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978-0-521-19933-9 - Internet Jurisdiction and Choice of Law: Legal Practices in the EU, US and China

Faye Fangfei Wang

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INTERNET JURISDICTION
AND CHOICE OF LAW: LEGAL
PRACTICES IN THE EU, US
AND CHINA

The adoption of electronic commercial transactions has facilitated cross-border trade and business, but the complexity of determining the place of business and other connecting factors in cyberspace has challenged existing private international law. This comparison of the rules of Internet jurisdiction and choice of law as well as online dispute resolution (ODR) covers both B2B and B2C contracts in the EU, US and China. It highlights the achievements of the Brussels I and Rome I Regulation in the EU, evaluates the merits of the Hague Convention on Choice of Court Agreements at the international level and gives an insight into the current developments in CIDIP. The in-depth research allows for solutions to be proposed relating to the problems of legal uncertainty of Internet conflict of law and the validity and enforceability of ODR agreements and decisions.

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PREFACE

Information technology generates cross-border electronic commercial transactions as geographical distance no longer remains an obstacle in communications among businesses and individuals in different countries. As a consequence, the place of business could be located in cyberspace. The concept of “the place of business” in cyberspace challenges the traditional regime of private international law, as traditionally it relies on physical factors such as the location of offices and the place of delivery of goods in determining which court will hear the case and which law will govern the dispute.

Internet Jurisdiction and Choice of Law: Legal Practices in the EU, US and China takes a “solutions to obstacles” approach, examines the existing jurisdiction and choice of law rules and proposes the interpretation of those rules to the digital age. It discusses the need for the modernisation and harmonisation of private international law, compares current legislative frameworks in the EU, US and China, and suggests a series of ways to remove the obstacles to the determination of Internet jurisdiction and choice of law for cross-border electronic B2B and B2C contracts. In addition, it encourages countries to sign and ratify the Hague Convention on Choice of Court Agreements and to modernise their laws for adaptation to the information society in line with the international standard. Finally, it also recommends that online dispute resolution (ODR) should be one of the most efficient methods to resolve certain Internet-related cases and that its legal certainty should be enhanced at the international level.

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ABBREVIATIONS

AAA	American Arbitration Association
ABA	American Bar Association
ACPA	Anticybersquatting Consumer Protection Act (US)
ADNDRC	Asian Domain Name Dispute Resolution Centre
ADR	Alternative Dispute Resolution
AFA	Arbitration Fairness Act (US)
B2B	business-to-business
B2C	business-to-consumer
CIDIP	Inter-American Specialized Conference on Private International Law
CIETAC	China International Economic and Trade Arbitration Commission
CIF	Cost-Insurance-Freight
CNNIC	China Internet Network Information Center
CISG	United Nations Convention on Contracts for the International Sale of Goods
CLC	Contract Law of the People's Republic of China
EAA	Arbitration Act (UK)
EC	European Community
ECJ	European Court of Justice
E-SIGN	Electronic Signatures in Global and National Commerce Act (US)
EU	European Union
EuroISPA	European Internet Services Providers Association
FAA	Federal Arbitration Act (US)
FOB	Free-on-Board
HKIAC	Hong Kong International Arbitration Centre
ICANN	Internet Corporation for Assigned Names and Numbers
ICC	International Chamber of Commerce
IP	Intellectual property
IT	Information Technology
OAS	Organization of American States
ODR	Online dispute resolution
OECD	Organisation for Economic Co-operation and Development
PRC	People's Republic of China

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LIST OF ABBREVIATIONS

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SLA	Secretariat for Legal Affairs
SMEs	small and medium-sized enterprises
UCC	Uniform Commercial Code
UCITA	Uniform Computer Information Transactions Act (US)
UDRP	Uniform Domain Name Dispute Resolution Policy
UFMJRA	Uniform Foreign Money Judgments Recognition Act (US)
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	International Institute for the Unification of Private Law
US	United States of America
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

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