

## What is Really Fair: Internet Sales and the Georgia Long-Arm Statute

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### INTRODUCTION

With over 86 million active members, quarterly revenues over \$1.2 billion, and 113 million concurrent listings,<sup>1</sup> it is little wonder that eBay<sup>2</sup> transactions generate litigation. Moreover, it is such an easy and popular tool for an ordinary consumer to buy or sell goods that the legal implications of using the site are often overlooked. Few eBay users recognize that the simple sale of their old golf clubs, baseball cards, or used car could result in a mandatory court appearance on the opposite side of the country, answering to a buyer who wants more than positive feedback.

The laws which subject these sellers to foreign jurisdictions differ from state to state and are known as “long-arm statutes.”<sup>3</sup> With the popularity of e-commerce sites growing<sup>4</sup> and the jurisdiction of state long-arm statutes increasing, this issue is rapidly becoming more important. States may be divided into “do or do-not-sell” classes such that

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1. EBAY MARKETPLACES FACT SHEET 1 (2008), available at <http://news.ebay.com/fastfacts.cfm> (follow “eBay Marketplaces Fast Facts” hyperlink).

2. EBay Home Page, <http://www.ebay.com>.

3. BLACK’S LAW DICTIONARY 961 (8th ed. 2004).

4. See EBAY MARKETPLACES FACT SHEET, *supra* note 1 (showing continuous growth in the number of active users and listings).

eBay members and other online sellers may target buyers that have a lower risk of subjecting the seller to legal liability. A national seller treating buyers differently based on the state they reside in is not a new concept,<sup>5</sup> and with the increase in online sales and the litigation associated with those sales, discrimination toward buyers based on state long-arm statutes is likely to follow.

A recent example of an eBay seller being sued in a foreign jurisdiction based on a sale made on the eBay auction site is the 2006 Georgia Court of Appeals case *Aero Toy Store, L.L.C. v. Grieves*.<sup>6</sup> In *Aero* a Florida company sold a 2001 BMW car to a Georgia resident for nearly \$32,000.<sup>7</sup> After receiving the vehicle, the buyer filed suit in Georgia against the company, Aero Toy Store, for making numerous misrepresentations about the car.<sup>8</sup> When Aero moved to dismiss the suit for lack of personal jurisdiction, the trial court found, and the court of appeals affirmed, that Aero had sufficient minimum contacts with Georgia to authorize Georgia's exercise of personal jurisdiction over the company under its long-arm statute.<sup>9</sup>

This article analyzes the current issue of online merchants being forced to defend themselves in foreign jurisdictions during litigation concerning online sales. Part I describes the history of personal jurisdiction from its nineteenth century concerns with territoriality to the twentieth century minimum contacts standard to other, more recent developments. Part II summarizes personal jurisdiction and minimum contacts as applied to the Internet generally and discusses whether Internet sales contain sufficient minimum contacts to satisfy the constitutional prerequisites for the exercise of personal jurisdiction over the seller. Part III analyzes the Georgia long-arm statute as it relates to jurisdiction over persons transacting sales over the Internet. Finally, Part IV examines the policies for and against allowing the Georgia long-arm

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5. For example, national sellers may avoid selling certain animal products, all terrain vehicles, and weapons to residents of certain states based on the states' respective endangered species laws, off-road vehicle regulations, and criminal weapon codes.

6. *Aero Toy Store, L.L.C. v. Grieves*, 631 S.E.2d 734 (Ga. Ct. App. 2006).

7. *Id.* at 735.

8. *Id.*

9. *Id.* at 735-36, 741.

statute to pull foreign sellers into Georgia before recommending clear guidelines to the Georgia Legislature if it were to amend the long-arm statute.

## I. A BRIEF HISTORY OF PERSONAL JURISDICTION

Before analyzing how the Georgia long-arm statute relates to Internet transactions, we must first understand what personal jurisdiction is, and how the current long-arm statute has been interpreted generally by the Georgia Supreme Court.

### A. TERRITORIALITY AND *PENNOYER*

Personal jurisdiction is defined as a “court’s power to bring a person into its adjudicative process; jurisdiction over a defendant’s personal rights, rather than merely over property interests.”<sup>10</sup> The Supreme Court introduced the concept of personal jurisdiction in 1877 in *Pennoyer v. Neff*.<sup>11</sup> In *Pennoyer* both parties claimed title to a piece of land in Oregon.<sup>12</sup> Pennoyer asserted title under a deed resulting from a sheriff’s sale of property to collect on a judgment entered in Oregon against Neff, a non-resident of Oregon who claimed that he was not properly served with process for the proceeding that resulted in the judgment.<sup>13</sup> The Supreme Court determined that Pennoyer’s assertion of title was invalid because the sheriff’s sale was unauthorized.<sup>14</sup> The Court held that Neff had not been properly served in the underlying case—resulting in the personal judgment against him—because he had not been personally served with process in Oregon<sup>15</sup> (but instead had only received constructive service by publication<sup>16</sup>). The Court reasoned that to assure “proper protection to citizens of other states,” due process required that a court obtain personal jurisdiction over a nonresident

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10. BLACK’S LAW DICTIONARY 870 (8th ed. 2004).

11. *Pennoyer v. Neff*, 95 U.S. 714 (1877); see *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 222 (1957) (“Since *Pennoyer v. Neff*, this Court has held that the Due Process Clause of the Fourteenth Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their boundaries.” (citation omitted)).

12. *Pennoyer*, 95 U.S. at 719.

13. *Id.* at 719–20.

14. *Id.* at 734.

15. *Id.*

16. *Id.* at 720.

only by personal service of process within the forum state.<sup>17</sup>

In addition to setting the foundation for personal jurisdiction jurisprudence, *Pennoyer* “served another key function as it placed *in personam* jurisdictional analysis squarely under the aegis of the Fourteenth Amendment’s Due Process Clause and provided support for the Court’s subsequent declaration that jurisdiction based on ‘physical presence’ *ipso facto* satisfies due process.”<sup>18</sup> From 1877 forward, courts equated their jurisdictional reach with a constitutional Fourteenth Amendment analysis based on the physical presence of a person in the forum.<sup>19</sup>

As innovations in transportation and interstate commerce increased at the turn of the twentieth century, courts developed exceptions to allow “jurisdictional assertions based on the type of dispute rather than a general adjudicative power over the individual defendant.”<sup>20</sup> One example was the Supreme Court’s 1927 decision in *Hess v. Pawloski*.<sup>21</sup> In *Hess* the Court upheld a state statute which declared that driving on a state highway is the equivalent of appointing an official of that state as one’s process agent and thus confers personal jurisdiction over the driver.<sup>22</sup> By 1945 there were so many exceptions to the physical presence requirement due to technological advancements and increased commerce that the Court decided to embrace a new jurisdictional theory.

#### B. *INTERNATIONAL SHOE* AND THE TWENTIETH CENTURY

As the usefulness of the physical presence standard decreased, the 1945 *International Shoe* Court formulated a more expansive test for the propriety of the extraterritorial

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17. *See id.* at 726.

18. Jeffrey J. Utermohle, *Maryland’s Diminished Long-Arm Jurisdiction in the Wake of Zavian v. Foudy*, 31 U. BALT. L. REV. 1, 5 (2001) (citing *Pennoyer*, 95 U.S. at 733; *Burnham v. Superior Court*, 495 U.S. 604, 619 (1990)).

19. *Id.*

20. Charles W. “Rocky” Rhodes, *The Predictability Principle in Personal Jurisdiction Doctrine: A Case Study on the Effects of a “Generally” Too Broad, but “Specifically” Too Narrow Approach to Minimum Contacts*, 57 BAYLOR L. REV. 135, 144 (2005).

21. *Hess v. Pawloski*, 274 U.S. 352 (1927).

22. *Id.* at 356–57. Jurisdiction was only appropriate for events relating to driving on a highway, however. *Id.* at 354–56.

exercise of personal jurisdiction.<sup>23</sup> The new due process standard to subject a defendant to a personal judgment when he is not physically present, was that the defendant must have “certain minimum contacts with [the forum] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”<sup>24</sup> Thus a defendant may be subject to a personal judgment in a foreign state based on some activity other than that involving his physical presence.<sup>25</sup>

Courts analyzing the minimum contacts standard use a two-step approach. First, they determine if minimum contacts exist between the defendant and the forum, and second, they analyze considerations of “fair play and substantial justice.”<sup>26</sup> Thus, *International Shoe* embraced a new jurisdictional theory founded upon the fairness of the exercise of jurisdiction instead of territoriality.<sup>27</sup>

In light of the expanded constitutional understanding of personal jurisdiction announced in *International Shoe*, all fifty states and the District of Columbia enacted long-arm statutes to enable their courts to hale a nonresident into the forum to defend against a lawsuit.<sup>28</sup> Some states chose to extend their courts’ jurisdictional reach to the full extent authorized by the Supreme Court, while others tailored their statutes to the specific requirements of their citizenry.<sup>29</sup>

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23. Utermohle, *supra* note 18, at 6.

24. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

25. Susan Nauss Exon, *A New Shoe is Needed to Walk Through Cyberspace Jurisdiction*, 11 ALB. L.J. SCI. & TECH. 1, 5 (2000).

26. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980) (quoting *Int’l Shoe*, 326 U.S. at 316, and noting that courts seek to afford defendants protection from unreasonable and unfair litigation).

27. Rhodes, *supra* note 20, at 147.

28. Utermohle, *supra* note 18, at 6 (citing 16 JAMES WM. MOORE ET AL., *MOORE’S FEDERAL PRACTICE* ¶ 108.60[1] (3rd ed. 2003)).

29. *Id.*, at 6–7.

Not all long-arm statutes are created equal: the overwhelming majority of states...extend personal jurisdiction to the full extent permitted by the due process decisions of the Supreme Court. On the other hand, a small minority of states implement their long-arm authority more narrowly than due process allows. For instance, New York clings to an anachronistic approach best described as ‘half-way between *Pennoyer* and *International Shoe*.  
*Id.*

### C. PERSONAL JURISDICTION IN GEORGIA

The Georgia long-arm statute is the general source of statutory authority for the exercise of personal jurisdiction over nonresidents.<sup>30</sup> The statute reads in part:

A court of this state may exercise personal jurisdiction over any nonresident or his executor or administrator, as to a cause of action arising from any of the acts, omissions, ownership, use, or possession enumerated in this Code section, in the same manner as if he were a resident of the state, if in person or through an agent, he:

- (1) Transacts any business within this state;
- (2) Commits a tortious act or omission within this state, except as to a cause of action for defamation of character arising from the act;
- (3) Commits a tortious injury in this state caused by an act or omission outside this state if the tort-feasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
- (4) Owns, uses, or possesses any real property situated within this state . . . .<sup>31</sup>

The portion of the statute pertinent to the e-commerce question at hand is subsection (1): “Transacts any business within this state.”<sup>32</sup>

Before 2005, Georgia courts interpreted the “[t]ransacts any business” language of the long-arm statute to apply only to contract actions.<sup>33</sup> An early Georgia Supreme Court case, *O.N. Jonas Co. v. B & P Sales Corp.*, illustrates this contract requirement while placing an emphasis on required contacts and narrowing the scope of the statute within available due process limits.<sup>34</sup> The *Jonas* case concerned a contract, executed outside of Georgia, between a nonresident defendant

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30. Steven W. Hardy, *Personal Jurisdiction in Georgia Over Claims Arising from Business Conducted Over the Internet*, GA. B.J., June 2006, at 21.

31. GA. CODE ANN. § 9-10-91 (2007). Subsection (5) solely concerns issues related to divorce and has been omitted. *Id.* § 9-10-91(5).

32. *Id.* § 9-10-91(1).

33. Jeffrey A. Van Detta & Shiv K. Kapoor, *Extraterritorial Personal Jurisdiction for the Twenty-First Century: A Case Study Reconceptualizing the Typical Long-Arm Statute to Codify and Refine International Shoe After its First Sixty Years*, 3 SETON HALL CIRCUIT REV. 339, 361 (2007).

34. *O.N. Jonas Co. v. B & P Sales Corp.*, 206 S.E.2d 437, 439 (Ga. 1974).

and a Georgia sales corporation.<sup>35</sup> In holding there was no personal jurisdiction, the Supreme Court of Georgia stated “there were no negotiations or contracts entered into in Georgia with respect to the goods that are the subject matter of these actions.”<sup>36</sup> Since the *Jonas* purchases were made by telephone and mail, Georgia courts held in subsequent cases that telephone, mail, and e-mail communications from a nonresident defendant did not confer personal jurisdiction under subsection (1).<sup>37</sup> This limited reading remained in effect for some time, and was only expanded in very limited applications in lawsuits initiated by banks.<sup>38</sup> However, in 2005, the *Jonas* principles, and all the subsequent cases that relied on it, were overturned in the landmark case, *Innovative Clinical & Consulting Services (“ICCS”)*.<sup>39</sup>

In *ICCS* a Georgia resident had brought claims for breach of contract, fraud, and conversion against non-resident First National Bank of Ames.<sup>40</sup> The bank had a security interest in a lease agreement between Innovative and a financing corporation, which was also a customer of the bank.<sup>41</sup> The Georgia Court of Appeals relied on precedent specifying the requirement of a contract and therefore applied subsection (1) to the breach of contract claim only.<sup>42</sup> The court determined ICCS’s breach of contract claim was not even “remotely related to the security interest taken by the bank.”<sup>43</sup> The Georgia

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35. *Id.* at 438.

36. *Id.* at 439.

37. Van Detta & Kapoor, *supra* note 33, at 363 (citing Catholic Stewardship Consultant, Inc. v. Ruotolo Assocs., Inc., 608 S.E.2d 1 (Ga. Ct. App. 2004); First Nat’l Bank of Ames v. Innovative Clinical & Consulting Servs., L.L.C. (*First Nat’l Bank I*), 598 S.E.2d 530 (Ga. Ct. App. 2004); ETS Payphone, Inc. v. TK Indus., 513 S.E.2d 257 (Ga. Ct. App. 1999); Burt v. Energy Servs. Inv. Corp., 427 S.E.2d 576 (Ga. Ct. App. 1993); Commercial Food Specialties, Inc. v. Quality Food Equip. Co., 338 S.E.2d 865 (Ga. Ct. App. 1985); Graphic Mach., Inc. v. H.M.S. Direct Mail Serv., Inc., 281 S.E.2d 343 (Ga. Ct. App. 1981)).

38. *See* Ga. R.R. Bank & Trust Co. v. Barton, 315 S.E.2d 17 (Ga. Ct. App. 1984) (expanding the scope of the long arm statute by allowing for jurisdiction over nonresidents purposefully availing themselves of the protections of Georgia law by doing some act in the state and considering whether there was “substantial” effect on the forum from the contact).

39. Innovative Clinical & Consulting Servs., L.L.C. v. First Nat’l Bank of Ames, 620 S.E.2d 352 (Ga. 2005).

40. *First Nat’l Bank I*, 598 S.E.2d at 532.

41. *Id.*

42. *Id.* at 534.

43. *Id.*

Supreme Court granted certiorari “to address preconceived inconsistencies in . . . precedents defining the scope of personal jurisdiction that Georgia courts may exercise over nonresidents pursuant to. . . the Georgia long-arm statute.”<sup>44</sup>

The Georgia Supreme Court’s opinion stated that, because an earlier case interpreted subsections (2) and (3) of the long-arm statute literally, courts should apply that same interpretation to subsection (1). Since “[n]othing in subsection (1) limits its application to contract cases”<sup>45</sup> or “requires the physical presence of the nonresident in Georgia or minimizes the import of a nonresident’s intangible contacts with the State,”<sup>46</sup> under a literal reading, these limitations do not apply.<sup>47</sup> Because the only limitation remaining was that of the Constitution, the court held that subsection (1) should henceforth reach “to the maximum extent permitted by procedural due process.”<sup>48</sup> The court explicitly “overrule[d] all prior cases that fail[ed] to accord the appropriate breadth to the construction of the ‘transacting any business’ language” of subsection (1).<sup>49</sup> Finally, the court vacated and remanded the case to the Court of Appeals to “fully consider whether the trial court had personal jurisdiction over the [nonresident] bank under [subsection (1)].”<sup>50</sup> Unsurprisingly, the Court of Appeals subsequently found that the trial court had personal jurisdiction over the bank.<sup>51</sup>

## II. PERSONAL JURISDICTION, MINIMUM CONTACTS, AND

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44. *Innovative*, 620 S.E.2d at 353.

45. *Id.* at 355.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 356.

51. *First Nat’l Bank of Ames v. Innovative Clinical & Consulting Servs., L.L.C.*, (*First Nat’l Bank II*) 634 S.E.2d 88, 89 (Ga. Ct. App. 2006). The court found that “the bank’s ‘postal, telephone, and other intangible Georgia contacts’ were sufficient under the new broader interpretation of subsection (1),” *Van Detta & Kapoor*, *supra* note 33, at 368 (quoting *First Nat’l Bank II*, 634 S.E.2d at 89), and that “the exercise of personal jurisdiction was within the limits of constitutional due process, because ‘the bank’s “business” was not brought to Georgia through a “unilateral action” of ICCS.’” *Van Detta & Kapoor*, *supra* note 33, at 368 n.116 (quoting *First Nat’l Bank II*, 634 S.E.2d at 89, and *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–75 (1985)).

### THE INTERNET GENERALLY

Since it has been established, through *ICCS*, that the Georgia long-arm statute's reach shall be to the full extent allowed by due process, before analyzing how Georgia courts define due process as it relates to Internet contacts, we should first look to influential national cases describing how due process applies to Internet contacts.

#### A. THE CONSTITUTIONALITY OF INTERNET CONTACTS AND THE *ZIPPO* TEST

Early cases regarding Internet jurisdiction can be described as inconsistent at best. One of the first to address the issue of personal jurisdiction based on Internet contacts was *Inset Systems v. Instruction Set, Inc.*<sup>52</sup> In that case, the defendant, a Massachusetts company, was subject to personal jurisdiction in Connecticut after posting advertisements on its website and offering a toll-free phone number.<sup>53</sup> The court reasoned that because the defendant's website was designed to communicate with people in every state, posting information on the website was the same as directing advertisements toward every state.<sup>54</sup> Because the defendant's advertisements were accessible to all Internet users in Connecticut, it had "purposefully availed itself of the privilege of doing business" in the state.<sup>55</sup> The fact that the defendant had no employees or offices in Connecticut nor conducted any regular business there was irrelevant to the court.<sup>56</sup> Since the court reasoned that the posting of information on a website was analogous to television or radio advertisements, it inferred that Internet users were being repetitively solicited with the information.<sup>57</sup>

"Fortunately for Internet merchants, later decisions have taken the Internet's unique qualities into consideration and required proof that the defendant's Internet activities were

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52. *Inset Sys., Inc. v. Instruction Set, Inc.*, 937 F. Supp. 161 (D. Conn. 1996).

53. *Id.* at 164.

54. *See id.* at 165.

55. *Id.*

56. *See id.* at 162-63.

57. *See id.* at 164; Aaron S. Guin, *Transactions: Internet Jurisdiction and Forum Selection Clauses*, 2 *TRANSACTIONS: TENN. J. BUS. L.* 33, 35 (2000) (stating that the *Inset* court "expanded the understanding of purposeful availment to its extreme conclusion").

purposely directed at the forum state.”<sup>58</sup> In *Bensusan Restaurant Corp. v. King*,<sup>59</sup> a New York federal court held that to extend jurisdiction over the defendant, a Missouri club owner, on the basis of the club’s website alone would violate the Due Process Clause.<sup>60</sup> The court reasoned “that posting information on the Internet is more analogous to placing a product into the stream of commerce, which may be ‘felt nationwide’ but without more does not establish minimum contacts.”<sup>61</sup> Because the defendant neither conducted business in New York nor directed New York residents to his club’s website, the court declined to exercise jurisdiction.<sup>62</sup>

Finally, in 1997, the U.S. District Court for the Western District of Pennsylvania issued a landmark opinion that set forth a new method for conducting the minimum contacts analysis which has been cited in almost every Internet jurisdiction case since.<sup>63</sup> The case, *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*,<sup>64</sup> concerned a dispute between the Zippo lighter company, a Pennsylvania corporation, and Zippo Dot Com, a California-based news service that obtained domain name registration for such sites as “zippo.com,” “zippo.net,” and “zippone.com.”<sup>65</sup> The District Court found jurisdiction proper even though the California resident did not have any physical presence in the forum state.<sup>66</sup>

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58. Quinn K. Nemeyer, Comment, *Don’t Hate the Player, Hate the Game: Applying the Traditional Concepts of General Jurisdiction to Internet Contacts*, 52 LOY. L. REV. 147, 168 (2006).

59. *Bensusan Rest. Corp. v. King*, 937 F. Supp. 295 (S.D.N.Y. 1996) (involving trademark infringement claims between the plaintiff, owner of the “Blue Note” jazz club in New York, and the defendant, owner of the “Blue Note” jazz club in Missouri).

60. *Id.* at 300–01.

61. Nemeyer, *supra* note 58, at 169 (quoting *Bensusan Rest. Corp.*, 937 F. Supp. at 301); *see also* *Asahi Metal Indus. Co. v. Superior Court of California*, 480 U.S. 102, 112 (1987) (“The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.”).

62. *Bensusan Rest. Corp.*, 937 F. Supp. at 301.

63. *See* Nemeyer, *supra* note 58, at 171 (“[T]he *Zippo* sliding scale has been widely adopted as the appropriate approach for evaluating Internet-based forum contacts in the context of specific jurisdiction.”).

64. *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997).

65. *Id.* at 1121.

66. *Id.* at 1126–27.

The *Zippo* court's analysis concerned "the nature and quality of commercial activity that an entity conducts over the Internet."<sup>67</sup> The court distinguished between three broad categories of websites based on their interactive and commercial characteristics, and created a sliding scale analysis for distinguishing between the sites.<sup>68</sup> At one end of the scale are websites that conduct business over the Internet and actively target a forum state through advertising efforts and information collection.<sup>69</sup> At the other end of the scale are websites that are "passive" and merely include information or advertisements.<sup>70</sup> Finally, the third category of websites, in the middle of the sliding scale, are interactive websites which allow a user to exchange information and possibly conduct business with a host computer.<sup>71</sup>

An example of a website actively targeting a forum state, the first end of the *Zippo* scale, is the defendant's site in *CompuServe, Inc. v. Patterson*.<sup>72</sup> There, the Internet activities were clearly aimed at the forum.<sup>73</sup> In its opinion finding jurisdiction proper, the Sixth Circuit held the defendant's distribution of software via the plaintiff's servers, along with the underlying commercial nature of the relationship between the parties, to satisfy "minimum contacts."<sup>74</sup> An example of a passive website, at the other end of the *Zippo* scale, is the printable mail-in order form available on the defendant's webpage in *Mink v. AAAA Development, L.L.C.*<sup>75</sup> Finally, the case cited in *Zippo* as an example of an interactive website, in the middle of the sliding scale, is *Maritz v. Cybergold, Inc.*<sup>76</sup> That case concerned a website that allowed users to add their address to a mailing list which would send them updates about a forthcoming advertising service.<sup>77</sup>

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67. *Id.* at 1124.

68. *See id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *CompuServe, Inc. v. Patterson*, 89 F.3d 1257 (6th Cir. 1996).

73. *See id.* at 1266.

74. *Id.* at 1265-66.

75. *Mink v. AAAA Development, L.L.C.*, 190 F.3d 333, 336 (5th Cir. 1999) (adopting the *Zippo* test and concluding the defendant's website was passive).

76. *Maritz, Inc. v. Cybergold, Inc.*, 947 F. Supp. 1328 (E.D. Mo. 1996).

77. *Id.* at 1330.

In holding that the exercise of jurisdiction over Zippo Dot Com in Pennsylvania was proper, the *Zippo* opinion stated that the company's website fell at the first end of the scale—the website actively targeted the forum state.<sup>78</sup> Even though the company did not have any physical presence in Pennsylvania, it advertised its news service to the Internet public with the help of Internet service providers that had bases of operation in Pennsylvania.<sup>79</sup> The problem with the test, however, is that in the middle of the scale, when analyzing interactive websites, *Zippo* encourages inquiry into the level of interactivity but does not describe a hard rule for analyzing the interactivity.<sup>80</sup> No clear list of principles or judicial method for analyzing specific factual circumstances has been put forth to analyze the middle of the *Zippo* scale. Unfortunately, this is where questions of jurisdiction regarding interactive eBay transactions lie, and subsequent courts have found both for and against jurisdiction.<sup>81</sup>

#### B. CASES AND STATUTES RELATED TO THE INTERNET AND PERSONAL JURISDICTION THROUGH EBAY SALES

Many courts forced to wrestle with the question of personal jurisdiction over eBay Internet sellers have held on both sides of the *Zippo* scale. In a recent opinion concerning the Louisiana long-arm statute, which allows for jurisdiction within the limits of due process,<sup>82</sup> a Louisiana appeals court upheld a trial court's ruling which concluded that Louisiana had jurisdiction over a Texas recreational vehicle ("RV") seller who advertised the vehicle on eBay.<sup>83</sup> Despite the sale actually being consummated, and the vehicle paid for, in Texas, the court stated "the use of the eBay website to market and sell the RV to a Louisiana buyer is, on the *Zippo* sliding scale, more

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78. See *Zippo*, 952 F. Supp. at 1126–27.

79. *Id.* at 1126.

80. See 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, 257–58 (2006).

81. See discussion *infra* Part II.B.

82. LA. REV. STAT. ANN. § 13:3201(B) (2006) ("A court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and of the Constitution of the United States.").

83. *Crummey v. Morgan*, 965 So. 2d 497, 503–05 (La. Ct. App. 2007).

akin to those situations for which a finding of personal jurisdiction is proper.”<sup>84</sup> The court continued: “Defendants used a variety of means of electronic communication to advertise, puff, negotiate, and accept payment for its product directed to a Louisiana consumer. Thus, sufficient minimum contacts, effectuated by electronic communications, have been established to maintain personal jurisdiction.”<sup>85</sup>

Dissenting from the majority’s opinion, Judge Welch stated:

In analyzing the facts of this case, the majority focuses “particularly” on *Zippo*’s “sliding scale,” and in doing so, they fail to consider the most important question in any personal jurisdiction due process inquiry – that is, whether the defendant has purposefully availed itself of the privilege of conducting activities within Louisiana, thus invoking the benefits and protections of its laws.<sup>86</sup>

He went on to say that “the few contacts that the defendants did have with Louisiana by virtue of this and any other sale on eBay were the exact type of ‘random, fortuitous, or attenuated’ contacts that [the U.S. Supreme Court] intended to exclude from jurisdictional reach.”<sup>87</sup>

Investigating further into opinions from other states reveals many jurists who agree with Judge Welch. In *Sayeedi v. Walser*<sup>88</sup> a resident of New York brought an action for breach of contract against the defendant, a resident of Missouri, resulting from the sale of an automobile engine through eBay which was shipped to New York.<sup>89</sup> The court concluded that, under these facts, “to summon the defendant into a New York court . . . would contravene the traditional notions of ‘fair play’ and ‘substantial justice’ that have become the ‘touchstone of personal jurisdiction.’”<sup>90</sup>

In a similar case, the Court of Appeals of North Carolina held that the placement of an “Internet advertisement and one prior sale” to a resident of North Carolina did not constitute

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84. *Id.* at 503.

85. *Id.* at 504.

86. *Id.* at 508 (Welch, J., dissenting) (quoting the majority opinion, *Crummey*, 965 So. 2d at 504, and citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

87. *Id.* at 511 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

88. *Sayeedi v. Walser*, 835 N.Y.S.2d 840 (N.Y. Civ. Ct. 2007).

89. *Id.* at 841.

90. *Id.* at 846.

sufficient minimum contacts with North Carolina to comply with federal due process.<sup>91</sup> The defendant's "only contacts were the solicitation for bids on eBay, e-mails exchanged between the parties, and the wire transfer of money to defendant."<sup>92</sup> The court stated further that "[i]n soliciting for bids on eBay, defendant does not target any particular state."<sup>93</sup>

Finally, in *Metcalf v. Lawson*,<sup>94</sup> the Supreme Court of New Hampshire addressed a lower court ruling finding that New Hampshire had jurisdiction over a New Jersey defendant who sold an excavator on eBay.<sup>95</sup> In holding that the defendant did not intentionally direct her activities at New Hampshire, the court concluded that "the defendant did not engage in sufficient activity in this State to make it fair and reasonable for purposes of due process to require her to defend [the claim in New Hampshire]."<sup>96</sup> It is also of interest to note that while analyzing the case under the *Zippo* test, the court concluded "[t]he *Zippo* test is not particularly helpful in this case, however, because the majority of cases using it are based upon a defendant's conduct over its own website. Unlike those cases, the transaction in this case was conducted through an Internet auction site."<sup>97</sup>

The most appropriate conclusion which can be drawn from a reading of these cases is that the law in this area is unsettled. Courts around the country are having difficulty grasping how to address personal jurisdiction as it relates to e-commerce in general and online auction sales in particular.

### III. PERSONAL JURISDICTION AND THE INTERNET IN GEORGIA AND OTHER STATES

With a general understanding of the Georgia long-arm statute's reach and the—albeit unsettled—extent of due process as it relates to Internet jurisdiction, we are now ready to look at the Georgia long-arm statute specifically to see how

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91. *Buckland v. Hobbs*, No. COA05-698, 2006 WL 695665, at \*2 (N.C. Ct. App. 2006).

92. *Id.*

93. *Id.*

94. *Metcalf v. Lawson*, 802 A.2d 1221 (N.H. 2002).

95. *Id.* at 1224.

96. *Id.* at 1227.

97. *Id.* at 1226 (citations omitted).

Georgia courts analyze eBay sale jurisdiction issues within the confines of due process.

A. AN EBAY CASE BEFORE ICCS

Since the exercise of long-arm jurisdiction must be analyzed in terms of the long-arm statute first, and, if necessary, constitutional due process second, it is useful to look at *Muir v. Assad*,<sup>98</sup> a Georgia case which analyzes an eBay sale dispute prior to the Georgia Supreme Court's ICCS opinion. This analysis, as compared to the later *Aero* decision, shows how a Georgia court may restrict itself by analyzing legislative intent<sup>99</sup> with regard to long-arm jurisdiction and prevent legal inequities from pulling an innocent out-of-state eBay user into Georgia.

*Muir* is the first Georgia case to directly address the issue of long-arm jurisdiction over out-of-state online auction sellers. *Muir*, just like the *Aero* case, concerned a Georgia plaintiff who purchased a vehicle from an out-of-state eBay seller.<sup>100</sup> The plaintiff sued the Washington state seller after the vehicle arrived in Georgia "allegedly in worse condition than advertised."<sup>101</sup>

In granting the defendant's motion to dismiss based on lack of jurisdiction, Superior Court Judge Bessen acknowledged that other jurisdictions recognize evolving concepts of personal jurisdiction; however, he stated that "this Court is . . . constrained to follow existing law."<sup>102</sup> He reviewed prior Georgia Supreme Court opinions which attempted to interpret the long-arm statute broadly, but then stated that the supreme court's opinion in *Gust v. Flint*<sup>103</sup> led lower courts to adopt a narrowed interpretation of the statute.<sup>104</sup> In the end, Judge Bessen criticized the limited interpretation of the long-arm statute, and stated "our courts' interpretations of the

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98. *Muir v. Assad*, No. Civ. A. 05VS079202J, 2005 WL 3367697 (Ga. Super. Ct. Aug. 24, 2005).

99. Less than a year after the *Muir* opinion, the Georgia Supreme Court ruled in ICCS that the assumed legislative intent in *Muir*, and the cases it cites, was incorrect. See *Innovative Clinical & Consulting Servs., L.L.C. v. First Nat'l Bank of Ames*, 620 S.E.2d 352, 355 (Ga. 2005).

100. *Muir*, 2005 WL 3367697, at \*1.

101. *Id.*

102. *Id.* at \*2-\*3.

103. *Gust v. Flint*, 356 S.E.2d 513 (Ga. 1987).

104. *Muir*, 2005 WL 3367697, at \*2.

[long-arm statute] have not met its intended and declared policy. . . . [O]ur decisions may not provide Georgians who are damaged by nonresidents a forum in this state to the fullest extent permitted by . . . the U.S. Constitution.”<sup>105</sup>

Accordingly, the *Muir* opinion shows that while the constitutional limits of due process on the Internet are not clearly defined, the specific words and intent of a long-arm statute, as interpreted by courts, will be followed. Unfortunately, post-*ICCS*, the intent of the Georgia legislature has been construed to allow only for constitutional limits to long-arm jurisdiction, and the Georgia Court of Appeals has interpreted that to allow jurisdiction over out-of-state eBay users. The question then becomes whether Judge Bessen was correct in assuming that Georgians would benefit the most by allowing a forum to the fullest extent permitted by the U.S. Constitution.

#### B. POST *ICCS* ANALYSIS AND *AERO*

Since the Georgia Supreme Court’s *ICCS* opinion determined that earlier cases, including *Muir*, conflicted with the notion that the long-arm statute permits maximum jurisdiction,<sup>106</sup> analyzing jurisdiction over Internet merchants in Georgia post-*ICCS* requires only a consideration of whether a merchant’s contacts with the state permits the exercise of jurisdiction over the merchant within “the maximum extent permitted by procedural due process.”<sup>107</sup> The first Georgia case to directly address the issue of long-arm jurisdiction over out-of-state online auction sellers after *ICCS* is *Aero Toy Store, L.L.C. v. Grieves*.<sup>108</sup>

As described earlier,<sup>109</sup> the *Aero* case dealt with a Georgia resident’s purchase of a vehicle from a Florida auto dealer who advertised the car on eBay.<sup>110</sup> After receiving the vehicle in Georgia, the buyer filed suit against the seller in Georgia for

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105. *Id.* at \*3.

106. See *Innovative Clinical & Consulting Servs., L.L.C. v. First Nat’l Bank of Ames*, 620 S.E.2d 352, 355 (Ga. 2005).

107. See *Aero Toy Store, L.L.C. v. Grieves*, 631 S.E.2d 734, 739 (Ga. Ct. App. 2006).

108. *Id.*

109. See *infra* Introduction.

110. *Aero*, 631 S.E.2d at 735.

making numerous misrepresentations about the car.<sup>111</sup> When Aero motioned to dismiss the suit based on lack of jurisdiction, the trial court found, and the Court of Appeals affirmed, that Aero established sufficient minimum contacts with Georgia to authorize Georgia's exercise of personal jurisdiction under the long-arm statute.<sup>112</sup>

The court began its analysis of jurisdiction based on Internet communications by stating:

In other jurisdictions, a line of decisions has developed recognizing the technological revolution ushered in by the Internet and utilizing a sliding scale for determining whether a nonresident has submitted to a state's long arm jurisdiction by establishing the requisite minimum contacts through Internet-based activity. This sliding scale was initially articulated in *Zippo Mfg. Co. v. Zippo Dot Com*.<sup>113</sup>

After citing *Zippo*, the Aero court cited two more local cases regarding minimum contacts and the Internet.<sup>114</sup> The first case was *Butler v. Beer Across America*,<sup>115</sup> where an Alabama minor ordered twelve beers from sellers in Illinois through the sellers' Internet website.<sup>116</sup> The second case was *Barton Southern Co. v. Manhole Barrier Systems*,<sup>117</sup> where a Georgia manhole security device manufacturing company filed suit in federal court against a similar New York company for trademark infringement.<sup>118</sup> The Georgia company argued that the New York company's website allowed for jurisdiction in Georgia because it permitted filling out company order forms and exchanging information with customers.<sup>119</sup>

While the Aero court admitted both cited cases did not find for jurisdiction over out-of-state defendants, the court distinguished the *Butler* and *Barton* facts from the Aero facts, because the Aero defendant "operated an interactive website

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111. *Id.*

112. *Id.* at 736, 741.

113. *Id.* at 739-40.

114. *Id.* at 740.

115. *Butler v. Beer Across Am.*, 83 F. Supp. 2d 1261 (N.D. Ala. 2000).

116. *Aero*, 631 S.E.2d at 740 (citing *Butler*, 83 F. Supp. 2d at 1266-67).

117. *Barton S. Co. v. Manhole Barrier Sys.*, 318 F. Supp. 2d 1174 (N.D. Ga. 2004).

118. *Aero*, 631 S.E.2d at 740 (citing *Barton*, 318 F. Supp. 2d at 1174).

119. *Barton*, 318 F. Supp. 2d at 1177-78. It is interesting to note that the district court in this case improperly states that the Georgia long-arm statute allows for jurisdiction to the maximum extent permitted by due process, which was not the case prior to the ICCS decision. See *id.* at 1176.

through which it reached out to, and [did] business with, persons in Georgia.”<sup>120</sup> The court specifically pointed out that “[u]nlike the situation in *Butler*, the [Aero] car was shipped into Georgia by the nonresident seller and not by a carrier acting as the resident buyer’s agent . . . .”<sup>121</sup> While the court found that Aero did “not have officers, employees, offices, or business affiliates in Georgia, and although the revenue [Aero] derives from goods sold [in Georgia] may not be substantial,” the court stated Aero did “regularly solicit business in Georgia through the Internet” and held that the revenue it derived was “enough to establish sufficient minimum contacts.”<sup>122</sup> Thus, the court held that with sufficient minimum contacts established, jurisdiction over Aero would not violate due process and would be proper.

### C. OTHER STATES WITH SIMILAR STATUTES

Despite the Court of Appeals of Georgia holding in *Aero* that after *ICCS*, the Georgia long-arm statute would allow for jurisdiction over out-of-state eBay users, other state appellate courts have held differently. For example, in *Kolberg v. Channell*<sup>123</sup> the State of Massachusetts Appellate Division Court ruled against jurisdiction over a West Virginia defendant eBay vehicle seller.<sup>124</sup> The Massachusetts statute at issue in the case reads exactly the same as the Georgia long-arm statute: “[a] court may exercise personal jurisdiction over a person . . . as to a cause of action . . . arising from the person’s [ ] transacting any business in this commonwealth . . . .”<sup>125</sup> While the Massachusetts case law history regarding the statute does not parallel the interpretations of the statute quite like the Georgia (pre- and post-*ICCS*) history, the *Kolberg* opinion analyzes the issue of personal jurisdiction over the out-of-state eBay seller under the statutory language and due process minimum contacts.<sup>126</sup> Both analyses resulted in the court

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120. *Aero*, 631 S.E.2d at 740.

121. *Id.*

122. *Id.* at 740–41.

123. *Kolberg v. Channell*, 2006 Mass. App. Div. LEXIS 8, at \*\*1 (Mass. App. Div. 2006).

124. *Id.* at \*\*7.

125. MASS. GEN. LAWS ANN. ch. 223A, § 3(a) (West 2000); *Kolberg*, 2006 Mass. App. Div. LEXIS 8, at \*\*2.

126. *Kolberg*, 2006 Mass. App. Div. LEXIS 8, at \*\*4–\*\*7.

finding the defendant's contacts with Massachusetts "insufficient to constitute the transaction of business in Massachusetts."<sup>127</sup>

When analyzing the facts of the case as compared to the statutory language, the Massachusetts court stated that "the purposeful and successful solicitation of business from residents of the Commonwealth will generally satisfy [the transacting any business] requirement, but an isolated and minor transaction with a Massachusetts resident is insufficient."<sup>128</sup> Since "the only connection" between the plaintiff, Kolberg, and the defendant, Channell, in the case was "the advertisement on eBay for the sale of the [vehicle]," the court held that the defendant did not "satisfy the statutory requirement even with the benefit of a broad construction of its provisions."<sup>129</sup> In differentiating the facts at issue from cases the plaintiff cited to support jurisdiction, the court stated:

These cases are readily distinguishable from this case because Channell did not sell the [vehicle] to Kolberg from his own personal or business website. Rather, he placed the item for sale to the highest bidder on eBay. Channell did not maintain eBay's website, he only maintained a minimally interactive listing . . . . In this case, eBay chose the winning bidder.<sup>130</sup>

With respect to the jurisdictional analysis under the Constitution's due process requirements, the Massachusetts appellate court stated, "Channell's sale of the [vehicle] on eBay to Kolberg was random and established only an attenuated connection to Massachusetts. Channell could not reasonably anticipate being subject to a lawsuit in Massachusetts based on this act."<sup>131</sup>

*Kolberg v. Channell* illustrates that courts in different states with identical long-arm statutory language to interpret have nevertheless drawn different conclusions on its meanings as compared to Georgia courts. Additionally, *Kolberg* shows again how courts interpreting the issue of constitutional minimum contacts on the Internet keep arriving at different conclusions. For these reasons, the Georgia legislature must

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127. *Id.* at \*\*7.

128. *Id.* at \*\*3-\*\*4 (citing *Tatro v. Manor Care, Inc.*, 625 N.E.2d 549 (Mass. 1994) and *Sullivan v. Hotown N.V.*, 1998 Mass. App. Div. 106, 108 (Mass. Dist. Ct. 1998)).

129. *Id.* at \*\*4.

130. *Id.* at \*\*5.

131. *Id.* at \*\*9.

specify, in the language of the statute, a clear intent based on the best policy of encouraging commerce and equity.

#### IV. DIRECTIONS FOR THE LEGISLATURE

With the problems and inconsistencies associated with the current Georgia long-arm statute established, we are now ready to look at a new direction for the statute as it relates to jurisdiction over online auction sellers and others.

##### A. POLICY CONSIDERATIONS FAVORING JURISDICTION OVER ONLINE AUCTION SELLERS

State policymakers traditionally believe citizens should be able to seek redress within their own state to the greatest extent possible for claims against nonresidents.<sup>132</sup> Providing an in-state forum for resident businesses mitigates the cost of litigating suits against out-of-state defendants and improves the state's business climate for smaller companies who have a single location and are more sensitive to litigation expenses.<sup>133</sup> Additionally, since the nonresident defendant is often enjoying the benefits and protections of the state's laws, it is typically in the state's interests to regulate business activities affecting its citizens within the plaintiff-resident's state courts.<sup>134</sup>

With respect to eBay sales in particular, policies favoring jurisdiction over nonresident defendants allow buyers to feel comfortable that purchases will not be fraught with fraud or false advertising. Since the cost would be great for sellers to defend themselves in foreign legal actions, they would be more inclined to advertise truthfully and settle matters before litigation with foreign buyers ensues.<sup>135</sup> Thus, the legislature's goal is to have its state codes, and courts, regulate business activities affecting its citizens and scare, with litigation expense, out-of-state sellers into truthful advertising and pretrial settlement.

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132. Van Detta & Kapoor, *supra* note 33, at 345.

133. *See id.* at 347.

134. *See Rhodes, supra* note 20, at 163.

135. *See Crummey v. Morgan*, 965 So. 2d 497, 504 (La. Ct. App. 2007).

B. POLICY CONSIDERATIONS DISCOURAGING JURISDICTION OVER ONLINE AUCTION SELLERS

Policy reasons against maximum jurisdiction generally center on ensuring personal jurisdiction that is predictable and consistent.<sup>136</sup> Long-arm laws that allow for jurisdiction to the maximum extent permissible under the Constitution force state courts and practitioners to be at the mercy of federal courts to define what is acceptable. Since the interpretation of federal law varies from district to district and circuit to circuit, a clearly defined statute for long-arm jurisdiction that is undoubtedly within the confines of due process is required in order to bring about a predictable and consistent application.<sup>137</sup> Additionally, a policy that does not allow residents to overextend the reach of state courts allows out-of-state businesses to feel more comfortable conducting business with a certain state's residents.<sup>138</sup>

With respect to eBay sales specifically, the mere existence of an e-commerce rule which allows buyers to subject any seller to personal jurisdiction would clearly inhibit transactions—more so than any buyer wary of being forced to litigate in the home court of out-of-state sellers.<sup>139</sup> Furthermore, the variances in jurisdictional reach would make it practical for online sellers to preclude certain buyers from participating in online auctions due to their state's rules despite a buyer making an individual informed decision of transacting with a specific seller. The effect could be a do-not-sell list where sellers assess the risk of selling to certain buyers to be far greater than the benefit. In contrast, if a buyer were wary of a foreign seller, the buyer could simply conduct more research into the seller and its products, or the buyer could choose to purchase from a local seller.

C. WHAT IS REALLY FAIR?

Most commentators agree that the “fairness factors” should be the deciding issue when qualitative and quantitative contacts analyses result in no clear jurisdictional

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136. See Van Detta & Kapoor, *supra* note 33, at 348

137. *Id.*

138. See George M. Perry et al., *Where Can You Be Sued, and Whose Laws Apply?*, 7 MEDIA L. & POL'Y 1, 12 (1998).

139. See *Crummey*, 965 So. 2d at 511 (Welch, J., dissenting).

conclusions.<sup>140</sup> Traditional notions of fair play is also the second step in the *International Shoe* minimum contacts test. Since requisite contacts may or may not be established in e-commerce jurisdiction cases, and the policies for both allowing and not allowing jurisdiction over out-of-state eBay users stack rather evenly, the final legislative decision regarding eBay transactions should rest upon an evaluation of equity/fairness.

Haling an out-of-state eBay defendant-seller into a foreign jurisdiction to litigate a dispute regarding the sale results in three fundamental fairness issues. First, in order to complete the sale to a plaintiff-buyer, it is the plaintiff-buyer who must proactively access the eBay website, browse through the many listings, and then systematically pick and bid on a specific item from a specific seller. In contrast, the seller merely posts the advertisement onto the third party eBay website and waits for eBay to *choose* a winning bidder as the Massachusetts appellate court in *Kolberg* noted. Second, an eBay seller-defendant does not target any specific buyer. While an eBay product listing may be tailored to a certain buyer's needs, it cannot be targeted to a particular state. In contrast, a buyer can search for products in a certain geographical area and thereby ensure a home state forum should a dispute arise. Finally, an eBay seller-defendant may not have her own store, business, or even website. Posting a product for sale on eBay is much simpler than hosting an interactive webpage with online ordering tools, contact phone numbers, and capabilities to process payments. The eBay website works by creating a huge marketplace that people come to for one-stop shopping and functions that allow buyers and sellers to reduce risk by essentially not dealing with each other directly.<sup>141</sup>

Due to these fundamental fairness issues—which all weigh against allowing jurisdiction over out-of-state eBay users—and

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140. See Nemeyer, *supra* note 58, at 183 (citing Charles W. “Rocky” Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. 807, 887 (2004)).

141. For example, eBay's PayPal site allows buyers to pay eBay with a standard credit card or bank account. After eBay receives the funds, sellers receive the money directly from eBay. See PayPal, About Us, <https://www.paypal-media.com/aboutus.cfm> (last visited Mar. 25, 2009). Thus sellers do not have to deal with a potentially fraudulent buyer, and buyers do not have to give their personal information directly to a seller.

the other ambiguities regarding the Georgia long-arm statute, it is necessary for the Georgia State Legislature to revisit the statutory language and clarify the intent of the current long-arm statute. The Legislature should ensure that courts have clear guidelines to follow when determining whether they have jurisdiction over out-of-state residents. Furthermore, the Legislature should specifically write into the statute or legislative history that jurisdiction should not be granted over out-of-state residents who have merely used a third party auction website to conduct a transaction over the Internet. In this way the Georgia long-arm statute application would return back to the more refined days of *Muir*, and the Georgia Legislature, as opposed to the Georgia courts, would be the ultimate policy maker in business litigation jurisdiction issues.

#### CONCLUSION

Few eBay sellers understand that through a simple eBay sale, they could be haled into court on the opposite side of the country litigating with a buyer over the transaction under the buyer's state's rules. With the popularity of e-commerce sites growing, and the jurisdiction of state long-arm statutes increasing, this issue is only going to become more important. Georgia, and any other state, could be placed on a "do or do-not- sell list" for eBay and other online sellers to target buyers who have a lower risk of subjecting the seller to legal liability.

In order to prevent this problem, and to address the issue of overreaching jurisdiction, Georgia, and other state legislatures, should revisit their respective long-arm statutes. Amended statutes should ensure that courts have clear guidelines to follow when determining whether they have jurisdiction over out-of-state residents. Further, an amended statute should make explicit that jurisdiction will not be permitted over out-of-state residents who have merely used a third party website to conduct a transaction over the Internet.