



**Internet  
Which Court Decides?  
Which Law Applies?  
Quel tribunal décide?  
Quel droit s'applique?**

Edited by

**Katharina Boele-Woelki and Catherine Kessedjian**

**Kluwer Law International**

## **Internet**

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Proceedings of the international colloquium  
in honour of Michel Pelichet  
organized by the  
Molengraaff Institute of Private Law, University of Utrecht  
and the  
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edited by/sous la direction de

**Katharina Boele-Woelki  
Catherine Kessedjian**



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# Introduction

Cyberspace, the electronic super-highway or the Internet, as it is commonly referred to in short, even in non-English speaking parts of the world, is a globally networked, computer-sustained, computer-accessed and computer-generated multidimensional virtual reality, the use of which increases tremendously on a day by day basis. In the decision of the Supreme Court of the United States of June 26, 1997 on the constitutionality of provisions of the Communications Decency Act of 1996 enacted to protect minors from 'indecent' and 'patently offensive' communications on the Internet, it is stated that the Internet has experienced extraordinary growth. The number of computers that store information and relay communications increased from about 300 in 1981 to approximately 9,400,000 in 1996. About 40 million people used the Internet in 1996, a number that is expected to mushroom to 200 million by 1999.

In the last few years much has been written on the legal aspects of the new virtual reality. In most of these publications and also at different conferences the private international law aspects have not yet been dealt with as the main subject. It seems to me that the answers to the well-known questions: which court has jurisdiction and which law is to be applied when litigation arises from activity on the Internet, have until now been cautiously avoided. Answering these important questions by taking a closer look at the conflict aspects of the digital revolution, to think about solutions and to provide an answer for the users of the Internet and also for those who have to decide a dispute arising from the use of the Internet have been long overdue. The answers must be provided by those who are familiar with the methodology of private international law, with its possibilities, with its flexibility and also its limitations. In fact, the basic assumption of private international law is that particular actions and events can be located territorially. Since the Internet is structured logically and not geographically, notions relying on geographical locations probably no longer apply. The main question is whether the challenges created by the global information revolution to the conflicts lawyer are matters of substance or only matters of degree.

We are particularly grateful that the Hague Conference on Private International Law, upon the suggestion of its Secretary-General HANS VAN LOON, gave us the opportunity to thoroughly study these issues. This book contains seven

contributions, by distinguished lawyers, which were presented in Utrecht on June 28, 1997 at the international colloquium organized by Utrecht University's Molengraaff Institute of Private Law and the Hague Conference on Private International Law in honour of MICHEL PELICHET, Deputy Secretary-General at the time of his retirement. That the colloquium and this book are dedicated to MICHEL PELICHET is no surprise as he was the one who proposed the Internet as a potential subject for an international convention to be drafted under the auspices of the major international organisations charged with the unification of private law. In the first part of the book two introductions to the role of law in Cyberspace are given by PIERRE SIRINELLI (Paris) and MATTHEW BURNSTEIN (Nashville). In the second part of the book WILLEM GROSHEIDE (Utrecht) and FRANÇOIS DESSEMONTET (Lausanne) present the experiences in the field of intellectual property. Can private international law provide order to the chaos? forms the theme of the third part. GABRIELLE KAUFMANN-KOHLER (Geneva) and HERBERT KRONKE (Heidelberg) discuss the problems concerning jurisdiction and applicable law. Finally, the book contains some concluding remarks written by CATHERINE KESSEDIAN (The Hague).

The editors would like to express their gratitude to those who made the organisation of the colloquium possible: substantial support was provided by the Molengraaff Institute of Private Law of the University of Utrecht, the Faculty of Law of the University of Utrecht, the Hague Conference on Private International Law, the Netherlands Ministry of Justice, the Netherlands Association of Comparative Law, Kluwer Law International and the Netherlands Research Centre 'Information, Technology and Law' (ITeR).

Utrecht, December 1997

Katharina Boele-Woelki

# List of Abbreviations/Liste des abréviations

ADR	Alternative Dispute Resolution
AJP/PJA	Aktuelle Juristische Praxis/Pratique juridique actuelle
ALAI	Association Littéraire et Artistique Internationale
Am. J. Comp. L.	American Journal of Comparative Law
Am. Society Int.	American Society of International Law
App. Cas.	Law Reports, Appeal Cases (1875-90)
Art.	Article
ASIL/NVIR	American Society of International Law/Nederlandse Vereniging voor Internationaal Recht
ATF/BGE	Arrêts du Tribunal Fédéral Suisse/Entscheidungen des Schweizerischen Bundesgerichts
BGB	Bürgerliches Gesetzbuch
BGBI.	Bundesgesetzblatt
C.A.	Court of Appeal
Cardozo Arts & Ent. L.J.	Cardozo Arts & Entertainment Law Journal
CB	Convention de Bruxelles
CCI	Chambre de Commerce Internationale
CEDH	Convention Européenne des Droits de l'Homme
CE	Communauté Européenne
CEE	Communauté Economique Européenne
CG	Conditions Générales
Ch.	chapter/chapitre/Law Reports, Chancery Division
Cir.	Circuit
CJCE	Cour de Justice des Communautés européennes
CL	Convention de Lugano
CNUDCI	Commission des Nations Unies pour le Droit Commercial International
Cour Cass. civ.	Cour de Cassation civile
CPJI	Cour Permanente de justice internationale
CPR	Center for Public Resources

LIST OF ABBREVIATIONS/LISTE DES ABRÉVIATIONS

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CR	Computerrecht
CUP	Convention de Paris pour la protection de la propriété industrielle
D.	Recueil Dalloz Sirey
D.I.P.	Droit Internationale Privé
DC	District Court
Doc. Prél.	Document Préliminaire
EDI	Echange de données informatisées/Electronic data interchange
EEC	European Economic Community
EFF	Electronic Frontier Fondation
EGBGB	Einführungsgesetz zum Bürgerlichen Gesetzbuch
EMOTA	European Mail Order and Distance Selling Trade Association
EMRK	Europäische Menschenrechtskonvention
EU	European Union
EuGVÜ	Europäisches Gerichtsstands- und Vollstreckungsübereinkommen
F.3d	Federal Reporter (Third Series)
F.Supp.	Federal Supplement
GATT	General Agreement on Tariffs and Trade
GRUR Int.	Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil
Harv. L. Rev.	Harvard Law Review
IAHC	International Ad Hoc Committee
IANA	Internet Assigned Names Authority
INCOTERMS	International Commercial terms
Int. Enc. Comp. L.	International Encyclopedia of Comparative Law
IPR	International Private Law
IPRax	Praxis des internationalen Privat- und Verfahrensrechts
ISP	Internet Service Providers
ISPA	Internet Service Providers Association
IuKDG	Informations- und Kommunikationsdienstegesetz
JCP	Juris-Classeur périodique, La Semaine juridique

LIST OF ABBREVIATIONS/LISTE DES ABRÉVIATIONS

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J.D.I.	Journal du droit international (Clunet)
JdT	Journal des Tribunaux
JO	Journal Officiel (de la République Française)
JOCE	Journal Officiel de la Communauté Européenne
LDIP	Loi Federale sur le droit international privé
LugÜ	Lugano Übereinkommen
N.E.	North Eastern Reporter
N.Y.	Reports of cases of the New York Court of Appeals
nF	neue Fassung
NJW	Neue Juristische Wochenschrift
NLIP	Association of Dutch Internet Providers
No, no, n°	numméro/number
O.J.	Organisation Judiciaire/Official Journal
OCDE	Organisation de Coopération et de Développement Economique (Paris)
OMC	Organisation Mondiale du Commerce
OMPI	Organisation Mondiale de la Propriété Intellectuelle
ONU	Organisation des Nations-Unies
op. cit.	opere citato
ord. réf.	ordonnance en référé
PIL	Private International Law
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht
RCADI	Recueil des cours de l'Académie de Droit International
RDAI	Revue de Droit des Affaires Internationales
RDI	Revue de Droit Intellectuel
RDU	Revue de Droit Uniforme
Rec.	Académie de Droit International, Recueil des Cours
Rec. D.	Recueil Dalloz et Sirey
Rev. crit.	Revue critique de droit international privé
RIDA	Revue internationale du droit d'auteur
RIW	Recht der Internationalen Wirtschaft
Riv. Dir. Int.	Rivista di diritto internazionale
RSJ	Revue Suisse de Jurisprudence



LIST OF ABBREVIATIONS/LISTE DES ABRÉVIATIONS

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S.Ct.	Supreme Court Reporter
S.D.N.Y.	State District Court of New York
SD	State District Court
Sec.	Section
SJZ (= RSJ)	Schweizerische Juristen-Zeitung
Sup. Ct.	Supreme Court
TGI	Tribunal de Grande Instance
U.S. (Supreme)	United States (Supreme Court Reports)
UCC	Uniform Commercial Code
UIT	Union Internationale des Télécommunica- tions (Genève)
ULR	Uniform Law Review
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	Institut international pour l'unification du droit privé
Univ. Calif. Davis L. Rev.	University of California Davis Law Review
Vanderbilt J Transnational L	Vanderbilt Journal of Transnational Law
WIPO	World Intellectual Property Organisation



MICHEL PELICHET

# Curriculum Vitae

*Michel Pelichet*, né à Zurich le 22 février 1936.

Bachelier ès lettres (mention latin-grec) (1955), licence en droit (mention droit suisse) (1959), docteur en droit (1963), brevet d'avocat vaudois (1965).

Ancien Secrétaire général adjoint de la Conférence de La Haye de droit international privé (1978-1997); Premier Secrétaire et Secrétaire au Bureau Permanent de la Conférence de La Haye (1968-1978); Avocat à Lausanne (1963-1968).

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