

RICHARD M. SCOVILLE,
INDIVIDUALLY and on behalf of
Free Speech Store also known as FSS,
FreeSpeechStore.com

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IN THE DISTRICT COURT

VS.

45th JUDICIAL DISTRICT

BRIAN J. BRUNS, AKA ABUSIVE
HOSTS BLOCKING LISTS, AHBL.ORG,
THE SUMMIT OPEN SOURCE
DEVELOPMENT GROUP, SOSDG.ORG,
ANDREW D. KIRCH, AKA
D&K CONSULTING, TRELANE.NET

BEXAR COUNTY, TEXAS

PLAINTIFFS' RESPONSE TO DEFENDANTS' SPECIAL APPEARANCE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW RICHARD M. SCOVILLE, Plaintiff, Individually, and on behalf of Free Speech Store, AKA freespeechstore.com, and FSS, Responding to and Objecting to ABUSIVE HOSTS BLOCKING LISTS, AHBL.ORG, THE SUMMIT OPEN SOURCE DEVELOPMENT GROUP, SOSDG.ORG; ANDREW D. KIRCH, AKA D&K CONSULTING, TRELANE.NET ("Defendants"), Special Appearance with prejudice and as grounds for such Opposition would respectfully show the Court the following:

I. The Parties.

A. The Plaintiff is RICHARD M. SCOVILLE, ("SCOVILLE"), an individual who resides in San Antonio, Bexar County, Texas 78212. As stated below, SCOVILLE is Sole Proprietor of the Entity Free Speech Store ("FSS"), AKA FSS and freespeechstore.com, all located in San Antonio, Bexar County, Texas.

B. The Defendant ANDREW D. KIRCH, ("KIRCH") AKA D&K CONSULTING, TRELANE.NET; Principal of ABUSIVE HOSTS BLOCKING LISTS, AHBL.ORG ("AHBL"), THE SUMMIT OPEN SOURCE DEVELOPMENT GROUP. SOSDG.ORG is a non-resident company/individual that has engaged in, inter alia, business, tortious acts, e-commerce, telephonic conversations, contractual obligations, and electronic emails in the State of Texas.

II. Jurisdiction And Venue

A. This Court has personal jurisdiction over Defendants because they have done business in the State of Texas by, inter alia, (1) committing one or more torts in whole and in part in this state, including but not limited to tortious acts which were intended to cause and did cause injury to Texas residents and to property located in Texas, and (2) contacting residents of Texas for a commercial transaction, contractual agreement (s), and/or membership in Texas companies, all transmitted to computers located in Texas. (3) All of the acts complained of by the Plaintiff occurred in Texas, including those of all Defendants, which involved electronic communications and/or electronic access from them into the State of Texas. This Court has subject matter jurisdiction over this lawsuit because the Plaintiff seeks injunctive relief.

B. Venue is proper in Bexar County, Texas, under §15.002(a)(1), Tex. Civ. Prac. & Rem. Code, because a substantial part of the events and omissions giving rise to this claim occurred in Bexar County. Venue is also proper under §15.002(a)(4) and § 15.017, Tex. Civ. Prac. & Rem. Code, because Bexar County is the county in which the Plaintiff resided at the time of the accrual of the cause of action. The venue is spelled out in the Contractual Terms of Service (TOS) of FSS which all Defendants have visited by direct or indirect compliance. Damages incurred by SCOVILLE were suffered all or in part in Bexar County, Texas.

III. Defendants' Burden

At the hearing, the non-resident must disprove jurisdiction by negating all alleged grounds of personal jurisdiction. *Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 203 (Tex. 1985); *Siskind v. Villa Foundation for Education, Inc.*, 642 S.W.2d 434, 437-38 (Tex. 1982).

IV. Responsive Allegations. Plaintiff challenges the Defendants' factual grounds for denying jurisdiction and the Defendants' legal interpretation of the factors that constitute jurisdiction over a non-resident.

1. **More than Minimal Contacts.** Defendants have met the standards under minimal contacts analysis as addressed and ~~denied~~ by Defendant's in their Special Appearance. The Court has jurisdiction over the Defendants because the Defendants purposefully established minimal contacts with Texas. *Schlobohm v. Schapiro*, 784 S.W.2d 355, 357 (Tex. 1990); see *Guardian Royal Exch. Assur., Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226 (Tex. 1991). Plaintiffs Exhibit "L" to Plaintiffs' Original Pleadings with applicable affidavits by Richard M. Scoville, Manuel Oblitas, and Javier Oblitas clearly shows that there was minimal contacts. Also, Detective Brian Padier will testify that the computers located at SOSDG.Org committed the

hacking of the FSS server located in Bexar County, Texas and FSS filed a police report which subsequently triggered a full scale police investigation of Kirchn, Bruns, et al which is presently ongoing in San Antonio, Texas. Brandon Zumwalt Internet Contrasts (FSS' present Internet Supplier) will testify that AHBL.org and Andrew Kirch, specifically, contacted him regarding the removal of FSS from their system to avoid abusive consequences. Exhibit "A" is Andrew Kirch's sign-up for membership at The Free Speech Store on 4/20//05 which requires interactive contact with the FSS server located in Bexar County, Texas, as well as contractual obligations. This was the same day of the hacking of FSS' server by IP address 66.93.203.199, or SOSDG.ORG. Jurisdiction is permissible when the defendant's activity in the forum is continuous and systematic and the cause of action is related to that activity.

- (a) **Specific Jurisdiction.** Plaintiffs' Cause of Actions arose from and/or relates to the non-resident Defendants' contacts with Texas. Schlobohm, 784 S.W.2d at 358. See item 1. above for references to proof.
- (b) **General Jurisdiction.** Plaintiffs' Cause of Actions arose from and/or relates to the non-resident Defendants' continuous and systematic contacts with Texas. Schlobohm, 784 S.W.2d at 358. See item 1. above for references to proof.

- 2. **No Issue Of Fair Play.** The Court's assumption of jurisdiction over Defendants and their property will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process (see Exhibit "B") where Defendants agree to jurisdiction and venue. Schlobohm, 784 S.W.2d at 358-359.

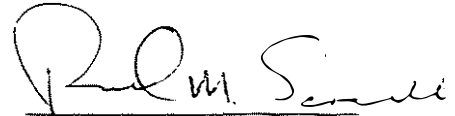
CONCLUSION

The Kirch Defendants have met the minimum contacts test with the State of Texas to justify a Texas Court's assumption of jurisdiction. By the court assuming jurisdiction, it will not offend traditional notions of fair play and substantial justice.

WHEREFORE, PREMISES CONSIDERED, the Scoville Plaintiffs request that the Kirch Defendants' Special Appearance be denied in total and that the Court continue the due process of this lawsuit as prescribed by law without prejudice against the Plaintiffs.

4.

Respectfully submitted,



RICHARD M. SCOVILLE

P.O. Box 120442

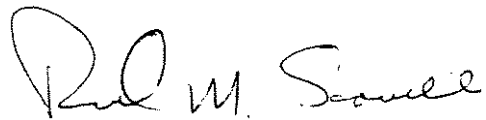
San Antonio, Texas 78212

207-510-9474

PRO SE

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a true and correct copy of the foregoing PLAINTIFFS' RESPONSE TO DEFENDANTS' SPECIAL APPEARANCE all to Defendants Counsel in Open Court in accordance with the Texas Rules of Civil Procedure, on this 5th day of January , 2006.



RICHARD M. SCOVILLE

EXHIBIT "A"

----- Original Message -----

From: www.freespeechstore.com
To: newmember@thefreespeechstore.com
Sent: wednesday, April 20, 2005 10:27 PM
Subject: New User Account Information

An account has been created for andrew kirch
The password for this account is MQH6K
We strongly urge you to change your password on your first logon Remote IP Address :
66.93.203.199

UID	Fname	Lname	Author	Email	Address	City	State	HomePhone		
WorkPhone		CellPhone		USLocation		LocationCode		DateRegistered		
CCNum	ExpDate	AccessUntil		SpeakerFlag		RegReaderFlag		AdminFlag		Pwd
Active	SessionId									
1853	andrew	kirch	TRELANE	andrew.kirch@gmail.com				IN		
		-1	46220	4/20/2005	11:27:38 PM					4/19/2005
11:27:38 PM		0	0	0	MQH6K	-1		815468812		

2005-04-21 04:27:08 24.173.226.178 GET /newmem.asp - 80 - 66.93.203.199
Mozilla/5.0+(X11;+U;+Linux+x86_64;+en-US;+rv:1.7.6)+Gecko/20050328+Firefox/1.0.2 200
0 0
2005-04-21 04:27:38 24.173.226.178 POST /saveMember.asp - 80 - 66.93.203.199
Mozilla/5.0+(X11;+U;+Linux+x86_64;+en-US;+rv:1.7.6)+Gecko/20050328+Firefox/1.0.2 200
0 0

EXHIBIT "B"

**Complete
Terms of
Service Text**

**Use of
Material**

**No
Warranties**

**Limitation of
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