

1 **COUDERT BROTHERS**
 2 **RONALD S. KATZ (SBN 85713)**
 3 **Four Embarcadero Center, Suite 3300**
 4 **San Francisco, CA 94111-4106**
 5 **Telephone: (415) 986-1300**
 6 **Telecopier: (415) 986-0320**

7 **COUDERT BROTHERS**
 8 **RICHARD A. JONES (SBN 135248)**
 9 **303 Almaden Boulevard, Fifth Floor**
 10 **San Jose, California 95110-2721**
 11 **Telephone: (408) 297-9982**
 12 **Telecopier: (408) 297-3191**

13 **Attorneys for Defendant, La Ligue**
 14 **Contre Le Racisme Et l'Antisemitisme**

15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**
 17 **SAN JOSE DIVISION**

18 **YAHOO! INC., a Delaware corporation,**
 19 **Plaintiffs,**

20 **vs.**

21 **LA LIGUE CONTRE LE RACISME ET**
 22 **L'ANTISEMITISME, a French association,**
 23 **and L'UNION DES ETUDIANTS JUIFS DE**
 24 **FRANCE, a French association,**
 25 **Defendants.**

26 **Case No: C00-21275 JF**

27 **NOTICE OF MOTION AND**
 28 **MOTION TO DISMISS PURSUANT**
TO RULE 12(b)

Date: March 26, 2001
Time: 9:00 a.m.

The Honorable Jeremy Fogel


NOTICE IS HEREBY GIVEN that on March 26, 2001, at 9:00 a.m., before The Honorable Jeremy Fogel at the U.S. District Court, Northern District of California, San Jose Division, located at 280 South First Street, San Jose, California, Defendant La Ligue Contre Le Racisme Et L'Antisemitisme will and hereby does move the Court for an Order Dismissing Plaintiff's Complaint in its entirety for lack of jurisdiction.

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1 This motion is based on this Notice of Motion and Motion, the Memorandum of
 2 Points and Authorities contained herein, the pleadings and papers on file herein, and upon
 3 such other matters as may be presented at the time of the hearing.
 4

5
 6 Dated: 2/07/01

COUDERT BROTHERS

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 8 By: 
 9 RICHARD A. JONES

10 Attorneys for Defendant La Ligue Contre Le
 11 Racisme Et l'Antisemitisme
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 8 Attorneys for Defendant, La Ligue
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 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION
 14

15 **YAHOO! INC.**, a Delaware corporation,
 16 Plaintiffs,

17 vs.

18 **LA LIGUE CONTRE LE RACISME ET**
 19 **L'ANTISEMITISME**, a French association,
 and **L'UNION DES ETUDIANTS JUIFS DE**
 20 **FRANCE**, a French association,
 21 Defendants.

Case No: C00-21275 JF

**POINTS AND AUTHORITIES IN
 SUPPORT OF MOTION TO
 DISMISS PURSUANT TO
 RULE 12(b)**

Date: March 26, 2001
 Time: 9:00 a.m.

The Honorable Jeremy Fogel

22
 23
 24 Defendant La Ligue Contre Le Racisme Et l'Antisemitisme ("LICRA") hereby
 25 moves to dismiss the Complaint filed by Yahoo!, Inc., pursuant to Fed. R. Civ. Proc. 12(b).
 26 Although this motion is made more than twenty days after service of the Summons and
 27

1 Complaint, this motion is timely because it is made before the Answer or other responsive
2 pleading. *Aetna Life Ins. Co v. Alla Medial Services, Inc.* (9th Cir. 1988) 855 F.2d 1470.¹

3 I. INTRODUCTION.

4 Plaintiff Yahoo!, Inc. ("Yahoo!") does not like the decision reached against it by a
5 French Court and asks this Court to declare the French Court's ruling null and void. The
6 French Court required Yahoo! to take such action as would be required to prevent further
7 violation of French law. Yahoo! now brings this action against LICRA and Co-Defendant
8 L'Union Des Etudiants Juifs De France seeking to undo the French Court's ruling.

9 This Court should dismiss Yahoo!'s Complaint against LICRA because the Court
10 lacks personal jurisdiction over LICRA.² LICRA does not do business in California or the
11 United States. Its sole contacts with the United States, as alleged by Plaintiff, are limited to
12 sending one "cease and desist" letter to Plaintiff and causing the service of legal process on
13 Plaintiff in connection with the claims before the French tribunal. While Plaintiff appears to
14 contend that LICRA also consented to a forum-selection clause providing for jurisdiction in
15 this Court, that clause cannot be enforced and, in all events, does not apply in this instance
16 because the claims at issue are not the sort of claims contemplated by the alleged forum-
17 selection clause.

18 For the reasons set forth more fully below, the Court should dismiss the Complaint
19 against LICRA.

24 ¹ Plaintiff's Complaint was delivered in France to the part-time president of LICRA, a
25 non-profit, volunteer-based French organization at the time LICRA was conducting
26 elections of its new president. Delays incident to the election and thereafter locating
U.S. counsel prevented LICRA from responding to the Complaint within 20 days.

27 ² While this motion is brought by LICRA, the points and authorities discussed apply
28 equally to "L'Union Des Etudiants Juifs De France."

1 II. ARGUMENT.

2 A. The Exercise Of Jurisdiction Is Unreasonable Under A Minimum Contacts
3 Analysis.

4 Plaintiff alleges the following facts in support of its claim of personal jurisdiction.

- 5 • LICRA is a French organization with its principal place of business in Paris,
6 France (Complaint, ¶2.);
- 7 • LICRA once sent a "cease and desist" letter to Yahoo! in Santa Clara,
8 California (Complaint, ¶6(a);
- 9 • LICRA filed a civil Complaint in Paris, France relating to marital viewed in
10 France but available on Yahoo!'s U.S. services (Complaint, ¶6(b));
- 11 • LICRA used the U.S. Department of Justice and U.S. Marshal's Office to
12 serve Complaints and Orders in the Paris Lawsuit on Yahoo! in Santa Clara,
13 California (Complaint, ¶6(c));
- 14 • LICRA sought and obtained an injunction in the Paris Lawsuit that requires
15 action by Yahoo! in the United States to comply with the order of the French
16 tribunal (Complaint, ¶6(d));

17 These facts, even if true, do not support the exercise of jurisdiction over LICRA. A
18 finding of personal jurisdiction must comport with due process. Where, as here, the
19 Defendant is not a citizen or resident of the United States, the jurisdictional barrier is
20 particularly high. See *Asahi Metal Industry Co., Ltd. v. Sup. Ct.* (1987) 480 U.S. 102, 114,
21 107 S.Ct. 1026 (the "unique burdens" placed upon a foreign national defending itself locally
22 "should have significant weight" in assessing the "reasonableness" of a local court's
23 exercise of personal jurisdiction); See also *Rano v. Sipa Press, Inc.* (9th Cir. 1993) 987 F.2d
24 580, 588 ("higher jurisdictional barrier" required for aliens").

25 Federal courts generally have no broader power over persons outside the state in
26 which they sit than do the local state courts. *Omni Capital Int'l v. Rudolph Wolff & Co.*

1 *Ltd.* (1987) 484 U.S. 97, 104-105, 108 S.Ct. 404, 410. They cannot assert jurisdiction over
2 defendants who lack sufficient "contacts" with the forum state.³

3 The facts asserted by Yahoo! cannot support a claim for personal jurisdiction over
4 LICRA. In the first place, there is no basis for general jurisdiction. General jurisdiction
5 occurs where the defendant's activities within the state are extensive or wide-ranging or
6 substantial, continuous, and systematic. *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147.
7 In this case, the activities "within the state" asserted by Plaintiff consist of a letter sent to
8 Plaintiff in California and the service of papers relating to the Paris Lawsuit in California.
9 These activities, limited in time and nature, cannot constitute a basis for general jurisdiction.

10 Nor is there a basis for limited jurisdiction. Limited jurisdiction may be exercised if
11 the quality and nature of the defendant's activities are such that the cause of action arises out
12 of an act or transaction completed in the state, the quality and nature of activities indicate
13 that the defendant purposely availed himself of the privileges of conducting activities in the
14 state, thereby invoking the benefits and protection of its laws, or the state has passed special
15 legislation on the subject matter at issue that supports the exercise of jurisdiction over the
16 nonresident. *McGee v. International Life Insurance Co.* (1957) 355 U.S. 220, 221-223, 78
17 S.Ct. 199; *Crea v. Busby* (1996) 48 Cal.App.4th 509. If personal jurisdiction is to attach, it
18 also must be deemed reasonable under the circumstances and be consistent with "fair play
19 and substantial justice." *Burger King v. Rudzewicz* (1985) 471 U.S. 462, 476-477, 105 S.Ct.
20 2174. It is not enough to show that the defendant's actions elsewhere have caused (or may
21 in the future cause) an effect in California. The nature and effect of the defendant's

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23
24 ³ Under FRCP 4(k)(2), a federal court may have jurisdiction over a defendant who lacks
25 sufficient contacts with any one state, but has sufficient contacts with the nation as a
26 whole. Such jurisdiction must still be consistent with the Constitution and laws of the
27 United States and comport with traditional notions of "fair play and substantial justice."
28 *See DeJames v. Magnificence Carriers, Inc.* (3rd Cir. 1981) 654 F.2d 280, 26, fn. 3. In
this case, Plaintiff relies on asserted contacts with California, which appear to comprise
all contacts by LICRA in the United States.

1 relationship to the forum state may make the exercise of personal jurisdiction unreasonable.
2 *Sibley v. Superior Court* (1976) 16 Cal.3d 442, 446.

3 In this case, LICRA did not purposely avail itself of the privileges of conducting
4 business in the state, thereby invoking the benefits and protections of California law.
5 Instead, LICRA sought the protection and application of French law to a California resident.
6 If that were sufficient to create a basis for jurisdiction, then any person who files an action
7 *anywhere on earth* against a California resident would be subject to jurisdiction in
8 California. Defendant is not aware of any authority for such a grand extension of this
9 Court's jurisdiction. In a somewhat different, but analogous context, jurisdiction has been
10 rejected based upon participation in legal proceedings giving rise to alleged effects in
11 California.

12 In *Edmunds v. Superior Court* (1994) 24 Cal.App.4th 221, the appellate court granted
13 a writ of mandate directing the trial court to grant a defendant attorney's Motion to Quash
14 the Summons and Complaint against him. The defendant attorney was from Hawaii.
15 Plaintiff was a California limited partnership which brought a legal malpractice action
16 against him. The attorney had represented the partnership in one Hawaii action and later
17 assisted in the sale of partnership real property in Hawaii. The attorney had even traveled to
18 California to represent the client in his deposition. The appellate court rejected jurisdiction
19 over the attorney even though the claim against him arose out of his representation of the
20 California partnership.

21 Here, unlike in *Edmunds, supra*, there is no contention that LICRA has ever traveled
22 to or conducted any business in California, or even the United States. Its purported contacts
23 with California are limited to sending a letter to Plaintiff in California and serving Plaintiff
24 with papers relating to the Paris Lawsuit. These acts caused no effects in California. The
25 effects about which Plaintiff complains result instead from the actions of the French tribunal
26 which require Plaintiff to take the steps necessary to avoid further violations of French law.
27 If Plaintiff here disputes that order, it may challenge it in the forum which issued the order.

28

-5-

1 The burdens imposed on LICRA as an alien Defendant, the minimal nature of
 2 LICRA's contacts with California, and the existence of an alternative and more appropriate
 3 forum all militate against an assertion of jurisdiction by this Court in this case. See *Core-*
 4 *Vent corp. v. Nobel Industries AB* (9th Cir. 1993) 11 F.3d 1482, 1490 (unreasonable to
 5 exercise personal jurisdiction over Swedish Doctors in a defamation action even if Doctors
 6 had "purposefully interjected" themselves in California because their forum-related acts
 7 were minimal, requiring them to submit to California jurisdiction would impose substantial
 8 burdens on them and would conflict with Swedish sovereignty, and plaintiff had an
 9 alternative forum in Sweden for resolution of the dispute).

10 B. The Forum Selection Clauses Do Not Provide A Basis For Jurisdiction.

11 Plaintiff also asserts that personal jurisdiction is proper over LICRA because LICRA
 12 allegedly "consented" to jurisdiction in this forum. According to Plaintiff, Defendant
 13 "agreed to Yahoo!s Terms of Service, which state that users agree to 'submit to the personal
 14 and exclusive jurisdiction of the courts located within the county of Santa Clara, California'
 15 to resolve any claims relating to use of the Yahoo! service" (See Complaint, ¶¶8 and 9.)

16 Yahoo!'s "consent" basis for jurisdiction lacks merit. In the first place, forum-
 17 selection clauses found in contracts may create jurisdiction only where "freely negotiated"
 18 and where they "are not unreasonable and unjust". *The Bremen v. Zapata Off-Shore*
 19 *Co.* (1972) 407 U.S. 1, 15, 92 S.Ct. 1907, 1916; *Burger King Corp. v. Rudzewicz* (1985) 471
 20 U.S. 462, 472, 105 S.Ct. 2174, 2182, fn. 14.) Here, there is no "freely negotiated" forum-
 21 selection clause. The clause Plaintiff relies on is found in its on-line, boiler-plate "Terms of
 22 Service". Beyond that, the grave inconvenience and unfairness of requiring any dispute
 23 concerning the "use" of Yahoo!'s service to be resolved in Santa Clara County compels the
 24 Court to reject the asserted forum-selection clause as a basis of jurisdiction. *Carnival*
 25 *Cruise Lines, Inc. v. Shute* (1991) 499 U.S. 585, 595, 111 S.Ct. 1522, 1528.

26 More importantly, the instant lawsuit is not based upon a claim relating to LICRA's
 27 "use of the Yahoo! service". Plaintiff is seeking a judicial determination of the
 28

COLEMAN BROTHERS
 TEL: (408) 297-0002
 FAX: (408) 297-0171

POINTS & AUTHORITIES IN SUPPORT OF MOTION TO DISMISS
 Case No.: C00-21275 JF


1 enforceability of an Order by the French Tribunal based upon Yahoo! conduct violating the
2 law of France. No matter how freely negotiated or objectively reasonable Yahoo!'s forum-
3 selection clause might otherwise be, it simply does not apply to this dispute.

4 **III. CONCLUSION.**

5 For the foregoing reasons, this Court should dismiss Plaintiff's Complaint in its
6 entirety.

7
8 Dated: 2/07/01

COUDERT BROTHERS

9
10 By: 
11 **RICHARD A. JONES**

12 Attorneys for Defendant La Ligue Contre Le
13 Racisme Et l'Antisemitisme
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PROOF OF SERVICE BY FAX & U.S. MAIL

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In Re: *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme and L'Union Des Etudiants Juifs De France*
Court: *U.S. District Court, Northern District of California*
Case No.: *C00-21275 JF*

I, Lori F. Hildebrand, hereby declare:

I am over the age of eighteen years and not a party to the foregoing cause. I am employed in the County of Santa Clara, California. My business address is Coudert Brothers, 303 Almaden Boulevard, Fifth Floor, San Jose, California 95110-2721.

I am readily familiar with my office's practice for collecting and processing correspondence for mailing with the United States Postal Service. Such correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

On February 7, 2001, I served the attached document titled exactly:

NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT TO RULE 12(b);

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PURSUANT TO RULE 12(b)

by placing a true copy thereof enclosed in a sealed envelope for collection and mailing on this date, following ordinary business practices, addressed as follows:

Michael Traynor, Esq.
Benjamin K. Riley, Esq.
Cooley Godward, LLP
One Maritime Plaza, 20th Floor
San Francisco, CA 94111-3580

Telephone: (415) 693-2000
Facsimile: (415) 951-3699

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Robert Vanderer, Esq.
O'Melveny & Myers, LLP
400 South Hope Street
Los Angeles, CA 90071-2899

Telephone: (213) 430-6000
Facsimile: (213) 430-6407

Additionally, I caused the above noted documents to be transmitted via facsimile to the parties above noted at the fax numbers noted for each..

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Jose, California on the date first herein above written.

Lori F. Hildebrand


1 enforceability of an Order by the French Tribunal based upon Yahoo! conduct violating the
2 law of France. No matter how freely negotiated or objectively reasonable Yahoo!'s forum-
3 selection clause might otherwise be, it simply does not apply to this dispute.

4 **III. CONCLUSION.**

5 For the foregoing reasons, this Court should dismiss Plaintiff's Complaint in its
6 entirety.

7
8 Dated: 2/27/01

COUDERT BROTHERS

9
10 By: 
11 **RICHARD A. JONES**

12 Attorneys for Defendant La Ligue Contre Le
13 Racisme Et l'Antisemitisme

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