Jurisdiction in B2C E-Commerce Redress in the European Community

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EXECUTIVE SUMMARY

E-commerce jurisdiction always has 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 where a court action should be brought. 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 is a review of 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.

Keywords: County of Destination; County of Origin; E-Commerce Directive; redress; Rome II

INTRODUCTION

The Internet has momentously augmented the potential for jurisdiction around the global e-marketplace, 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).

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 global e-market 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 simply does not diminish the importance of physical location; it demolishes locality. In addition, 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 question over which court is able to judge the dispute. 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 and 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 that a consumer knows who the business/merchant is. The opportunity to inspect the product before the transaction is nearly zero. In addition, consumers have no control over the technological methods for information sharing of goods in terms of the suitability, quality, and durability. Hence, consumers assert that there is a lack of respect for their rights in this e-environment, because high numbers of consumers have no idea by whom or under what jurisdiction they are protected when seeking redress. Consumers further claim that in this cross-border e-commerce environment, “We are entering into a dangerous minefield,” or, obliquely, consumers are engaging at their own risks. From the second a consumer places an online order until the payment is complete, consumers already have moved in and out of numerous regulatory realms. The transaction could be national or international, and consumers do not know when they are leaving a regulated zone and entering an unregulated area (Mitchell & Robertson 2001).

Another issue is that an Internet/Web site easily can cross multiple jurisdiction borders. Businesses and consumers never can be certain to which rules of a particular country they could be subjected. Correspondingly, the authorities are also confronted by a similar situation in regulating their jurisdiction of these e-commerce activities. The Internet and Web sites are not smart enough to distinguish or draw a line to define what rules and regulations are enforceable in the current transaction. Web sites are not static, and transactions can be based or formed elsewhere in a matter of seconds (Clark, 2000). Thus, consumers are at a great disadvantage because of distance and mobility of the Internet and Web sites, and they also are weakened by scar-
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