GLOBAL INTERNET JURISDICTION:
THE ABA/ICC SURVEY

American Bar Association
Business Law Section
Cyberspace Law Sub-Section
Internet Jurisdiction Sub-Committee

Sub-Committee Chair
Professor Michael Geist
University of Ottawa, Faculty of Law

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Executive Summary

In 2003, the American Bar Association’s Business Law Section, Cyberspace law Committee joined forces with the International Chamber of Commerce, a global leader on Internet jurisdiction policy, and the Internet Law and Policy Forum, a global consortium of technology companies, in crafting a detailed survey to examine the practical effects of Internet jurisdiction risks on companies worldwide.

The survey was translated into French, Spanish, Arabic, Polish, German, Korean, and Chinese, and distributed in mid-August 2003 by ICC national committees and by country correspondents identified by the ABA. Following an extensive effort, the survey was ultimately distributed in 45 countries to hundreds of companies. The survey distribution was designed to encompass small, medium, and multinational companies and cut across all business sectors. The Committee closed the survey in November 2003 with responses from 277 organizations.

The survey’s key findings are as follows:

A. Companies from North American responding to the survey were far more concerned with Internet jurisdiction issues than their counterparts in Europe and Asia. By a ratio of six to one, U.S. companies said that the Internet jurisdiction issue has become worse over the past two years and four of every five companies say they feel that matters will worsen by 2005. In contrast, responding Asian and European companies think that the risk associated with the issue has improved since 2001 and will improve further by 2005.

B. The majority of responding companies who think that jurisdictional issues are an increasing problem attribute the increase to the emergence of the Internet and e-commerce.

C. When companies were asked which jurisdictional issues posed the greatest concern, first on the list was litigation risk, which was commonly cited by companies worldwide and by all industrial sectors as their primary concern. This suggests the risk of getting hauled into court is the biggest fear of companies operating online, exceeding concerns associated with conflicting legal frameworks. Other notable concerns included industrial and consumer regulations, e-commerce regulation, taxation, and privacy.
D. Of those sectors polled by the survey, the media sector was clearly the most affected by Internet jurisdiction. For example, more than half of media company respondents indicated that they have adjusted their business operations in response to Internet jurisdiction risk.

E. Some companies, particularly those situated in North America, seek to influence jurisdictional outcomes by using both technological and legal approaches to mitigate risk. The most common methods to achieve this include the insertion of legal terms on websites, the use of a local server, the use of a national (country-code) top domain name, or the posting of local content.

F. North American companies appear far more likely to attempt to identify the geographic location of their users. Sixty-nine percent of North American respondents indicated that they employed techniques to identify user location, compared with 41 percent of Asian companies and 29 percent of European companies.

G. It appears that companies are increasingly refraining from interacting with certain “higher risk” jurisdictions citing fears of liability in the target jurisdiction, liability in the home jurisdiction, and user fraud as the primary reasons for doing so. They attempt to achieve this by employing technical measures to block access to their site or by establishing registration requirements. The use of geo-locational technologies, which purport to identify the location of Internet users, is still relatively rare.

While the final results cover a broad cross-section of small, medium and large sized business engaged in various business sectors in every geographic region, it is important to caution that the results of the survey have not been tested for statistical significance. Though the sample size of 277 companies might be viewed as respectable, the survey was distributed to an indeterminate number of companies, yielding an unknown response rate.
Introduction

When business gravitated to the Internet in the late 1990s, concern over the legal risks of operating online quickly moved to the fore, since the legal issues inherent in selling products, providing customer service, or simply maintaining an information-oriented website began to emerge. Certain legal risks, such as selling defective products or providing inaccurate information disclosure, were already well-known to business, as these risks are encountered and addressed routinely in the offline world.

The unique challenge presented by the Internet is that compliance with local laws is rarely sufficient to assure an online business that it has limited its exposure to legal risk. Since websites are instantly accessible worldwide, the prospect that a website owner might be hauled into a courtroom in a far-off jurisdiction is much more than a mere academic exercise; it is a very real possibility as cases such as Yahoo! France and Gutnick v. Dow Jones illustrate.

Businesses seeking to embrace the promise of a global market at the click of a mouse must factor into their analysis the prospect of additional compliance costs and possible litigation. Moreover, they must also consider the evolving policy environment, which includes discussions such as those currently underway at the Hague Conference on Private International Law concerned with negotiating a global Internet jurisdiction treaty.

The Cyberspace Law Committee of the American Bar Association’s Business Law Section has long been active on the Internet jurisdiction issue. In 1998, it launched a major global study on Internet jurisdiction, culminating in a lengthy report in 2000 that assessed the legal environment and recommended a series of reforms to increase business and legal certainty.

In 2002, the Cyberspace Law Committee undertook to revisit the Internet jurisdiction issue. Under the aegis of a new Internet jurisdiction subcommittee, its first priority was to better understand the effect of Internet jurisdiction risk on business worldwide through a global survey on the effects of, and responses to, Internet jurisdiction risk. The committee’s goal was to use the results to better inform future policy recommendations and to develop best practices guidelines for businesses operating online.
In 2003, the Committee agreed to work with the International Chamber of Commerce, a global leader on Internet jurisdiction policy, and the Internet Law and Policy Forum, a global consortium of technology companies, to craft a detailed survey and distribute it worldwide.

The survey’s initial goal was to examine the practical effects of Internet jurisdiction concerns on companies worldwide by identifying when Internet jurisdiction issues emerge as serious concerns for companies operating online, which issues pose the greatest concern and how companies respond to these issues.

Members of the ABA, ICC, and a group of law firm volunteer contacts distributed the survey to hundreds of organizations in 45 countries (a full list of project participants can be found at Appendix Three). The Committee closed the survey in November 2003 with responses from 277 organizations after having distributed it for three months.

**Methodology**

The Internet jurisdiction subcommittee, in consultation with representatives from the ICC jurisdiction committee, developed an initial survey in January 2003. In April 2003, the Internet Law and Policy Forum agreed to serve as a test-bed for the survey, distributing it to its nearly two-dozen members. Feedback received from ILPF members was incorporated into a final version of the survey in July 2003 at a meeting at the ICC offices in Paris, France.

The survey was translated into French, Spanish, Arabic, Polish, German, Korean, and Chinese, and distributed in mid-August 2003 by ICC national committees and by country correspondents identified by the ABA (see Appendix One for a copy of the final English version of the survey). Following an extensive effort, the survey was ultimately distributed in 45 countries (see Appendix Two for complete list of countries) to hundreds of companies. The survey distribution was designed to encompass small, medium, and multinational companies and cut across all business sectors.
Given the sensitivity of some of the questions on the survey, the ICC and ABA instituted processes to ensure that all survey responses would be treated as anonymous and would be untraceable to the original respondent. Respondents were invited to send their responses directly to the email or fax address noted on the survey form. Once received, members of the ICC or of the University of Ottawa inputted the data into a secure electronic database. No other parties had access to the original survey response forms.

While the final results cover a broad cross-section of small, medium and large sized business engaged within business sectors in every geographic region, it is important to caution that the results of the survey have not been tested for statistical significance. Though the sample size of 277 companies might be viewed as respectable, the survey was distributed to an indeterminate number of companies, yielding an unknown response rate. In fact, anecdotal evidence suggests that respondents in developing countries, particularly in Latin America, experienced significant difficulty in completing the survey as many organizational representatives candidly admitted that they were unfamiliar with Internet jurisdiction risks and with their organization’s approach to the issues. Accordingly, the results of the survey ultimately represent the views of the 277 respondents and do not provide a statistically rigorous global analysis of Internet jurisdiction.

**Survey Results**

i. **Survey Respondents**

As noted above, the survey yielded 277 respondents from organizations in 45 countries. The five leading countries (as measured by total responses) were China, the United States, France, Germany, and the United Kingdom. It may be noteworthy that these five countries represent five of the seven largest Internet populations as measured by aggregate users. As expected, two-thirds of survey respondents serve as legal counsel within their organizations. Survey respondents represent a broad cross-section of business sectors including organizations focused primarily on information technology, financial institutions, retailers, professional service firms, industrial companies, and media organizations. There was roughly equivalent participation from small (under 100 employees), medium (100 – 1000 employees), large (over 10,000 – 25,000 employees) and extra-large (over 25,000 employees) sized companies. Three-quarters of all
respondents indicated that their primary target market was business-to-business, while the remaining quarter cited the business-to-consumer market as their primary market.

ii. **Key Findings**

A. Companies from North American responding to the survey were far more concerned with Internet jurisdiction issues than their counterparts in Europe and Asia. By a ratio of six to one, U.S. companies said that the Internet jurisdiction issue has become worse over the past two years and four of every five companies say they feel that matters will worsen by 2005. In contrast, responding Asian and European companies think that the risk associated with the issue has improved since 2001 and will improve further by 2005.

B. The majority of responding companies who think that jurisdictional issues are an increasing problem attribute the increase to the emergence of the Internet and e-commerce.

C. When companies were asked which jurisdictional issues posed the greatest concern, first on the list was litigation risk, which was commonly cited by companies worldwide and by all industrial sectors as their primary concern. This suggests the risk of getting hauled into court is the biggest fear of companies operating online, exceeding concerns associated with conflicting legal frameworks. Other notable concerns included industrial and consumer regulations, e-commerce regulation, taxation, and privacy.

D. Of those sectors polled by the survey, the media sector was clearly the most affected by Internet jurisdiction. For example, more than half of media company respondents indicated that they have adjusted their business operations in response to Internet jurisdiction risk.

E. Some companies, particularly those situated in North America, seek to influence jurisdictional outcomes by using both technological and legal approaches to mitigate risk. The most common methods to achieve this include the insertion of legal terms on websites, the use of a local server, the use of a national (country-code) top domain name, or the posting of local content.

F. North American companies appear far more likely to attempt to identify the geographic location of their users. Sixty-nine percent of North American respondents indicated that they
employed techniques to identify user location, compared with 41 percent of Asian companies and 29 percent of European companies.

G. It appears that companies are increasingly refraining from interacting with certain “higher risk” jurisdictions citing fears of liability in the target jurisdiction, liability in the home jurisdiction, and user fraud as the primary reasons for doing so. They attempt to achieve this by employing technical measures to block access to their site or to establish registration requirements. The use of geo-locational technologies, which purport to identify the location of Internet users, is still relatively rare.

iii. Specific Findings

a. Internet Jurisdiction Risk – A Growing Concern

The survey asked respondents several questions to gauge current corporate perceptions of the risk associated with Internet jurisdiction. On average nearly 50 percent of respondents indicated that they perceived Internet jurisdiction to be a growing issue. Concern was fairly uniform across business sectors, led by the media sector with a nearly 60 percent concern response rate.
While there was limited differentiation between business sectors, there were significant differences between geographic regions on the jurisdictional issue. North American companies were far more likely to be concerned about Internet jurisdiction, with their positive responses significantly higher than companies in Europe and Asia.

Of those companies that cited Internet jurisdiction as a significant concern, a majority attributed their concerns to the growth of the Internet and e-commerce. Interestingly, concern over Internet jurisdiction was rarely due to an incident that occurred within the organization (17 percent) or to a competitor (14 percent). Rather, concern appears to stem primarily from heightened awareness of the shifting legal framework and associated developments worldwide (45 percent).

Respondents were also asked to identify specific sources of concern with the survey providing a menu of eleven options: securities regulation, financial regulation, taxation, privacy, consumer protection legislation, e-commerce regulation, defamation and other torts, criminal liability, industry-specific regulation, security/encryption regulation, and
litigation costs. Across all sectors, litigation was the most frequently cited concern with consumer and industry-specific regulations, e-commerce regulation, taxation, and privacy following behind. Not surprisingly, the financial services sector respondents cited financial regulation as the greatest concern. The media sector was the sole business sector to point to defamation as a concern.

**IT Sector**

<table>
<thead>
<tr>
<th>Industry Regs</th>
<th>Consumer Regs</th>
<th>Tax</th>
<th>Litigation</th>
<th>E-Comm</th>
</tr>
</thead>
<tbody>
<tr>
<td>55%</td>
<td>52%</td>
<td>50%</td>
<td>50%</td>
<td>44%</td>
</tr>
</tbody>
</table>
This question also elicited significant differences between geographic regions. North American respondents felt litigation risk was their chief concern, likely reflecting the more litigious environment in the United States. Interestingly, privacy ranked second among North American respondents (56 percent) but ranked much lower in the responses of both European and Asian companies, where it was second only to criminal as the lowest concern amongst Asian respondents.
North America

- Litigation: 69%
- Privacy: 56%
- E-comm: 50%
- Industry regs.: 44%

Asia

- Consumer regs.: 55%
- Industry regs.: 55%
- Litigation: 50%
- E-comm: 46%
- Privacy: 25%
b. Internet Jurisdiction – Managing The Risk

The survey also included a series of questions that sought to identify how companies concerned with Internet jurisdiction manage the associated risk. Amongst all survey respondents, 36 percent indicated that they had adjusted their business in response to perceived risk, while 44 percent said that they had not. The media sector proved to be the most likely to have adjusted their business, with 52 percent of respondents in that sector indicating that they had made changes to their business due to Internet jurisdiction risk.

For those companies that had adjusted their business operations in response to Internet jurisdiction risk, the most common approaches were to either eliminate or reduce business activity in higher risk jurisdictions (12 percent) or to target specific jurisdictions that are perceived to be lower risk alternatives (12 percent). Jurisdictional avoidance tended to occur for three main reasons: concern over liability in the target jurisdiction (45 percent), liability in the home jurisdiction that may arise from doing business with a
jurisdiction on a prohibited list due to sanctions or security reasons (37 percent) and user fraud (32 percent). North Africa, the Middle East, and Asia were the most frequently avoided regions among survey respondents.

While the number of respondents that refrain from interacting with higher risk jurisdictions remained relatively low, respondents did provide some insights into how jurisdictional avoidance is achieved. The most commonly used approaches were technical access blocking (50 percent), user registration requirements (47 percent), self-identification (40 percent), and password protection (40 percent).

As noted above, a similar number of companies indicated that rather than avoiding higher risk jurisdictions, they specifically target low risk jurisdictions. One method of engaging in this latter approach is to identify the physical location of a website’s visitors. Thirty-seven percent of responding companies indicated that they seek to identify user location, while 38 percent responded that they did not, and 20 percent of respondents were unsure, perhaps reflecting a lack of communication between technical website administrators (who manage and implement user identification solutions) and legal counsel (who constituted the majority of survey respondents).

The most popular approaches to identify users were through user registration or self-identification. Passwords, credit card matching, cookies, and geo-identification technologies were all relatively rare methods of identifying user location. Consistent with the greater concern for jurisdictional risk, the media sector ranked first among all sectors in seeking to identify user location, while North American respondents (69 percent) were far more likely than either Asian (41 percent) or European (29 percent) to implement identification measures.

Responding companies also seek to influence jurisdictional outcomes by tailoring their online presence to particular jurisdictions, presumably adopting a “targeting” based approach to their online presence. Country-code top-level domains, the language of the website, legal terms, use of a local server, and country-specific content were the most frequently cited approaches. Not surprisingly, targeting specific local jurisdictions is much more common among larger businesses than among small and medium sized businesses. For example, while 72 percent of the largest company respondents have
registered and use country-code top-level domains, only 34 percent of smaller companies have made similar investments.

c. **Internet Jurisdiction – The Use of Contracts**

The survey also included several questions on website contractual practices based on the premise that contractual certainty would be a widely practiced method of addressing Internet jurisdictional risk. The responses yielded some surprising results as 37 percent of respondents indicated that they do not include a terms of use agreement on their website.

Of those respondents that include contractual language on their websites, the division by business sector and organization size are consistent with other results of this survey. The media (73 percent), retail (71 percent) and financial institution sectors (66 percent) were the most likely to include a terms of use agreement, while professional service firms (37 percent) ranked at the bottom among business sectors. Moreover, while 71 percent of large and 69 percent of extra-large companies included the agreements, only 45 percent of small and 34 percent of medium sized business did as well. The geographic breakdown also remained consistent with North American respondents (69 percent) more likely than their Asian (56 percent) and European (39 percent) counterparts to include terms of use agreements.

While the terms of use agreements may feature a wide range of provisions, including terms addressing privacy policies, intellectual property, and consumer protection rights, the survey focused on the inclusion of choice of law and choice of forum clauses. Choice of law clauses typically identify the specific law that will be applied in the event of a dispute, while choice of forum identifies the specific court or dispute resolution mechanism to be used.

The results obtained from these questions were also consistent with the remainder of the survey. The media and retail sectors were the heaviest users of both choice of forum and choice of law clauses, larger organizations reported using such clauses much more frequently than smaller and medium sized organizations, and both forms of clauses found greater favor amongst North American respondents.
There were two additional contractual findings of note. First, the survey asked respondents how they ensured users were aware of the contractual provisions attached to their websites. The media, retail, and information technology sectors all indicated that a passive link was their preferred approach, while the financial institution sector stood alone in adopting an “opt-in” approach, perhaps reflecting more stringent regulatory requirements in their sector.

Second, the survey asked whether alternative dispute resolution was offered as a method to resolve outstanding disputes. ADR was most popular among the financial institution sector (27 percent) and with Asian companies (31 percent), while both North American (25 percent) and European (13 percent) companies were less in favor of using this approach.

d. Internet Jurisdiction – The Future

Once again consistent with the survey’s other results, respondents were deeply divided in their perspective on the outlook for Internet jurisdiction risk. Given that responding companies from North America were far more likely to adopt measures to either target or avoid particular jurisdictions in order to mitigate jurisdictional risk, they also proved to be far more concerned with Internet jurisdiction issues than their counterparts in Europe and Asia.

In a question designed to serve as a benchmark for future surveys, respondents were asked whether online business has become easier or harder from a legal perspective since 2001 and whether they expected it become harder or easier by the end of 2005. When viewed in the aggregate the results were relatively close – 22 percent said online business had become more difficult since 2001, 28 percent said easier, and 31 percent said there was no change. When viewed by geographic region, the numbers tell a much different story, however. Thirty-seven percent of North American respondents said that online business had become harder since 2001 and only six percent replied that it had become easier. By contrast, 25 percent of Asian respondents and 20 percent of European respondents believe that online business has become harder, but 35 percent of Asian respondents and 22 percent of European respondents suggested that online business has
become easier.

The divide between North American and Asian/European companies is even more striking when it is viewed toward the future. One of every two North American respondents believe that Internet jurisdiction risk will worsen by the end of 2005 as compared to only 22 percent of Asian respondents and 29 percent of European respondents.
GLOBAL INTERNET JURISDICTION SURVEY

August 18, 2003

This survey is being conducted on a joint basis by the American Bar Association and the International Chamber of Commerce (ICC) with additional support from the Internet Law and Policy Forum. It is co-chaired by Professor Michael Geist of the University of Ottawa and of Osler, Hoskin & Harcourt LLP and Michael Hancock of Salans in Paris. Its purpose is to determine the international impact of e-commerce on jurisdictional issues, based upon information obtained from companies around the world.

Your response to this survey should take only about 30 minutes.

Individual responses to this survey will remain confidential, unless express permission has been obtained. Responses will be aggregated to ensure anonymity.

Please address replies, or requests for further information, to abajurisdiction@iccwbo.org or completed responses by fax to +33 1 49 53 28 59, to the attention of Jonas Astrup.

RESPONDENT INFORMATION

1. What is your job title/position?  ____________________________________________________________

2. Are you responding for

   ♦ An autonomous group
   ♦ Business unit
   ♦ Local subsidiary
   ♦ Other (explain)

3. Which department are you in?

   ♦ Legal
   ♦ Government Relations/Policy
   ♦ Public Relations/Communications
   ♦ Sales/Marketing
   ♦ Risk/Compliance
   ♦ Other (explain)

ORGANIZATIONAL QUESTIONS

4. Please list your organization’s business sectors

   Information Technology                     Media and Communications
   Financial Services                          Industrial
   Retail                                      Professional Services
   Other (explain)
5. Please provide the location of your organization’s home office: ____________________________

6. Please indicate the number of employees in your organization.
   ♦ 1-100
   ♦ 101-1000
   ♦ 1001-2,500
   ♦ 2,501-5,000
   ♦ 5,001-10,000
   ♦ 10,001-25,000
   ♦ > 25,000

7. Are more than 2/3 of your company’s employees located in one region?
   Yes
   No
   If yes, which one:
   Asia Pacific
   North America
   Middle East/North Africa
   Europe
   Latin America
   Sub-Saharan Africa

8. Please estimate the percentage of revenue outside of country of home office (gross revenue)
   ♦ 0%
   ♦ 1-10%
   ♦ 11-25%
   ♦ 26-50%
   ♦ 51-75%
   ♦ 76-100%

9. Primary customer/user base:
   ♦ Business
   ♦ Consumers
JURISDICTIONAL DECISIONS AND EXPERIENCE

10. How important is jurisdiction and applicable law to your organization? (Jurisdiction refers to the country the courts of which would take jurisdiction in a lawsuit involving your company. Applicable law refers to the law that the court is likely to apply to determine the outcome of the lawsuit.)

   ♦ 1  ♦ 2  ♦ 3  ♦ 4  ♦ 5

a. Have jurisdiction and applicable law concerns become a more important issue for your organization since 2001?
   ♦ Yes  ♦ No  ♦ Don’t Know

b. If you answered one, two or three,
   Is the Internet/e-commerce is a significant factor?
   ♦ Yes  ♦ No  ♦ Don’t Know
   Is the increase due to an incident within your organization?
   ♦ Yes  ♦ No  ♦ Don’t Know
   Is the increase due to an incident of a competitor?
   ♦ Yes  ♦ No  ♦ Don’t Know
   Is the increase due to recent legal developments?
   ♦ Yes  ♦ No  ♦ Don’t Know

c. If you answered one, two or three, which of the following specific concerns have become more prevalent? [check all that apply]

   ♦ Securities regulation  ♦ Consumer protection laws  ♦ Industry-specific regulation
   ♦ Financial regulation  ♦ E-commerce regulation  ♦ Security/encryption regulation
   ♦ Taxation  ♦ Defamation and other torts  ♦ Cost of litigating in a foreign jurisdiction
   ♦ Privacy  ♦ Criminal  ♦ Other (please specify)

d. If you answered one, two or three to 10 above,
   Is the concern primarily focused on international jurisdiction or execution issues?
   ♦ Yes  ♦ No  ♦ Don’t Know
   Is the concern primarily focused on intra-jurisdiction issues (such as within the E.U. or United States)?
   ♦ Yes  ♦ No  ♦ Don’t Know
   Is the concern both international and intra-jurisdictional?
   ♦ Yes  ♦ No  ♦ Don’t Know

11. Has your organization adjusted the way it does business in response to these jurisdictional concerns?
   ♦ Yes  ♦ No  ♦ Don’t Know

   a. If yes, how? [check all that apply]

      ♦ Eliminated or reduced business activity  ♦ Declined to use a local server or service provider
      ♦ Declined to establish a physical presence  ♦ Targeted a specific geographic audience
      ♦ Charge a premium  ♦ Other (please specify)
      ♦ Advertising and marketing expenditures

12. If you are a content provider, have you, in response to jurisdictional concerns, [check all that apply]

      ♦ Altered content?
      ♦ Declined to post content?
      ♦ Blocked content to certain jurisdictions?
      ♦ Other (please specify)
TECHNIQUES/TECHNOLOGIES TO INFLUENCE JURISDICTION OUTCOME

Web presence

13. Does your company consider its website a significant element of its marketing strategy?  ♦ Yes  ♦ No  ♦ Don’t Know

14. Does your company use a:
   a. global website  ♦ Yes  ♦ No  ♦ Don’t Know
   b. country-specific websites  ♦ Yes  ♦ No  ♦ Don’t Know
   c. no web presence? (if no, answer question 18 and skip to 27)  ♦ Yes  ♦ No  ♦ Don’t Know

15. Does your website simply passively describe products and services without prices?  ♦ Yes  ♦ No  ♦ Don’t Know

16. Does your website promote products and services with prices?  ♦ Yes  ♦ No  ♦ Don’t Know

17. Does your website actively solicit business and/or sell products or services via your website?  ♦ Yes  ♦ No  ♦ Don’t Know

18. If you are not actively soliciting business or selling, are legal concerns in a foreign jurisdiction a significant reason why?  ♦ Yes  ♦ No  ♦ Don’t Know

19. If your organization uses country-specific websites, have you made any effort to influence possible jurisdictional outcomes?  ♦ Yes  ♦ No  ♦ Don’t Know
   a. If yes, what features are used to influence possible jurisdictional outcomes? [check all that apply]
   ♦ Language
   ♦ Currency
   ♦ Legal terms
   ♦ Different forms of product/service availability
   ♦ Country-code TLD
   ♦ Local contact points
   ♦ Local server
   ♦ Tax treatment
   ♦ Country-specific/consumer-specific content
   ♦ Other (please specify)

Online identification

20. Do you seek to identify the location of your users?  ♦ Yes  ♦ No  ♦ Don’t Know
   a. If yes, how? [check all that apply]
   ♦ User registration
   ♦ Credit card
   ♦ Geo-identification technology
   ♦ Cookies
   ♦ User self-identification
   ♦ Password protection
   ♦ Order placement/ship-to address
   ♦ Other (please specify)  

21. a. Do you actively seek to block access from certain jurisdictions?  ♦ Yes  ♦ No  ♦ Don’t Know
b. Do you actively refrain from interacting with certain jurisdictions?  
   ♦ Yes ♦ No ♦ Don’t Know

c. If yes, how? [check all that apply]
   ♦ User Registration
   ♦ Credit Card
   ♦ Geo-identifying technologies
   ♦ Cookies
   ♦ User self-identification
   ♦ Password protection
   ♦ Other (please specify) _____________________

d. If yes, why?
   ♦ Legal liability in home jurisdiction
   ♦ Legal liability in destination jurisdiction
   ♦ User fraud
   ♦ Non-legal business concerns
   ♦ Other (explain)

e. If yes, where?
   ♦ Asia/Pacific
   ♦ North America
   ♦ Middle East/North Africa
   ♦ Europe
   ♦ Latin America
   ♦ Sub-Saharan Africa

Online contracts

22. Does your company’s website(s) contain terms of use agreements?  
   ♦ Yes ♦ No ♦ Don’t Know

a. If yes, do they specify a choice of law?  
   ♦ Yes ♦ No ♦ Don’t Know

b. If yes and your organization employs country-specific sites,
   Do all sites reference a single choice of law?  
   ♦ Yes ♦ No ♦ Don’t Know
   What mechanism do you use to bring the terms to your customers’ attention?
   ♦ Passive link
   ♦ Opt-out check box
   ♦ Opt-in check box
   ♦ Not applicable

c. If yes, does it specify choice of forum?  
   ♦ Yes ♦ No ♦ Don’t Know

d. If yes and your organization employs country-specific sites
   is your choice the same as your home jurisdiction?  
   ♦ Yes ♦ No ♦ Don’t Know

e. If you conduct both B2B and B2C activities, do your terms for each differ?  
   ♦ Yes ♦ No ♦ Don’t Know

23. Do you use an ADR clause in your terms of use agreement?  
   ♦ Yes ♦ No ♦ Don’t Know

a. If yes, what rules, if any, are specified?
   ♦ Arbitration
   ♦ Mediation/Conciliation
   ♦ Arbitration and Mediation/Conciliation
   ♦ Other (explain)

b. If yes, do you use an online dispute resolution provider?  
   ♦ Yes ♦ No ♦ Don’t Know
24. Are you a member of an online trustmark program, such as TRUSTe or BBBOnline?  
♦ Yes  ♦ No  ♦ Don’t Know

25. Has online business become easier or harder from a legal perspective since 2001?  
♦ Harder  ♦ Easier  ♦ No Change

26. Do you expect that online business will become easier or harder from a legal perspective by the end of 2005?  
♦ Harder  ♦ Easier  ♦ No Change

ADDITIONAL ANECDOTAL SUBMISSION

27. Do you give us permission to publicly disclose your participation in this survey?  
♦ Yes  ♦ No

28. We would appreciate receiving any brief anecdotes you may be willing to share that illustrate your jurisdictions' decisions and experience. If referred to in our report on the survey, such information will be masked so that your company is not identified. Feel free to provide such information below.
Appendix Two
Participating Countries

1. Australia
2. Austria
3. Belgium
4. Brazil
5. Canada
6. China
7. Columbia
8. Croatia
9. Cyprus
10. Czech Republic
11. Denmark
12. Estonia
13. Finland
14. France
15. Germany
16. Greece
17. Hungary
18. Iceland
19. India
20. Iran
21. Italy
22. Japan
23. Korea
24. Lithuania
25. Malaysia
26. Mexico
27. Morocco
28. Netherlands
29. Nigeria
30. Norway
31. Pakistan
32. Peru
33. Poland
34. Romania
35. Russia
36. Singapore
37. Slovenia
38. South Africa
39. Sweden
40. Switzerland
41. Turkey
42. Ukraine
43. United Kingdom
44. United States
45. Venezuela
Appendix Three
Survey Participants

Sponsoring Organizations

American Bar Association, Business Law Section, Cyberspace Law Committee
International Chamber of Commerce
Internet Law and Policy Forum

Sub-committee Participants

Michael Geist (co-chair)
Michael Hancock (co-chair)
Jeffrey Aresty
Jonas Astrup
Stewart Baker
Ian Ballon
Stefan Bernhard
Elizabeth Blumenfield
Peter Canfield
Tim Cole
Michael Dunne
Carlos Enrech
Yaniv Friedman
Richard Garnett
Julia Gladstone
Arlene Godfrey
Dan Greenwood
John Gregory
Eric C. Grimm
James A. Graham
Micalyn S. Harris
Ayesha Hassan
Elise Hoffman
Candace Jones
Henry Judy
Jacqueline Klosek
Andrew Konstantaras
Chris Kunz
Gregg J. Lallier
Thomas Laudise
Don McGown
Michael Mendenhall
Mark Milone
Juliet M. Moringiello
John Nicholson
Marc Pearl
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Rajah & Tann (Singapore)
Rajes Hisham Pillai & Gopal (Malaysia)
Salans (France, Germany, Russia, Poland, Iran)
Tulchinsky Stern & Co., Law Offices (Israel)
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