
Michael J. Santisi
PRES-KAP, INC. V. SYSTEM ONE, DIRECT ACCESS, INC.: EXTENDING THE REACH OF THE LONG-ARM STATUTE THROUGH THE INTERNET?

I. INTRODUCTION

"The test of whether business was transacted within [a forum state to determine personal jurisdiction] must be applied in the context, not of communication and transportation criteria of yesteryears, but of modern day commercial and personal accelerated relationships. The long arm statutes are comrades of the computer." As Judge Lacey of the Federal District Court of New Jersey acknowledged, computers have added another dimension to the area of personal jurisdiction law.

The online access and use of a computer database should satisfy the

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2. Personal jurisdiction, also referred to as in personam jurisdiction, is the power to subject a particular defendant to the decision of a court. 1 ROBERT C. CASAD, JURISDICTION IN CIVIL ACTIONS §1.01(2) (2d ed. 1991). Hence, a court in the forum state may only adjudicate a dispute if it has personal jurisdiction over the out-of-state defendant. Id. The exercise of personal jurisdiction must not exceed the limits of the due process clauses in the United States Constitution. Id. at §1.01. See infra note 12 (explaining the due process clause).

There are two requirements for personal jurisdiction: "basis" and "process." 1 CASAD, at §1.01(2)[a]. Basis refers to the connection between the defendant and the forum state that seeks to exercise jurisdiction. Id. A defendant must have at least one of the following bases:

(a) presence, (b) domicile, (c) residence, (d) nationality or citizenship, (e) consent, (f) appearance in an action, (g) doing business in the state, (h) an act done in the state, (i) causing an effect in the state by an act done elsewhere, (j) ownership, use or possession of a thing in the state, [or] (k) other relationships to the state which make the exercise of judicial jurisdiction reasonable.

Id.

Process refers to the requisite procedures that must be followed to inform the defendant of the suit. Id. at §1.01(2)[b]. The two types of service are called "personal" and "constructive." Personal service is physically handing a summons to a party. Constructive service is serving the process in any other way. 1 CASAD at § 101(2)[a].

Since meeting the process requirement of personal jurisdiction was not an issue in Pres-Kap, Inc. v. System One, Direct Access, Inc., 636 So. 2d 1351 (Fla. Dist. Ct. App. 1994), this Note focuses only on whether the basis requirement was satisfied in the form of the two pronged analysis set forth by the United States Supreme Court. Pres-Kap, 636 So. 2d
two-pronged personal jurisdiction requirements\(^3\) for subjecting a busi-

Finally, it is worth mentioning that a court must also have subject matter jurisdiction and be the proper venue to adjudicate a dispute between two parties. 1 CASAD, at §1.01 and §1.03. Constitutional or statutory provisions define whether a court has subject matter jurisdiction. \textit{Id.} at §1.01. Venue specifies the proper court within a state where a suit may be adjudicated. \textit{Id.} at §1.03. Statutes explain the application of venue rules and other considerations, such as convenience and efficiency of the suit. \textit{Id.} Because these issues were not addressed in Pres-Kap, they are not discussed in this Note. \textit{Pres-Kap}, 636 So. 2d at 1351.

3. \textit{Burger King Corp. v. Rudzewicz}, 471 U.S. 462 (1985) and \textit{World-Wide Volkswagen Corp. v. Woodson}, 444 U.S. 286 (1980) have set forth the following two-pronged personal jurisdiction analysis for determining whether an out-of-state business user must respond to claims filed against it in a distant forum state: (1) does the out-of-state business have sufficient minimum contacts with the forum state? ("minimum contacts prong") and (2) is it reasonable to require the out-of-state business user to answer the claims filed against it in the forum state? ("reasonableness prong"). \textit{Burger King}, 471 U.S. at 475-77; \textit{World-Wide Volkswagen}, 444 U.S. at 291-92.

When applying the minimum contacts prong, the \textit{Burger King} court articulated a two factor analysis that courts should apply: (1) purposeful availment and (2) foreseeability. \textit{Burger King}, 471 U.S. at 479. In \textit{International Shoe Co. v. Washington}, 326 U.S. 310 (1945), the Court originally defined "purposeful availment" as:

\begin{quote}
[To] the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.
\end{quote}


This purposeful availment test is established if an out-of-state defendant purposefully directs its activities toward the forum state. \textit{Burger King}, 471 U.S. at 476. In addition, the test insures that an out-of-state defendant will not be haled into a distant forum state's court because of "random', 'fortuitous' or 'attenuated' contacts." \textit{Id.} at 475.

Alternatively, the Court in \textit{World-Wide Volkswagen} established that the foreseeability test is satisfied only if the out-of-state defendant's activities in connection with the forum state are such that he should reasonably expect to be subject to the distant forum state's jurisdiction. \textit{World-Wide Volkswagen}, 444 U.S. at 297.

The reasonableness prong was first established by the \textit{International Shoe} court when it explained that "subject[ing] a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" \textit{International Shoe}, 326 U.S. at 319. However, the \textit{World-Wide Volkswagen} court expanded on this definition by setting forth a five factor analysis that courts should consider: 1) the burden on the defendant; 2) the forum state's interest in adjudicating the dispute; 3) the plaintiff's interest in obtaining convenient and effective relief; 4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and 5) the shared interest of the states in furthering fundamental substantive social policies. \textit{World-Wide Volkswagen}, 444 U.S. at 292.

No specific factor of the reasonableness prong is required to establish personal jurisdiction. \textit{Burger King}, 471 U.S. at 476-77 (citing \textit{World-Wide Volkswagen}, 444 U.S. at 292). The reasonableness prong was more fully explained by the \textit{Burger King} court. \textit{See also}
ness user to suit in the forum state under its long-arm statute. By contracting for online access and use, an out-of-state business user can confer financial benefits and actively participate in the performance of a contract without physically entering the forum state.

However, establishing personal jurisdiction through the Internet was recently rejected by a Florida appellate court. In *Pres-Kap, Inc. v. System One, Direct Access, Inc.*, the court reviewed whether a New York defendant’s online access and business use of a computer database, located in Florida, constituted sufficient minimum contacts to establish personal jurisdiction under the Florida long-arm statute.

4. Determining whether a court has personal jurisdiction over an out-of-state defendant requires an analysis of the law of the forum state, referred to as the “long-arm statute.”

5. See infra note 67 and accompanying text (addressing whether an out-of-state defendant that derives economic benefits from a plaintiff in the forum state is subject to personal jurisdiction in the forum state).

6. See infra note 79 and accompanying text (addressing whether an out-of-state defendant that participates in the course of performance of an interstate contract is subject to personal jurisdiction in the forum state).


8. *Id.* at 1351.

9. The United States Supreme Court defined “minimum contacts” as “prior negotiations and contemplated future consequences, along with the terms of the contract and the actual course of dealing—that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.” *Burger King*, 471 U.S. at 479.

10. Personal jurisdiction and general jurisdiction are two standards by which a plaintiff may establish sufficient contacts between an out-of-state defendant and the forum state. Brian O'Keefe, Comment, *Automated Clearing House Growth in an International Marketplace: The Increased Flexibility of Electronic Funds Transfer and its Impact on the Minimum Contacts Test*, 15 U. Pa. J. Int'l Bus. L. 105, 115 (1994). Personal jurisdiction is appropriate in situations when the controversy arose from the out-of-state defendant’s contacts with the forum state. *Id.* In contrast, when the cause of action does not arise from the forum-related activity, general jurisdiction is applicable. *Id.* However, satisfying the requirements for general jurisdiction is more difficult than personal jurisdiction because it requires “substantial, continuous, and systematic contacts” with the forum state. *Id.*

In *Pres-Kap*, since all of *Pres-Kap’s* contacts with Florida pertained to the lease contract which was the subject of the dispute, the *Pres-Kap* court only addressed the issue of personal jurisdiction. *Pres-Kap*, 636 So. 2d at 1351. If the circumstances of the case differed so that the controversy between the parties did not pertain to the lease contract, then the online access and use of the computer database, without more, would be insufficient to justify exercising general jurisdiction over *Pres-Kap*. Assuming that an online connection between two parties is closely analogous to wire transfers between financial institutions for
Kap court held that the Internet connection was an insufficient contact to subject the user to suit in a Florida court because of the constitutional limits of due process.12

This Note examines the circumstances presented in Pres-Kap.13 After setting forth the facts of the case in Part II, Part III summarizes the issues and holding of the court. Next, Part IV presents the court's reasoning which is then followed by an analysis of the court's decision in Part V. While comparing similar court decisions from other jurisdictions that applied the identical due process standard,14 this Note asserts that general jurisdiction analysis purposes, such activity would easily fail to establish general jurisdiction. See generally O'Keefe, supra note 10 (presenting standards for establishing general jurisdiction for financial institutions that regularly use electronic funds transfer devices). Compare Resolution Trust Corp. v. First of America Bank, 796 F. Supp. 1333, 1335 (C.D. Cal. 1992) (holding that personal jurisdiction, a lower threshold requirement than general jurisdiction, did not exist over the out-of-state bank that participated in electronic fund transactions with the forum state bank); Dollar Savings Bank v. First Security Bank, 746 F.2d 208, 212 (3d Cir. 1984) (holding that "[t]he record as it clearly stands is insufficient to support general jurisdiction" from a wire transfer); T.J. Raney & Sons, Inc. v. Security Savings & Loan Ass'n, 749 F.2d 523, 525 (8th Cir. 1984) (holding that wire and mail transfers of money, in addition to telephone calls between the forum state plaintiff and the out-of-state defendant were insufficient minimum contacts to even establish the lower requirements for personal jurisdiction).

11. Pres-Kap, 636 So. 2d at 1353. The Florida long-arm statute provides in relevant part:

48.193. Acts subjecting person to jurisdiction of courts of state

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:

... (g) Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.


12. Pres-Kap, 636 So. 2d at 1353. The “due process clause” pertains to Two such clauses... found in the U.S. Constitution, one in the 5th Amendment pertaining to the federal government, the other in the 14th Amendment which protects persons from state actions. There are two aspects: procedural, in which a person is guaranteed fair procedures and substantive which protects a person's property from unfair governmental interference or taking.

13. Pres-Kap, 636 So. 2d at 1353.

the Pres-Kap court erroneously held that the Internet connection did not satisfy the two prongs of the personal jurisdiction analysis. Furthermore, this Note suggests reasons why courts should extend the reach of the long-arm statute through the Internet.

II. SUMMARY OF FACTS AND BACKGROUND

The plaintiff, System One, Direct Access, Inc. ("System One"), is a Delaware corporation with its principal place of business in Miami, Florida. System One's office in Florida owns and operates a computer database providing airline, hotel and car reservation systems for travel agencies. System One also maintains a branch office in New York, New York.

The defendant, Pres-Kap, Inc. ("Pres-Kap"), is a New York travel agency in Rockland County, New York. All of Pres-Kap's business is conducted out of its New York office. In December 1989, System One, through a representative in its New York office, solicited and negotiated a lease contract with Pres-Kap. Under the lease contract, System One provided Pres-Kap with computer terminals and granted online access and use to System One's database in Florida in exchange for a monthly fee. The lease contract was subsequently forwarded to System One's office in Florida for final execution. Disputes between the parties were directed to System One's branch office in New York. The lease contract at issue did not have a forum selection clause that would allow System One to sue Pres-Kap in a Florida court in the event of a dispute. However, three previous lease contracts from 1982 to 1989 between Pres-Kap and System One's former parent company, Eastern Airlines ("Eastern"), included a Florida forum selection clause. Finally, the contract contained a choice-of-law provision that specified Florida law governed the

Subsequently, System One brought an action against Pres-Kap in a Florida state court for breach of the lease contract. Pres-Kap moved to dismiss this action for want of personal jurisdiction. The circuit court denied the motion to dismiss. On appeal, the court reversed in favor of Pres-Kap and dismissed the action.

### III. ISSUES AND CONCLUSION

The *Pres-Kap* court addressed whether Pres-Kap's connection to System One in Florida through the Internet constituted sufficient minimum contacts which would subject Pres-Kap to personal jurisdiction in Florida. The *Pres-Kap* court found that this principal contact was insufficient to satisfy either the purposeful availment or foreseeability tests of the minimum contacts prong. The court then addressed whether invoking the Florida long-arm statute over Pres-Kap satisfied the reasonableness prong. The court reasoned that because Pres-Kap had insufficient minimum contacts, exercising personal jurisdiction over Pres-Kap would be unreasonable. Thus, the court reversed the trial court's denial of Pres-Kap's motion to dismiss for lack of personal jurisdiction.

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30. *Id.*

31. *Id.* at 1352.

32. *Id.*


34. *Id.* at 1352.

35. *Id.* at 1353-1354.

36. *Id.* at 1353.

37. *Id.*; see supra note 3 (explaining the components of the minimum contacts prong).


39. *Id.* at 1353.

40. *Id.* at 1353-54.
Under the minimum contacts prong of the personal jurisdiction test, the court first analyzed whether Pres-Kap had purposefully availed itself of Florida law.\footnote{Id. at 1352.} The court reasoned that though Pres-Kap may have benefited financially from the information accessed via the computer database, the financial benefit arose from a lease contract negotiated between the two parties in New York.\footnote{Pres-Kap, 636 So. 2d at 1352.} Furthermore, Pres-Kap conducted all of its business in New York and was “solicited, engaged, and serviced entirely”\footnote{Id. at 1353.} by System One’s branch office located in the defendant’s forum state.\footnote{Id. at 1353.} Accordingly, the court concluded that the purposeful availment test was not satisfied because the lease contract was essentially “a financial gain arising from a New York, not a Florida-based business transaction.”\footnote{Id.}

With respect to the foreseeability test of the minimum contacts prong, the Pres-Kap court determined that mailing all rental payments, under the terms of the lease contract, and accessing a computer database through the Internet were insufficient contacts and held that Pres-Kap could not reasonably expect to be subjected to suit in a Florida court.\footnote{Id. at 1353.} The court also remarked that contracting with an out-of-state party alone does not establish sufficient minimum contacts.\footnote{Pres-Kap, 636 So. 2d at 1353.} The additional factor that the lease contract pertained to a computer database located in Florida did not alter the outcome.\footnote{Id.} Also, the court observed that the record did not show that Pres-Kap was aware of the location of the computer database.\footnote{Id.} However, even if Pres-Kap knew the database was in Florida, the court acknowledged that the decision would not be affected.\footnote{Id. at 1353.} Furthermore, the court noted that the lease contract lacked the forum selection clause that was in the previous leases between Pres-Kap and System One’s former parent company, Eastern.\footnote{Pres-Kap, 636 So. 2d at 1353.}

Moreover, the court contended that upholding the trial court’s decision would spur countless other incidents in which computer database users would unsuspectingly be subject to suits in distant forum states with which they have contractual relations for computer database serv-
ices. The court opined:

"[f]or example, Westlaw is based in St. Paul, Minnesota, and all bills are generated and paid in St. Paul, . . . [and] Lexis is based in Dayton, Ohio, and all bills for use of the Lexis System are generated in and paid in Dayton." According to the court, subjecting these "on-line" users and other professional people that access computer databases to personal jurisdiction in a distant forum state "is wildly beyond the reasonable expectations of such computer information users."

Turning to the reasonableness prong, the Pres-Kap court determined that "[t]he maintenance of the suit against the defendant, based on the totality of the circumstances, offend[ed] traditional notions of fair play and substantial justice." The court inferred that because the minimum contacts prong was not satisfied, neither was the reasonableness prong.

Judge Barkdull stated a contrary view in his dissent. Judge Barkdull determined that Pres-Kap satisfied the purposeful availment test under the minimum contacts prong because Pres-Kap purposely directed its activities to Florida for over nine years, by accessing information supplied by Eastern and its successor, System One. In his dissenting opinion, it was irrelevant that the ownership of the computer database changed or that the forum selection clause was not expressly stated in the new lease contract. Judge Barkdull reasoned that the computer database, located in Florida, made a significant contribution to Pres-Kap's financial well-being because it provided essential information for operating a travel agency in New York. Furthermore, Judge Barkdull determined that the foreseeability test of the minimum contacts prong was satisfied because Pres-Kap executed four contracts and

52. Id. at 1353.
53. Id. at 1353 n.2.
54. Pres-Kap, 636 So. 2d at 1353.
55. Id. Usually, if a court finds that there was insufficient minimum contacts for personal jurisdiction, the court does not consider the reasonableness factors set forth in World-Wide Volkswagen. Lee, supra note 3, at 954-55.
56. Pres-Kap, 636 So. 2d at 1353.
57. Id. at 1354 (Barkdull, J., dissenting).
58. Id.
59. Id. at 1354 n.1.
60. Pres-Kap, 636 So. 2d at 1354 (Barkdull, J., dissenting).
made payments for such access. He concluded that this was sufficient notice to subject Pres-Kap to personal jurisdiction in Florida. Finally, because there was sufficient notice, he inferred that the reasonableness prong was satisfied. Therefore, in his opinion, the court should have extended the Florida long-arm statute to exercise personal jurisdiction over Pres-Kap.

V. AUTHOR'S ANALYSIS

Because both the minimum contacts and reasonableness prongs were satisfied, the Pres-Kap court erroneously failed to invoke the Florida long-arm statute. Pres-Kap's access to System One's database through the Internet was a purposeful availment to the rights and privileges of Florida law. In addition, by contracting for the online access and use of System One's computer database in Florida, Pres-Kap had reasonable notice that it was subject to jurisdiction in Florida. Finally, there was no compelling reason for finding that subjecting Pres-Kap to jurisdiction in Florida was unreasonable.

A. ACCESSING A DISTANT FORUM DATABASE THROUGH THE INTERNET CAN CONSTITUTE PURPOSEFUL AVAILMENT

The Pres-Kap court incorrectly ruled that Pres-Kap had not purposefully availed itself of Florida law for two reasons. First, the court failed to recognize that Pres-Kap derived direct economic benefits from its online access and use of System One's computer database. Second, the court failed to recognize that Pres-Kap's online access and use constituted active participation in the course of performance of the lease contract.

61. Id.
62. Id.
63. Id.
64. Pres-Kap, 636 So. 2d at 1354 (Barkdull, J. dissenting).
66. If an out-of-state defendant uses the Internet to provide a product or service to the forum state, then that contact by itself is sufficient to subject the out-of-state defendant to the jurisdiction of the forum state. Scherman v. Kansas City Aviation Ctr., Inc., No. 92-2211-GTV, 1993 WL 191369, at *5 (D. Kan. 1993), aff'd on other grounds, No. 92-2211-GTV, 1993 WL 455554 (D. Kan. 1993), aff'd on other grounds, No. 92-2211-GTV, 1994 WL 477269 (D. Kan. 1994); Williams v. Institute for Computational Studies at Colorado State Univ., 355 S.E.2d 177, 179 (N.C. Ct. App. 1987). For example, in Scherman, the United States District Court for the District of Kansas held that an out-of-state third party defendant was subject to jurisdiction solely by using the Internet to advertise the sale of an aircraft in the forum state. Scherman, 1993 WL 191369 at *5. The court reasoned that because the advertisement resulted in a sale to a citizen of the forum state, it was a sufficient contact to support a finding for jurisdiction over the third party defendant. Id.
According to the Supreme Court in *Burger King Corp. v. Rudzewicz*, personal jurisdiction may be established when an out-of-state defendant "purposefully deriv[e]s benefit" from the forum state. Under this rule, the United States District Court for the District of Colorado in *Plus System, Inc. v. New England Network, Inc.* held that an out-of-state defendant can purposefully avail itself of a plaintiff's forum state through the Internet. Specifically, the court placed significant weight on the

For jurisdiction analysis purposes, *Scherman* is easily distinguished from *Pres-Kap*. In *Scherman*, the defendant used the Internet to place an advertisement into the plaintiff's forum state whereas in *Pres-Kap* the plaintiff provided services from the forum state. *Pres-Kap*, 636 So. 2d at 1354. Because these networks were not both operating from the forum state hosting the suit, these situations cannot be effectively compared under the personal jurisdiction tests.

In another case dealing with the Internet, *Williams*, the Court of Appeals of North Carolina held that the out-of-state defendant was subject to its jurisdiction by providing online services to the forum state plaintiff. *Williams*, 355 S.E.2d at 179. The court reasoned that the computer interaction was a substantial enough contact in itself to justify such a finding. *Id.* at 181-82.

*Williams* is distinguishable from *Pres-Kap* for two main reasons: first, the defendant in *Williams* provided computer services to the plaintiff in the plaintiff's forum state. *Id.* at 179. In contrast, the plaintiff in *Pres-Kap* provided online services from the forum state. *Pres-Kap*, 636 So. 2d at 1353. Second, the *Williams* plaintiff brought the breach of contract action from the forum state where it had direct dealings with the defendant. *Williams*, 355 S.E.2d at 179. Conversely, the plaintiff in *Pres-Kap* brought the breach of contract action in a different forum state from which it dealt directly with the defendant. *Pres-Kap*, 636 So. 2d at 1353.

Though the scenarios in *Scherman* and *Williams* are distinguishable from *Pres-Kap* because these defendants did not retain online services from the forum state plaintiffs, the *Pres-Kap* court still should have concluded that *Pres-Kap* purposefully availed itself to Florida law in light of the cases addressed in this Note. See infra note 67, 79 and the respective accompanying text (asserting that *Pres-Kap*’s derived direct economic benefits and active participation in the course of performance of the contract from the online access and use of System One's computer database were sufficient to satisfy the purposeful availment test).

69. *Id.* at 117, 119. The forum state plaintiff, incorporated in Delaware with its principal place of business in Colorado, brought a breach of contract action in Colorado against the out-of-state defendant. *Id.* at 114. The defendant, a Connecticut corporation consisting of nearly seven hundred financial institutions throughout New England, moved to dismiss for lack of personal jurisdiction. *Id.* The plaintiff provided automatic teller machine (ATM) banking services using its online computer database located in Colorado. *Plus System*, 804 F. Supp. at 114. Twenty-four of the financial institutions that the defendant represented accessed the computer database through an independent data processor in Wisconsin. *Id.* at 119. As a result of the online access, these twenty-four institutions were able to provide typical banking transaction services to its customers. *Id.* at 114-15. The plaintiff alleged that the defendant neglected to enforce a contract provision which entitled the plaintiff to royalty fees for the on-line access and use of these services. *Id.*
economic benefits derived directly from the online access and use of the plaintiff's computer database.\textsuperscript{70} The court reasoned that because the computer services were the basis for the contract between the parties, it was immaterial that the benefits were conferred to the defendant through an independent data processor.\textsuperscript{71} The court opined that "[t]he intangible nature of [the plaintiff's computer] services should not be perceived as detracting from their very real and valuable function."\textsuperscript{72}

Comparing \textit{Plus System} to \textit{Pres-Kap}, the relevant jurisdictional facts are nearly identical.\textsuperscript{73} However, the \textit{Pres-Kap} court reached a different conclusion because it determined that \textit{Pres-Kap} received economic benefits from System One's branch office located in the defendant's forum state.\textsuperscript{74} For this reason, the court did not apply the purposeful derived benefit factor set forth in \textit{Burger King}.\textsuperscript{75} Nevertheless, \textit{Pres-Kap} subjected itself to Florida's jurisdiction by purposefully deriving direct benefits from the online access and use of the computer database located in Florida.\textsuperscript{76} Furthermore, it was inconsequential that \textit{Pres-Kap} dealt almost exclusively with the branch office located in the defendant's forum state because the online services were provided by System One—a company based in Florida.\textsuperscript{77}

\textsuperscript{70} law governed the contract, the defendant rendered monthly payments to the plaintiff in Colorado, the defendant sent a representative to Colorado for a demonstration of the computer database, and the resulting benefits conferred upon the defendant were directly from the computer interaction. \textit{Plus System}, 804 F. Supp. at 118-19.
\textsuperscript{71} Id. at 119.
\textsuperscript{72} Id.
\textsuperscript{73} \textit{Pres-Kap}, 636 So. 2d at 1351-52.
\textsuperscript{74} Id. at 1353. It is worth emphasizing that the \textit{Pres-Kap} court conceded that \textit{Pres-Kap} "may have benefited financially" from the online access and use of the database in both past contracts with Eastern as well as the current disputed contract. \textit{Id}.
\textsuperscript{75} \textit{Burger King}, 471 U.S. at 473-74. Judge Barkdull argued this point but did not apply relevant case law to support his finding, opting to merely cite authorities. \textit{Pres-Kap}, 636 So. 2d at 1354 (Barkdull, J., dissenting).
\textsuperscript{76} \textit{Pres-Kap}, 636 So. 2d at 1354 (Barkdull, J., dissenting).
\textsuperscript{77} The \textit{Pres-Kap} court contended that the economic benefits that \textit{Pres-Kap} derived were from a transaction between two New York parties. \textit{Pres-Kap}, 636 So. 2d at 1353. However, notwithstanding that the only direct contact that \textit{Pres-Kap} had with System One in Florida was through the Internet, \textit{Pres-Kap} still availed itself to the rights and privileges of Florida law. More specifically, transacting substantial business, although indirectly, constitutes purposeful availment. For example, in \textit{First National Monetary Corp. v. Chesney}, 514 F. Supp. 649 (E.D. Mich. 1980), the United States District Court for the Eastern District of Michigan, Southern District determined that the out-of-state defendants purposefully availed themselves to the rights and privileges of the plaintiff's forum state, despite holding that exercising jurisdiction would offend due process for other reasons specific to the case. \textit{First National Monetary} at 652-53. \textit{See infra} note 111 and accompanying text (subjecting individual citizens, as opposed to a commercial party, to suit in a distant forum state was a compelling reason that rendered exercising jurisdiction unreasonable). Although the defendants contracted with the plaintiff's branch office in their own forum
Connecting through the Internet constitutes active participation in the course of performance of the contract and is another way to satisfy the purposeful availment test. For example, in Computac, Inc. v. Dixie News Co., the Supreme Court of New Hampshire held that the out-of-state defendant purposefully availed itself by routinely delivering information to the in-state plaintiff by mail or telephone. Because this activity was continuous and deliberate, and neither unilateral nor isolated, the court reasoned that the defendant had a sufficient connection with the forum state to justify exercising personal jurisdiction.

Similarly, by sending queries for reservation availability information, Pres-Kap had continuous and purposeful contacts with System One state, they satisfied the purposeful availment test by making substantial business transactions within the plaintiff's forum state under the terms of the contract. First National Monetary, 514 F. Supp. at 652. Similarly, Pres-Kap made substantial business transactions in Florida, utilizing the Internet to book airline, hotel, and automobile reservations for its customers. Pres-Kap, 636 So. 2d at 1352.

In contrast, Painewebber Inc. v. Westgate Group, Inc., 748 F. Supp. 115 (S.D.N.Y. 1990), is an example of an out-of-state defendant's activities failing to satisfy the purposeful availment test because substantial business was not transacted in the forum state. Painewebber 748 F. Supp. at 119. In Painewebber, the forum state plaintiff rendered financial consulting services under a contractual agreement to the out-of-state defendant. Id. at 117. The services were rendered from the forum state and from one of the plaintiff's branch offices located in the defendant's forum. Id. The plaintiff brought the action to recover money owed by the defendant which, in turn, motioned to dismiss for lack of personal jurisdiction. Id. at 116. In addition, the contract was negotiated and executed in the defendant's forum state. Painewebber, 748 F. Supp. at 117. Furthermore, the defendant conducted activities exclusively in its own forum state, never requesting the services of the forum state plaintiff. Id. at 121. While the Painewebber court applied a New York long-arm statute that did not extend to the constitutional limits of due process, it held that the defendant lacked sufficient contacts with the forum state to satisfy the purposeful availment test. Id. at 119, 121.

Pres-Kap is distinguishable from Painewebber. Pres-Kap specifically contracted for the online access and use of a database which System One owned and operated in Florida. Pres-Kap, 636 So. 2d at 1351-52. In contrast, the defendant in Painewebber never requested the forum state plaintiff's services. Painewebber, 748 F. Supp. at 121. Thus, by contrasting Painewebber to Pres-Kap, Pres-Kap purposefully availed itself to Florida law. Pres-Kap, 636 So. 2d at 1353.


79. Id. at 1347. The forum state plaintiff, incorporated in Delaware with its principal place of business in New Hampshire, brought a breach of contract action in New Hampshire against a North Carolina defendant. Id. at 1346. The plaintiff alleged that the defendant failed to make payment for data processing services rendered. Id. The defendant motioned to dismiss for lack of personal jurisdiction. Computac, 469 A.2d at 1346. Every week or every other week, the defendant sent data to the plaintiff in New Hampshire by mail or telephone. Id. In turn, the plaintiff processed this data and relayed it back to the defendant in North Carolina via telephone. Id. The contract specified that New Hampshire law governed the agreement. Id.

80. See infra note 83 (illustrating unilateral and isolated activity).

81. Computac, 469 A.2d at 1347.
in Florida. In turn, the computer database processed the queries and relayed the information back to Pres-Kap. This activity, the routine exchange of information during the course of performing the lease contract, distinguished it from the unilateral and isolated activity concept addressed by the Computac court. Therefore, the Pres-Kap court erroneously concluded that the computer interaction did not satisfy the purposeful availment test.

B. Online Access, Coupled With Other Factors, Can Constitute Adequate Notice

The Pres-Kap court failed to thoroughly consider the totality of the circumstances surrounding the Internet connection, in light of the foreseeability test. With respect to situations involving advanced communications, the Burger King Court explained:

Although territorial presence frequently will enhance a potential defendant's affiliation with a State and reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of 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.

82. Pres-Kap, 636 So. 2d at 1354 (Barkdull, J., dissenting).
83. Computac, 469 A.2d at 1347. Infomed v. Healthcare of Louisville, Inc., 526 F. Supp. 1287 (D.N.J. 1981), is an example of a plaintiff's unilateral and isolated activity in its own forum state failing to satisfy the foreseeability test. Infomed, 526 F. Supp. at 1289. In Infomed, the forum state plaintiff, a New Jersey corporation, contracted to design data processing services for the out-of-state defendant, a Kentucky corporation. Id. at 1287. After the plaintiff custom designed the services for the defendant in New Jersey, a dispute arose pertaining to the installation of the system at the defendant's site in Kentucky. Id. Consequently, the plaintiff brought a breach of contract action against the defendant which, in turn, motioned to dismiss for lack of personal jurisdiction. Id. The United States District Court for the District of New Jersey held that because the defendant did not actively participate in the course of performance of the contract, the purposeful availment requirement was not satisfied. Infomed, 526 F. Supp. at 1289. The court further explained that the data processing services that the plaintiff provided constituted unilateral and isolated conduct because it was substantively performed in the forum state. Id. at 1289-90.

Infomed is distinguishable from Pres-Kap because the contracted computer services were not interactive, engaging the out-of-state defendant with the plaintiff's forum state during the course of the performance of the contract. Id. at 1289. See supra note 79 and accompanying text (asserting that active participation in the course of performance of the contract satisfies the purposeful availment test).
84. Burger King, 471 U.S. at 481-82.
85. Id. at 476 (emphasis added). Of the recent United States Supreme Court decisions that examined personal jurisdiction, the closest to the present case is unquestionably Burger King because it dealt with an interstate contract dispute. Id. at 464. In Burger King, the forum state plaintiff was a franchise restaurant operation which headquartered and maintained its principal place of business in Florida. Id. The out-of-state defendant operated a franchise restaurant in Michigan. Burger King, 471 U.S. at 466. The plaintiff brought a breach of contract action in Florida alleging that the defendant violated its
As the Supreme Court observed, and Judge Barkdull in his dissent correctly inferred, the Internet connection at issue should be considered in its appropriate context as a modern communication when invoking the foreseeability test. Under this premise, Judge Barkdull concluded that because Pres-Kap contracted with System One and made payments to Florida for the online access and the use of the database over a nine year period, it had ample notice that it was subject to jurisdiction in Florida. One particular factor that the court gave insufficient weight was that Pres-Kap rendered payment to Florida for the online access of a computer database located in Florida. Mailing these lease payments was a strong signal that the failure to do so would result in foreseeable injuries.

franchise obligations by failing to render monthly franchise payments. Id. at 468. The defendant motioned to dismiss for lack of personal jurisdiction. Id. at 469.

The pertinent facts for a jurisdictional analysis were as follows: the defendant dealt directly with both the plaintiff's branch office in Michigan and the plaintiff in Florida, the defendant rendered all franchise payments to Florida, a Florida choice-of-law provision governed the contract at issue, and the defendant continued to operate as a franchise after the plaintiff terminated the contract. Id. at 466-68.

The Burger King court held that the foreseeability test was satisfied by the defendant's failure to make payments and unilaterally discontinue using the plaintiff's services after not making such payments. Burger King, 471 U.S. at 480. The Court reasoned that the defendant knew that he was affiliating himself with a franchise located in the forum state of Florida. Id. at 480. The Court further remarked that the contract documents emphasized that the plaintiff was headquartered in Florida, the defendant sent payments and notices to Florida, and Florida law expressly governed the contract. Id. In addition, the defendant had direct and continuous dealings with the plaintiff. Id. at 481. The Court also acknowledged that a choice-of-law provision by itself was not sufficient to satisfy the foreseeability test. Burger King, 471 U.S. at 483. However, the Court noted that a choice-of-law provision should be considered in light of the other factors in determining if the foreseeability test is satisfied. Id. at 481-82.

The only significant distinguishing fact between Burger King and Pres-Kap was that in Burger King the out-of-state defendant dealt directly with the forum state plaintiff. Id. at 480-81. However, the Burger King Court did not specifically hold that direct communication between the two parties was a prerequisite for establishing foreseeability. Id. at 480-83. Alternatively, the Court held that each situation should be analyzed as a whole. Burger King, 471 U.S. at 479. Even though Pres-Kap communicated with System One through its branch office in New York, Pres-Kap could still reasonably foresee having to defend a suit in Florida court over a dispute pertaining to the lease contract of the computer database located in Florida. Pres-Kap, 636 So. 2d at 1352-53. The Pres-Kap court erroneously placed significant weight on the absence of a forum selection clause in the lease contract, a clause which was in the previous leases between Pres-Kap and System One's former parent company. Id. The court effectively treated this omission as if there was an actual provision stating that Florida was not an acceptable forum in the event of a dispute. Furthermore, the Pres-Kap court never mentioned or considered the choice-of-law provision specifying that Florida law governed the lease contract at issue. Reproduced Record, supra note 28, Exhibit A at 9. Burger King expressly stated that such a provision should not be ignored. Burger King, 471 U.S. at 482.

86. Pres-Kap, 636 So. 2d at 1354 (Barkdull, J., dissenting).
87. Pres-Kap, 636 So. 2d at 1353.
to the forum state plaintiff.\textsuperscript{88} Mailing these payments also suggested, as did the Florida choice-of-law provision, that Pres-Kap had contracted with a business in the forum state.\textsuperscript{89}

Other jurisdictions that applied the \textit{Burger King} foreseeability test under the same principles of due process are valuable for comparison purposes. For instance, the \textit{Plus System} court held that the foreseeability test of the minimum contacts prong was satisfied in circumstances remarkably similar to those in \textit{Pres-Kap} where there was online access.\textsuperscript{90} The only additional factor that the \textit{Plus System} court considered was a physical entry by a representative of the out-of-state defendant to the forum state for a demonstration of the plaintiff's computer database.\textsuperscript{91} Though physical entry by a Pres-Kap representative into Florida would lend more support to satisfy the foreseeability test, the absence of physical entry was not dispositive. More specifically, the online access coupled with the other circumstances was sufficient to satisfy the foreseeability test.

Alternatively, an Internet user's mere knowledge that he accessed a computer database in a distant forum state can constitute adequate notice. For example, the \textit{Computac} court held that the foreseeability test was met merely by the defendant's awareness that the contract it entered into was substantially connected to the plaintiff in the forum state.\textsuperscript{92} In that case, the out-of-state defendant routinely sent information to the in-state plaintiff for processing.\textsuperscript{93} Applying the \textit{Computac} court's reasoning to the facts in \textit{Pres-Kap}, Pres-Kap had adequate notice that System One was substantially connected to Florida. That is, rendering payment for the online access, in conjunction with a provision specifying that Florida law governed the previous contracts for such access, was sufficient notice that Pres-Kap was subject to suit in Florida in the event of a dispute with System One.\textsuperscript{94}

\textsuperscript{88} \textit{Burger King}, 471 U.S. at 480.
\textsuperscript{89} \textit{Id.}
\textsuperscript{90} \textit{Plus System}, 804 F. Supp. at 118. \textit{See supra} note 69 and accompanying text (analyzing the facts of \textit{Plus System} in the "purposeful availment" sub-issue).
\textsuperscript{91} \textit{Plus System}, 804 F. Supp. at 118. The out-of-state defendant's representative visited the plaintiff's forum state prior to entering into the contract. \textit{Id.}
\textsuperscript{92} \textit{Computac}, 469 A.2d at 1347. \textit{See supra} note 79 and accompanying text (analyzing the facts of \textit{Computac} in the "purposeful availment" sub-issue).
\textsuperscript{93} \textit{Computac}, 469 A.2d at 1347.
\textsuperscript{94} In \textit{Insurance Data Processing, Inc. v. Old Charleston Insurance Co.'s, Ltd.}, No. 88-4479, 1989 WL 157138, *7 (E.D. Pa. 1989), the United States District Court for the Eastern District of Pennsylvania held that a choice-of-law provision, without more, did not satisfy the foreseeability test. \textit{Id.} In that case, the forum state plaintiff, a Pennsylvania corporation, brought a breach of contract action in Pennsylvania against the out-of-state defendant. \textit{Id.} at *1. The defendant, a South Carolina corporation, moved to dismiss for lack of personal jurisdiction. \textit{Id.} In addition to a choice-of-law provision specifying that Penn-
Finally, the Pres-Kap court erroneously determined that exercising personal jurisdiction under the circumstances would subject all computer database users, including users of such services as Westlaw and Lexis, to actions in distant forum states where the database is located. While mere online access, without more, may not satisfy the foreseeability test, the court failed to support this contention with any case law or other authority.

In contrast, the Supreme Court has recognized that each situation should be viewed in its entirety. In Pres-Kap, the court failed to consider the Internet in its appropriate context, giving full weight and consideration to this type of advanced communication and its surrounding circumstances. The Burger King court and others have recognized that advancements in computer technology have added a new twist to personal jurisdiction law and have required courts to take a more adaptive approach. In the present case, the Internet not only provided Pres-Kap with reservation information, but it contributed to Pres-Kap’s financial prosperity by booking reservations for its customers. This online access, coupled with the other circumstances, satisfied the foreseeability test. Therefore, the Pres-Kap court erroneously failed to invoke the Florida long-arm statute.

The Insurance Data Processing court indicated that the relevant jurisdictional facts were as follows:

[T]he initial sales contact occurred in South Carolina, the contract was signed in South Carolina, the goods were to be delivered to South Carolina, the system was implemented in South Carolina, payment was rendered in South Carolina, and the two defendants who were parties to the contract, Beach and Old Charleston, are incorporated and maintain offices in South Carolina. In short, all essential events relating to the negotiation and formulation of the contract at issue occurred in South Carolina.

Id. at *8.

In finding that the foreseeability test was not satisfied, the court placed great emphasis on the fact that payment was rendered to the plaintiff in the defendant’s forum state. Insurance Data Processing, 1989 WL 157138 at *7.

Pres-Kap is distinguishable from Insurance Data Processing because Pres-Kap rendered payment to System One in Florida. Pres-Kap, 636 So. 2d at 1352. If Pres-Kap rendered payment to System One in New York, then the choice-of-law provision would have been insufficient to invoke Florida law. However, Pres-Kap mailed payments to System One in Florida and accessed System One's database in Florida so that the choice-of-law provision did not operate in isolation. Therefore, by considering the choice-of-law provision as an additional factor under the foreseeability test, Pres-Kap had sufficient notice that a Florida court would be an appropriate place to resolve a dispute pertaining to the lease contract.

95. Pres-Kap, 636 So. 2d at 1353.
96. Burger King, 471 U.S. at 479.
97. Pres-Kap, 636 So. 2d at 1354 (Barkdull, J., dissenting).
C. Subjecting an Internet User to the Jurisdiction of a Distant Forum Can Be Reasonable

Because the Pres-Kap court held that the minimum contacts prong was not satisfied, it erroneously reasoned that hosting the suit in a Florida court was unreasonable.\(^9\) In fact, the reasonableness prong was satisfied because Pres-Kap failed to show a compelling reason that invoking the Florida long-arm statute would be unduly burdensome.

In reference to the reasonableness prong, the Burger King court stated that “where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.”\(^9\) Thus, the underlying question of the reasonableness prong requires balancing the burden placed on the defendant by having the suit in a distant forum state against the reasonable interests of the plaintiff to seek redress in its forum state.\(^10\) Under this balancing approach, courts may also evaluate the forum state’s interest in adjudicating the dispute, the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and the shared interest of the states in furthering fundamental substantive social policies.\(^11\) In addition, in the event that the minimum contacts prong is satisfied, Burger King indicates that the out-of-state defendant must prove that exercising personal jurisdiction would be unduly burdensome.\(^12\) However, because most defendants usually cannot assert a compelling reason, this prong has become a safeguard for courts to invoke in unusual situations that warrant avoiding jurisdiction.\(^13\)

Comparing other cases to Pres-Kap illustrates that subjecting an Internet user to the jurisdiction of a distant forum state is not unreasonable. For instance, in Info-Med, Inc. v. National Healthcare, Inc.,\(^14\) the United States District Court for the Western District of Kentucky held that the out-of-state defendant’s failure to render payment to the forum state plaintiff was reasonable grounds to exercise jurisdiction.\(^15\) The

\(^9\) Pres-Kap, 636 So.2d at 1353.

\(^9\) Burger King, 471 U.S. at 477.

\(^10\) Id. at 477. See also Lee, supra note 3, at 965.

\(^11\) Id. at 477. See also Le, supra note 3, at 965.

\(^12\) Burger King, 471 U.S. at 478 (citing World-Wide Volkswagen, 444 U.S. at 292).

\(^13\) Burger King, 471 U.S. at 482. See also 1 CASAD, supra note 2, at § 2.05. The Burger King Court held that it was reasonable to subject the defendant to jurisdiction in the forum state because the out-of-state defendant failed to prove that exercising personal jurisdiction over it outweighed the considerations which established the minimum contacts prong. Burger King, 471 U.S. at 482.

\(^14\) Lee, supra note 3, at 956.


\(^16\) Id. at 798. In Info-Med, the plaintiff, a Kentucky corporation, designed computer systems specifically for the defendant, a Delaware corporation which maintained its princi-
court recognized that the forum state's "substantial interest in seeing that its residents get the benefit of their bargain" outweighed the defendant's burden of responding to a claim filed against it in a distant forum state.\textsuperscript{106}

The \textit{Computac} court also found that it was reasonable to exercise jurisdiction over an out-of-state defendant.\textsuperscript{107} The court noted that the forum state's "manifest interest" to provide recourse for its residents in the event of a contract dispute outweighed the defendant's burden.\textsuperscript{108}

Conversely, subjecting individual citizens to a court in a distant forum state may qualify as a compelling reason that would render exercising jurisdiction unreasonable. For example, in a pre-\textit{Burger King} ruling,\textsuperscript{109} \textit{First Nat'l Monetary Corp. v. Chesney},\textsuperscript{110} the United States District Court for the Eastern District of Michigan, Southern District, held that it was unreasonable to subject the defendants, as individual citizens, to jurisdiction in a distant forum state for a breach of contract action.\textsuperscript{111} According to the court, the compelling factor that outweighed the reasonableness of maintaining the suit in the forum state was that the out-of-state defendants were individuals, husband and wife.\textsuperscript{112} The court reasoned that they were substantially less prepared to deal with distant litigation than were commercial parties that frequently conduct interstate business.\textsuperscript{113}

Comparing these decisions to \textit{Pres-Kap}, it was not unreasonable to subject \textit{Pres-Kap} as an Internet user to the jurisdiction of a Florida court. Considering that \textit{Pres-Kap} had satisfied the minimum contacts prong, the record did not indicate that \textit{Pres-Kap}, a commercial party, would be unduly burdened by litigating in Florida. That is, the incon-
venience to Pres-Kap was not “so substantial to achieve constitutional magnitude” which outweighed the considerations that satisfied the purposeful availment and foreseeability tests.\textsuperscript{114} The underlying rationale is that if the two tests within the minimum contacts prong are met, then System One has a substantial interest to seek recourse in its forum state, Florida.\textsuperscript{115} This interest can only be compromised by a defendant putting forth a compelling reason,\textsuperscript{116} as illustrated by First Nat'l Monetary.\textsuperscript{117} Therefore, in the absence of a compelling reason, the Pres-Kap court erred by not invoking the Florida long-arm statute.

VI. CONCLUSION

Although establishing personal jurisdiction through the Internet was rejected by the Pres-Kap court, the issue of extending the reach of the long-arm statute in this context is still unresolved. In Pres-Kap, the court erroneously decided that an Internet user was not subject to the jurisdiction of the forum state. Specifically, the court failed to recognize that the online access and use of a computer database permitted the out-of-state party to derive direct economic benefits and participate in the performance of an interstate contract without physically entering the forum state. This activity, viewed in its entirety, satisfied both prongs of the personal jurisdiction analysis.

Courts in other jurisdictions will undoubtedly face this unsettled issue and Pres-Kap illustrates the need for courts to extend the parameters of minimum contacts as it pertains to advancements in computers and other technological creations. The reason is that the two prongs articulated by the United States Supreme Court were intended to be flexible, allowing for full weight and consideration in light of innovations. Otherwise, System One and other forum state parties that contract to provide similar technologically advanced services will be denied their right to seek redress in their forum state. Consequently, courts must assume a more adaptive approach when applying the personal jurisdiction tests to insure that developing technology does not outpace the law.

MICHAEL J. SANTISI

\textsuperscript{114} Burger King, 471 U.S. at 482, 484.
\textsuperscript{115} Id. at 482-83.
\textsuperscript{116} Id. at 477.
\textsuperscript{117} First National Monetary, 514 F. Supp. at 649. See also Burger King, 471 U.S. at 477.