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PERSONAL JURISDICTION HAS (KIND OF) BEEN KEEPING UP WITH THE KARDASHIANS

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PERSONAL JURISDICTION HAS (KIND OF) BEEN KEEPING UP WITH THE KARDASHIANS

Christopher R. Torikoglu, J.D. Candidate 2024



Table of Contents

I. Abstract 1

II. Introduction 1

III. The Personal Jurisdiction Standard 2

IV. Personal Jurisdiction in the Social Media Context..... 3

a. Purposeful Availment and Purposeful Direction 4

i. Purposeful Availment..... 4

ii. Purposeful Direction 6

*1. Fourth and Ninth Circuit Split in Cases Involving
 Geo-Targeted Advertisements 9*

*b. Claim Must Arise out of or Relate to the Defendant’s
 Forum-Related Activities..... 11*

c. Reasonableness: Comporting with Fair Play and Substantial Justice.. 12

V. The Zippo Test: An Adjunct to Interpreting Minimum Contacts in Websites 16

a. Interactivity of Social Media Websites..... 18

i. Minimal Interactivity of Social Media Websites 18

ii. Sharing Information on Social Media Websites..... 19

iii. Social Media Maintenance 20

*iv. Criticism of the Interactivity Prong in the Social Media
 Context 21*

*b. Commercial Nature of the Information Exchanged on Social Media
 Websites..... 22*

i. Posting Links to Commercial Websites on Social Media..... 22

ii. Transacting Business on Social Media Websites..... 23

*iii. Criticism of the Commercial Nature Prong in the Social
 Media Context..... 23*

VI. Conclusion..... 28

PERSONAL JURISDICTION HAS (KIND OF) BEEN KEEPING UP WITH THE KARDASHIANS

Christopher R. Torikoglu*

I. Abstract

Since its inception, social media has evolved from a platform for fostering personal connections to a lucrative commercial space, catalyzed in part by the famous Kardashian family. This Note explores the legal implications social media influencers have on personal jurisdiction. With social media influencers being able to virtually reach any forum state through social media, courts have been faced with the challenge to apply the traditional personal jurisdiction analysis to these modern digital contacts. Through a careful analysis of precedent involving personal jurisdiction and social media, as well as the seminal Zippo test, this Note evaluates ways in which courts have and have not kept up with the Kardashians.

II. Introduction

The landscape of social media websites has rapidly changed since its inception in 1997.¹ Initially, social media was used as an instrument to solely maintain and contact a list of friends.² Over time, the premise of social media shifted when users started to prioritize leveraging it for commercial gain instead of using it to foster personal relationships. One could make the case that the Kardashians – especially Kim Kardashian, “one of the authors of social media”³ – caused this shift by building a billion-dollar empire with the help of social media propelling countless business ventures.⁴ Society was quick to notice how the Kardashian’s leveraged social media websites to amass an exorbitant amount of wealth, pushing others to get in on the action. As a result, the concept of a social media influencer was born. A social media influencer is someone who actively creates and posts content on social media with the intention to attract fans and generate money by collaborating with brands.⁵

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¹ Ngak Chenda, *Then and Now: A History of Social Networking Sites*, CBSNEWS (July 6, 2011, 4:55 PM), <https://www.cbsnews.com/pictures/then-and-now-a-history-of-social-networking-sites/2/>.

² *Social Media*, BRITANNICA (Nov. 21, 2023, 9:08 AM), <https://www.britannica.com/topic/social-media#ref1303882>.

³ *Kim Kardashian Gets Real, Dapper Dan Gets the Vaccine, and More on Today’s Good Morning Vogue*, VOGUE (Mar. 15, 2021), <https://www.vogue.com/video/watch/kim-kardashian-dapper-dan-biden-administration-good-morning-vogue>.

⁴ Parker Stefanie, *Keeping Up with the Kardashians’ Net Worth: How Much Money Kim, Kylie, and Their Siblings Really Have*, PARADE (Nov. 15, 2023), <https://parade.com/1003866/stefanieparker/kylie-jenner-kim-kardashian-family-net-worth/>.

⁵ *What is a Social Influencer?*, GCU (May 26, 2022), <https://www.gcu.edu/blog/performing-arts-digital-arts/what-social-influencer>.

However, the proliferation of social media influencers has precipitated novel legal issues, especially regarding personal jurisdiction. Specifically, the traditional boundaries of personal jurisdiction are challenged with brands increasingly collaborating with social media influencers to capitalize on their notoriety, coupled with social media's ability to virtually reach residents in any forum state. As our new normal has changed, the question of whether exercising personal jurisdiction over a nonresident defendant has become increasingly nuanced. Although society has been keeping up with the Kardashians by mirroring the ways in which they leverage social media, courts have not been fully keeping up with the Kardashians, as they are lagging in modernizing personal jurisdiction issues involving social media contacts.

In Part III, I will describe the traditional personal jurisdiction standard that courts rely on. Part IV will set out examples of cases involving social media contacts under each personal jurisdiction standard, and then argue the ways in which precedent has either kept up or not kept up with the Kardashians. In Part V, I will offer a thorough analysis of the seminal Zippo test, which is used to help determine whether to exercise personal jurisdiction over a nonresident defendant whose contacts involve the use of websites. Specifically, I address the middle ground of the test, criticisms involving both prongs of the test, and whether or not courts have kept up with the Kardashians.

III. The Personal Jurisdiction Standard

Personal jurisdiction is “the power that a court has to make a decision regarding the party being sued in a case.”⁶ In other words, it is the power the court has over the defendant.⁷ The fight to determine whether personal jurisdiction should be exercised over a nonresident defendant starts with that defendant filing a Rule 12(b)(2) motion for lack of personal jurisdiction.⁸ Once this motion is filed, the plaintiff has the burden of proving that exercising personal jurisdiction over the nonresident defendant is proper.⁹

The first step to the personal jurisdiction analysis considers the laws of the state where the case was filed in federal court.¹⁰ In other words, “federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons.”¹¹ Assuming the laws of the state do not restrict the court to continue with their personal jurisdiction analysis, the next step addresses a due process inquiry.¹² The due process clause of the Fourteenth Amendment requires that in order to exercise personal jurisdiction over a nonresident defendant, they 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

⁶ *Personal Jurisdiction*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/personal_jurisdiction (last visited Sept. 22, 2023).

⁷ *Id.*

⁸ Fed. R. Civ. P. 12. (“Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: . . . (2) lack of personal jurisdiction.”).

⁹ *N. Grain Mktg., LLC v. Greving*, 743 F.3d 487, 491 (7th Cir. 2014).

¹⁰ *Schreiner v. Crespi*, No. 21-CV-7, 2021 WL 1758955, at *2 (E.D. Wis. May 3, 2021); *see also* *Heard v. Jenkins*, No. 1:21-CV-01374, 2022 WL 4482765, at *2 (N.D. Ill. Sept. 27, 2022) (“Under [Fed. R. Civ. P. 4(k)(1)(A)], federal courts generally may exercise personal jurisdiction over a defendant if the defendant is subject to the jurisdiction of the state court in which the district court sits.”).

¹¹ *Daimler v. Bauman*, 571 U.S. 117, 125 (2014).

¹² *Schreiner*, 2021 WL 1758955, at *2.

justice.”¹³ With respect to these minimum contacts, they must “proximately result from actions by the defendant himself which create a substantial connection with the forum State.”¹⁴ These minimum contacts must be “purposefully directed toward the forum State,”¹⁵ also known as “purposeful availment.”¹⁶ Moreover, the “quality and nature of an interstate transaction may sometimes be so random, fortuitous, or attenuated that it cannot fairly be said that the potential defendant should reasonably anticipate being haled into court in another jurisdiction.”¹⁷

To determine whether the minimum contact inquiry is satisfied, courts consider two categories of personal jurisdiction- general and specific jurisdiction.¹⁸ General jurisdiction is when the nonresident defendant’s contacts with the forum state are “continuous and systematic” to the point where they are considered to be at home in the forum state.¹⁹ Specific jurisdiction is when the nonresident defendant “purposefully availed [itself] of the privilege of conducting business in the forum state or purposefully directed [its] activities at the state.”²⁰

If the plaintiff satisfies the first two prongs of the specific jurisdiction analysis, then the burden shifts to the defendant to satisfy the third and final prong.²¹ The defendant must “present a compelling case” that the reasonableness prong of exercising personal jurisdiction in the forum state would offend “traditional notions of fair play and substantial justice.”²²

IV. Personal Jurisdiction in the Social Media Context

Social media contacts in personal jurisdiction cases are primarily involved in cases applying a specific jurisdiction analysis. For this reason, this section will not address general jurisdiction.²³ A tripartite analysis is used to determine whether specific jurisdiction is satisfied:

- (1) [T]he nonresident defendant must purposefully direct his activities or consummate some transaction with the forum or residents thereof; or perform some act by which he purposefully avails himself of the privilege

¹³ *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 315-16 (1945).

¹⁴ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985).

¹⁵ *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 112 (1987).

¹⁶ *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021); *see also* *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987) (“The purposeful availment requirement is based on the presumption that it is not unreasonable to require a defendant who purposefully conducts business in a state, thereby using the benefits and protections of the forum state’s laws, to submit to the burdens of litigation in that forum as well. Jurisdiction may not be avoided by a lack of physical contact with the forum state. Indeed, the Supreme Court has upheld the assertion of jurisdiction over a defendant whose efforts were intentionally directed towards the forum state when there was no physical contact relating to the claim.”) (internal citations omitted).

¹⁷ *Burger King*, 471 U.S. at 486.

¹⁸ *Daimler v. Bauman*, 571 U.S. 117, 127 (2014).

¹⁹ *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

²⁰ *Lexington Ins. Co. v. Hotai Ins. Co.*, 938 F.3d 874, 878 (7th Cir. 2019).

²¹ *Friedman v. PopSugar, Inc.*, No. 218CV05888CASMAAX, 2018 WL 6016963, at *9 (C.D. Cal. Oct. 29, 2018).

²² *See Burger King*, 471 U.S. at 477; *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 105 (1987).

²³ Upon my research, I was unable to locate any cases involving social media contacts that focused on exercising personal jurisdiction over the nonresident defendant through general jurisdiction.

of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.²⁴

The remainder of this section will address each of these requirements and the ways in which they are interpreted in cases involving social media contacts. Also, each section will shed light on whether each requirement has kept up with the Kardashians.

a. Purposeful Availment and Purposeful Direction

i. Purposeful Availment

Nonresident defendants purposefully avail themselves of the privileges of conducting activities in the forum when their social media posts target the forum state.²⁵ In *Leal*, a New York resident and social media influencer in the bodybuilding industry, sued his ex-girlfriend, a California resident, in the District Court for the Southern District of Ohio for conspiring to harass him.²⁶ The plaintiff alleged the defendant posted false statements about his business and implored her social media followers to report it to the FDA.²⁷ However, because the defendant's posts were silent on mentioning Ohio, not directed at Ohioan residents, not posted with the hopes of targeting Ohio, and were posted while she was physically in California, the court held she did not purposefully avail herself of Ohio's forum.²⁸

Similarly, in *Heard*, Kojon Heard, Instagram influencer and audio content producer, sued Jay Wayne Jenkins (also known as Jeezy), musical artist and Georgia resident, in the District Court for the Northern District of Illinois.²⁹ Heard sued Jeezy for violating copyright law because he allegedly took Heard's audio from his Instagram video and used it in his song, "Don't Forget."³⁰ Heard contended that because Jeezy made his song continuously available on YouTube to be listened by Illinois residents, Jeezy has purposefully availed himself in Illinois.³¹ However, this allegation was not useful for the court to exercise personal jurisdiction over Jeezy because it does not explain how putting the song on YouTube for a general audience to listen to meant Jeezy purposefully directed contact with the State of Illinois.³²

²⁴ *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987); *see also* *Werner v. Dowlatsingh*, No. 218CV03560CASFFMX, 2018 WL 6975142, at *4 (C.D. Cal. Sept. 17, 2018) (A purposeful direction analysis, as opposed to a purposeful availment analysis, is used in tort cases. In personal jurisdiction cases, the tort asserted tends to be alleged copyright infringement because it resembles a "tort-like cause of action.")

²⁵ *See* *Lake*, 817 F.2d at 1421; *Leal v. Bedel*, No. 1:22-CV-150, 2022 WL 16533912, at *1 (S.D. Ohio Oct. 28, 2022); *E'Casanova v. Morrow*, No. 220CV01255GMNBNW, 2021 WL 682058, at *3 (D. Nev. Feb. 22, 2021).

²⁶ *Leal*, 2022 WL 16533912, at *1.

²⁷ *Id.*

²⁸ *Id.* at *3.

²⁹ *Heard v. Jenkins*, No. 1:21-CV-01374, 2022 WL 4482765, at *1-2 (N.D. Ill. Sept. 27, 2022).

³⁰ *Id.*

³¹ *Id.* at *4.

³² *Id.*

In connection with that, the nonresident defendant's social media contacts cannot be just aimed at the plaintiff residing in the forum state.³³ In *E'Casanova*, a Nevada actor, sued a Pennsylvania resident who worked as a social media influencer and YouTube star, in the District Court for the District of Nevada for defaming and harassing him on YouTube and Instagram.³⁴ Because the plaintiff merely explained how the defendant's activities were directed towards the plaintiff, the court held the defendant did not expressly aim at Nevada.³⁵ Instead, the plaintiff had to identify how the defendant's social media activities negatively impacted the plaintiff's reputation in Nevada.³⁶

Nonresident defendants do not purposefully avail themselves of the privileges of conducting activities in the forum if they use social media websites based in the forum state.³⁷ In *Brophy*, the plaintiff, a California resident, sued Belcalis Almanzar (also known as Cardi B), entertainer and New Jersey resident, in the District Court for the District of California.³⁸ The plaintiff alleged Cardi B misappropriated his likeness by using his image on her album cover without his knowledge or consent.³⁹ The plaintiff argued Cardi B targeted California audiences because she used Twitter and Instagram, which are headquartered in California.⁴⁰ However, this argument was unconvincing for the court because it would violate the "due process restrictions of personal jurisdiction."⁴¹ If merely maintaining social media accounts constituted purposeful availment, then millions of people would be automatically subjected to personal jurisdiction in California.⁴²

Nonresident defendants do not purposefully avail themselves of the privileges of conducting activities in the forum based on their "knowledge of a plaintiff's connections to a forum."⁴³ Instead, courts "must look to the defendant's own contacts with the forum."⁴⁴ In *Ensing*, Amanda Ensing, a social media influencer and Tennessee resident,

³³ *E'Casanova v. Morrow*, No. 220CV01255GMNBNW, 2021 WL 682058, at *3 (D. Nev. Feb. 22, 2021); see also *Walden v. Fiore*, 571 U.S. 277, 285 (2014) ("[M]inimum contacts analysis examines the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there.") (quotations omitted).

³⁴ *E'Casanova*, 2021 WL 682058, at *1.

³⁵ *Id.* at *3.

³⁶ *Id.*

³⁷ *NuboNau, Inc. v. NB Labs, Ltd.*, No. 10CV2631-LAB BGS, 2012 WL 843503, at *6 (S.D. Cal. Mar. 9, 2012); see also *DFSB Kollektive Co. v. Bourne*, 897 F.Supp.2d 871, 884 (N.D. Cal. 2012) (holding that the nonresident defendant did not purposefully direct activities in the state of California by "utiliz[ing] accounts on California-headquartered Internet companies Facebook, hi5.com, DeviantArt, and 4Shared to direct traffic to his Websites.").

³⁸ *Brophy v. Almanzar*, 359 F. Supp. 3d 917, 920 (C.D. Cal. 2018).

³⁹ *Id.* at 921.

⁴⁰ *Id.* at 924.

⁴¹ *Id.* at 925.

⁴² *Id.*

⁴³ *Axiom Foods, Inc. v. Acerchem Intl., Inc.*, 874 F.3d 1064, 1070 (9th Cir. 2017).

⁴⁴ *Id.*; see also *Werner v. Dowlatsingh*, No. 218CV03560CASFFMX, 2018 WL 6975142, at *1-7 (C.D. Cal. Sept. 17, 2018) (In *Werner*, the plaintiff, a professional photographer and California resident, sued Landon Dowlatsingh, a YouTube personality with over eight million subscribers and Toronto resident, for copyright infringement in the District Court for the Central District of California. The plaintiff alleged Dowlatsingh used his images without permission in five YouTube videos, collectively reaching over 735,000 views. One of the images displayed in Dowlatsingh's video had the plaintiff's watermark on the bottom right hand corner. The plaintiff used this as evidence to support Dowlatsingh knowing the plaintiff was a California resident because he reviewed every video before it was uploaded on YouTube. However, exercising personal jurisdiction over this allegation would not have been sound because whether Dowlatsingh was aware of the plaintiff's connection to California was immaterial, but rather Dowlatsingh's contacts with California was material. To that end, even analyzing Dowlatsingh's social media contacts

sued Sephora USA, Inc., a California corporation, for tortious interference with contractual and prospective business relationships in the District Court for the Middle District of Tennessee.⁴⁵ Ensing and Sephora entered into a contractual relationship, obligating her to create a sponsored YouTube video.⁴⁶ However, after Ensing posted controversial tweets, Sephora publicly announced they were severing their business ties with Ensing and used an external vendor to take her YouTube video down.⁴⁷ Ensing alleged exercising personal jurisdiction over Sephora would be proper because Sephora was aware of Ensing residing in Tennessee, and thus, it was reasonable to infer Sephora hoped and intended their announcement would have reached Tennessee residents.⁴⁸ The court held this was insufficient to satisfy personal jurisdiction because, although this fact shows Sephora’s knowledge and intent, it does not show any conduct satisfying personal availment.⁴⁹ It merely shows Ensing “rely[ing] on her own contacts with Tennessee to characterize [Sephora]’s actions as targeting Tennessee.”⁵⁰

ii. Purposeful Direction

A three-part “effects test” – also known as the “Calder Effects Test” – is used to determine whether purposeful direction is satisfied.⁵¹ Pursuant to this test, the defendant must have: “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.”⁵² The following analysis delves into an instructive case, which explains how courts interpret the “effects test” in the context of social media contacts.

In *Friedman*, Brittani Friedman, a California resident, sued PopSugar, Inc., a Delaware corporation with its principal place of business in San Francisco, California, in the District Court for the Central District of California for copyright infringement.⁵³ Friedman is a fashion and lifestyle blogger, and social media influencer with over 37,000 Instagram followers.⁵⁴ She owns all of the images on her social media accounts that promote different fashion and lifestyle brands.⁵⁵ She monetizes her social media accounts through affiliate marketing.⁵⁶ Affiliate marketing allows affiliates to earn commissions when a product is purchased from a unique link.⁵⁷ PopSugar is a website that promotes celebrity,

with the forum was not enough to satisfy purposeful direction. The subject matter of the YouTube videos had no connection to California, and the plaintiff failed to show whether a substantial number of views came from California and whether the videos targeted Californians.)

⁴⁵ Ensing v. Sephora USA, Inc., No. 3:21-CV-00421, 2022 WL 4097712, at *1-2, *4 (M.D. Tenn. Sept. 6, 2022).

⁴⁶ *Id.* at *1.

⁴⁷ *Id.*

⁴⁸ *Id.* at *3.

⁴⁹ *Id.*

⁵⁰ *Id.*; see also Blessing v. Chandrasekhar, 988 F.3d 889, 906 (6th Cir. 2021) (holding that the nonresident defendant’s Twitter posts “did not create sufficient contacts with [the forum state] simply because the plaintiffs have [forum state] connections.”) (internal quotation marks omitted).

⁵¹ Calder v. Jones, 465 U.S. 783, 787-89 (1984).

⁵² *Id.*

⁵³ Friedman v. PopSugar, Inc., No. 218CV05888CASMMAAX, 2018 WL 6016963, at *1 (C.D. Cal. Oct. 29, 2018).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Affiliate Marketing 101: What it is and how to get Started*, BIGCOMMERCE, <https://www.bigcommerce.com/articles/ecommerce/affiliate-marketing/> (last visited Sept. 15, 2023).

pop culture, fashion, and lifestyle content.⁵⁸ They also embed ecommerce in their “shoppable” content.⁵⁹ Friedman alleged PopSugar misappropriated, copied, and published 267 of her social media images on their website without her consent.⁶⁰ The images were hyperlinked as “shoppable posts” on PopSugar’s website, which were located on a designated fraudulent page including Friedman’s name, email, and her Los Angeles location.⁶¹

PopSugar claimed the court lacked personal jurisdiction and asked the court to transfer the case to the Northern District of California where jurisdiction is proper.⁶² The court, however, held that specific jurisdiction existed in the Central District of California.⁶³ This section will address how Friedman presented a *prima facie* case satisfying the three-part Calder test for purposeful direction in the Central District of California.

First, the court did not analyze the first-part of the Calder test because PopSugar did not challenge whether they committed an intentional act⁶⁴ through their alleged copyright infringement. A possible explanation is that the standard for satisfying this part of the test is relatively low.⁶⁵ For example, in *E’Casanova*, the court held the defendant committed an intentional act just by posting allegedly defamatory and harassing messages about the plaintiff on Instagram and YouTube.⁶⁶ Even outside of the social media influencer context, courts have held that merely posting a message on an online forum constitutes an intentional act.⁶⁷ Therefore, it seems the crux of the analysis falls on the second part of the Calder test, which is what PopSugar focused on.

Second, PopSugar’s copyright infringement was expressly aimed at the Central District of California.⁶⁸ Previously, the Ninth Circuit held individualized targeting was enough to satisfy express aiming in copyright cases.⁶⁹ Individualized targeting is when “a defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state.”⁷⁰ In *Walden*, however, the Ninth Circuit amended this requirement and held that, although “individualized targeting may remain relevant to the minimum contacts inquiry, it will not, on its own, support the exercise of specific jurisdiction.”⁷¹

⁵⁸ See generally Armstrong Paul, *What you Don’t Know About Popsugar (And it’s 2017 Strategy)*, FORBES (Jan. 8, 2017, 6:50 PM), <https://www.forbes.com/sites/paularmstrongtech/2017/01/08/what-you-dont-know-about-popsugar-and-its-2017-strategy/?sh=3c184e7c41af>; *Popsugar*, <https://www.popsugar.com> (last visited Sept. 15, 2023).

⁵⁹ *Shoppable*, POPSUGAR, <https://www.popsugar.com/Shoppable> (last visited Sept. 15, 2023).

⁶⁰ *Friedman*, 2018 WL 6016963, at *2.

⁶¹ *Id.*

⁶² *Id.* at *4.

⁶³ *Id.* at *10.

⁶⁴ See *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 806 (9th Cir. 2004) (“We construe intent in the context of the intentional act test as referring to an intent to perform an actual, physical act in the real world, rather than an intent to accomplish a result or consequence of that act.”) (internal quotation marks omitted).

⁶⁵ See *E’Casanova v. Morrow*, No. 220CV01255GMNBNW, 2021 WL 682058, at *3 (D. Nev. Feb. 22, 2021)

⁶⁶ *Id.*

⁶⁷ *Cornelius v. DeLuca*, 709 F. Supp. 2d 1003, 1011 (D. Idaho 2010).

⁶⁸ *Friedman*, 2018 WL 6016963, at *7.

⁶⁹ *Id.*

⁷⁰ *Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 675 (9th Cir. 2012).

⁷¹ *Axiom Foods, Inc. v. Acerchem Intl., Inc.*, 874 F.3d 1064, 1070 (9th Cir. 2017).

In *Friedman*, Friedman’s residence was relevant to the minimum contacts inquiry both because she lives in Los Angeles and she displayed a beachy Southern California lifestyle on social media, which is what Los Angeles is praised for.⁷² Moreover, her fashion and lifestyle centric social media accounts contributed to Los Angeles celebrity culture.⁷³ These factors are relevant to the minimum contacts inquiry because PopSugar not only targeted Friedman herself, but also targeted Central California – the epicenter of fashion and celebrity lifestyle culture – through their website’s content.⁷⁴ Unironically, at the time of this suit, the first two topic tabs on their website are “Celebrity” and “Fashion.”⁷⁵

Nonresident defendants can expressly aim their conduct at a state if their “website with a national viewership and scope appeals to, and profits from, an audience in a particular state.”⁷⁶ PopSugar “anticipated, desired, and achieved a substantial Los Angeles viewer base” by operating a popular website focusing on Los Angeles-centered celebrity and entertainment content.⁷⁷ In light of PopSugar using and profiting from Friedman’s copyrighted photos by exploiting the large California market, their conduct meaningfully connected them to the Central District of California, and thus, they expressly aimed in the forum.⁷⁸

Ultimately, *Friedman*’s analysis of the second part of the *Calder* test – expressly aiming at the forum state⁷⁹ – exemplifies the ways in which personal jurisdiction has kept up with the Kardashians. With Central California being the epicenter for social media influencers,⁸⁰ it is reasonable to infer brands expressly aim their conduct in this forum state when they collaborate with social media influencers. The premise of their collaboration is to capitalize on the mega following of social media influencers – which tends to cater to Central California residents – because most Instagram influencers reside in Los Angeles.⁸¹ Therefore, brands should be expected to be haled into California courts for using social media influencers as surrogates to promote conduct that exploits California culture, including but not limited to, cosmetic procedures,⁸² fashion, celebrity gossip, and beachy lifestyles.

Third, PopSugar’s conduct caused harm that PopSugar knew was likely going to be suffered by Friedman in the Central District of California.⁸³ PopSugar was acutely aware of Friedman’s Los Angeles residency because she candidly shared it on her social media

⁷² *Friedman*, 2018 WL 6016963, at *7-8.

⁷³ *Id.* at *7.

⁷⁴ *Id.* at *8.

⁷⁵ *Id.* at *7.

⁷⁶ *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1231 (9th Cir. 2011).

⁷⁷ *Friedman*, 2018 WL 6016963, at *7.

⁷⁸ *Id.* at *8.

⁷⁹ *Id.* at *7.

⁸⁰ Adie Olivia, *The State of Instagram Influencer Marketing: USA*, HEEPSY, <https://blog.heepsy.com/posts/the-state-of-instagram-influencer-marketing-usa/> (last visited Sept 15, 2023).

⁸¹ *The Top Ten Cities with the Most Instagram Mega-Influencers*, HYPEAUDITOR (Jan. 27, 2020), <https://hypeauditor.com/blog/most-influential-cities-in-the-world-the-top-ten-cities-with-the-most-instagram-mega-influencers/>.

⁸² Tenbarga Kay, *Young Influencers are Being Offered Cheap Procedures in Return for Promotion. They Say it’s Coming at a Cost*, NBCNEWS (Apr. 27, 2022, 5:28 AM), <https://www.nbcnews.com/tech/internet/followers-cheaper-lips-young-influencers-detail-allure-cosmetic-proced-rcna14463>.

⁸³ *Friedman*, 2018 WL 6016963, at *9.

accounts, and they posted her Los Angeles location on their fraudulent web page.⁸⁴ Moreover, considering PopSugar’s subject matter and broad audience, coupled with Friedman’s Los Angeles residency, the harm primarily occurred in Los Angeles.⁸⁵

1. Fourth and Ninth Circuit Split in Cases Involving Geo-Targeted Advertisements

Although *Friedman* illustrates how the second prong of the Calder effects test – expressly aiming at the forum state⁸⁶ – can be interpreted to keep up with the Kardashians, it does not present a set of facts addressing the impact geo-targeted advertisements⁸⁷ have on this prong. Currently, the Fourth and Ninth Circuits are diametrically split on whether geo-targeted advertisements can satisfy personal jurisdiction in a forum state.⁸⁸ Consequently, cases involving social media contacts through geo-targeted advertisements have not kept up with the Kardashians because the circuit split leads to differing implications.

The Ninth Circuit currently maintains nonresident defendants do not expressly aim their conduct at the forum state through geo-targeted advertisements.⁸⁹ In *AMA Multimedia*, a Nevada company sued a foreign defendant, a citizen and resident of Poland, for copyright and trademark infringement in the District of Arizona.⁹⁰ The plaintiff’s copyrighted work was displayed on the defendant’s website, which used a third-party advertising company to geo-target advertisements.⁹¹ This meant that tailored advertisements would be displayed on the defendant’s website based on the visitor’s location.⁹² Also, 19.21% of the website’s traffic was from the United States, which was the website’s largest audience.⁹³ However, the court held the tailored advertisements did not expressly aim at the United States because the defendant “does not personally control the advertisements shown on the site, as [the website] contracts with third parties (not located in the United States) which tailor the advertisements themselves or sell the space to other parties who do.”⁹⁴

However, the Fourth Circuit currently maintains the opposite view, as personal jurisdiction over a nonresident defendant can be satisfied through geo-targeted advertisements.⁹⁵ In *UMG Recordings* – a case with strikingly similar facts to *AMA Multimedia* – twelve plaintiffs who were all Delaware corporations with principal places of business in either New York, California, or Florida, sued a foreign defendant, a citizen and resident of Russia, for copyright infringement in the District of Virginia.⁹⁶ The plaintiffs’ copyrighted work was displayed on the defendant’s websites, which sell

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Calder v. Jones*, 465 U.S. 783, 789 (1984).

⁸⁷ *What is Geotargeting and Why It’s an Important Advertising Strategy?*, MAILCHIMP, <https://mailchimp.com/resources/what-is-geotargeting/> (last visited Oct. 5, 2023) (“Geotargeting is a type of advertising where you create ads that are based on your consumers’ geographic locations.”).

⁸⁸ *See AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1211 (9th Cir. 2020); *UMG Recordings, Inc. v. Kurbanov*, 963 F.3d 344, 348 (4th Cir. 2020).

⁸⁹ *AMA Multimedia*, 970 F.3d at 1211.

⁹⁰ *Id.* at 1204-05.

⁹¹ *Id.* at 1204.

⁹² *Id.*

⁹³ *Id.* at 1205.

⁹⁴ *Id.* at 1211.

⁹⁵ *UMG Recordings, Inc. v. Kurbanov*, 963 F.3d 344, 354 (4th Cir. 2020).

⁹⁶ *Id.* at 347-48.

advertising spaces to a third-party advertising broker.⁹⁷ The third-party advertising broker applied geo-targeting to the advertisements in order to display targeted advertisements to certain countries, states, and cities.⁹⁸ The websites themselves garnered over 30 million visitors from the United States, which was approximately 10% of the website's total traffic.⁹⁹ The court held the tailored advertisements satisfied exercising personal jurisdiction over the foreign defendant because the defendant collected IP addresses of their visitors and sold this data to third-party brokers who facilitated the targeted advertising in the United States.¹⁰⁰ The court further reasoned that because the advertisements targeted residents of the forum state, this “indicate[d] that the defendant kn[ew]—either actually or constructively—about its [forum state] user base, and that it exploits that base for commercial gain by selling space on its website for advertisements.”¹⁰¹

Ultimately, this Fourth and Ninth Circuit split poses profound challenges for future cases involving influencers that contract with third-parties to post advertisements on the influencer's social media pages. It is not atypical for influencers to work with third-party marketing platforms, which help locate brands to collaborate with social media influencers.¹⁰² For example, *aspire.io* is a marketing platform helping brands locate creators, who can then manage campaigns, create advertisements, and drive revenue by using the influencers social media pages.¹⁰³ These third-party marketing platforms allow advertisers to geo-target the advertisements they post on the influencers social media pages.¹⁰⁴ To illustrate the implications this can have on personal jurisdiction issues, consider a foreign brand was sued for copyright infringement based on an advertisement posted on an influencer's social media page that was facilitated by a third-party marketing platform. If the foreign brand is sued in the Fourth Circuit, the court will be more receptive to exercise personal jurisdiction over them relative to the Ninth Circuit.¹⁰⁵ In other words, if you are a foreign brand sued in the Fourth Circuit, you would be unhappy that personal jurisdiction has kept up with the Kardashians, and if you are a foreign brand sued in the Ninth Circuit, you would be happy that personal jurisdiction has not kept up with the Kardashians.¹⁰⁶ This tension raises concerns because certain foreign brands can receive immunity from being sued in the United States, even when their conduct infringes copyright law.¹⁰⁷ Therefore, in light of this circuit split, forum-shopping will be promulgated in cases involving foreign defendants using geo-targeted advertising towards the United States.¹⁰⁸

⁹⁷ *Id.* at 348.

⁹⁸ *Id.*

⁹⁹ *Id.* at 349.

¹⁰⁰ *Id.* at 348.

¹⁰¹ *Id.* at 354.

¹⁰² See *Top 10 Influencer Marketing Platforms*, SIMPLILEARN, <https://www.simplilearn.com/top-influencer-marketing-platforms-article> (last visited Nov. 8, 2023).

¹⁰³ See generally *ASPIRE*, <https://www.aspire.io/> (last visited Nov. 8, 2023).

¹⁰⁴ See *id.*

¹⁰⁵ See *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1211 (9th Cir. 2020); *UMG Recordings*, 963 F.3d at 348.

¹⁰⁶ See *id.*

¹⁰⁷ See *id.*

¹⁰⁸ *Intellectual Property & Marketing Law*, ASS'N OF NAT'L ADVERTISERS, <https://www.ana.net/getfile/32958> (last visited Oct. 10, 2023).

b. Claim Must Arise out of or Relate to the Defendant’s Forum-Related Activities

A plaintiff’s claim arises out of the nonresident defendant’s forum-related activities “if there is a direct nexus between the cause of action being asserted and the defendant’s activities in the forum.”¹⁰⁹ The Ninth Circuit applies a “but for” test to determine whether a plaintiff’s lawsuit arises out of the nonresident defendant’s contact with the forum state.¹¹⁰ In *Friedman*, the Ninth Circuit held Friedman’s copyright lawsuit arose from PopSugar’s alleged misappropriation of the 267 Los Angeles lifestyle photographs on their fraudulent web page.¹¹¹ These activities had the effect of injuring the plaintiff in the Central District of California, especially because PopSugar’s website is immersed with Los Angeles lifestyle content.¹¹² The court applied the “but for” test to make this determination by asserting that “but for” PopSugar’s misappropriation of 267 photographs, the injury – harm to her brand and image through copyright infringement – would not have occurred.¹¹³

A plaintiff’s claim arises out of the nonresident defendant’s forum-related activities when they have an extensive business relationship with each other.¹¹⁴ In *Ensing*, the court held that Sephora’s defamatory conduct did not arise out of the business relationship between Ensing and Sephora.¹¹⁵ The court reasoned Ensing did not have an extensive business relationship with Sephora by fulfilling a single contractual obligation requiring her to post a sponsored video on her YouTube channel.¹¹⁶ In contrast, the *Power Investments* opinion held that exercising personal jurisdiction over a nonresident defendant was proper because they extensively communicated with the plaintiff about purchasing a power plant for a year in the forum state.¹¹⁷ Also, in *Neal*, the court held that exercising personal jurisdiction over a nonresident defendant was proper because they were involved in a business relationship – resulting in defrauding the plaintiffs in the forum state – for a substantial period of time.¹¹⁸

However, this analysis exemplifies how personal jurisdiction has not kept up with the Kardashians. Courts are relying on the duration of a business relationship to justify whether the plaintiff’s claim arises out of the nonresident defendant’s forum-related activities,¹¹⁹ without considering that it is not atypical for social media influencers to be hired only once by a company. This is especially true because the social media influencer market size has significantly grown.¹²⁰ In 2016, the social media influencer market size

¹⁰⁹ *Friedman v. PopSugar, Inc.*, No. 218CV05888CASMAAX, 2018 WL 6016963, at *9 (C.D. Cal. Oct. 29, 2018).

¹¹⁰ *Id.*

¹¹¹ *Id.* at *2, *9.

¹¹² *Id.* at *9.

¹¹³ *Id.*

¹¹⁴ *See Ensing v. Sephora USA, Inc.*, No. 3:21-CV-00421, 2022 WL 4097712, at *4 (M.D. Tenn. Sept. 6, 2022); *Power Inv., LLC v. SL EC, LLC*, 927 F.3d 914, 919 (6th Cir. 2019); *Neal v. Janssen*, 270 F.3d 328, 333 (6th Cir. 2001).

¹¹⁵ *Ensing*, 2022 WL 4097712, at *4.

¹¹⁶ *Id.*

¹¹⁷ *Power Inv.*, 927 F.3d at 919.

¹¹⁸ *Neal*, 270 F.3d at 333.

¹¹⁹ *See Ensing*, 2022 WL 4097712, at *4; *Power Inv.*, 927 F.3d at 919; *Neal*, 270 F.3d at 333.

¹²⁰ Geyser Werner, *The State of Influencer Marketing 2023: Benchmark Report*, INFLUENCER MARKETING HUB (Oct. 30, 2023), <https://influencermarketinghub.com/influencer-marketing-benchmark-report/>.

was an estimated \$1.7 billion, which grew to \$16.4 billion in 2022.¹²¹ Moreover, 21% of brands collaborate with 10 to 20 social media influencers and 16% of brands collaborate with 50 to 100 social media influencers.¹²² Some brands even collaborate with over 1000 social media influencers.¹²³ Therefore, it can be inferred that the rapidly increasing social media influencer market is proportional to the number of new influencers brands collaborate with.¹²⁴ With the saturation of new influencers, it would not be outlandish for a brand to only collaborate with a social media influencer once to diversify the audience of their market campaigns. To that end, it is concerning if courts continue to apply the *Ensing* analysis because it presents a profound challenge for plaintiffs to bring lawsuits where their claim arises out of or relates to the defendant's activities in that forum state.¹²⁵ Specifically, this loophole increases the chances of brands receiving personal jurisdiction immunity when they enter into shorter business relationships with social media influencers, posing insufficient grounds for courts to hear cases.¹²⁶

c. Reasonableness: Comporting with Fair Play and Substantial Justice

Once the first two prongs of the personal jurisdiction analysis are satisfied, the burden then shifts to the defendant to prove the final prong- reasonableness.¹²⁷ Courts apply a seven-factor balancing test to evaluate whether it is reasonable to exercise personal jurisdiction over a nonresident defendant:

- (1) the extent of the defendant's purposeful interjection into the forum state's affairs;
- (2) the burden on the defendant of defending in the forum;
- (3) the extent of conflict with the sovereignty of the defendant's state;
- (4) the forum state's interest in adjudicating the dispute;
- (5) the most efficient judicial resolution of the controversy;
- (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and
- (7) the existence of an alternative forum.¹²⁸

The following analysis delves into an instructive case, which explains how courts interpret reasonableness in the context of social media contacts. Moreover, it provides insight into how personal jurisdiction can still be satisfied over foreign defendants whose social media contacts relate to the spirit of the lawsuit, despite exercising personal jurisdiction over them being more difficult relative to domestic defendants.¹²⁹

¹²¹ *Id.*

¹²² Santora Jacinda, *17 Key Influencer Marketing Statistics to Fuel your Strategy*, INFLUENCER MARKETING HUB, <https://influencermarketinghub.com/influencer-marketing-statistics/> (last updated Feb. 6, 2024).

¹²³ *Id.*

¹²⁴ *See id.*

¹²⁵ *See Ensing v. Sephora USA, Inc.*, No. 3:21-CV-00421, 2022 WL 4097712, at *4 (M.D. Tenn. Sept. 6, 2022).

¹²⁶ *Id.*

¹²⁷ *McCullum v. Oplous*, No. CV2200587MWFMARX, 2022 WL 17218072, at *5 (C.D. Cal. Aug. 3, 2022).

¹²⁸ *Freestream Aircraft (Berm.) Ltd. v. Aero L. Grp.*, 905 F.3d 597, 607 (9th Cir. 2018).

¹²⁹ *See Tech. Dev. Assocs. v. Victor Co. of Japan*, C-93-1336 MHP ARB, 1993 WL 266651, *8 (N.D. Cal. July 14, 1993) (“Litigation involving a nonresident defendant from a foreign nation creates a higher jurisdictional barrier for a finding that personal jurisdiction is reasonable”); *Walker & Zanger (West Coast) Ltd. v. Stone Design S.A.*, 4 F.Supp.2d 931, 940 (C.D. Cal. 1997) (“Because Stone Design is a foreign national, the reasonableness standard is somewhat more stringent.”).

In *McCullum v. Opulous*, Miles Parks McCollum (also known as Lil Yachty¹³⁰), a Georgia resident, sued foreign defendants, residents of England, for trademark infringement in the Central District of California.¹³¹ Lil Yachty and the defendants had a prospective meeting to discuss whether Lil Yachty was interested in being in a business relationship with the defendants.¹³² The crux of the business relationship would be to “offer ownership interests in [Lil Yachty’s] copyrighted works, using non-fungible tokens (“NFTs”) to convey and maintain certain interests,” as well as selling his music on their platform.¹³³ Although an agreement was not reached during this meeting, the defendants decided to launch an advertising campaign and press release on their Twitter business accounts, misrepresenting Lil Yachty’s association with the defendants.¹³⁴ The Twitter posts asserted Lil Yachty was engaged in an NFT collection with the defendants, as well as tagging his Twitter account, attaching a picture of his face in the Tweet, and linking to a press release showcasing his stage name – which is trademarked – without his consent.¹³⁵

These social media contacts precipitated Lil Yachty’s suit against the defendants, albeit the foreign defendants asserted the Central District of California did not have personal jurisdiction over them.¹³⁶ Because Lil Yachty was able to meet his burden for the first two prongs of the personal jurisdiction analysis, the remainder fell on the third prong of the analysis where the court determined whether it would be unreasonable to exercise jurisdiction over the foreign defendants.¹³⁷ The forthcoming discussion uses *McCullum* as an instructive example to provide a comprehensive analysis of the reasonableness prong in the social media context.

First, courts consider “the extent of the defendant’s purposeful interjection into the forum state’s affairs.”¹³⁸ Purposeful interjection is synonymous with the purposeful direction factor in the personal jurisdiction analysis.¹³⁹ Therefore, this factor is easily determined because if courts have reached the reasonableness analysis, then they have previously concluded purposeful direction is satisfied.¹⁴⁰ In light of this, this factor was not given any weight in *McCullum*.¹⁴¹

Second, courts consider the burden defendants would experience if they defended themselves in the forum.¹⁴² Unless defendants show that defending in the forum would be “unduly burdensome, such that the inconvenience is so great as to constitute a deprivation of due process,” then their burden cannot “overcome clear justifications for

¹³⁰ *McCullum*, 2022 WL 17218072, at *1 (Lil Yachty is primarily known for being a celebrity rapper, who has amassed a large and engaged social media presence- 10.4 million Instagram followers, 5.4 million Twitter followers, and over 171 million TikTok likes).

¹³¹ *Id.* at *1-2, *4.

¹³² *Id.* at *1.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at *1-2.

¹³⁷ *Id.* at *5.

¹³⁸ *Freestream Aircraft (Berm.) Ltd. v. Aero L. Grp.*, 905 F.3d 597, 607 (9th Cir. 2018).

¹³⁹ *McCullum*, 2022 WL 17218072, at *6.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Entrepreneur Media, Inc. v. Rugged Entrepreneur*, No. 821CV00390JVSADS, 2021 WL 4497891, at *9 (C.D. Cal. July 14, 2021).

the exercise of jurisdiction.”¹⁴³ However, plaintiffs are under a stricter standard when their opponent is a foreign defendant.¹⁴⁴ Nonetheless, courts have recognized advancements in technology, transportation, and telecommunications significantly reducing the defendant’s burden of litigating their case in another forum state or country.¹⁴⁵ In *McCollum*, the court held the second factor weighed in favor of exercising jurisdiction because it would not be burdensome for the defendants to defend in California.¹⁴⁶ The court reasoned that nine days before the defendant’s filed their 12(b)(2), they advertised and promoted a live show located in the Central District of California.¹⁴⁷ The advertisement was posted on social media, included an American flag emoji, and stated, “Based in or around California? This is your chance to join the lineup for #DittoLive Hollywood!”¹⁴⁸ Moreover, although the defendants argued they did not have a California based office, their LinkedIn business accounts suggest their employees are dispersed all throughout the United States.¹⁴⁹

Third, courts consider whether conflicts exist with the forum state and the sovereignty of the defendant’s state.¹⁵⁰ This factor is not a significant consideration in lawsuits between United States citizens relative to lawsuits between an alien defendant and United States plaintiff.¹⁵¹ Because higher sovereignty considerations exist with a foreign nation, “[g]reat care and reserve [is] exercised when extending our notions of personal jurisdiction into the international field.”¹⁵² This factor, however, does not control the reasonableness analysis.¹⁵³ In *McCollum*, the court held the third factor weighed in favor of exercising jurisdiction because Lil Yachty’s asserted trademark claim does not conflict with English sovereignty, especially because the nature of the claim is based on California and United States law.¹⁵⁴

¹⁴³ See *Impossible Foods Inc. v. Impossible X LLC*, 80 F.4th 1079, 1099 (9th Cir. Sept. 12, 2023); *Hirsch v. Blue Cross, Blue Shield of Kansas City*, 800 F.2d 1474, 1481 (9th Cir. 1986).

¹⁴⁴ *Intelligent SCM, LLC v. Qannu PTY Ltd.*, No. CV1406417MMMVBKX, 2015 WL 13916822, at *22 (C.D. Cal. Mar. 2, 2015); see also *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 114 (1987) (“The unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders.”).

¹⁴⁵ See *Gallagher v. MaternityWise Intl., LLC*, Civ. No. 18-00364 LEK-KJM, 2019 WL 961982, at *7 (D. Haw. Feb. 27, 2019); *CE Distrib., LLC v. New Sensor Corp.*, 380 F.3d 1107, 1112 (9th Cir. 2004); *MCA Records v. Charly Records, Ltd.*, 108 F.3d 338, 1997 WL 76173, *6 (9th Cir. 1997).

¹⁴⁶ *McCollum v. Opulous*, No. CV2200587MWFMARX 2022 WL 17218072, at *6 (C.D. Cal. 2022).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at *3.

¹⁴⁹ *Id.* at *6.

¹⁵⁰ See *Intelligent SCM, LLC v. Qannu PTY Ltd.*, No. CV 1406417MMMVBKX, 2015 WL 13916822, at *23 (C.D. Cal. 2015); *Roth v. Garcia Marquez*, 942 F.2d 617, 623 (9th Cir. 1991).

¹⁵¹ See *Kukui Gardens Corp. v. Holco Cap. Grp., Inc.*, 664 F. Supp. 2d 1103, 1116 (D. Haw. 2008); *Sinatra v. Natl. Enquirer, Inc.*, 854 F.2d 1191, 1199 (9th Cir. 1988).

¹⁵² See *Fed. Deposit Ins. Corp. v. British-Am. Ins. Co., Ltd.*, 828 F.2d 1439, 1444 (9th Cir. 1987); *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 115 (1987).

¹⁵³ *Intelligent SCM*, 2015 WL 13916822, at *23.

¹⁵⁴ *McCollum v. Opulous*, No. CV2200587MWFMARX, 2022 WL 17218072, at *6 (C.D. Cal. 2022); see also *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 984 (9th Cir. 2021) (“[T]he resolution of Ayla’s claims will unlikely undermine Australian sovereignty. Ayla seeks only the determination and enforcement of its rights under United States trademark law and California unfair competition law and challenges Ayla Skin’s sales only in the United States.”).

Fourth, courts consider the “forum state’s interest in adjudicating the dispute.”¹⁵⁵ Generally, states have a “manifest interest” to accommodate its residents with a forum that allows them to redress injuries caused by nonresident actors.¹⁵⁶ In *McCollum*, the court held the fourth factor weighed in favor of exercising personal jurisdiction because the United States has a manifest interest to protect consumers from confusion arising out of trademark infringement and to redress the injuries it causes.¹⁵⁷ The defendant argued that because they are not a California resident, California lacks an interest in adjudicating this dispute.¹⁵⁸ However, this argument was unconvincing, as under Rule 4(k)(2), the interest is grounded on the United States as a whole and not just the forum state.¹⁵⁹

Fifth, courts consider judicial efficiency, which primarily focuses on where witnesses and evidence are located.¹⁶⁰ This factor, however, does not hold much weight anymore due to “modern advances in communication and transportation.”¹⁶¹ In *McCollum*, the court held the fifth factor weighed in favor of exercising personal jurisdiction.¹⁶² The court reasoned Lil Yachty’s trademark claims were grounded in California and United States law, and thus, “the United States would provide the most efficient judicial resolution of the controversy as well as better provide [Lil Yachty] with convenient and effective relief.”¹⁶³

Sixth, courts consider the importance of honoring convenient and effective relief for the plaintiff.¹⁶⁴ Plaintiffs have an interest in receiving effective relief in the United States when their forum state is located in the United States because “litigating in one’s home forum is obviously most convenient.”¹⁶⁵ This factor, however, is not given significant weight when the plaintiff is a global corporation.¹⁶⁶ Although plaintiffs may experience inconvenience for litigating in a specific forum, such as financial hardships, the Supreme Court has never strongly weighted the plaintiff’s inconvenience to the reasonableness analysis.¹⁶⁷ In *McCollum*, the court held the sixth factor weighs in favor of exercising personal jurisdiction because litigating the case in California will be favorable to the United States as a whole, as opposed to litigating it in Georgia.¹⁶⁸

¹⁵⁵ *Entrepreneur Media, Inc. v. Rugged Entrepreneur*, No. 821CV00390JVSADS, 2021 WL 4497891, at *10 (C.D. Cal. 2021).

¹⁵⁶ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985).

¹⁵⁷ *McCollum*, 2022 WL 17218072, at *6.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*; see also *Lang Van, Inc. v. VNG Corp.*, 40 F.4th 1034, 1040 (9th Cir. 2022) (“Rule 4(k)(2) was established in respon[se] to the Supreme Court’s suggestion that the rules be extended to cover persons who do not reside in the United States, and have ample contacts with the nation as a whole, but whose contacts are so scattered among states that none of them would have jurisdiction.”) (internal quotation marks omitted).

¹⁶⁰ See *Friedman v. PopSugar, Inc.*, No. 218CV05888CASMAAX, 2018 WL 6016963, at *9 (C.D. Cal. 2018); *Panavision Intern., L.P. v. Toeppen*, 141 F.3d 1316, 1323 (9th Cir. 1998).

¹⁶¹ *Panavision*, 141 F.3d at 1323.

¹⁶² *McCollum*, 2022 WL 17218072, at *6.

¹⁶³ *Id.*

¹⁶⁴ See *id.* at *7; *Friedman*, 2018 WL 6016963, at *9.

¹⁶⁵ See *Riot Games, Inc. v. Suga PTE, Ltd.*, 638 F. Supp. 3d 1102, 1119 (C.D. Cal. 2022); *CE Distrib., LLC v. New Sensor*, 380 F.3d at 1112.

¹⁶⁶ *Riot Games*, 638 F. Supp. 3d at 1119.

¹⁶⁷ See *Panavision*, 141 F.3d at 1324; *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1490 (9th Cir. 1993).

¹⁶⁸ *McCollum*, 2022 WL 17218072, at *7.

Seventh, the court considers whether an alternative forum exists.¹⁶⁹ In *McCollum*, the court did not analyze this factor because the defendant left this factor unaddressed.¹⁷⁰ Therefore, pursuant to the seven-factor balancing test, it was reasonable for the court to assert personal jurisdiction over the foreign defendants in the Central District of California.¹⁷¹

Ultimately, *McCollum* provides insight into how courts have kept up with the Kardashians because it signifies social media satisfying the reasonableness prong of the personal jurisdiction analysis. It appears that when the spirit of the lawsuit is related to the nonresident defendants' use of social media, then it would not be overly burdensome for them to defend the lawsuit in the forum state.¹⁷² Therefore, nonresident defendants shall be aware that using social media as a surrogate to promote advertisements and press releases that potentially infringe on the plaintiff's intellectual property rights can be broadly construed as satisfying the reasonableness factor in their case.¹⁷³

V. The Zippo Test: An Adjunct to Interpreting Minimum Contacts in Websites

Zippo is seminal when determining whether a nonresident defendant's internet activity establishes personal jurisdiction in a forum state.¹⁷⁴ It birthed the infamous sliding scale test, classifying interactivity of websites under three categories.¹⁷⁵ At one end of the scale, personal jurisdiction is proper when the nonresident defendant clearly uses the internet to conduct business.¹⁷⁶ This includes the defendant entering into contracts and sending files over the internet to residents in the forum state.¹⁷⁷ At the opposite end of the scale, personal jurisdiction is improper because the nonresident defendant merely posted information on a passive website accessed in the forum state.¹⁷⁸ Passive websites do not have a commercial nature because users cannot purchase products – meaning they cannot engage in business activities – on the actual website.¹⁷⁹

The middle ground of the scale is when the analysis gets nebulous.¹⁸⁰ The middle ground considers the exchange of information between the user and the host computer in interactive websites.¹⁸¹ Exercising personal jurisdiction over a nonresident defendant under the middle ground considers two factors: (1) “the level of interactivity” and (2) the “commercial nature of the exchange of information” on the website.¹⁸² When delineating the legal standard for the middle ground, some courts also like to reaffirm that the

¹⁶⁹ *Friedman*, 2018 WL 6016963, at *9.

¹⁷⁰ *McCollum*, 2022 WL 17218072, at *7.

¹⁷¹ *Id.*

¹⁷² *See id.* at *6.

¹⁷³ *See id.* at *3, *6-7.

¹⁷⁴ *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 452 (3d Cir. 2003).

¹⁷⁵ *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Intl. Unions, Sec. Police and Fire Pros. of Am. v. Maritas*, 19-10743, 2019 WL 3503073, at *4 (E.D. Mich. Aug. 1, 2019).

¹⁸⁰ *UHS of Delaware, Inc. v. United Health Servs., Inc.*, 1:12-CV-00485, 2013 WL 12086321, at *9 (M.D. Pa. Mar. 26, 2013).

¹⁸¹ *Zippo*, 952 F. Supp. at 1124.

¹⁸² *Id.*

nonresident defendant's contacts must have been purposefully directed "toward the forum state or [the defendant] purposefully availed himself of the privilege of conducting activities within the forum state."¹⁸³ In other words, for purposes of specific jurisdiction – despite the interactivity of the website – there must be a connection between the website and the legal claim, and for purposes of general jurisdiction, the website's contacts must be "systematic and continuous."¹⁸⁴ Presumably, courts raise this standard to quash any arguments about the *Zippo* sliding scale test replacing the traditional minimum contacts analysis.¹⁸⁵ However, this raises valid concerns about the test's usefulness.

The Supreme Court "long ago rejected the notion that personal jurisdiction might turn on 'mechanical' tests" or "any talismanic jurisdictional formulas."¹⁸⁶ To that end, courts have expressed reservations about even applying *Zippo* because it appears to depart from Supreme Court precedent.¹⁸⁷ Furthermore, courts have overtly critiqued the practical limitations of *Zippo*, even in cases involving social media.¹⁸⁸ These courts maintain that exercising personal jurisdiction over a nonresident defendant cannot hinge on whether a website is passive or active.¹⁸⁹ A passive website can still be valuable to the personal jurisdiction analysis if it is used to intentionally target and harm the plaintiff in the forum state.¹⁹⁰ Conversely, an active website may hinder the personal jurisdiction analysis if it was not used to target the plaintiff in the forum state.¹⁹¹

Some courts have even furthered the *Zippo* analysis by narrowly construing its application to exclude social media websites.¹⁹² The District Court for the Eastern District of Michigan explained how Facebook and YouTube "[did] not lend themselves to the *Zippo* interactivity test" because the nonresident defendants held social media accounts on these websites, rather than actually owning or operating the websites.¹⁹³ However, generally courts do not subscribe to excluding social media websites from the *Zippo* test.¹⁹⁴ For example, the District Court for the Western District of Michigan found applying *Zippo* to Facebook was appropriate because it is a "slightly more interactive" website by allowing users to like, share, and comment on posts.¹⁹⁵

In light of courts still applying *Zippo* to cases involving social media websites – despite criticism about its usefulness – it is evident that the sliding scale test is pertinent to the personal jurisdiction analysis. In these cases, the crux of the analysis rests on the scale's middle ground. The remainder of the discussion in this section will critically analyze the two factors of the middle ground in the social media context.

¹⁸³ *Drive Fin. Servs., LP v. Ginsburg*, 3:06 CV 1288 G, 2007 WL 2084113, at *5 (N.D. Tex. July 19, 2007); *Revell v. Lidov*, 3:00-CV-1268-R, 2001 WL 285253, at *4 (N.D. Tex. Mar. 20, 2001).

¹⁸⁴ *Hy Cite Corp. v. Badbusinessbureau.com, LLC*, 297 F.Supp.2d 1154, 1160 (W.D. Wis. 2004).

¹⁸⁵ *See Caiazzo v. Am. Royal Arts Corp.*, 73 So. 3d 245, 255 (Fla. 4th Dist. App. 2011); *Kindig It Design, Inc. v. Creative Controls, Inc.*, 157 F. Supp. 3d 1167, 1174 (D. Utah 2016); *Hy Cite*, 297 F.Supp.2d at 1160.

¹⁸⁶ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478, 485 (1985).

¹⁸⁷ *Caiazzo*, 73 So. 3d at 255.

¹⁸⁸ *Id.*; *Kindig*, 157 F. Supp. 3d at 1174.

¹⁸⁹ *Caiazzo*, 73 So. 3d at 255; *Hy Cite*, 297 F.Supp.2d at 1160.

¹⁹⁰ *Hy Cite*, 297 F.Supp.2d at 1160.

¹⁹¹ *Id.*

¹⁹² *Hyperbaric Options, LLC v. Oxy-Health, LLC*, 12-12020, 2013 WL 5449959, at *6 (E.D. Mich. Sept. 30, 2013).

¹⁹³ *Id.*

¹⁹⁴ *See, e.g., LeafFilter N., LLC v. Home Craft Builders, Inc.*, 487 F. Supp. 3d 643, 649-50 (N.D. Ohio 2020).

¹⁹⁵ *Thomas v. Barrett*, No. 1:12-CV-00074, 2012 WL 2952188, at *4 (W.D. Mich. July 19, 2012).

a. Interactivity of Social Media Websites

The first prong – “the level of interactivity”¹⁹⁶ – has generally failed in the context of social media websites. The interactivity of a website hinges on the degree of engagement between consumers and the company or individual operating the website.¹⁹⁷ A nonresident defendant exercising minimal interactivity on social media websites is insufficient to satisfy personal jurisdiction.¹⁹⁸ Although not dispositive, sharing information with other users on the website and the maintenance of a website can help increase its interactivity level.¹⁹⁹ Interactivity, however, does not consider a website's internal functions, such as its ability to hyperlink to another website.²⁰⁰

The following subsections will elucidate the significance social media has on the interactivity prong by delving into its most common considerations, as well as highlighting the criticism courts have regarding the interactivity of social media websites.

i. Minimal Interactivity of Social Media Websites

Minimal interactivity on social media websites is insufficient to satisfy personal jurisdiction.²⁰¹ In *HLVPO2*, a Nebraska company alleged they had personal jurisdiction over a Florida resident because of their Facebook activities.²⁰² The Florida resident allegedly posted defamatory statements on their Facebook business page and a Facebook group.²⁰³ A Nebraska resident was invited to like the business page and a different Nebraska resident commented on the post.²⁰⁴ Although these activities are interactive, the court held they were minimal, and thus, the *Zippo* test failed to establish personal jurisdiction in Nebraska.²⁰⁵ In another case, *Lifestyle Lift*, a Michigan corporation alleged they had personal jurisdiction over a doctor, a Florida resident, because of their RealSelf activities.²⁰⁶ The RealSelf profile qualified under *Zippo*'s middle ground category because it allowed other users to email the doctor and request more information about his services, as well as obtain virtual coupons for Botox, filler, and laser treatments.²⁰⁷ Although these website features were interactive, the court held they are “low on the scale of interactivity” because they failed to show the doctor's intention or actual interaction with Michigan residents.²⁰⁸

¹⁹⁶ *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

¹⁹⁷ *LeafFilter*, 487 F. Supp. 3d at 649-50.

¹⁹⁸ See *HVLPO2, LLC v. Oxygen Frog, LLC*, 187 F. Supp. 3d 1097, 1103 (D. Neb. 2016); *Lifestyle Lift Holding Co., Inc. v. Prendiville*, 768 F. Supp. 2d 929, 931-32 (E.D. Mich. 2011).

¹⁹⁹ See *Shippitsa Ltd. v. Slack*, 3:18-CV-1036-D, 2019 WL 2372687, at *6 (N.D. Tex. June 5, 2019); 59 Am. Jur. Proof of Facts 3d 1 (Originally published in 2000).

²⁰⁰ *LeafFilter*, 487 F. Supp. 3d at 649-50.

²⁰¹ See *HVLPO2, LLC v. Oxygen Frog, LLC*, 187 F. Supp. 3d 1097, 1103 (D. Neb. 2016); *Lifestyle Lift Holding Co., Inc. v. Prendiville*, 768 F. Supp. 2d 929, 931-32 (E.D. Mich. 2011).

²⁰² *HVLPO2*, 187 F. Supp. 3d at 1103.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 1115.

²⁰⁶ *Lifestyle Lift*, 768 F. Supp. 2d at 931-32.

²⁰⁷ *Id.* at 935.

²⁰⁸ *Id.* at 936; see also *Shippitsa Ltd. V. Slack*, 3:18-CV-1036-D, 2019 WL 2372687, at *6 (N.D. Tex. 2019) (“In contrast, the kinds of interactive features that the *Zippo* test *does* take into account—such as the defendant's processing online order forms and allowing sales associates to exchange messages with visitors—require subsequent, purposeful action by the defendant or its agents.”) (internal citation omitted).

ii. Sharing Information on Social Media Websites

It is significant to recognize that the RealSelf social media profile allowed information to be exchanged between the doctor and his leads. Yet, the *Zippo* test still failed to establish personal jurisdiction. This is an observable tendency across cases. Essentially, a website's level of interactivity increases when it allows its users to share information.²⁰⁹ However, relying on this feature does not establish personal jurisdiction.²¹⁰ In *Hyperbaric*, a Michigan company alleged they had personal jurisdiction over a California company for posting false and misleading information about their products on YouTube and Twitter.²¹¹ The court held the California company's activity on YouTube and Twitter was primarily used to spread information, and thus, the *Zippo* interactivity prong was not satisfied.²¹²

Even in cases where the nonresident defendant's social media activity was a "little more" than posting information, courts have held the *Zippo* test failed.²¹³ For example, in *Binion*, a Michigan resident sued Shaquille O'Neal, a former professional basketball player and Florida resident, for posting his picture on his Instagram and Twitter accounts in the Eastern District of Michigan.²¹⁴ O'Neal had approximately nine million social media followers collectively on Instagram and Twitter.²¹⁵ Despite O'Neal's posts being a "little more" than posting information on these websites because they reached Michigan users, the *Zippo* test failed because the websites were minimally interactive.²¹⁶ *Binion* is instructive to show that using social media to exchange information helps increase interactivity levels but does not guarantee satisfying personal jurisdiction.²¹⁷ However, the absence of a user exchanging information with the host computer through social media can preclude *Zippo* from applying because it is a consideration for the middle ground.²¹⁸

Loomis, however, distinguishes itself from *Binion* because it illustrates how social media activity can provide "something more" to exercise personal jurisdiction over a non-resident defendant.²¹⁹ In *Loomis*, the District Court for the Southern District of California found they had personal jurisdiction over a New Jersey company.²²⁰ Not only was the New Jersey defendant's website interactive and exchanged information with California residents, but social media activity provided "something more" because the defendant targeted California fitness influencers to advertise their products on Facebook.²²¹

²⁰⁹ *Shippitsa*, 2019 WL 2372687, at *6.

²¹⁰ *Id.*

²¹¹ *Hyperbaric Options, LLC v. Oxy-Health, LLC*, 12-12020, 2013 WL 5449959, at *1-2 (E.D. Mich. 2013).

²¹² *Id.*

²¹³ *Binion v. O'Neal*, 95 F. Supp. 3d 1055, 1060 (E.D. Mich. 2015).

²¹⁴ *Id.* at 1058.

²¹⁵ *Id.*

²¹⁶ *Id.* at 1060.

²¹⁷ *See id.*

²¹⁸ *See Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

²¹⁹ *Loomis v. Slendertone Distrib., Inc.*, 420 F. Supp. 3d 1046, 1070 (S.D. Cal. 2019).

²²⁰ *Id.* at 1072.

²²¹ *Id.* at 1068, 1070.

iii. Social Media Maintenance

A nonresident defendant's maintenance of a website can help shift the *Zippo* sliding scale to establish personal jurisdiction.²²² But, other traditional contacts targeting the forum state must also exist,²²³ which, as previously discussed, resembles the analysis about how sharing information on social media is not enough on its own to establish personal jurisdiction. If the personal jurisdiction analysis hinged on just maintaining a website absent of interactivity between the nonresident defendant and consumers in the forum state, then this "would create almost universal personal jurisdiction because of the virtually unlimited accessibility of websites across the country."²²⁴ Courts assert that this would violate the Supreme Court's jurisprudence, which stresses that technological advances "may not eviscerate the constitutional limits on a state's power to exercise jurisdiction over nonresident defendants."²²⁵

DayCab illustrates how maintenance of a social media website is insufficient on its own to satisfy personal jurisdiction.²²⁶ In *DayCab*, a Tennessee company argued the District Court for the Eastern District of Tennessee had personal jurisdiction over a South Dakota company.²²⁷ Although the court held they had personal jurisdiction over the South Dakota company, it was not due to the maintenance of their Facebook, Twitter, and YouTube pages.²²⁸ Because the South Dakota company used their social media pages to market products nationwide, their conduct was considered to be passive by not specifically targeting Tennessee residents.²²⁹

Conversely, in *JibJab*, the interactivity prong of the *Zippo* test succeeded because the nonresident defendant maintained a Facebook and Twitter page, and used these social media websites to expressly aim in California.²³⁰ Specifically, the nonresident defendant's Facebook advertising campaigns reached residents in the forum state, none of which liked the Facebook page.²³¹ Moreover, the nonresident defendant did not exercise their ability to limit the geographic range of their Facebook advertisements to prevent California residents from seeing them.²³² Because these advertisements garnered users to the Facebook page, and invited users to fill out an application that personally branded their personal photos, the court held that their online activities constituted sufficient contacts in California.²³³ Although the second prong of the *Zippo* test failed,²³⁴

²²² 59 Am. Jur. Proof of Facts 3d 1 (Originally published in 2000).

²²³ *Id.*

²²⁴ *Jennings v. AC Hydraulic A/S*, 383 F.3d 546, 550 (7th Cir. 2004).

²²⁵ *Id.*

²²⁶ *DayCab Co., Inc. v. Prairie Tech., LLC*, 3:20-CV-63, 2021 WL 6275629, at *1, *4 (E.D. Tenn. Aug. 13, 2021).

²²⁷ *Id.* at *1.

²²⁸ *Id.* at *1, *4.

²²⁹ *Id.* at *4.

²³⁰ *Id.* at *5.

²³¹ *Id.* at *2.

²³² *Id.*

²³³ *JibJab Media Inc. v. White Castle Mgt.*, CV1204178MMM/JEMX, 2013 WL 12123696, at *5 (C.D. Cal. May 14, 2013); *see also* *Jeske v. Fenmore*, No. SACV 08-01015 DOC, 2008 WL 5101808, *4 (C.D. Cal. Dec. 1, 2008) ("In the internet context, the Ninth Circuit utilizes a sliding scale analysis under which passive websites do not create sufficient contacts to establish purposeful availment, whereas interactive websites may create sufficient contacts, depending on how interactive the website is.") (internal quotation marks omitted).

²³⁴ *JibJab*, 2013 WL 12123696, at *5.

which will be further discussed in the next section, *JibJab* punctuates how maintaining social media profiles in tandem with sufficient contacts can satisfy the interactivity prong.²³⁵

iv. Criticism of the Interactivity Prong in the Social Media Context

With the ever-changing landscape of the digital space, courts have criticized using the *Zippo* test for social media websites.²³⁶ However, before delving into the criticism, it is important to preface that *Zippo* was decided in January 1997²³⁷ - a time when many interactive website features did not exist or were even contemplated. In fact, *Zippo* was decided four months before the inception of social media.²³⁸ Launched in May 1997, Six Degrees is considered to be the first social media platform ever created.²³⁹ Six Degrees allowed users to create their own profile page, make connections with other users, and exchange messages.²⁴⁰ Ultimately, because the court in *Zippo* was unable to consider these unique features since they were not a staple to websites in 1997, there are weaknesses in applying the sliding scale to modern social media websites.²⁴¹

Six Degrees undoubtedly laid the groundwork for modern social media because their features are evidently mimicked and elevated in Facebook, Instagram, Twitter, and TikTok. With this foundation, websites are becoming increasingly sophisticated, as it is extremely rare for them to lack interactive features on the front end that help “place orders, share content, ‘like’ content, ‘retweet,’ submit feedback, contact representatives, send messages, ‘follow,’ receive notifications, subscribe to content, or post comments.”²⁴² Moreover, websites interact with their users on the backend by tracking cookies.²⁴³ Considering this, websites taken at their face value can be interpreted as passive, but in reality, they are “interacting with the user’s data and custom-tailoring the content based on the user’s identity, demographics, browsing history, and personal preferences.”²⁴⁴

In light of these modernized interactive features occurring on the front and back end of a website, it is evident that social media platforms can indefinitely expand the geographical confines that ground personal jurisdiction.²⁴⁵ This is especially concerning because owning a social media profile can subject a nonresident defendant to litigation in virtually any forum state.²⁴⁶ Courts have criticized this, and maintained that absent Congressional discretion, this cannot be the case.²⁴⁷ Therefore, interactivity – no matter how broad its

²³⁵ See also *Revell v. Lidov*, 3:00-CV-1268-R, 2001 WL 285253, at *4 (N.D. Tex. Mar. 20, 2001).

²³⁶ See e.g. *Kindig It Design, Inc. v. Creative Controls, Inc.*, 157 F. Supp. 3d 1167, 1174 (D. Utah 2016).

²³⁷ *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1119 (W.D. Pa. 1997).

²³⁸ See *id.*; Ngak, *supra* note 1.

²³⁹ Ngak, *supra* note 1.

²⁴⁰ Alexandra Samur and Colleen Christison, *The History of Social Media in 33 Key Moments*, HOOTSUITE (Apr. 6, 2023), <https://blog.hootsuite.com/history-social-media/>.

²⁴¹ *Kindig*, 157 F. Supp. 3d at 1174.

²⁴² *Id.*

²⁴³ *Id.* at 1174-75.

²⁴⁴ *Id.* at 1175.

²⁴⁵ *Id.*

²⁴⁶ See *Sportschanel New Eng. Ltd. Partn. v. Fancaster, Inc.*, No. 09CV11884-NG, 2010 WL 3895177, at *6 (D. Mass. Oct. 1, 2010).

²⁴⁷ *Id.*

definition has become or will continue to become – cannot exclusively be the cornerstone in exercising personal jurisdiction over a nonresident defendant.²⁴⁸

b. Commercial Nature of the Information Exchanged on Social Media Websites

The second prong – “the commercial nature of the exchange of information that occurs on the website”²⁴⁹ – has also generally failed in the context of social media websites. Courts have maintained posting links to commercial websites on social media lacks a commercial nature,²⁵⁰ and social media websites themselves are not generally used to transact business.²⁵¹ These are the primary reasons preventing personal jurisdiction to be satisfied in cases involving social media websites under *Zippo*’s second prong. While the criticism in the previous section centered on the court’s scrutiny of the first prong, the criticism in this section about the second prong is more nuanced. Specifically, it focuses on novel issues that courts may have been overlooking or possibly deliberately avoiding.

i. Posting Links to Commercial Websites on Social Media

Posting links to commercial websites on social media is more akin to advertisements, and thus, lacks a commercial nature.²⁵² In *Armijo*, the plaintiff, a Nevada resident, sued the defendant, a company incorporated in the state of Delaware with its principal place of business in Virginia, in the District Court for the District of Nevada.²⁵³ The plaintiff alleged the defendant used Twitter and Discord to communicate and engage in commercial transactions with its members, despite agreeing that nothing was being sold directly on these platforms.²⁵⁴ The plaintiff contended the defendant’s Twitter and Discord accounts were commercial in nature because they posted links to their commercial websites selling digital and tangible products to its members.²⁵⁵ However, the court held the posts were more akin to advertisements as opposed to commercial content and lacked “something more,” making the *Zippo* test fail.²⁵⁶ In fact, this holding is unsurprising because there has never been a case where an internet advertisement alone satisfied exercising personal jurisdiction over a nonresident defendant.²⁵⁷

Les Giblin LLC also failed to satisfy personal jurisdiction over a nonresident defendant over several Twitter posts directing people to their website to purchase the plaintiff’s copyrighted book.²⁵⁸ These Twitter posts were more akin to advertisements that were not

²⁴⁸ *Id.*

²⁴⁹ *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

²⁵⁰ *Armijo v. Ozone Networks, Inc.*, No. 322CV00112MMDCLB, 2023 WL 319577, at *7 (D. Nev. Jan. 19, 2023).

²⁵¹ *Newman Lakka Cancer Found. v. Briggs*, No. A15-1217, 2016 WL 854776, at *7 (Minn. App. Mar. 7, 2016); *Hyperbaric*, 2013 WL 5449959, at *6; *Securities and Exch. Comm’n v. PlexCorps*, No. 17CV7007CBARML, 2018 WL 4299983, at *14 (E.D.N.Y. Aug. 9, 2018).

²⁵² *Armijo*, 2023 WL 319577, at *7.

²⁵³ *Id.* at *1–2.

²⁵⁴ *Id.* at *6–7.

²⁵⁵ *Id.* at *7.

²⁵⁶ *Id.*

²⁵⁷ *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997).

²⁵⁸ *Les Giblin LLC v. La Marque*, No. 2:20-CV-13827-WJM-MF, 2021 WL 1997376, at *1, *5 (D.N.J. May 19, 2021).

targeted to the forum state.²⁵⁹ Advertisements themselves do not directly solicit customers.²⁶⁰ Instead, they spread knowledge to the general public, and thus, do not satisfy personal jurisdiction.²⁶¹

ii. Transacting Business on Social Media Websites

Courts have expressed social media websites are not generally used to transact business.²⁶² Presumably, this disadvantages plaintiffs who rely on a defendant's social media contacts because judges have a preconceived notion that they were unintended to conduct business. Therefore, social media content must intend to transact business to label social media websites as commercial.²⁶³ For example, in *Newman-Lakka Cancer Foundation*, the appellant, a Minnesota corporation supporting cancer research, sued the respondent, a Massachusetts resident, for defamation in the District of Minnesota.²⁶⁴ The respondent allegedly accused and implied in Facebook and Twitter posts about the appellants misappropriation, misuse, and mismanagement of funds.²⁶⁵ Under the *Zippo* analysis, the court prefaced Facebook and Twitter "are not [] generally used for business transactions," but nonetheless placed the defendant's social media activity under the middle ground because those websites are highly interactive.²⁶⁶ However, the social media posts were non-commercial and even "seek to stop the flow of money," and thus, the *Zippo* test weighed against exercising personal jurisdiction in Minnesota.²⁶⁷

iii. Criticism of the Commercial Nature Prong in the Social Media Context

With the constant evolution of social media, courts should refrain from assuming websites like Facebook and Instagram "do not intrinsically implicate commercial activity."²⁶⁸ The reality is, they now do. Modern precedent is lagging in confronting the commercial spirit of social media websites. This can be attributed to judges lacking sophistication about social media platforms or even being afraid of modernizing old precedent that could single handedly eliminate personal jurisdiction. The blame can also be placed on lawyers lacking sophistication about social media platforms because they may be unaware that social media accounts now have commercial features. If lawyers do not stay abreast of these technological changes, they would fail to inquire to their client about salient facts that should have been alleged in their complaint.²⁶⁹ Courts will remain silent on how to tackle social media's new commercial features if lawyers do not raise these issues, preventing courts of the opportunity to reinterpret *Zippo*'s middle ground through a modern lens. The remainder of this section will address these criticisms in turn.

²⁵⁹ See *id.* at *5; *Seltzer v. I.C. Optics, Ltd.*, 339 F. Supp. 2d 601, 612 (D.N.J. 2004).

²⁶⁰ *Seltzer*, 339 F. Supp. 2d at 612.

²⁶¹ *Id.*

²⁶² *Newman Lakka Cancer Found. v. Briggs*, No. A15-1217, 2016 WL 854776, at *7 (Minn. App. Mar. 7, 2016); *Hyperbaric*, 2013 WL 5449959, at *6; *Securities and Exch. Comm'n v. PlexCorps*, No. 17CV7007CBARML, 2018 WL 4299983, at *14 (E.D.N.Y. Aug. 9, 2018).

²⁶³ *Binion v. O'Neal*, 95 F. Supp. 3d 1055, 1060 (E.D. Mich. 2015).

²⁶⁴ *Newman*, 2016 WL 854776, at *1.

²⁶⁵ *Id.*

²⁶⁶ *Id.* at *7.

²⁶⁷ *Id.*

²⁶⁸ *Securities and Exch. Comm'n v. PlexCorps*, No. 17CV7007CBARML, 2018 WL 4299983, at *14 (E.D.N.Y. Aug. 9, 2018); *Gilbert v. Indeed, Inc.*, 513 F. Supp. 3d 374, 414 (S.D.N.Y. 2021).

²⁶⁹ Fed. R. Civ. P. 12.

The first area of criticism concerns judges and their level of sophistication when it comes to understanding social media features. Judges are not subjected to any per se law preventing them from having social media accounts, with the understanding that their activity does not violate the canons of judicial conduct.²⁷⁰ However, their activity – no matter how harmless it may seem – can easily cast doubt on their impartiality and integrity.²⁷¹ This includes simply liking a tweet or following a company that is tenuously related to a case on their docket.²⁷² For example, in *Sierra Pacific Industries*, a district court judge followed a federal prosecutor on Twitter who was on a case they were presiding over.²⁷³ The judge also tweeted an article about the case.²⁷⁴ Although the Ninth Circuit declined to recuse the judge for bias, the court made it clear that “this case [was] a cautionary tale about the possible pitfalls of judges engaging in social media activity relating to pending cases,” and they “reiterate[d] the importance of maintaining the appearance of propriety both on and off the bench.”²⁷⁵ Because a judge’s social media activity is expected to be under constant public scrutiny²⁷⁶ and can jeopardize their position on the bench, it is understandable for them to avoid social media entirely. That said, this hinders a judge’s grasp on the nuances of commercial social media contacts in personal jurisdiction cases. Judge Stephen Dillard, who presides over the Georgia Court of Appeals, stressed that judges who are not on social media are actually committing political malpractice.²⁷⁷ He opined judges will undoubtedly come across cases that will “turn on” the “dynamics and the different personalities of social media platforms.”²⁷⁸ To that end, he believes it is imperative for judges to be sophisticated about social media because the way people communicate has vastly changed.²⁷⁹ Ultimately, irrespective of your stance on whether judges should abstain from using social media, this at least provides an explanation as to why judges are silent on social media’s increasing commercialization under *Zippo*.

The second area of criticism also concerns judges and their potential fear of modernizing *Zippo* because it could single handedly eliminate personal jurisdiction- cases applying *Zippo* to traditional websites are highly instructive for understanding the rationale behind classifying social media websites as commercial. Courts have delineated a myriad of website features favoring commerciality.²⁸⁰ An illustrative list of features include a virtual store allowing customers to browse products, categorize products, display pictures,

²⁷⁰ See Cynthia Gray, *Social Media and Judicial Ethics Up-Date*, NCSC (Jan. 2022), https://www.ncsc.org/_data/assets/pdf_file/0020/73307/SocialMediaandJudicialEthics-Update-Feb-2022.pdf; *Jl-148*, SBM (Nov. 1, 2019), https://www.michbar.org/opinions/ethics/numbered_opinions/Jl-148; John Browning, *Ethical Risks in Judicial Use of Social Media*, ABA (Feb. 11, 2022), https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2022/january-february/ethical-risks-judicial-use-social-media/.

²⁷¹ See *Social Media Posts About the Law, the Legal System, or the Administration of Justice*, JUDICIAL ETHICS OPINIONS (Apr. 28, 2021), <https://www.judicialethicsopinions.ca.gov/wp-content/uploads/CJEO-Expedited-Opinion-2021-042.pdf>; Browning, *supra* note 270.

²⁷² Browning, *supra* note 270.

²⁷³ *U.S. v. Sierra P. Industries, Inc.*, 862 F.3d 1157, 1166 (9th Cir. 2017).

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 1174-76.

²⁷⁶ See *Social Media Posts About the Law*, *supra* note 271.

²⁷⁷ Safiyat Naseem, *To Post or Not to Post: Judges’ Social Media Predicament*, COLUMBIA J. OF TRANSACTIONAL L. (Aug. 19, 2021), <https://www.jtl.columbia.edu/bulletin-blog/to-post-or-not-to-post-judges-social-media-predicament>.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Stomp, Inc. v. NeatO, LLC*, 61 F. Supp. 2d 1074, 1078 (C.D. Cal. 1999).

descriptions, and prices of products, and checkout to purchase.²⁸¹ Ironically, these exact same features now exist on social media websites, placing judges in an awkward position because they still maintain social media websites “do not intrinsically implicate commercial activity.”²⁸²

For example, in *Stomp*, the defendant’s website was highly commercial because it was primarily dedicated for customers to purchase their products.²⁸³ Their website was referred to as a “virtual store” because it allowed customers to search or browse through different categories of products.²⁸⁴ The products were also accompanied by pictures, descriptions, and prices.²⁸⁵ When a customer wanted to save a product, they had the ability to add it to their virtual shopping cart.²⁸⁶ Finally, if they wanted to purchase the product(s) in their virtual shopping cart, they would be directed to the “check out” where they enter their credit card and shipping information.²⁸⁷ Currently, social media websites have adopted these same features.²⁸⁸

In May 2020, Instagram launched their shop feature, allowing users to create their own virtual store directly on their Instagram page.²⁸⁹ The shop feature allows the owner of the Instagram account to customize their shop by categorizing their products.²⁹⁰ Each product is accompanied by a product detail page, which includes pictures, descriptions, and pricing information.²⁹¹ Customers are permitted to add items to their shopping cart and go back to view them.²⁹² The shop owner can either drive customers to their website to purchase or checkout directly on Instagram.²⁹³ It is worth noting also that Facebook launched a similar shop feature in May 2020.²⁹⁴ Plainly, it is clear Instagram and Facebook are akin to the highly commercial website in *Stomp* because of their strikingly identical features.²⁹⁵ Given this context, it is confusing when courts continue to maintain social media “do[es] not intrinsically implicate commercial activity.”²⁹⁶

²⁸¹ *Id.*

²⁸² *Securities and Exch. Comm'n v. PlexCorps*, No. 17CV7007CBARML, 2018 WL 4299983, at *14 (E.D.N.Y. Aug. 9, 2018); *Gilbert v. Indeed, Inc.*, 513 F. Supp. 3d 374, 414 (S.D.N.Y. 2021); *see also Stomp*, 61 F. Supp. at 1078.

²⁸³ *Stomp*, 61 F. Supp. 2d at 1078.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Instagram Shopping Helps You Reach New Customers*, INSTAGRAM, <https://business.instagram.com/shopping> (last visited Sept. 10, 2023); *Introducing Facebook Shops: Helping Small Businesses Sell Online*, META (May 19, 2020), <https://about.fb.com/news/2020/05/introducing-facebook-shops/>; *Introducing: Shops on Instagram*, META (May 19, 2020), <https://business.instagram.com/blog/introducing-shops-on-instagram>.

²⁸⁹ *Introducing: Shops on Instagram*, *supra* note 288.

²⁹⁰ *Instagram Shopping Helps You Reach New Customers*, *supra* note 288.

²⁹¹ *Id.*

²⁹² *See & Buy Items in your Cart on Instagram*, INSTAGRAM, https://help.instagram.com/360704827958571/?cms_platform=android-app&helpref=platform_switcher (last visited Nov. 1, 2023).

²⁹³ *Instagram Shopping Helps You Reach New Customers*, *supra* note 288.

²⁹⁴ *Introducing Facebook Shops*, *supra* note 288.

²⁹⁵ *See Instagram Shopping Helps You Reach New Customers*, *supra* note 288; *See & Buy Items in Your Cart on Instagram*, *supra* note 292; *Stomp*, 61 F. Supp. 2d at 1078.

²⁹⁶ *Gilbert v. Indeed, Inc.*, 513 F. Supp. 3d 374, 414 (S.D.N.Y. 2021).

An explanation towards this view, however, can be attributed to judges fearing the “unsettling effect on the law” that could arise from addressing the increased commercialization of social media.²⁹⁷ Judges are acutely aware their decisions can be pervasive.²⁹⁸ Because judges are cognizant of this, their reasoning is influenced by their philosophy of justice.²⁹⁹ This includes either strictly applying legal rules regardless of fairness policy interests, simply doing the right thing, or adapting the law to align with social mores.³⁰⁰ In the *Zippo* context, judges seem to strictly construe the definition of social media, regardless of fairness policy interests, by continuing to maintain it lacks a commercial nature.³⁰¹ If precedent shifts to admit social media intrinsically implicates commerciality, then there could be a profound impact on the legal system by eliminating personal jurisdiction.

When *Zippo* was decided, the internet was “in its infant stages”- for context, *Zippo* mentions the internet was “a global super-network of over 15,000 computer networks used by over 30 million individuals, corporations, organizations, and educational institutions worldwide.”³⁰² In 1997, this was a big deal, but in 2023, these numbers are underwhelming and even comical. *Zippo* also acknowledged how businesses were starting to utilize “the Internet to provide information and products to consumers and other businesses.”³⁰³ However, it did not understand the magnitude of the internet and the commercial monolith that social media was going to become.

Currently, 4.89 billion social media accounts are estimated to exist.³⁰⁴ By 2027, it is estimated this number will increase to 5.85 billion accounts- approximately a 20 percent increase from 2023.³⁰⁵ Individuals and businesses have used this large audience and capitalized from it by implementing targeted social media advertisements to their marketing strategy. In fact, social media platforms allow you to target certain audiences either through banners, interactive videos, and posts that display on a certain user’s feed.³⁰⁶ Filtering through which users get to view the commercial advertisements is extremely sophisticated and should not be underestimated. For example, Facebook advertisements allow users to target leads through location, age, gender, and languages.³⁰⁷ They also impressively allow targeting users who have visited their website and engaged with their social media content.³⁰⁸ LinkedIn advertising is also impressive by allowing targeting users with certain job titles or members of certain groups.³⁰⁹ With these robust

²⁹⁷ Jack G. Day, *Why Judges Must Make Law*, 26 CASE W. RESV. L. REV. 563, 565 (1976).

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.* at 565.

³⁰¹ See *Thomas v. Barrett*, No. 1:12-CV-00074, 2012 WL 2952188, at *4 (W.D. Mich. July 19, 2012); *Binion v. O’Neal*, 95 F. Supp. 3d 1055, 1060 (E.D. Mich. 2015).

³⁰² *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1123 (W.D. Pa. 1997).

³⁰³ *Id.*

³⁰⁴ *Number of Social Media Users Worldwide from 2017 to 2027*, STATISTA (June 2022), <https://www.statista.com/statistics/278414/number-of-worldwide-social-network-users/#main-content>.

³⁰⁵ *Id.*

³⁰⁶ Gaurav Sharma, *6 Types of Social Media Ads that Drive Solid Results*, CONVINC&CONVERT, <https://www.convinceandconvert.com/social-media/6-types-of-social-media-ads-that-drive-solid-results/> (last visited Oct. 10, 2023).

³⁰⁷ *Audience ad Targeting*, META, <https://www.facebook.com/business/ads/ad-targeting> (last visited Oct. 10, 2023).

³⁰⁸ *Id.*

³⁰⁹ *Targeting Options for LinkedIn Ads*, LINKEDIN, <https://www.linkedin.com/help/lms/answer/a424655> (last visited Oct. 10, 2023).

features, businesses have – rightfully – not eschewed from investing in digital advertisements to help them generate revenue.³¹⁰ In 2022, approximately 230 billion U.S. dollars were spent on social media ads, and this number is estimated to exceed 300 billion U.S. dollars in 2024.³¹¹ Moreover, United States users spend the most money globally on social media advertisements.³¹²

With the rise of social commerce, it is inevitable to run across social media advertisements daily. In fact, 49 percent of people from the ages of 18 to 29 purchase an item after seeing it on social media,³¹³ and 32 percent of United States users have completed a transaction directly on social media platforms.³¹⁴ In light of this data, it is fair to assume current judges are acutely aware of social media’s implication on personal jurisdiction. If judges start to hold social media websites intrinsically implicate commercial activity, they would expand the “permissible scope of personal jurisdiction.”³¹⁵ This would significantly increase the chances of the middle ground analysis favoring personal jurisdiction over nonresident defendants.³¹⁶ The wide reaching consequences are detrimental to the legal system because virtually nonresident defendants can be subjected to any forum state.³¹⁷ This could lead to an overwhelming uptick in cases being litigated in certain jurisdictions due to its laws being more plaintiff-favorable.³¹⁸ Furthermore, with this increase in forum shopping, certain courts will become the epicenter to litigate certain claims, subjecting judges to an unmanageable caseload.³¹⁹ Certain judges whose philosophy of justice aligns with what is most favorable to the plaintiff will also be targeted.³²⁰ These concerns undoubtedly violate fairness and efficiency policy interests that solidify personal jurisdiction.³²¹ Judges, therefore, are presumably afraid to modernize the definition of social media because the potential unsettling legal effects are detrimental.

Moreover, judges may be cognizant of the impact it can have on social media businesses and the United States economy. In 2022, 30.57 million businesses in the United States used social media to interact with customers, and promote their products and services.³²² And because *Zippo* “treat[s] commerciality as a proxy for purposeful availment, it [can]

³¹⁰ Valentina Dencheva, *Social Media Advertising and Marketing Worldwide - Statistics & Facts*, STATISTA (Oct. 23, 2023), <https://www.statista.com/topics/1538/social-media-marketing/#topicOverview>.

³¹¹ *Id.*

³¹² *Leading Markets Worldwide in 2022, by Social Media Advertising Spending*, STATISTA (Nov. 2023), <https://www.statista.com/forecasts/459813/social-media-advertising-revenue-countries-digital-market-outlook>.

³¹³ Coral Ouellette, *Social Selling Statistics for 2023 (Includes Social Media Marketing!)*, OPTINMONSTER (Jan 7, 2022), <https://optinmonster.com/social-selling-statistics/>.

³¹⁴ *Percentage of Online Consumers Buying from Social Networks in Selected Countries Worldwide in 2022*, STATISTA (Aug. 2023), <https://www.statista.com/statistics/1252481/social-buyers-worldwide-countries/>.

³¹⁵ *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1123 (W.D. Pa. 1997).

³¹⁶ *See id.* at 1124.

³¹⁷ *Kindig It Design, Inc. v. Creative Controls, Inc.*, 157 F. Supp. 3d 1167, 1174 (D. Utah 2016).

³¹⁸ *See Avalon Zoppo, Forum Shopping Can Hurt Quality of Judges’ Decisions, Study Says*, LAW (Nov. 25, 2023), <https://www.law.com/2023/10/25/forum-shopping-can-hurt-quality-of-judges-decisions-study-says/>.

³¹⁹ *Id.*

³²⁰ Day, *supra* note 297.

³²¹ *See Zoppo, supra* note 318.

³²² Yaqub M., *How Many Businesses Use Social Media: State of Social Media for Business (2023 Update)*, BUSINESSDIT (June 9, 2023), <https://www.businessdit.com/social-media-for-business-statistics/>.

effectively punish[] [30.57 million] e-commerce” businesses.³²³ The commerciality requirement has been puzzling for many courts and scholars, as they criticize why commerciality is relevant to the purposeful availment analysis.³²⁴ More often than not, commerciality is not used to satisfy purposeful availment.³²⁵ Commerciality is not even a prerequisite for purposeful availment.³²⁶ However, under the lens of *Zippo*, commercial contacts help satisfy purposeful availment, even though it is not apparent as to why this is the case.³²⁷ Judges, therefore, are presumably afraid to modernize the definition of social media because it can disincentivize entrepreneurs from operating e-commerce social media businesses, stifling a trillion dollar market.³²⁸

Finally, the last area of criticism about the lagging definition of social media could be attributed to lawyers being unsophisticated about social media. This criticism is surprising because 81 percent of lawyers maintain a social media presence, and within this cohort, 95 percent use LinkedIn, 29 percent use Facebook, 17 percent use Twitter, and 13 percent use Instagram.³²⁹ However, with the majority of lawyers only maintaining a presence on LinkedIn – which is not a platform saturated with ecommerce advertisements and sponsored posts by social media influencers – lawyers are presumably unaware of the increased commercialization occurring on social media.³³⁰ Indeed, 36 percent of solo practitioners and small law firms use Facebook’s paid advertising, followed by 7 percent on LinkedIn, 2 percent on Instagram, and one percent on Twitter.³³¹ With lawyers lacking exposure to platforms saturated with commercialized content, such as Facebook and Instagram, it is reasonable to assume they are ill-equipped to understand the mechanics behind paid advertisements. In the event that this holds, lawyers would forget to defend or refute the issue of social media contacts in a Rule 12(b)(2),³³² which may ultimately become the silver lining as to whether or not the court exercises personal jurisdiction over the nonresident defendant.

VI. Conclusion

The pervasive impact the Kardashians have had on the precipitation of social media is indisputable. As a result, the traditional boundaries of personal jurisdiction are challenged with brands increasingly collaborating with social media influencers and using their social media accounts as a surrogate to promote commercialization. These have profound implications to exercising personal jurisdiction over nonresident defendants, especially because social media can instantly reach residents of forum states. Although courts have kept up with the Kardashians to some capacity, this Note demonstrated that there are still

³²³ See *id.*; *No Bad Puns: A Different Approach to the Problem of Personal Jurisdiction and the Internet*, 116 HARV. L. REV. 1824, 1834 (2003).

³²⁴ *No Bad Puns*, *supra* note 323, at 1835.

³²⁵ See *id.* at 1834.

³²⁶ *Id.*

³²⁷ *Id.* at 1835; see also *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997) (“the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of the commercial activity that the entity conducts over the internet.”).

³²⁸ Paul Conley, *US Ecommerce in 2022 Tops \$1 Trillion for First Time*, DIGITALCOMMERCE360 (Feb. 17, 2023), <https://www.digitalcommerce360.com/article/us-ecommerce-sales/>.

³²⁹ *ABA Profile of the Legal Profession*, ABA (July 2022),

<https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf>.

³³⁰ See *id.*

³³¹ *Social Media for Lawyers*, MEDIUM (Oct. 3, 2019), <https://medium.com/@Rankingsio/social-media-for-lawyers-814cf5518c1a>.

³³² See Fed. R. Civ. P. 12.

whitespace opportunities that courts must be prepared to address. Moving forward, courts must be prepared – and willing – to amend our interpretation of personal jurisdiction due to the permanently rooted establishment of social media.