

# JURISDICTION AND THE INTERNET

A Study of Regulatory Competence  
over Online Activity

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## PREFACE AND ACKNOWLEDGMENTS

If a thing is worth doing, it is worth doing badly.

G. K. Chesterton, *What's Wrong with the World*

When I first came across Johnson and Post's article, 'Law and Borders – The Rise of Law in Cyberspace' (1996), in 1998, it impressed me. The authors seem to prove quite conclusively that States could not possibly, in all rationality, apply their laws to online activity and that this new cyberspace was completely beyond their legitimate and actual supervision. And yet, at the same time, the first cases were emerging where States did exactly that. Over the following years, while investigating competence questions in cyberspace, the article has stayed with me and my views on it have almost come full circle: from being fascinated by it and utterly convinced of its accuracy, to rejecting most of it, to finally admiring the brilliance that lies in the confident simplicity of its core ideas and in its provocative imperfections. If this book can follow suit, it does well.

Researching for, and writing, this book was a humbling experience. I was left, at every stage, with the feeling that there was so much more to read and know. Being a Jack-of-all-trades is perhaps partly a genetic predisposition and partly unavoidable given the nature of the competence inquiry, spanning across most substantive legal fields. However, in this case no doubt it was mainly down to the ambition to understand and explain the 'big picture' – the picture of how national law and the transnational Internet can be reconciled – based on the conviction that there is a need for such understanding. Yet still I am only too conscious of the specialists who will read this book and all the imperfections they may unearth.

This book may be read from cover to cover, but it need not be. Although each chapter builds upon the preceding ones, they also stand quite comfortably on their own. (Indeed Chapter 2 and Chapter 3 are revised versions of two earlier articles, 'Legal Reasoning and Legal

Change in the Age of the Internet – Why the Ground Rules Are Still Valid' (1999) 7 IJLIT 123 and 'Eggs, Jurisdiction and the Internet' (2002) 51 ICLQ 555, and Chapter 4 builds on some of my previous writing on online defamation; see the bibliography.) An abbreviated version of the main arguments made in this book is provided in Chapter 1, which also sets out basic background 'data': the key problem, its relevance and the general legal framework. All the other chapters present a general argument in a specific legal context in order to make the sheer volume of material manageable and to focus the discussion. Thus, Chapter 2 looks at the nature of legal change and reasoning in the general context of the conflict between transnational domain names and national trademarks. Chapter 3 examines the dangers of fine-tuning legal rules beyond a certain point in the context of the US 'targeting' approach and EU consumer contracts (in comparison with online crime). Chapter 4 examines the pros and cons of the outright and the moderate country-of-destination approaches by reference to online defamation (again compared with online crime). Chapter 5 discusses the exclusive country-of-origin approach illustrated by gambling regulation and the Electronic Commerce Directive. Chapter 6 analyses questions of enforcement and enforceability in the context of the *Yahoo* saga. And, finally, Chapter 7 examines the two fundamental regulatory options open to States, using spam regulation as the specific example.

There are many people who helped me in very different ways to write this book, but a few stick out: my parents, Birgit Wacks and Andreas Kohl, who taught me the importance of finishing what you start; my PhD supervisor, Eugene Clark, whose infectious energy made it difficult to sustain any pessimism or writing fatigue at the worst of times; my colleagues and friends, Christopher Harding and Naomi Salmon, who – invariably over coffee – shared my tribulations and provided intellectual stimulation, much fun and a sense of perspective on life generally; the editing team of Cambridge University Press, Finola O'Sullivan and Richard Woodham, who never made me feel late, even when I was very late; and last but not least Ryszard Piotrowicz, whose substantive feedback, proofreading and general encouragement made all the difference. Thank you.

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