

Swiss Companies Litigating in US Courts

Website Liability

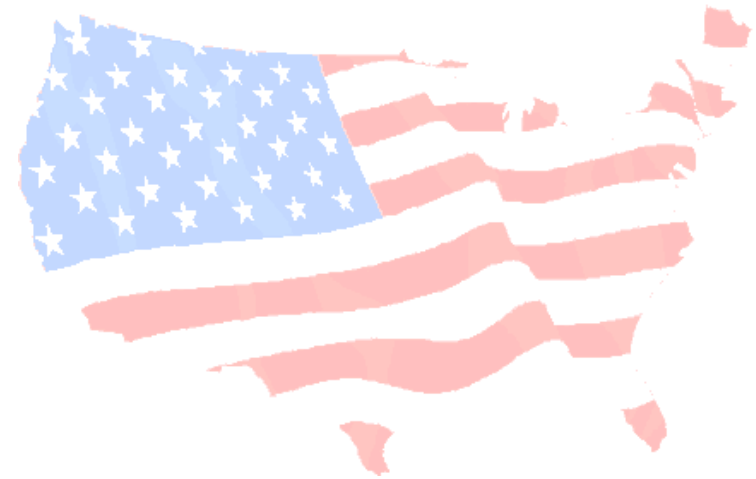
Tagung der Swiss-American Chamber of Commerce vom 9. März 2006 - Widder Hotel
Peter Honegger

Personal Jurisdiction

Joseph Story (1779-1845)

“Jurisdiction, to be rightfully exercised, must be founded either upon the person being within the territory, or the thing being within the territory, for, otherwise, there can be no sovereignty exerted ...

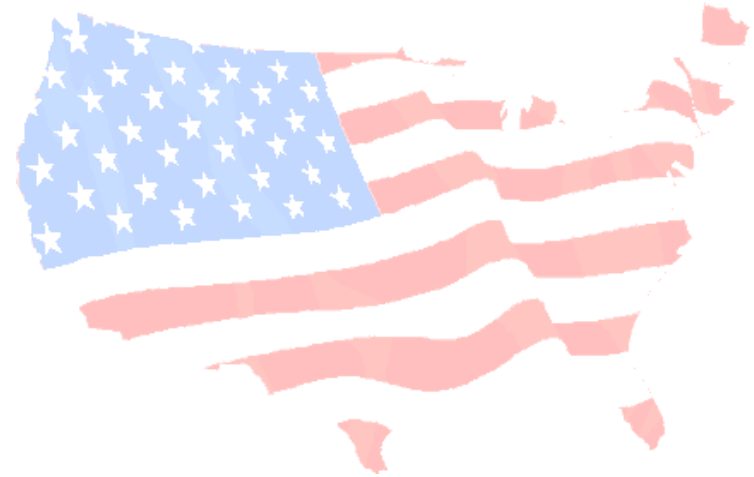
AMISTAD



No sovereignty can extend its process beyond its own territorial limits, to subject either persons or property to its judicial decisions.”

Burger King (1985)

“It is an inescapable fact of modern commercial life that a substantial amount of commercial business is transacted solely by mail and wire communications across state lines, thus **obviating the need for physical presence** within a State in which business is conducted.”



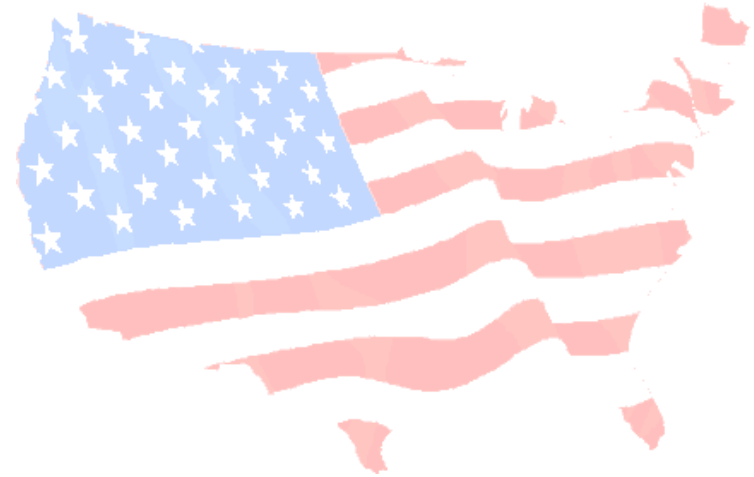
Core Question

“Can personal jurisdiction be exercised by U.S. courts based on a foreign defendant’s website activity?”



Zippo Manufacturing v. Zippo Dot Com (1997)

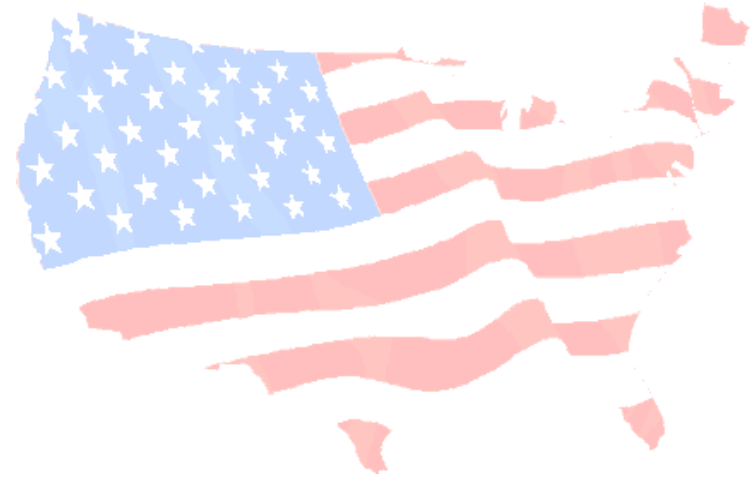
“Dot Com repeatedly and consciously chose to process Pennsylvania residents’ applications and to assign them passwords. Dot Com knew that the result of these contracts ...”



“We conclude that this court may appropriately exercise personal jurisdiction over the Defendant.”

Anderson v. Dassault Aviation

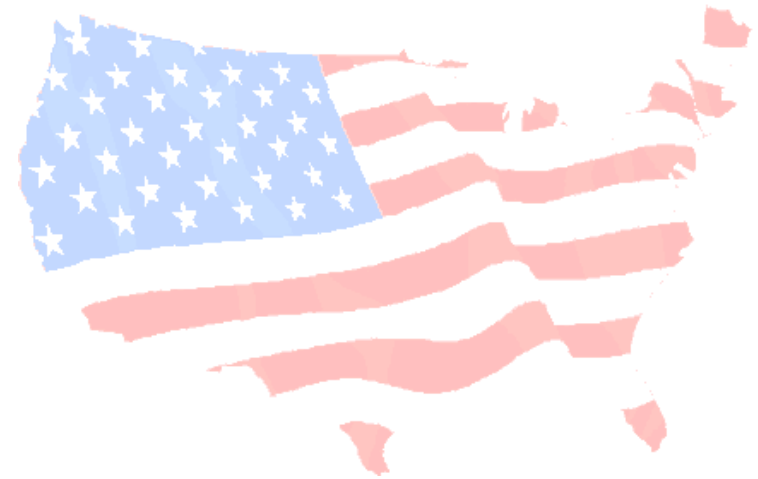
“A website operated and administered jointly by Dassault Aviation and Dassault Falcon Jet (www.dassaultfalcon.com) ... boosts the center's production capacity to over 60 new aircraft completions per year.”



”We conclude that Dassault Aviation has sufficient contacts with Arkansas to support an Arkansas court's assertion of personal jurisdiction over it.“

Soma Medical Int'l v. Standard Chartered Bank

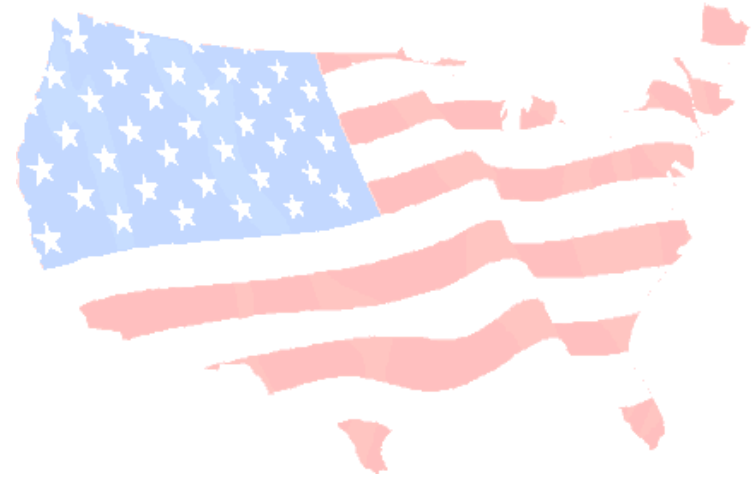
“Finally, we cannot conclude that SCB's maintenance of a passive website, merely providing information to interested viewers, constitutes the kind of purposeful availment of the benefits of doing business in Utah ...”



“We therefore affirm the district court's dismissal of all claims against SCB for lack of personal jurisdiction ...”

In re ski train fire in Kaprun, Austria, on Nov. 11, 2000

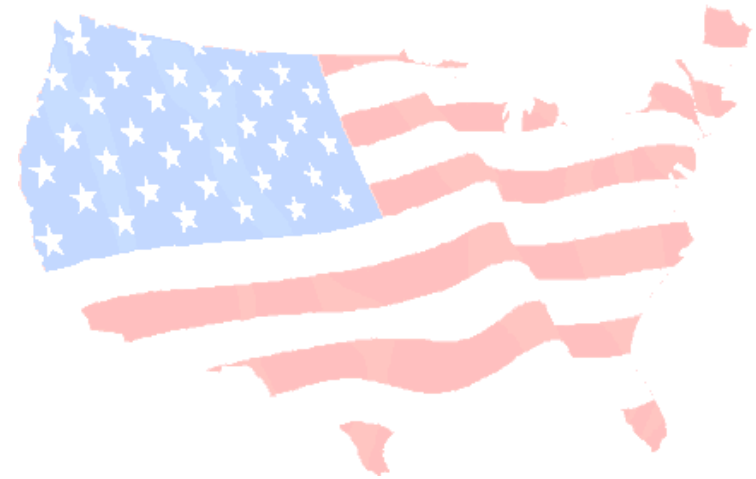
“There is no contention in this case that the accident in Kaprun, Austria “arises from” or shares a “substantial nexus with” Siemens Austria’s ... transactions over the Internet.”



“... Siemens Austria’s motion to dismiss the case against it for lack of personal jurisdiction must be granted.”

Borer Fielding (2005)

“Here, Fielding and Borer have shown neither significant circulation nor certain harm in the forum state. The brunt of the harm of alleged libel was not suffered in Texas and the Publishers did not meaningfully direct their activities toward Texas.”



“The district court correctly concluded that it lacked specific jurisdiction.”

Lessons to be learned

Doing business over the Internet by entering into contracts.

Website that allows a user to exchange information.

Maintaining a merely passive website.

