states; banned by 4 others.
5. NCCUSL has dropped its support of UCITA.