Chapter 10

Legal Issues in the Virtual World and E-Commerce

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ABSTRACT
Cyberspace is such an enormous concept that trying to briefly explain the “rules” for E-Commerce or “cyberlaw” is next to impossible. For an E-Commerce, it is important to understand that there are business-to-business transactions and those involving consumers. In addition to requiring a mastery of many legal specialties, E-Commerce presents legal issues in a virtual environment. Many business practices in a cyberspace are untested in the courts. New and innovative methods of competition, as well as the effects of an international playing field change the playfield constantly. The legalities of this great new frontier pose an impressive and intellectually stimulating challenge. This chapter is a survey and summary of the legal environment in the E-Commerce and the virtual world.

INTRODUCTION TO JURISDICTION IN THE VIRTUAL WORLD

Information sharing, accessibility and efficiency are the true benefits of E-Commerce. The ability to conduct due diligence, analyze a competitive market and make an informed decision in lightening speed is a hallmark of the cyber economy. What happens, however, if there is a problem with a cyber transaction? Where does a party seek redress if they have been wronged?

Procedural law in the U.S. is an established, yet complicated body of rules that must be followed to determine what will be the proper court to bring a legal action. Once the appropriate judicial system (e.g. state or federal courts) is determined to have jurisdiction, the appropriate venue is then established through another set of well-tested rules of procedure.

How do these questions get answered in cyberspace? If you try to determine where the wrongful act occurred or a party’s minimum contacts, could it not be possible that the wrongful conduct or contacts are everywhere AND nowhere? Deter-
mining where the defendant resides or conducts business can be complicated if the company does not have a “physical” presence within a particular jurisdiction. This can be problematic when dealing with companies over the Internet (Zippo Manufacturing Company, 1997).

**JURISDICTION, VENUE AND CHOICE OF LAWS**

The easiest way to navigate the jurisdictional procedure is to answer the following questions: where did the alleged wrongful act occur? Where does the defendant reside or conduct business? Is there another jurisdiction in which the defendant established “minimum contacts” thereby making jurisdiction appropriate there? (International Shoe Company, 1945)

Each dispute must be analyzed using the U.S. Supreme Court’s standard that the non-resident defendant must (a) have had some minimum contact with the particular state, and (b) invoking that state’s jurisdiction will not offend the “traditional notions of fairplay” and “substantial justice”. (Ibid; Helicopteros Nacionales de Columbia, 1984). In other words, did the defendant receive some benefit from the jurisdiction, such as engaging in sales with residents of the particular jurisdiction, advertising within the jurisdiction, having residents of the jurisdiction as members to its website (Helicopteros Nacionales de Columbia).

The fact that a party has its principal place of business and servers located in another jurisdiction does not insulate that party from another state invoking its jurisdictional long-arm statute (Zippo Manufacturing Company; Lakin, 2003; Trintec Industries In, 2005).

**Jurisdiction Parties’ Consent**

One way to avoid being subjected to another state or nation’s jurisdiction is through a mandate as to what law will apply should there be a dispute related to the transaction. The “choice of laws” or “choice of venue” provision is a standard term in most contracts. In the event there is a breakdown in an on-line business relationship, next to the parties’ signatures, this should be considered one of the more important covenants in any eContract. *Who* will be presiding over the dispute, *where* will the dispute be resolved, and *what* laws will be applied are critical strategies in business.

Language to the following effect should be considered in any agreement between parties in an E-Commerce transaction:

**Choice of Law and Venue.** This agreement has been entered into in the State of Michigan, United States of America. The validity, interpretation and legal effect of this agreement is governed by the laws of the State of Michigan applicable to contracts entered into and performed entirely within such state (without giving effect to any conflict of laws principles under the laws of the State of Michigan and regardless of the place or places of the actual execution of this agreement or the place or places of the actual performance of this agreement). The Michigan courts (state and federal), only, shall govern jurisdiction over any controversies regarding this agreement, and the parties hereto consent to and irrevocably and unconditionally agree to be subject to the exclusive jurisdiction of said courts located in Wayne County, Michigan, United States (and of the appropriate appellate courts therefrom).

Courts throughout the United States and treaty nations should honor the provisions of a valid and otherwise lawful agreement, including an agreement pre-determining the jurisdiction, venue, choice of laws, if these are terms negotiated between the parties (Hague Conference on Private International Law, 2005).

**Alternate Dispute Resolution/ e-Dispute Resolution**

An alternative to the traditional method of resolving commercial disputes in the judicial forum is the use of alternative dispute resolution (“ADR”). ADR are informal processes that are intended