

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

JURISDICTION AND THE INTERNET

This book examines how regulatory competence is allocated over online activity: which State has the right to regulate which site or online event? Who can apply their defamation or contract law, their obscenity standards, gambling or banking regulation, pharmaceutical licensing requirements or hate speech prohibitions to a site – and enforce these laws? Traditionally transnational activity has been ‘shared out’ between States with the aid of location-centric rules and these can be adjusted to suit the Internet. But can these rules be stretched indefinitely and what are the costs of squeezing global online activity into nation-state law? This book offers some uncomfortable insights into one of the most important debates on Internet governance, and will be of interest to students, academics, policy makers, legal practitioners and businesses who work in the field of e-commerce or Internet regulation.

U T A K O H L is a lecturer in law at the University of Wales, Aberystwyth.

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

JURISDICTION AND THE INTERNET

A Study of Regulatory Competence
over Online Activity

UTA KOHL

University of Wales, Aberystwyth



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore,
São Paulo, Delhi, Dubai, Tokyo, Mexico City

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9780521184083

© Uta Kohl 2007

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2007
First paperback edition 2010

A catalogue record for this publication is available from the British Library

ISBN 978-0-521-84380-5 Hardback
ISBN 978-0-521-18408-3 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

CONTENTS

<i>Preface and acknowledgments</i>	<i>page</i>	ix
<i>Table of cases</i>		xi
<i>Table of statutes, regulations, directives and treaties</i>		xviii
1 Jurisdiction and the Internet		1
1. The global net versus national laws		1
A. A story about eggs		1
B. Mapping the legal landscape		3
C. Who cares?		6
D. A conservative approach		11
2. The building blocks		13
A. Jurisdiction		13
B. Public law versus private law		19
C. The quest for the perfect link		20
3. Actual and possible solutions foreshadowed		24
A. Territoriality: country-of-origin and country-of-destination		24
B. The Achilles' Heel: limited enforcement jurisdiction		26
C. More global law or a less global internet: a simple choice		28
D. Code: a separate option?		30
2 Law: too lethargic for the online era?		33
1. National trademarks versus international domain names		33
2. The Internet's impact on law and regulation		35
A. The qualitatively new legal problems		35
B. The quantitatively new legal problems		37
C. The severity of the problems		39
3. Legal reasoning and legal change		41
A. Legal reasoning		41
B. Judicial reasoning: continuity and change		43
C. Legislative justification: change and continuity		45
4. The jurisdictional challenge		47
A. Is a website enough? Two schools of thought		47

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

	B. Conservatism: a mere result of the judiciary's limitations?	52
	C. The best solution versus the least disruptive solution	56
5.	Law as an engine of, or brake on, change	58
	A. The floodgates argument	59
	B. The futility argument	62
	C. The cautious way forward	64
3	The tipping point in law	66
	1. Contract law: unaffected by online transnationality?	66
	2. The tipping point	69
	A. Evolution of law versus the tipping point	69
	B. Substantive justice versus formal justice	71
	3. The evolution of jurisdictional rules in private cases	74
	A. Adjudicative jurisdiction in consumer contracts: no gain without pain	74
	B. Pre-Internet refinements	79
	C. Internet refinements	82
	4. The evolution of jurisdictional rules in public cases	87
	A. Criminal jurisdiction	87
	B. Pre-Internet refinements	89
	The objective territoriality principle	89
	The 'reasonable' effects doctrine	91
	Return to a 'crude' effects doctrine	94
	C. Internet developments	96
	D. The common denominators	102
	The possibility of concurrent jurisdiction	102
	Insistence on enforcement jurisdiction	104
	Lack of international consensus: moral and cultural values	107
	5. The better path?	108
4	Many destinations but no map	111
	1. Notice of foreign legal obligations	111
	2. Foreseeability of foreign defamation law	115
	A. Foreseeability and the rule of law	115
	B. Absence of noticeable borders in cyberspace	117
	C. Actual access, even if minuscule	119
	D. Foreseeability of foreign law in respect of freely accessible sites	125
	Foreseeability of all destinations	127
	Foreseeability of foreign harm	129
	Foreseeability of specifically targeted destinations	134
	E. Two destination principles: their flaws and merits	138

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

CONTENTS

vii

3.	Foreseeability of foreign criminal law	141	
	A. Common rules but multiple interpretations	141	
	B. Foreseeability and the territoriality principle	143	
	C. Foreseeability of all destinations	145	
	D. 'Reasonable foreseeability': some conclusions	149	
4.	Actually foreseeing and knowing foreign law	153	
	A. Actual notice and the effectiveness of law	153	
	B. Traditional methods of publication of law	157	
	C. The failure of traditional methods in the online world	159	
5.	An afterthought	163	
5	The solution: only the country of origin?	164	
	1. The <i>exclusive</i> country-of-origin approach	164	
	2. Online gambling: foreign providers' local activities	167	
	A. The general rejection of the exclusive country-of-origin approach	167	
	Netherlands and Germany	167	
	European Union	168	
	United States	169	
	WTO and GATS	171	
	Australia	173	
	New Zealand	174	
	B. The exclusive country-of-origin approach and its flaws	175	
	The UK Gambling Act 2005	175	
	Loss of economic rewards	176	
	Forum-shopping and the race to the bottom	178	
	Shift of regulatory burden	181	
	No protection from harmful foreign content	182	
	Lowest common denominator	184	
	The special case of the Electronic Commerce Directive	184	
	3. Online gambling: local providers' foreign activities	190	
	A. Lack of cooperation in non-harmonised public law	190	
	B. The UK and Australia: good neighbours	193	
	4. An example to follow?	197	
6	The lack of enforcement power: a curse or a blessing?	199	
	1. Limited enforcement power: a blessing in disguise	199	
	2. Enforceability and legal compliance	203	
	A. Enforceability, not enforcement, matters	203	
	B. 'Voluntary' compliance without the threat of enforcement	206	
	C. Enforceability and why it really matters	207	
	3. Upholding local law despite foreign violations	210	

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

viii

CONTENTS

A.	Cooperation in private law	210	
	Cooperation and regulatory restraint	212	
	Two interpretations of the 'public policy' exception	214	
B.	No cooperation in public law	218	
	The 'public law' taboo	218	
	Lack of power or lack of will?	221	
C.	Unilateral enforcement strategies	225	
	Symbolic prosecution without enforcement	225	
	Imposition of penalty on related local persons	226	
	Analogous prohibitions imposed on local intermediaries and end-users	227	
	Prohibition of supportive services by local actors	228	
	Blocking of foreign illegal content	229	
4.	The public-private law dichotomy and its lessons for cooperation	230	
	A. 'Public' and 'private' international law	231	
	B. The public-private law spectrum	233	
	C. Underlying concern: foreign State interest and involvement	238	
	Public versus private complainants	240	
	Public versus private cause of action	242	
	Public versus private remedy	245	
	The paradox	248	
5.	The future of cooperation	251	
7	A 'simple' choice: more global law or a less global Internet	253	
	1. The hidden choice	253	
	2. More global law	258	
	A. Harmonisation of competence rules?	259	
	B. Substantive harmonisation by design	262	
	Harmonisation through treaty	263	
	Harmonisation through deregulation	265	
	C. Substantive harmonisation by default	270	
	The country-of-destination approach	271	
	The country-of-origin approach	275	
	3. A less transnational Internet	278	
	A. Zoning in the country of origin	278	
	B. Zoning in the country of destination	283	
	4. Making the choice: a value judgment	287	
	<i>Bibliography</i>	291	
	<i>Index</i>	312	

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

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

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

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.

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

TABLE OF CASES

- 800-Flowers Trade Mark [2000] FSR 697 *page 50*
- ACLU v. Reno, 929 F Supp 824 (ED Pa 1996), affirmed in Reno v. ACLU, 521 US 844 (1997) 60, 64, 288
- Adams v. Cape Industries plc [1990] Ch 433 (CA) 74, 209
- AG (UK) v. Heinemann Publishers Australia Pty Ltd (1988) 165 CLR 30 220, 222, 235, 238, 239, 240, 241, 243, 244, 249
- AG of New Zealand v. Ortiz [1984] AC 1, affirming AG of New Zealand v. Ortiz [1982] QB 349 222, 236, 237, 241
- Albaforth, The (Cordoba Shipping Co. Ltd v. National State Bank, Elizabeth, New Jersey) [1984] 2 Lloyds Reports 91 112
- Alcoa Case (US v. Aluminium Company of America), 148 F 2d 416 (1945) 91, 144
- ALS Scan Inc. v. Digital Serv Consultants Inc., 293 F 3d 707 (4th Cir. 2002) 49, 136
- Arzneimittelwerbung im Internet (BGH, 30 March 2006, I ZR 24/03) 166, 179, 186
- Atcheson v. Everitt (1775) 1 Cowp 382 231
- Ayers v. Evans (1981) 56 FLR 335 240, 241, 242, 246
- Banco Nacional de Cuba v. Sabbatino, 376 US 398 (1964) 221
- Bank voor Handel en Scheepvaart NV v. Slatford [1953] 1 QB 248 (CA) 222, 243
- Barcelona Traction Case: Case Concerning the Barcelona Traction, Light and Power Company, Ltd (Belgium v. Spain), Preliminary Objections [1964] ICJ Reports 6 92, 226
- Bata v. Bata (1948) WN 366 119
- Bensusan Restaurant Corp. v. King, 937 F Supp 295 (SDNY 1996) 49, 53, 54
- Berezovsky v. Michaels [2000] 1 WLR 1004 112, 120, 123
- Bier v. Mines de Potasse d'Alsace, Case 21/76 [1976] ECR 1735 124
- Blumenthal v. Drudge, 992 F Supp 44 (1998) 135
- Bodil Lindqvist, Case C-101/01 [2004] 1 CMLR 20 125, 276
- Bonnier Media Ltd v. Greg Lloyd Smith and Kestrel Trading Corp. (Court of Session, Scotland, 1 July 2002), www.scotcourts.gov.uk/opinionsv/dru2606.html 50, 137
- Brandenburg v. Ohio, 395 US 444 (1969) 107, 207
- British Aerospace plc v. Dee Howard Co. [1993] 1 Lloyds Reports 368 75

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

xii

TABLE OF CASES

- British Airways Board v. Laker Airways Ltd [1984] 1 QB 142 (CA) 246
- British Nylon Spinners v. Imperial Chemical Industries [1953] Ch 19 (CA) 219
- Brokaw v. Seatrain UK Ltd [1971] 2 QB 476 (CA) 241
- Bullfrog Films Inc. v. Wick, 646 F Supp 492 (CD Cal. 1986) 216
- Cable News Network LP v. CNNNews.com, 56 Fed Appx 599 (4th Cir. 2003), affirming
Cable News Network LP v. CNNNews.com, 177 F Supp 2d 506 (ED Va 2001)
51, 86, 149
- Calder v. Jones, 465 US 783 (1984) 133
- Carnival Cruise Lines Inc. v. Shute, 499 US 585 (1991) 78
- Citron v. Zündel (No. 4) (2002) 41 CHRR D/274 107, 153
- Commission v. UK, Case C-222/94 [1996] ECR I-4025 181, 188
- Compuserve v. Patterson, 89 F 3d 1257 (6th Cir. 1996) 54
- Connor v. Connor [1974] 1 NZLR 632 241
- Cotton v. King [1914] AC 176 (PC) 225
- Criminal Proceedings against Piergiorgio Gambelli, Case C-243/01 [2003] ECR
I-13031 168, 169, 172, 176, 177, 182, 187, 277
- Cybersell Inc. v. Cybersell Inc., 130 F 3d 414 (9th Cir. 1997) 49
- Desai v. Hersh, 719 F Supp 670 (ND Ill. 1989) 216
- Deutscher Apothekerverband eV v. 0800 Doc Morris NV, Case C-322/01 [2003] ECR
I-14887 166, 179, 186
- Dietrich v. Queen (1992) 177 CLR 292 41
- Digital Equipment Corp. v. Altavista Technology Inc., 960 F Supp 456 (D Mass.
1997) 48, 51, 53
- Distillers Co. (Biochemicals) Ltd v. Thompson [1971] AC 458 (PC) 133
- Dluhos v. Strasberg, WL 1683732 (DNJ 2005) 49
- Dow Jones & Co. Inc. v. Gutnick [2002] HCA 56, affirming Gutnick v. Dow Jones &
Co. Inc. [2001] VSC 305 13, 39, 112, 120, 121, 123, 125, 126, 127, 128, 129,
130, 133, 135, 136, 138, 139, 140, 152, 157, 160, 164, 178, 180, 212, 225, 254,
255, 288
- Dow Jones & Co. Inc. v. Harrods Ltd and Mohamed Al Fayed, 237 F Supp 2d 394
(2002) 121
- Ducharme v. Hunnewell, 411 Mass 711 (1992) 247
- Duke of Brunswick and Luneberg v. Harmer (1849) 14 QB 184 120
- Emanuel v. Symon [1908] 1 KB 302 (CA) 74
- ESAB Group Inc. v. Centricut Inc., 126 F 3d 617 (4th Cir. 1997) 136
- Euromarket Designs Inc. v. Crate & Barrel Ltd, 96 F Supp 2d 824 (ND Ill. 2000) 49,
84, 152
- Euromarket Designs Inc. v. Peters [2000] ETMR 1025 50, 138
- Firth v. State of New York, 775 NE 463 (Ct App 2002) 120
- Foster v. Driscoll [1929] 1 KB 470 (CA) 248
- Fothergill v. Monarch Airlines [1981] AC 251 (HL) 116
- Gertz v. Robert Welch Inc., 418 US 323 (1974) 133

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

TABLE OF CASES

xiii

Government of India v. Taylor [1955] AC 491 (HL)	241, 245
Green v. Mason, 996 F Supp 394 (1998)	81
Groppera Radio AG v. Switzerland (1990) 12 EHRR 321	37
GTE New Media Services Inc. v. Bellsouth Corp., 199 F 3d 1343 (D Co 2000)	85
Halean Products Inc. v. Beso Biological, 43 USPQ (BNA) 1672 (1997)	83
Hanson v. Denckla, 357 US 235 (1958)	81
Harrods Ltd v. Dow Jones & Co. Inc. [2003] EWHC 1162 (QB)	112, 121, 130, 140, 152
Hartford Fire Insurance Co. v. California, 509 US 764 (1993)	94, 145
Haynsworth v. The Corporation, 121 F 3d 956 (5th Cir. 1997)	78
Hearst Corp. v. Goldberger, WL 97097 (SDNY 1997)	51, 55
Heroes Inc. v. Heroes Foundation, 958 F Supp 1 (DDC 1996)	49, 53
Hilton v. Guyot, 159 US 113 (1895)	80, 224
Hoath v. Connect Internet Services [2006] NSWSC 158	36
Holland Casino v. Paramount Holdings (District Court, Utrecht, 27 February 2003)	167
Huntington v. Attrill [1893] AC 150 (PC)	232, 238, 240, 241, 242, 243, 245, 246
Huntington v. Attrill, 146 US 657 (1892)	221, 222, 232, 245
Huth v. Huth [1915] 3 KB 32	133
Inset Systems Inc. v. Instruction Set Inc., 937 F Supp 161 (D Conn. 1996)	49, 51, 54, 83
International Shoe Co. v. Washington, 326 US 310 (1945)	79, 80, 81, 90
Island of Palmas (The Netherlands v. United States of America) (1928) 2 RIAA 829	27, 200
ITP Solar Technologies Inc. v. TAB Consulting Inc., 413 F Supp 2d 12 (DNH 2006)	49
Jabbour v. Custodian of Israeli Absentee Property [1954] 1 WLR 139	80
Jaensch v. Coffey (1984) 155 CLR 549	41
Jenner v. Sun Oil Co. (1952) 2 DLR 526	122
Jeremy Jones and Members of the Committee of Management of the Executive Council of Australian Jewry v. Frederick Töben (Australian Human Rights and Equal Opportunities Commission, 5 October 2000), affirmed in Jones v. Töben [2002] FCA 1150	101, 107
Kamer van Koophandel en Fabrieken voor Amsterdam v. Inspire Art Ltd, Case C-167/01 [2003] ECR I-10115	180
Keeton v. Hustler Magazine Inc., 465 US 770 (1984)	124
Kitkufe v. Olaya Ltd, ACWSJ LEXIS 84447 (Ontario Court of Justice, 1998)	122
Kleinwort Benson v. Glasgow [1999] 1 AC 153 (HL)	74
Konsumentombudsmannen (KO) v. De Agostini (Svenska) AB and TV-Shop i Sverige AB (C-35/95 and C-36/95), Case C-34/95 [1997] ECR I-3843	186
Kroch v. Rossell [1937] 1 All ER 725	121, 130, 133
Kunstsammlung zu Weimar v. Elicofon, 678 F 2d 1150 (2d Cir. 1982), affirmed 536 F Supp 829 (EDNY 1981)	241, 243

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

xiv

TABLE OF CASES

- Kuwait Airways Corp. v. Iraqi Airways Co. [2002] UKHL 19 209, 215
- Laker Airways Ltd v. Pan American Airways Inc., 604 F Supp 280 (DDC 1984) 216
- Lee Teck Chee v. Merrill Lynch International Bank Ltd [1998] Current Law Journal 188 122
- Lee v. Wilson and Mackinnon (1934) 51 CLR 276 119
- Lewis v. King [2004] EWCA Civ 1329 (CA), affirming King v. Lewis [2004] EWHC 168 112, 121, 122, 128, 130, 140
- LICRA and UEJF v. Yahoo! Inc. and Yahoo France (Tribunal de Grande Instance de Paris, 20 November 2000), affirming LICRA and UEJF v. Yahoo! Inc. and Yahoo France (Tribunal de Grande Instance de Paris, 22 May 2000) 99, 100, 105, 140, 145, 160, 201, 202, 213, 226, 227, 245, 283
- LICRA and UEJF v. Yahoo! Inc. and Yahoo France (Tribunal de Grande Instance de Paris, 11 August 2000), www.foruminternet.org/actualites/lire.phtml?id=273, translations www.lapres.net/yahweb.html 202
- LICRA v. Yahoo! Inc., 126 SCt 2332 (Mem) (2006) 203
- Lipohar v. R (1999) 168 ALR 8 14, 105, 141, 223, 224
- Liu v. Republic of China, 892 F 2d 1419 (9th Cir. 1989) 221
- Lorentzen v. Lydden & Co. Ltd [1942] 2 KB 202 237
- Lotus Case: The Case of the SS 'Lotus' (France v. Turkey) (1927) PCIJ Reports, Series A, No. 10 16, 25, 26, 89–91, 142, 200
- Loucks v. Standard Oil Co. of New York, 120 NE 198 (NY 1918) 215
- Loutchansky v. Times Newspapers Ltd [2001] EWCA Civ 1805 120, 123
- Macquarie Bank v. Berg [1999] NSWSC 526 85, 108, 152
- MacShannon v. Rockware Glass Ltd [1978] 1 All ER 625 122
- Mannington Mills v. Congoleum Corp., 595 F 2d 1287 (1979) 145
- MARITIM Trade Mark, Re [2003] ILPr 17 50
- Maritz Inc. v. Cybergold Inc., 947 F Supp 1328 (ED Mo 1996) 40, 54, 83
- McDonough v. Fallon McElligott Inc., 40 USPQ 2d (BNA) 1826 (SD Cal. 1996) 50
- McGee v. International Life Insurance Co., 355 US 220 (1957) 80
- Mecklermedia Corp. v. DC Congress GmbH [1998] 1 All ER 148 48
- Metro-Goldwyn-Mayer Studios Inc. v. Grokster Ltd, 545 US 125 (2005) 227
- Millennium Enterprises Inc. v. Millennium Music LP, 33 F Supp 2d 907 (D Or. 1999) 49, 84, 85
- Moore v. Mitchell, 30 F 2d 600 (1929) 220
- Moshe D, Re (Italian Court of Cassation, 17 December 2000), www.cdt.org/speech/international/20001227italiandecision.pdf 122
- Municipal Council of Sydney v. Bull [1909] 1 KB7 243
- National Sporttotaliser Foundation v. Ladbrokes Ltd (District Court, The Hague, 27 January 2003), www.rechtspraak.nl 167
- New York Times Co. v. Sullivan, 376 US 254 (1964) 133
- Nottebohm Case (Liechtenstein v. Guatemala) [1955] ICJ Reports 4 93
- Ocean Sun Line Special Shipping Co. Inc. v. Fay (1988) 165 CLR 197 (HL) 82

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

TABLE OF CASES

xv

- Panavision Intern LP v. Toeppen, 141 F 3d 1316 (1998) 49
- Pennoyer v. Neff, 95 US 714 (1887) 79
- People v. World Interactive Gaming Corp., 714 NYS 2d 844 (1999) 96, 97, 102, 103, 104, 107, 148, 149, 152, 170, 228
- People of Vacco v. Lipsitz, 663 NYS 2d 468 (NY Sup. 1997) 48
- Perrin v. UK (ECHR, 18 October 2005, Application No. 5446/03)
- Peter Buchanan Ltd and Macharg v. McVey [1955] AC 516 (Ir HC) 241, 242
- Phrantzes v. Argenti [1960] 2 QB 19 (CA) 215
- Pinding v. National Broadcasting Corp. (1985) 14 DLR (4th) 391 122
- Playboy Enterprises Inc. v. Chuckleberry Publishing Inc., 939 F Supp 1032 (SDNY 1996) 48, 54, 55, 60, 62, 151
- Powell v. Gelston [1916] 2 KB 615 133
- Prince plc v. Prince Sports Group Inc. [1998] FSR 21 34
- Pullman v. Walter Hill & Co. Ltd [1891] 1 QB 524 133
- R v. Burdett (1820) 4 B & Ald 115 151
- R v. Catanzariti (1995) 65 SASR 201 95
- R v. Felix Somm, CEO of CompuServe GmbH (AG München I, 17 November 1999 – 20 Ns 465 Js 173158/95), www.computerundrecht.de/1672.html 103
- R v. Harden [1963] 1 QB 8 143, 219
- R v. Lipohar (1999) 168 ALR 8 95, 96
- R v. Manning [1999] 2 WLR 430 105
- R v. Perrin [2002] EWCA Crim 747 98, 99, 140, 145, 151, 164, 280
- R v. Timothy K and Yahoo! Inc. (Tribunal de Grande Instance de Paris, 26 February 2002, No. 0104305259), www.foruminternet.org/actualites/lire.phtml?id=273/ 100, 102, 145, 160, 161, 244
- R v. Treacy [1971] AC 537 151, 165
- Rainbow Warrior (New Zealand v. France) 74 ILR 241 191
- Raulin v. Fisher [1911] 2 KB 93 240, 244
- Rayner v. Davies [2002] EWCA Civ 1880 75
- Regazzoni v. KC Sethia (1944) Ltd [1958] AC 301 (HL) 235, 248, 249
- Regie National des Usines Renault SA v. Zhang (2002) 76 ALJR 551 (HC) 15, 113
- Reno v. ACLU, 521 US 844 (1997), affirming ACLU v. Reno, 929 F Supp 824 (ED Pa 1996)
- SA Consortium General Textiles v. Sun and Sand Agencies Ltd [1978] QB 279 (CA) 246
- Sanitec Industries Inc. v. Sanitec Worldwide Ltd, 376 F Supp 2d 571 (D Del. 2005) 49
- Schöner Wetten (BGH, 1 April 2004, I ZR 317/01) (2004) *Computer und Recht* 613 168
- Schimmelpenninck, Re, 183 F 3d 347 (5th Cir. 1999) 215
- Shaffer v. Heitner, 433 US 186 (1977) 80
- Shamsuddin v. Vitamin Research Products, 346 F Supp 2d 804 (D Md 2004) 84, 85

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

xvi

TABLE OF CASES

- Shetland Times Ltd v. Wills [1997] FSR 604 36
- Shevill v. Presse Alliance SA, Case C-68/93 [1995] ECR I-415 25, 124, 125, 131
- Socialist Labor Party v. Gilligan, 406 US 583 (1972) 205
- Sosa v. Alvarez-Machain, 542 US 692 (2004) 200
- Spiliada Maritime Corp. v. Cansulex Ltd (The Spiliada) [1987] AC 40 (HL) 82
- Staples v. US, 511 US 600 (1994) 158, 162, 170
- State v. Truesdale, 152 F 3d 443 (5th Cir. 1988)
- State of Minnesota v. Granite Gate Resorts Inc., 568 NW 2d 715 (1997), affirming
State of Minnesota v. Granite Gate Resorts Inc., WL 767431 (Minn. 2d Dist.
1996) 148, 161
- State of Missouri v. Coeur D'Alene Tribe, 164 F 3d 1102 (1999) 170
- State of Missouri v. Interactive Gaming & Communications Corp., WL 33545763 (Mo
Cir. 1997) 170
- State of Norway's Application, Re [1990] 1 AC 723 (HL) 223
- Stomp Inc. v. Neato LLC, 61 F Supp 2d 1074 (CD Cal. 1999) 84
- Sunday Times v. UK (No.1) (1979) 2 EHRR 245 145
- Tech Head Inc. v. Desktop Service Center Inc., 105 F Supp 2d 1142 (D Or. 2000)
152
- Ticketmaster Corp. v. Tickets.com Inc., WL 525390 (CD Cal. 2000) 36, 152
- Timberlane Lumber Co. v. Bank of America, 549 F 2d 597 (1976) 93, 145
- Töben (BGH, 12 December 2000, 1 StR 184/00, LG Mannheim) (2001) 8 *Neue
Juristische Wochenschrift* 624 100, 101, 105, 106, 140, 145, 160, 225
- Toys 'R' Us Inc. v. Step Two, 318 F 3d 446 (3rd Cir. 2003) 29, 34, 49
- Trail Smelter Arbitration (United States of America v. Canada) (1938) 3 RIAA
1905 191
- Turner Entertainment Co. v. Degeto Film GmbH, 25 F 3d 1512 (11th Cir. 1994)
215
- Twentieth Century Fox Film Corp. v. iCraveTV, US Dist. LEXIS 1013 (WD Pa, 28
January 2000) 153
- Underhill v. Hernandez, 168 US 250 (1897) 221
- United Cutlery Corp. v. NFZ Inc., WL 22851946 (D Md 2003) 84
- United States – Measures Affecting the Cross-Border Supply of Gambling and Betting
Services (WTO Appellate Body, 7 April 2005, WT/DS285/AB/R), on appeal
from WTO Panel (10 November 2004, WT/DS285/R) 171, 172
- Unzulässiges Online-Glücksspielangebot (OLG Hamburg, 19 August 2004, 5 U 32/04)
(2004) 12 *Computer und Recht* 925 167, 168, 169
- US v. American Sports Ltd, 286 F 3d 641 (3rd Cir. 2002) 102, 104, 105, 170,
171, 206
- US v. Cohen, 260 F 3d 68 (2d Cir. 2001) 170, 172
- US v. General Electric Co., 82 F Supp 753 (1949) 92
- US v. Harden (1963) 41 DLR 2d 721 241
- US v. Inkley [1989] QB 255 (CA) 219, 243, 249

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

TABLE OF CASES

xvii

US v. Ivey (1996) 139 DLR (4th) 570	246
US v. Ross, WL 782749 (SDNY 1999)	169
Vita Food Products Inc. v. Unus Shipping Co. [1939] AC 277 (PC)	67
Voth v. Manildra Flour Mills (1990) 171 CLR 538	133, 137
Weir v. Lohr (1967) 65 DLR (2d) 717	243, 246
Williams & Humbert v. W & H Trade Marks [1986] AC 368 (HL)	219, 241, 249
Worldwide Volkswagen Corp. v. Woodson, 444 US 286 (1980)	36, 82
Yahoo! Inc. v. LICRA and UEJF, 433 F 3d 1199 (9th Cir. 2006), affirming Yahoo! Inc. v. LICRA and UEJF, 379 F 3d 1120 (9th Cir. 2004), reversing Yahoo! Inc. v. LICRA and UEJF, 169 F Supp 2d 1181 (ND Cal. 2001), reversing Yahoo! Inc. v. LICRA and UEJF, 145 F Supp 2d 1168 (ND Cal. 2001)	99, 103, 104, 199–252, 273, 280
Young v. New Haven Advocate, 315 F 3d 256 (4th Cir. 2002), reversing Young v. New Haven Advocate, 187 F Supp 2d 498 (WD Vir. 2001)	49, 135, 136, 138, 140
Zündel v. Canada (1999) 175 DLR (4th) 512	107
Zippo Manufacturing Co. v. Zippo Dot Com Inc., 952 F Supp 1119 (WD Pa 1997)	48, 49, 50, 83, 84, 85, 86, 87, 118, 119, 137, 140

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

TABLE OF STATUTES, REGULATIONS,
DIRECTIVES AND TREATIES

Australia

Crimes Act 1900 (NSW)

s.10C *page* 95

s.578C 98

Foreign Antitrust Judgments (Restriction of Enforcement) Act 1979 (Cth) 246

Interactive Gambling Act 2001 (Cth) 173

Division 3

s.3 173, 174

s.8 173

s.9A 194

s.9B 194

s.14 173

s.15 173

s.15A 173, 194, 196

Racial Discrimination Act 1975 (Cth) 101

s.18C 108

Spam Act 2003 (Cth) 271

s.7 272

s.16 272

Canada

Human Rights Act 1985

s.13(1) 106, 108

France

New Code of Civil Procedure (Nouveau Code de Procédure Civile) 99

Arts. 808 and 809 202

Penal Code (Code Pénal) 244

R-645-1 227

R-645-2 108

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

TABLE OF LEGISLATION

xix

Germany

Criminal Code

s.130 108

s.131 108

Italy

Law No. 401 of 13 December 1989

Art. 4 168, 227

New Zealand

Gambling Act 2003 174, 286

s.4 174

s.9(2) 174

s.15 174

s.16(1) 174, 228

s.19(1) 174

United Kingdom

Civil Procedure Rules 1998

r.6.15 75

Crime (International Co-operation) Act 2003 192

Electronic Commerce (EC Directive) Regulations 2002

reg.3(1) 168

Gambling Act 2005 166, 193, 197

s.1(c) 183

s.4 175

s.5(2) 184

s.5(3) 184

s.33 182, 189

s.33(1) 175

s.33(2) 175

s.36 175, 183, 189

s.36(3) 175

s.36(4) 175

s.36(5) 175

s.44 191, 194, 196

s.44(2) 194

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

XX

TABLE OF LEGISLATION

s.46	183	
s.48	183	
Obscene Publications Act 1959		
s.2(1)	98	
Privacy and Electronic Communications (EC Directive) Regulations 2003		58
reg.22		
Protection from Harassment Act 1997		
s.3	244	
Unfair Terms in Consumer Contracts Regulations 1999		
reg.9	67	

United States

Communications Decency Act 1996	64	
§230	228	
Controlling the Assault of Non-Solicited Pornography and Marketing Act 2003		
266, 272, 277		
§5(a)	272	
Digital Millennium Copyright Act 1998		
Title 1	64	
New York Penal Code		
§225-05	228	
Interstate Horse Racing Act 1978	172	
Sherman Antitrust Act 1890	91	
15 United States Code		
§7704	272	
18 United States Code		
§1030(e)	272	

EC Directives and Regulations

Copyright Directive 2001/29/EC		
Art. 6	64	
Credit Institutions Directive 89/646/EEC	186	
Data Protection Directive 95/46/EC	125, 275, 276	
Art. 4	175, 189, 227, 276	
Art. 25	227	
Direct Insurance other than Life Assurance Directive 92/49/EEC	186	
Distance Selling Directive 97/7/EC	69	
Electronic Commerce Directive 2000/31/EC	69, 197, 276	
Recital 16	168	
Art. 1(5)	168	

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

TABLE OF LEGISLATION

xxi

Art. 2(c)	180	
Art. 2(h)	185	
Art. 3(1)	187, 190	
Art. 3(2)	185, 189	
Art. 3(4)	186, 188	
Arts. 12–15	228	
Art. 18	188	
Art. 19	188	
Investment Services in Securities Directive 93/22/EEC	186	
Privacy and Electronic Communications Directive 2002/58/EC	57, 58, 69, 275, 276, 277	
Recital 42	258	
Art. 13(1)	275	
Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, 44/2001		
Recital 11	72	
Art. 2(1)	74	
Art. 5(3)	124, 131	
Art. 15(1)	76, 77, 114, 118, 119, 137, 140	
Art. 16	76	
Art. 23	67, 75	
Television without Frontiers Directive 89/522/EC (revised by 97/36/EC)	186	
Art. 2a(1)	186, 189	
Art. 2(1)	181, 187, 188	

Treaties, Protocols, Model Laws and Declarations

Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters (1990)	211
Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (1968)	
Art. 5(3)	25
Art. 13(3)	75
Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)	192
Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences (1991)	250
Convention on Mutual Assistance in Criminal Matters between Member States of the European Union (2000)	193
Council of Europe Cybercrime Convention (2001)	263, 264

Cambridge University Press

978-0-521-18408-3 - Jurisdiction and the Internet: A Study of Regulatory Competence over Online Activity

Uta Kohl

Frontmatter

[More information](#)

xxii

TABLE OF LEGISLATION

Preamble	264
Chapter III	192
Art. 9	227
Arts. 23–35	201
Additional Protocol to the Cybercrime Convention, concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed through Computer Systems (2002)	217, 263, 264
Declaration on Freedom of Communication on the Internet (2003)	255, 256, 268
Principle 1	255
Principle 2	268
Principle 3	256, 286
Declaration on Freedom of Political Debate in the Media (2004)	255
EC Treaty/Treaty of Rome (1957)	
Art. 28	185
Art. 43	168
Art. 45	169
Art. 49	168, 185
Art. 226	188
Art. 227	188
General Agreement on Trade in Services (GATS)	
Art. 16	172
Art. 14(a)	172
Hague Conference on Private International Law Convention on Choice of Court Agreements (2005)	67
International Convention for the Suppression of the Financing of Terrorism (1999)	
Art. 10	191
Montevideo Convention on Rights and Duties of States (1933)	
Art. 1	8
Art. 8	191
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)	
Art. 10	201
Rome Convention on the Law Applicable to Contractual Obligations (1980)	
Art. 3	67
Art. 4	67
Art. 5	75
Art. 7	67, 105
Treaty of Amsterdam on the European Union (1997)	250
UN Convention on the Use of Electronic Communications in International Contracts (2005)	263
UNCITRAL Model Law on Electronic Signatures (2001)	263
UNCITRAL Model Law on Electronic Commerce (1996)	263