

Chapter 5.31

Jurisdiction in B2C E-Commerce Dispute within European Union

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ABSTRACT

E-commerce jurisdiction has always been an issue because e-commerce exists in a borderless environment, and this e-environment diminishes the importance of physical location and locality. This imposes a great concern over which country's jurisdiction to engage when disputes occur between business and consumer in the e-environment. This is crucial when the consumer is seeking "redress" as there is always the question as to where a court action should be brought in. The current jurisdictions by the European Commission (EC) within the European Union (EU), The E-Commerce Directive—Country of Origin, and Rome II are still in the drafting process. These legislations are not the total solution. This paper reviews the issue of current jurisdiction, whether there is a need to call for a single jurisdiction, and what complications arise when seeking redress in this borderless e-environment. This paper also raises important issues that relate to the gaps and loopholes that exist in Country of Origin and Rome II.

JURISDICTION

Stoney (2001) claims that jurisdiction is a word that has had significant meaning and influence in the off-line world for hundreds of years. The problems posed by jurisdiction are not problems created by the Internet and e-commerce. The global and seamless nature of the Internet has simply added to or compounded the problem as e-commerce (whether it is business-to-business [B2B] or business-to-consumer [B2C]) expands and increasingly gains the confidence of the commercial and consumer sectors.

All the same, it is the fact that the Internet has momentarily augmented the potential for jurisdiction around the global e-commerce market, and more importantly it has extended the potential scope of liability through e-commerce to make it practically boundless and immeasurable. There are several phenomena absent from e-commerce relations when compared with face-to-face communication. The presumption of desired relational development is not present, the degree of intimacy possible in an e-commerce relationship

is constrained, and the expansion of whatever e-relationship exists in other domains is limited (Johnson, 2001; Podlas, 2000). Consequently, e-commerce radically undermines the relationship between legally significant (online) phenomena and physical location. This rise of the cross border e-commerce activity is destroying:

- the link between geographical location;
- the power of local governments to assert control over online behavior;
- the effects of online behavior on individuals or things;
- the legitimacy of a local sovereign's efforts to regulate global phenomena; and
- the ability of physical location to give notice of which sets of rules apply.

Cross border e-commerce thus radically subverts the system of rule making based on borders between physical spaces (Johnson & Post, 1996).

In addition to breaking down barriers between physical jurisdictions, it has no territorially based boundaries. Substantive and procedural laws vary from jurisdiction to jurisdiction. The question of what laws govern transactions over cross-border e-commerce environments and where consumers and businesses are subject to jurisdiction can be important. Notions of jurisdiction are based on a physical reality that does not exist in the e-commerce environment. However, actions in the virtual world of e-commerce have legal ramifications in the tangible world. Disputes occurring from e-commerce transactions introduce the most difficult application of traditional law, when businesses are being contacted via electronic means. Contract formation may require contact of minds, but it does not require an actual meeting of the businesses and consumers involved (Zekos, 2002).

Authorities, businesses, and even consumers know that the liability in global e-commerce is virtually limitless. Hence, there is a need for clear

and effective protection (redress) to consumers. This is one of the means for creating consumer confidence in the e-environment. The test to determine and limit liability in the cross border e-commerce environment is jurisdiction. However, the question is:

What test or rules are applied by the courts to determine proper jurisdiction for Internet based transactions in cases where defendants reside or provide goods or services from outside the jurisdiction? (Oosterbaan, Jeekel, & Jonker, 2003)

This e-environment does not simply diminish the importance of physical location; it demolishes locality. In addition to that, e-commerce was contemplated to go beyond the physical boundary; to provide and create the ease of use; and facilitate businesses and consumers to land at unreachable destinations. Thus, it has rendered territorial jurisdiction problematic (Kobrin, 2001).

The principle issues of jurisdiction are which country's laws to engage when disputes occur between businesses and consumers in more than one country, and the questions over which court is able to judge the disputes. At first, this might appear only to be of importance to legal advocates, but there is an actual increase of cross-border e-commerce between consumers in one country buying goods or services from businesses based in other countries. Without certainty over the legal disputes and risks in this business to the consumer e-market, cross-border e-commerce cannot reach its potential (Cable & Wireless, 2003).

CALL FOR A SINGLE JURISDICTION?

The leading complication encountered in the e-environment is that cross-border channels are not always sympathetic to the needs of consumers. There is no certainty for a consumer to know who the business/merchant is. The opportunity to

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