



Law and the Internet: Location, Location, Location

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One of the single greatest attributes of the Internet is its global nature. Until recently, the global aspect of the Internet has not been of great concern to cyber underwriters or the companies conducting e-commerce. In the United States, we have been more concerned about intellectual property issues, security breaches, contextual liability, and privacy issues.

In the last few months, however, two major pieces of litigation have resulted in outcomes that could greatly change the global nature of the Internet. Up to this time, jurisdictional concerns were limited. The recent Hewlett-Packard and Yahoo! cases raise concerns yet to be fully understood by those who purchase or underwrite insurance online.

In late November, Hewlett-Packard became the first company to be “snagged” by a German law requiring firms to pay fees for making CD burners that are being used to illegally lift music from the Internet. The music industry’s \$5 billion loss last year hinted that it was only a matter of time before someone would challenge the nature of free exchange of copyrighted music.

The Yahoo! case is further proof that there might come a day when Internet companies will be required to tailor their efforts to the laws of individual countries. Two French groups—the Union of Jewish Students and the International Anti-Racism and Anti-Semitism League—brought suit against Yahoo! for breaking French law barring the display or sale of racist material. The French court told Yahoo! it must block French users of its Web site from accessing Nazi memorabilia.

In November, Judge Jean-Jacques gave Yahoo! three months to find a way to prevent French users from accessing auction pages with Nazi-related objects or face fines of about \$13,000 a day. Yahoo has said that it has no intention of honoring the French ruling unless a U.S. Court orders it to do so.

Yahoo! contends that blocking all French users in this way violates its right of free speech. In addition, it will be almost impossible to only block Nazi memorabilia without also blocking news events that refer to World War II or Hitler or the sales of Anne Frank’s biography, for example.

These recent rulings have created an uproar among technologists, who believe that the application of national laws to the Internet could cripple the promise of a borderless online world. To the consumer, the ramifications of these two decisions will alter their idea that the Internet is actually free.

Companies may no longer be able to conduct business in the global manner by which they now anticipate success. Corporations and their directors, as well as their legal advisors, will be forced to follow developments closely and analyze judicial decisions in their specific jurisdictions when establishing an Internet presence in order to avoid or limit exposure from Internet-based activities.

These two cases raise many questions: Will the World Wide Web become the Neighborhood Wide Web? Can the insurance industry provide jurisdictional protection? Can companies doing business on the Internet protect themselves? Are U.S. corporations now responsible for the local violations of laws of countries in which they had no desire or intention for an individual or group to access their Web site?

We have always said a changing environment will provide opportunities for innovative underwriters and provide disasters for stagnate underwriters. Only time will separate the two when addressing the many perils that exist and will exist in the new economy.

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