

***Liability On-Line:  
Choice of Law and Jurisdiction on the Internet,  
or Who's In Charge Here?***

By Andre R. Jaglom\*

A. *The Applicability of Multiple Laws*

Use of the Internet generally, and the World Wide Web in particular, has exploded in recent years. Many thousands of companies have established "home pages" on the Web, through which they communicate advertising and marketing materials, as well as other content, to those who choose to access their sites. Often purchases and other contracts may be made directly online. Frequently links are provided by which browsers may be taken automatically to other sites, with materials and content provided by third parties. Many companies provide access to storehouses of information through their site, becoming significant content providers.

These business web sites are often (indeed, perhaps typically) established by marketing personnel with little consideration given to the legal risks that may be incurred. The Internet is a unique medium in that it is effectively borderless, providing instant global exposure for the information made available on the Web. This raises thorny questions of the applicable law governing the provider of such information. Laws in well over a hundred countries with Internet access potentially govern advertising content, consumer protection, permissible speech, defamation, intellectual property infringement and myriad other matters. Consider the following examples:

- ◆ An Italian publisher is enjoined from publishing its "PLAYMEN" magazine in the United States because it infringes the "PLAYBOY" trademark. Publication in Italy is lawful. The publisher then makes the magazine available over the Internet from a computer in Italy. A federal district court has held that conduct to violate the injunction.<sup>1</sup>
- ◆ Virgin Atlantic Airways, a British airline, advertises a discount airfare between Newark and London on the Internet. The U.S. Department of Transportation fined Virgin Atlantic \$14,000 for failure to comply with U.S. advertising rules requiring clear disclosure of applicable taxes.<sup>2</sup>
- ◆ Benetton S.p.A., an Italian clothing marketer, runs an advertisement showing a human body marked "H.I.V. Positive". The ad is found to violate German law by exploiting intense "feelings of pity" and French

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<sup>1</sup> *Playboy Enterprises Inc. v. Chuckleberry Publishing Inc.*, No. 79 CIV 3525 (SAS) (S.D.N.Y. July 16, 1996) reported in 52 PAT. TRADEMARK & COPYRIGHT J. (BNA) 361 (8/1/96).

<sup>2</sup> L. Rose & J.P. Feldman, *Practical Suggestions for International Advertising and Promotions on the 'Net'*, *Cyberspace Lawyer* at 8 (May 1996).

law as a “provocative exploitation of suffering.”<sup>3</sup> What would be the consequences of putting such an advertisement on the Web?

- ◆ A major French catalog company decides to put its catalog on the Web. Some fifty pages of the catalog sell lingerie, with photographs designed to appeal to the French buyer. What repercussions might there be from the availability of this catalog in fundamentalist Islamic countries? What should counsel advise the company President before his next business trip to Singapore or Iran?<sup>4</sup>
- ◆ The French Evin Act of January 10, 1991 forbids all “advertising and direct or indirect promotion” regarding tobacco and, in certain circumstances, alcohol. The French TOUBON law of August 4, 1994 requires that businesses offer their products and services to consumers in the French language.<sup>5</sup> What are the consequences of these laws for web sites located outside France but accessible there?

#### B. *Jurisdictional Questions*

These not so hypothetical situations raise obvious jurisdictional questions. Put aside for the moment the questions of whether foreign countries would apply concepts of jurisdiction similar to those familiar to U.S. counsel, or in the case of some countries would even concern themselves with niceties of jurisdiction. (The capital sentence levied *in absentia* by ayatollahs in Iran on author Salman Rushdie for publication abroad of the allegedly blasphemous “Satanic Verses” suggests that at least some nations would have no difficulty with penalizing conduct on the Web.)

Under U.S. law one might argue that the availability of a passive web site within a state is insufficient to confer jurisdiction over the operator of the site in that state, at least in the absence of evidence that the site operator purposefully availed itself of the benefits of that state or continuously and systematically conducted part of its general business there. That, indeed, was the holding in *Digital Control Inc. v. Boretronics*,<sup>6</sup>

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<sup>3</sup> *Id.* at 9.

<sup>4</sup> A. Bertrand, *Collective Administration of Copyrights, Artists Rights and the Law of Publicity on the Internet: Current Issues and Future Perspectives*, 3 New York State Bar Association International Law and Practice Section Fall Meeting 1227 (1996).

<sup>5</sup> *Id.* at 9. In part due to objections from the European Commission, these laws not have been construed not to apply to broadcasts from abroad of World Cup soccer games and similar sporting events that include otherwise forbidden advertising, which are rebroadcast in France without control over content, nor to advertising legally broadcast from abroad by companies not resident in France. *Id.* In the absence of such international constraints and resulting narrow construction, however, similar laws could obviously have a major impact on web site operators. A suit was filed against the Georgia Institute of Technology by private plaintiffs complaining that the English language web site set up by Georgia Tech’s French campus in Metz ([http://www.georgiatech\\_metz.fr](http://www.georgiatech_metz.fr)) violated French law. The case was dismissed in June 1997 on procedural grounds because the plaintiff groups failed to file a police complaint before suing, leaving unresolved the larger substantive issue. *French Purists Lose Their Cases*, N.Y. TIMES, June 10, 1997.

<sup>6</sup> 2001 U.S. Dist. LEXIS 14600 (rejecting the passive/active test set forth in *Zippo Mfg. Co. v. Zippo Dot Com Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997), the court ruled that “until the advertiser is actually faced with and makes the choice to dive into a particular forum, the mere existence of a worldwide web site, regardless of whether the site is active or passive, is an insufficient basis on which to find that the advertiser has purposely directed its activities at residents of the forum state”).

*Mink v AAAA Development LLC*,<sup>7</sup> *Cybersell Inc. v. Cybersell Inc.*<sup>8</sup> and *Bensusan Restaurant Corp. v. King and the Blue Note*,<sup>9</sup> among others.<sup>10</sup> That argument, however, might fail for a national or multinational corporation that does intend its site to be viewed globally.

Many courts have disagreed with the *Bensusan Restaurant* line of holdings. *Inset Systems, Inc. v. Instruction Set Inc.*<sup>11</sup> held that a Massachusetts corporation was subject to jurisdiction in Connecticut by reason of its advertising on a web site available for viewing in Connecticut, thus “purposefully avail[ing] itself of the privilege of doing business within Connecticut.” *CoolSavings.com Inc. v. IQ Commerce Corp.*<sup>12</sup> held that establishing a web site accessible to all states constitutes purposeful establishment of minimum contacts with all states.<sup>13</sup> *National Football League v. Miller*,<sup>14</sup> while purporting to follow *Bensusan*, held that the operator of a passive web site was subject to jurisdiction in New York because he profited from sales in interstate commerce of advertising on the web site, which caused harm to the plaintiffs to New York and was viewed by many New Yorkers.

Other cases have upheld jurisdiction based on forum state activities beyond mere web site accessibility, such as advertising in forum state media, sales of passwords or services to forum state residents, contracting for forum state access with Internet service providers, explicit on-line solicitations and some level of interactivity or information gathering.<sup>15</sup>

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<sup>7</sup> 190 F.3d 333 (5<sup>th</sup> Cir. 1999).

<sup>8</sup> 130 F.3d 414 (9<sup>th</sup> Cir. 1997).

<sup>9</sup> 937 F. Supp. 295 (S.D.N.Y. 1996). The Second Circuit affirmed *Bensusan* on other grounds, that New York law is narrower in its assertion of personal jurisdiction than the U.S. Constitution permits. *Bensusan Restaurant Corp. v. King*, 126 F.3d 25 (2d Cir. 1997). New York law “reaches only tortious acts performed by a defendant who was physically present in New York when he performed the wrongful act” and would not even reach “a New Jersey domiciliary [who was] to launch a bazooka across the Hudson at Grant’s tomb. . . in an action by an injured New York plaintiff,” or tortious acts committed outside New York by persons who derive substantial revenues from interstate commerce. In *Bensusan*, neither was the case, but this narrower holding offers less comfort to Internet marketers.

<sup>10</sup> See also, e.g., *Wildfire Communications, Inc. v. Grapevine, Inc.*, No. 00-CV-12004-GAO (D. Mass. Sept. 28, 2001) (the existence of a web site accessible by Massachusetts citizens countered by a lack of actual purchases by Massachusetts customers is not sufficient to subject an out of state web site to jurisdiction in Massachusetts); *Perry v. RightOn.com* (D. Or. 2000); *Northern Lights Technology, Inc. v. Northern Lights Club* (D. Mass. 2000); *K.C.F.C. v. Nash*, 49 U.S.P.Q.2d (BNA) 1584, 1998 U.S. Dist. LEXIS 18464 (S.D.N.Y. Nov. 24, 1998), reported in 57 PAT. TRADEMARK & COPYRIGHT J. (BNA) 136 (Dec. 17, 1998); *Hearst Corp. v. Goldberger*, 1997 U.S. Dist LEXIS 2065, 1997 WL 97097 (S.D.N.Y. 1997).

<sup>11</sup> 937 F. Supp. 161 (D. Conn. 1996).

<sup>12</sup> 53 F. Supp. 2d 1000 (N.D. Ill. 1999).

<sup>13</sup> See also *Remsburg v. Docusearch Inc.*, 2002 WL 130952, 2002 DNH 35 (D. N. H. 2002) (five transactions with New Hampshire resident by which he obtained information used to murder victim, plus a pretextual call to victim by defendant to obtain requested information, were sufficient for jurisdiction over defendant in wrongful death action). See also *Haelan Products, Inc. v. Beso Biological Research, Inc.*, 43 U.S.P.Q.2d (BNA) 1672, 1997 U.S. Dist. LEXIS 10565 (E.D. La. 1997) (web site, plus 800 telephone number and advertisements in nationally circulated publications sufficient to consider jurisdiction).

<sup>14</sup> 54 U.S.P.Q. 2d 1574 (S.D.N.Y. 2000).

<sup>15</sup> See, e.g., *National College Athletic Ass’n v. BBF Int’l*, No. 01-422-1, U.S. Dist. Ct. (E.D. Va. May 4, 2001), reported in WORLD INTERNET L. Rep. (BNA) June 2001, at 23 (in ruling on a domain name dispute,

The jurisdictional standard of purposefully availing oneself of the privilege of doing business in a state is met, for purposes of claims arising from the defendant's activities in a state, where there are numerous transactions with residents of the state. Thus where a domain name registrar was alleged to have engaged in some 5,000 transactions with Ohio residents and its site was accessible in Ohio, the Sixth Circuit held in *Bird v. Parsons*<sup>16</sup> that it was subject to its jurisdiction in a trademark infringement suit, since the infringement arose from the registration business.<sup>17</sup> The D.C. Circuit similarly found jurisdiction over a defendant whose web site allowed Washington, D.C. residents to form contracts with it to buy securities and brokerage services in *Gorman v. Ameritrade Holding Corp.*<sup>18</sup> The Court distinguished *GTE New Media Services Inc. v. BellSouth Corp.*,<sup>19</sup> where a yellow pages web site was "essentially passive," allowing customers to obtain information, but not to contract with the defendants.

A growing number of cases have followed *Zippo Manufacturing Co. v. Zippo Dot Com Inc.*,<sup>20</sup> which developed a relatively simple active/passive test for determining

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Virginia court exercised jurisdiction over defendant Haitian entity which marketed its gambling web sites in Virginia and entered contracts with Virginia residents); *Starmedia Network Inc. v. Star Media Inc.*, S.D.N.Y., No. 00 CIV 4647 (Apr. 23, 2001), reported in 62 PAT. TRADEMARK & COPYRIGHT J. 153 (BNA) (May 11, 2001), at 41 (New York long arm statute reached Washington state defendant that operated a web site serving a national market even though the web site had no New York customers, but did have potential business in New York); *Internet Doorway Inc. v. Parks*, Civil Action No. 3:00CV405BN, U.S. Dist. Ct. (S.D. Miss. Apr. 9, 2001), reported in WORLD INTERNET L. Rep. (BNA) June 2001, at 20 (the action of sending an e-mail message to a Mississippi resident established the necessary minimum contacts to exercise specific personal jurisdiction over such sender in Mississippi); *Ty Inc. v. Baby Me Inc.*, N.D. Ill., No. 00 C 6016 (Apr. 6, 2001), reported in 62 PAT. TRADEMARK & COPYRIGHT J. 153 (BNA) (May 11, 2001), at 40 (sale of three plush toys to Illinois resident through defendant's web site subjected Hawaiian defendant to jurisdiction in Illinois); *Kollmorgen Corp. v. Yaskawa Electric Corp.*, No. 99-308-R (W.D. Va. Dec. 13, 1999) (subsidiary's web site conveying impression parent and subsidiary acted in consort to place goods in stream of commerce was enough to establish jurisdiction over parent); *American Network, Inc. v. Access America/Connect Atlanta, Inc.*, 975 F. Supp. 494 (S.D.N.Y. 1997); *Digital Equipment Corp. v. Altavista Technology Inc.*, 960 F. Supp. 456 (D. Mass. 1997); *Rubbercraft Corp. of California v. Rubbercraft, Inc.*, No. 97-4070-WDK (C.D. Cal. Dec. 17, 1997), reported in 55 PAT. TRADEMARK & COPYRIGHT J. (BNA) 358 (Feb. 26, 1998) (web site, toll-free telephone number, advertising in national media and significant income from sales in forum state supports personal jurisdiction); *Maritz Inc. v. CyberGold Inc.*, 947 F. Supp. 1328 (E.D. Mo. 1996), (operation of a California web site that asked customers to add their addresses to targeted email addressing system constituted "active solicitation" sufficient to satisfy the "minimum contacts" requirement for jurisdiction in Missouri; and defendant was found to be "purposely avail[ing] itself" of privilege of conducting activities in Missouri); *Heroes Inc. v. Heroes Foundation*, 958 F. Supp. 1 (D. D.C. 1996); *EDIAS Software Int'l LLC v. BASIS Int'l Ltd.*, 947 F. Supp. 413 (D. Ariz. 1996).

<sup>16</sup> 289 F.3d 865 (6<sup>th</sup> Cir. 2002).

<sup>17</sup> See also *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F. 3d 883 (6<sup>th</sup> Cir. 2002) (passive web site available in Michigan, that also let Michigan residents use passwords to view blood test results, with at least 14 transactions with Michigan residents, constituted purposeful availment sufficient for jurisdiction; citing *Zippo Mfg. Co, infra*).

<sup>18</sup> 293 F.3d 506 (D.C. Cir. 2002).

<sup>19</sup> 199 F.3d 1342 (D.C. Cir. 2000).

<sup>20</sup> 952 F. Supp. 1119 (W.D. Pa. 1997) (developing the active/passive test, which gave the court the power to exercise jurisdiction over an extra-jurisdictional web site operator if the web site was an interactive site, but not if it was a passive site that merely provided information). See, e.g., *ALS Scan Inc. v. Digital Service Consultants Inc.* 293 F.3d 707 (4<sup>th</sup> Cir. 2002); *Neogen Corp., supra*; *Euromarket Designs, Inc. v. Crate & Barrel Ltd.*, 96 F. Supp. 2d 824 (N.D. Ill. 2000); *Search Force, Inc. v. Dataforce Int'l, Inc.*,

jurisdiction over a web site operator.<sup>21</sup> Web sites are categorized on a spectrum from purely passive sites that merely make information available to visitors, which do not alone provide a basis for jurisdiction, through levels of increasing interactivity to full e-commerce sites that permit online contracts and transactions with forum residents, which do suffice as a jurisdictional basis in the forum. The more interactive the site, the more likely jurisdiction is to be found.

Similarly, consider *United States v. Thomas*,<sup>22</sup> affirming the *criminal* conviction on obscenity charges in federal court in Tennessee of a California couple who sold sexually explicit photographs by making them available for downloading from a computer bulletin board in California. The offending materials were downloaded in Tennessee by a United States Postal Inspector acting on the complaint of a Tennessee resident. The defendants argued that venue in Tennessee was improper because they did not cause the files to be transmitted to Tennessee. That was done by the zealous postal inspector. The Sixth Circuit held otherwise, finding substantial evidence that the defendants set up their bulletin board so that persons in other jurisdictions could access it.<sup>23</sup> The Sixth Circuit therefore held not only that venue in Tennessee was proper, but that the appropriate community standards to be applied in determining whether the materials were obscene were those of Tennessee.<sup>24</sup>

Such state jurisdictional issues are relevant to the regulation of “spam” (unsolicited commercial e-mail) and several states<sup>25</sup> have passed laws regulating spam

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112 F. Supp. 2d 771 (S.D. Ind. 2000); *Blumenthal v. Drudge*, 992 F.Supp.44 (D.D.C. 1998) (web site providing political gossip and rumor and providing for e-mail communications and e-mail subscriptions, was interactive and subject to jurisdiction in the District of Columbia).

<sup>21</sup> This approach has been criticized by some courts, and a few have rejected this approach in favor of the reasoning of *American Information Corp. v. American Infometrics, Inc.*, 139 F. Supp. 2d 696 (D. Md. 2001) which applied a “targeting-based” test that asks whether the defendant’s actions were aimed at the forum state to determine if jurisdiction was proper. *See, e.g., Ottenheimer Publishers, Inc. v. Playmore, Inc.*, 158 F. Supp. 2d 649 (D. Md. Aug. 13, 2001); *Starmedia Network, Inc. v. Star Media, Inc.* 2001 WL 417118 (S.D.N.Y. Apr. 23, 2001). The majority of courts, however, seem to follow the *Zippo* active/passive analysis.

<sup>22</sup> 74 F.3d 701 (6th Cir. 1996).

<sup>23</sup> In addition, the court found the defendants to have specifically approved the distribution of offending materials to a Tennessee resident by calling the postal inspector in Tennessee in response to a message he left at their bulletin board and providing him with an account number to use in accessing their service. The tenor of the Sixth Circuit’s opinion suggests that this fact may not have been dispositive, but it certainly provides a greater degree of intentional contact with the forum than the pure establishment of a web site accessed by others with no direct interaction with the site operator, as was the situation in the *Maritz* case.

<sup>24</sup> *Id.* at 709-11.

<sup>25</sup> *See e.g.,* Cal. Bus. Profs. Code §17538.4; Colo. Rev. Stat. §6-2.5-101; Del. Code Ann., tit. 11, §§937-938; Idaho Code §48-603E; 815 Ill. Comp. Stat. 511; Iowa Code §§ 714E.1-.2; Nev. Rev. Stat. Ann. §§41.705-.735; R.I. Gen. Laws, §11-52-1; Tenn. Code Ann. §§47-18-1602, -2501; Wash. Rev. Code, tit. 19, Chap. 19.190. For a summary of the laws regulating spam in each state *see* <http://www.spamlaws.com/state/index.html>. As of January 1, 2002, no federal anti-spam legislation had been passed although there were several bills pending, *see* <http://www.spamlaws.com/federal/index.html>. *See also*, Stefanie Olsen, *Congress, critics wrinkle noses at spam bills*, CNET NEWS.COM (May 21, 2001) located at <http://news.cnet.com/news/0-1005-200-5976585.html> (no effective federal spam legislation is expected to be approved anytime soon). *But see, Protecting Consumers’ Privacy: 2002 and Beyond: Remarks of FTC Chairman Timothy J. Muris*, at The Privacy 2001 Conference, Oct. 4, 2001, located at <http://www.ftc.gov/speeches/muris/privisp1002.htm> (containing announcement by FTC Chairman that in

received by their residents, regardless of its place of origin. While some state statutes regulating spam have been struck down as violative of the commerce clause of the U.S. Constitution,<sup>26</sup> others have been upheld.<sup>27</sup> The European Community is also moving towards legislation on this issue.<sup>28</sup>

Across the Atlantic, German prosecutors indicted the general manager of Compuserve's German operation on charges of trafficking in pornography because it provided Internet access to its customers without blocking independent child pornography sites, as well as failing to block sites with Nazi and neo-Nazi material, which are illegal in Germany.<sup>29</sup> After conviction, he was given a two year suspended prison sentence and fined.<sup>30</sup> The guilty verdict was finally overturned in November 1999, based on a new multimedia law enacted after the conviction.<sup>31</sup> The incident nonetheless suggests the risks of non-compliance with foreign law.

In France, a court held it had jurisdiction to hear a trademark case brought by a French trademark owner alleging infringement by a U.S.-based Internet site.<sup>32</sup> The French courts have also asserted jurisdiction over Yahoo! Inc., a California-based Internet company, as a result of various Nazi items offered on Yahoo!'s auction site, which was accessible by users in France, in contravention of French law<sup>33</sup> prohibiting the

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2002 the FTC will be intensifying its efforts against fraudulent spam).

<sup>26</sup> See e.g., *American Libraries Ass'n v. Pataki*, 969 F. Supp. 160 (S.D.N.Y. 1997). See also, discussion in Carl Kaplan, *In Spam Case, Another Defeat for State Internet Laws*, reported in *Cyber L.J.*, Mar. 24, 2000 (New York, Michigan and New Mexico anti-spam laws have been struck down either in state or federal court for violating the commerce clause of the U.S. Constitution).

<sup>27</sup> See e.g., *State v. Heckel*, 143 Wash. 2d 824, 24 P. 3d 404 (Wash. Sup. Ct. June 7, 2001) (holding law which "prohibits e-mail solicitors from using misleading information in the subject line or transmission path of any commercial e-mail message sent to Washington residents or from a computer located in Washington...does not violate the dormant Commerce Clause"), *rev'g* No. 98-2-25490 (Wash. Super. Ct. Mar. 10, 2000) and *cert. denied* 122 S. Ct. 467 (Oct. 29, 2001); *Ferguson v. Friendfinders, Inc.*, \_\_\_ Cal. App. 4<sup>th</sup> Supp. \_\_\_, 2002 WL 4706 (Cal. App. 1<sup>st</sup> Dist. Super. Ct. Jan. 2, 2002) (holding law regulating e-mail users who send spam to California residents via equipment located in California does not violate dormant Commerce Clause), *rev'g* No. 307309 (Cal. Super. Ct. June 2, 2000). See also, *eBay, Inc. v. Bidder's Edge, Inc.*, 100 F. Supp. 2d 1058 (N.D. Cal. 2000) (applying logic behind spamming case law to protect database owner from diminished server capacity caused by repeated, unauthorized intrusions by bots, i.e. smart software, intelligent agents or robots, used to locate, retrieve, copy and aggregate data that otherwise is entitled to limited or no copyright protection).

<sup>28</sup> The European Parliament approved proposals that would allow unrestricted Internet marketing by leaving it to the Member States to regulate spam through an "opt-out" system, which is at odds with the position of the European Commission. The European Commission favors an "opt-in" system under which e-mail marketing and advertising could be lawfully sent only if a consumer has contacted a company for information. Eleven countries support the European Commission and favor a ban on unsolicited e-mail, while four, Britain, Ireland, Luxembourg and France, prefer the opt-out approach. See, Paul Meller, *European Confrontation Over Privacy Rights on the Internet*, N.Y. Times on the Web, Nov. 30, 2001, available at <http://www.nytimes.com/2001/11/30/technology/30DATA.html>.

<sup>29</sup> *Germany Charges Compuserve Manager*, N.Y. TIMES, Apr. 10, 1997, at D19.

<sup>30</sup> *Morning Briefcase*, DALLAS MORNING NEWS, May 29, 1998, at 2D, cited in P. Swire, *Of Elephants, Mice and Privacy: International Choice of Law and the Internet*, 32 THE INT'L LAWYER 991, 992 n.5 (1998).

<sup>31</sup> *German Court Overturns Pornography Ruling Against Compuserve*, N.Y. TIMES, Nov. 18, 1999, at C4.

<sup>32</sup> *Saint-Tropez Commune v. SA Eurovirtuel*, reported in 53 INTA Bulletin No. 3, Feb. 1, 1998, at 2.

<sup>33</sup> Section R645-1 of the French Criminal Code.

display or sale of racist material.<sup>34</sup> The presiding judge ordered Yahoo! to block French users from viewing Nazi memorabilia;<sup>35</sup> however, in a later decision he declined to go so far as to impose an obligation upon Internet service providers to block access to racist material.<sup>36</sup> The Yahoo! ruling was upheld on appeal<sup>37</sup> and generated significant concern over the repercussions that such a decision, which would allow one country to regulate access to sites originating elsewhere, would have on the entire Internet. (An April 2002 European Parliament vote opposing such blocking of web site content in favor of self-regulation by Internet service providers may limit such orders in the future.<sup>38</sup> But despite the Parliament vote, Deutsche Bahn AG has moved against Internet search engines Google, Yahoo and Alta Vista seeking the removal of links to sites of extremist groups with information on rail sabotage.<sup>39</sup>)

To the relief of some Internet companies, a U.S. District Court ruled that under the First Amendment the French court's order and fines were not enforceable against Yahoo! in the United States.<sup>40</sup> Yahoo!'s international division senior corporate counsel believes that this decision renders the French decision meaningless<sup>41</sup> and affords First Amendment protection to content hosted at U.S. based web sites.<sup>42</sup> Others believe the French judge's attempt to restrict Nazi memorabilia on Yahoo! may be a harbinger of the Internet of the future where geolocation techniques determine which sites a viewer may enter based on the laws of and restrictions imposed by the country, state or even city from which such viewer is surfing the Internet.<sup>43</sup> And if Yahoo! had substantial assets in France, the daily fine levied on Yahoo! by the French court for failure to comply with its order might well be meaningful. Moreover, even in the U.S., there are efforts to require blocking of unacceptable web sites, as evidenced by a Pennsylvania statute requiring Internet service providers to block access by Pennsylvania residents to web sites containing child pornography or face criminal penalties.<sup>44</sup>

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<sup>34</sup> *Association Union des Etudiants Juifs de France et al. v. Yahoo! Inc.*, reported in WORLD INTERNET L. REP. (BNA) (7/00).

<sup>35</sup> *Judge leaves screening of racist material to French ISPs*, Oct. 31, 2001, available at [www.ananova.com/news/story/sm\\_437656.html](http://www.ananova.com/news/story/sm_437656.html).

<sup>36</sup> *ISPs Not Obligated to Block Access to Hate Portal: Action Internationale pour la Justice, La Licra et al. v. Association Franchise d'Acces et de Services Internet et al.*, reported in WORLD INTERNET L. REP. (BNA) (Dec. 2001). Similarly, on July 27, 2001, a German court ruled that a German Internet domain registry was not responsible for Web content, but rather the party seeking action against a web site must address the owner of the site. *See Registry Not Responsible For Web Content*, reported in CASE REPORTS (BNA) Oct. 2001, at 20.

<sup>37</sup> John Tagliabue, *French Uphold Ruling Against Yahoo on Nazi Sites*, N.Y. TIMES, Nov. 21, 2000, at C8.

<sup>38</sup> T. Richardson, "Europe Elbows Internet Content Blocking"; THE REGISTER (11/4/2002); [www.theregister.co.uk/content/6/24808.html](http://www.theregister.co.uk/content/6/24808.html).

<sup>39</sup> J. Evers, "German Railway Operator to Sue Google over Sabotage Links," COMPUTERWORLD (4/16/2002), [www.computerworld.com/story/ba/0.4125.NAV47\\_STO70203.00.html](http://www.computerworld.com/story/ba/0.4125.NAV47_STO70203.00.html).

<sup>40</sup> *Yahoo! Inc. v. La Ligue Contre Le Racisme Et l'Antisemitisme*, 169 F.Supp.2d 1181 (N.D. Cal. 2001).

<sup>41</sup> Carl S. Kaplan, *Was the French Ruling on Yahoo Such a Victory After All?*, The N.Y. Times on the Web Nov. 11, 2001 available at [www.nytimes.com/2001/11/16/technology/16CYBERLAW.html](http://www.nytimes.com/2001/11/16/technology/16CYBERLAW.html).

<sup>42</sup> Lisa Guernsey, *Court Says France Can't Censor Yahoo Site*, N.Y. TIMES, Nov. 9, 2001, at C5.

<sup>43</sup> Lisa Guernsey, *Welcome to the Web. Passport, Please?*, N.Y. TIMES, Mar. 15, 2001, at G1.

<sup>44</sup> PA crimes code, 18 Pa.C.S. §7330, Internet Child Pornography.

The French Yahoo! decision is by no means unique. A Milan appeals court's recent ruling on a defamation claim follows the same logic. The court ruled that a defamation claim against a site created in Israel was prosecutable despite Italian case law disallowing the prosecution of defamation that originates outside of Italy. The Milan court distinguished the case by citing the fact that Italian Internet users needed Italy-based service to view offending pages.<sup>45</sup> Likewise, Australia's Victoria Supreme Court has ruled that an article containing allegedly defaming material which originated in New Jersey was also "published" in Melbourne via the Web and therefore a defamation suit based on the article could properly be brought under Australia's strict defamation laws.<sup>46</sup> This Australian ruling would create liability for on-line publishers anywhere their material is read, or at least wherever a potential victim might be found.

A recent federal district court decision is to the contrary, holding that a passive web site for offshore gambling fans that allegedly defamed Pennsylvania resident was not subject to jurisdiction in Pennsylvania, because it had not intentionally aimed its tortious conduct at the forum state. The Court held, "There is difference between tortious conduct targeted at a forum resident and tortious conduct expressly aimed at the forum. Were the former sufficient, a Pennsylvania resident could hale into court in Pennsylvania anyone who injured him by an international tortious act committed anywhere."<sup>47</sup>

Finally, a 1996 article in the New York Times noted that "[t]here are few patches of legal turf the states guard more fiercely than gambling."<sup>48</sup> The article noted the problem of regulating web sites that offer wagering over the Internet without regard to the location of the gambler. The State of Minnesota sued a Las Vegas-based company that offered sports betting on-line, contending that the company committed consumer fraud in asserting that its service was legal, as it may have been in Nevada. The issue, once more, was whose law governs a web site in one jurisdiction that may be accessed from every other jurisdiction in the world. A Minnesota court resolved the jurisdictional issue in the State's favor, holding that advertising on a web site available in Minnesota was sufficient to confer jurisdiction over the defendants, particularly in light of the maintenance of a toll-free telephone number and a mailing list that included Minnesota residents.<sup>49</sup>

A similar case was brought by federal prosecutors in New York against the owners and managers of six offshore Internet gambling sites. The sites were licensed by the governors of the Caribbean and Central American countries where they were based, raising similar issues of jurisdiction and choice of law.<sup>50</sup> In 1999, a New York court granted injunctive relief against one such operator, finding a violation of law despite the fact that a user of the gambling site who gave a New York address was not permitted to

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<sup>45</sup> *Controlling Access to Foreign web sites: In re Dulberg*, WORLD INTERNET L. REP. (BNA), Feb. 2001, at 14.

<sup>46</sup> Barclay Crawford and Amanda Keenan, *Court ruling 'threatens free internet'*, AUSTRALIAN IT, Aug. 29, 2001.

<sup>47</sup> *English Sports Betting Inc. v. Tostigan*, 2002 WL 461492 (E.D.Pa.2002).

<sup>48</sup> J. Sterngold, *A One-Armed Bandit Makes a House Call*, N.Y. TIMES, Oct. 28, 1996, at D1, col. 2.

<sup>49</sup> *Minnesota v. Granite Gate Resorts, Inc.*, No. C6-95-7227, 1996 WL 767431 (Minn. Dist. Ct., County of Ramsey 2d Jud. Dist., Dec. 10, 1996).

<sup>50</sup> *14 Charged by U.S. In First Such Case On Internet Betting*, N.Y. TIMES, Mar. 5, 1998, at A1, col. 8.

gamble.<sup>51</sup> The court granted relief reasoning that the restriction could easily be circumvented by a New Yorker who provided an address in Nevada or other state where gambling was legal.<sup>52</sup>

Similar issues arise as the SEC considers how to regulate offerings of securities by foreign web sites.<sup>53</sup> Currently, the SEC will not consider an offshore (non-U.S.) Internet offer as targeted at the U.S. and will not treat it as occurring in the U.S. for registration purposes if the offerors take adequate measures to prevent U.S. persons from participating.<sup>54</sup> Australia and Japan have similar rules and have published guidelines offerors can follow, including a jurisdictional disclaimer, to avoid violating their securities laws.<sup>55</sup>

International policy makers from fifty-two member nations have been trying to set common rules governing online trade and commerce for ten years through the Hague Convention on Jurisdiction and Foreign Judgments. As it is currently drafted, the Hague treaty would require participants to enforce each others' commercial laws even if such laws prohibit actions that are legal under local laws.<sup>56</sup> There are many critics in the United States who fear that U.S. citizens will lose many of their rights if all web sites are forced to comply with the laws of every member nation. On the other hand, the software, movie and recording industries, along with other copyright holders, view the treaty as an effective means of enforcing copyright violations abroad.<sup>57</sup> Although it has been involved in the drafting process, it remains to be seen whether the U.S. will sign onto the finished product.

### C. *Determining Applicable Law*

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<sup>51</sup> See, *United States v. Cohen*, No. 00-1574 (2d Cir. July 31, 2001) (court upheld conviction of founder of World Sports Exchange under the Wire Wager Act, 18 USC § 1084).

<sup>52</sup> *New York v. World Interactive Gaming Corp.*, 1999 N.Y. Misc. LEXIS 425 (July 22, 1999). Jurisdiction was clear in *World Interactive Gaming*, as the defendants had many other jurisdictional contacts in New York. The decision in *World Interactive Gaming*, along with *Twentieth Century Fox Film Corp. v. iCraveTV* (Civil Action No. 00-121 (W.D. Pa. Jan. 28, 2000)), was a copyright infringement suit where jurisdiction was asserted over a Canadian defendant which had tried to limit its targeting to Canadian residents, have been contrasted with Judge Fogel's decision in *Yahoo! Inc. v. La Ligue Contre Le Racisme Et l'Antisemitisme* (Case No. C-00-21275 JF, U.S. Dist. Ct. (N.D. Cal. Nov. 7, 2001)).

<sup>53</sup> See discussion in J. Coffee, *Brave New World?: The Impact(s) of the Internet on Modern Securities Regulation*, 52 Bus. Law. 1195, 1227-32, suggesting international treaties as a potential approach. In November 2001, the SEC sponsored a Major Issues Conference on Securities Regulation in the Global Internet Economy, which was the first SEC-supported conference since 1984 that is devoted to examining broad policy issues in securities regulation. See <http://www.sec.gov/news/headlines/majorissues.htm>.

<sup>54</sup> Stéphan Le Goueff, *Offering Financial Services on the Web: Experiencing the World Wide (Legal) Web*, World Internet L. REP. (BNA) (Feb. 2001), at 26. The SEC has issued guidance rules for the offer of securities on the Internet in the U.S. which are contained in the SEC International Series Release No. 1125, effective as of March 23, 1998.

<sup>55</sup> Id. See also, *FSA Introduces Guidelines on Foreign Firms' Internet Ads*, World Internet L. REP. (BNA) (Feb. 2001), at 6.

<sup>56</sup> Lisa M. Bowman, *Global treaty could transform Web*, CNET NEWS.COM (June 22, 2001) located at <http://news.cnet.com/news/0-1005-200-6345725.html>.

<sup>57</sup> Jeffrey Benner, *New World Order, Copyright Style*, WIRED NEWS (Sept. 11, 2001) located at <http://www.wired.com/news/politics/0,1283,46676,00.html>.

As the law in this area was developing, some commentators argued that the reasonable solution to such problems was to apply to those making information available on the Internet the law of the jurisdiction where the server is located.<sup>58</sup> The theory behind this thinking was that, like a library in the same location, an Internet service is a passive instrument which must be intentionally accessed by the user. Such a user may therefore violate the law of his country by visiting the library and returning with information that is unobjectionable in the library's jurisdiction but illegal in his home land, but the library should not be subject to penalty.

Equally, the user in Iran who downloads photographs of Miss March from the Playboy Internet site may be subject to harsh penalties by the conservative judiciary in Tehran, but Playboy should not be. It is the user in Iran, goes the argument, not Playboy, which never entered or acted in Iran, who has violated Taliban law. The only difference is that the library visit is physical and the Web access electronic.

Unfortunately, this approach, while perhaps logical, depended for implementation on nations willingly forgoing jurisdiction over conduct that reaches their citizens at home and at a minimum, facilitates the violation of their laws and, often, their core religious or moral standards.

While the law, both internationally and domestically, continues to develop on jurisdiction over web sites, such a voluntary limitation of jurisdiction is unlikely for now, as evidenced by the *Maritz* decision and the *Thomas* conviction, where even the United States judicial system found jurisdiction to hold liable, or even convict, foreign service operators who simply made offending materials available via Internet or telephone access. The German Compuserve indictment is in the same sense.<sup>59</sup>

In a case presenting the other side of this coin, a federal court in New Jersey recently rejected the notion that the server's location should be determinative, holding that the mere physical presence of a web server in a particular state does not in itself provide sufficient contacts to create jurisdiction of that state over the web site.<sup>60</sup>

The Electronic Commerce Directive, a regulatory framework for e-commerce, was put forth by the European Union in 2000.<sup>61</sup> The E-Commerce Directive does employ

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<sup>58</sup> A. Bertrand, *Collective Administration of Copyrights, Artists Rights and the Law of Publicity on the Internet: Current Issues and Future Perspectives*, 3 New York State Bar Association International Law and Practice Section Fall Meeting 1227 (1996); A. Gigante, *Ice Patch on the Information Superhighway: Foreign Liability for Domestically Created Content*, 14 CARDOZO ARTS & ENT. L.J. 523 (1996). A proposed Convention on Transfrontier Computer-Network Communications contained in the Gigante article is available at <http://dvorak.org/gigante/>. The treaty would prohibit signatories from regulating or restricting communications and e-mail originating outside their territory and passing or routed through any part of a computer network located on their territory, and would apply the civil law of the originating party to determine private rights and obligations with respect to a communication.

<sup>59</sup> See also *U.S. v. Mohrbacher*, 182 F.3d 1041 (9<sup>th</sup> Cir. 1999) (person who downloads contraband from computer bulletin board is guilty of receiving contraband, but not of shipping or transporting it; provider of bulletin board would be guilty of the latter).

<sup>60</sup> *Amberson Holdings LLC v. Westside Story Newspaper* (D. N.J. 2000) reported in 60 PAT. TRADEMARK & COPYRIGHT J. 686 (10/27/00).

<sup>61</sup> The E-Commerce Directive was scheduled to be implemented by the legislatures of all E.U. Member States by January 17, 2002. However, as this deadline approached many E.U. Member States came to the realization that their citizens might become subject to the commercial laws of other E.U. states rather than

a “country of origin” approach when determining which country has jurisdiction over ISPs, thereby making the country in which an “information society service provider” maintains a fixed establishment, regardless of where the web site or server is located, responsible for exercising control over the service provider and the country whose law will govern in the absence of agreement to the contrary.<sup>62</sup> The country of origin principle, however, does not apply to consumer transaction contracts.<sup>63</sup> Consumers remain protected by the laws of their own nation.<sup>64</sup> (The Brussels Regulation, which is binding in Member States without the need of implementing legislation, provides jurisdiction in a consumer’s home country over a foreign defendant that “pursues commercial or professional activities in the . . . the consumer’s domicile or, by any means, directs such activity to that Member State . . . and the contract falls within the scope of such activities.”<sup>65</sup>)

The European Union has been active in attempting to resolve cross-border electronic commerce issues. The E.U. Commission has issued a draft regulation, to govern jurisdictional issues surrounding cross-border consumer e-transactions.<sup>66</sup> This proposed regulation, termed Rome II, will create jurisdiction over on-line sellers in the home state of the purchaser, a concept which is at odds with the principles of the E-Commerce Directive. The International Chamber of Commerce, among others, has called on the European Union to reconsider Rome II in favor of a regulation that would make the laws of the country of origin of goods or services the basis for settling disputes arising out of e-business transactions.<sup>67</sup>

Moreover, a company that sells over the Internet increasingly must consider not only the jurisdictional issues discussed above, but also various international legislative requirements with regard to how the contract is executed and performed. For instance, the recently enacted European Union Electronic Commerce Directive requires that any promotional offers or commercial communications be “clearly identified as such”, that the identity of the sender is clearly identifiable, and that the offers or communications clearly and unambiguously disclose any conditions of participation.<sup>68</sup>

This Directive also grants the same legal validity to documents electronically signed as for their hand-written signed counterparts, provided that the electronic

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their own and the legislatures of such states were concerned their citizens would not be adequately protected. Thus, as of December 2001 only Luxembourg was on track to have implementing legislation by the designated date. *E-Commerce Directive is “Working Well”*, WORLD INTERNET L. REP. (BNA) Dec. 2001, at 6.

<sup>62</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 (the “E-Commerce Directive”), available at [http://europa.eu.int/comm/internal\\_market/en/media/electcomm/com31en.pdf](http://europa.eu.int/comm/internal_market/en/media/electcomm/com31en.pdf), Recital (22), Annex.

<sup>63</sup> *Id.*, Recitals (29), (53), (55), (56), (65), Art. 1, §3, Annex.

<sup>64</sup> *Id.*, Recital (55).

<sup>65</sup> Council Regulation No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters, art. 15(c).

<sup>66</sup> See [http://www.europa.eu.int/comm/justice\\_home/civil/consultation/index\\_en.htm](http://www.europa.eu.int/comm/justice_home/civil/consultation/index_en.htm).

<sup>67</sup> *Proposed European e-commerce law would stifle business*, July 25, 2001, located at [http://www.iccwbo.org/home/news\\_archives/2001/e\\_commerce\\_law.asp](http://www.iccwbo.org/home/news_archives/2001/e_commerce_law.asp).

<sup>68</sup> D. Marino and D. Fontana, *The EU Draft Directive on Electronic Commerce*, WORLD INTERNET L. REP. (BNA) (3/00), at 26.

signature employs a reliable process of identification, guaranteeing a link between a document and the signature attached to it.<sup>69</sup>

The United States has similar legislation embodied in the E-SIGN Act, which gives equal force to e-signatures and signed papers, but requires that any electronic sale inform consumers of their right (a) to receive the information in paper form; (b) to withdraw their consent to the transaction and any conditions, consequences, and fees of such withdrawal; and (c) a description of the hardware and software required to access the electronic records.<sup>70</sup> In addition, 38 states have adopted, and 4 more have pending legislation to adopt, the Uniform Electronic Transactions Act (“UETA”)<sup>71</sup>, whose main purpose is to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to electronic commerce.<sup>72</sup> UETA has been so widely accepted among the states in part because the E-SIGN Act pre-empts state laws affecting electronic signatures, making an exception only when a state has adopted UETA in the form it was proposed.<sup>73</sup>

The United Nations Commission on International Trade has, since 1996, been developing a Model Law on Electronic Commerce. If adopted, the Model Law is not expected to have a significant impact on most developed countries, including Japan, the United States and the European Union’s Member State’s, which have largely enacted electronic signature legislation. However, some commentators have pointed out that the U.N.’s Model Law is nothing like the electronic signature laws passed in either Europe or the United States and the effects, if adopted, will be unpredictable and sweeping.<sup>74</sup>

Thus, for now, the applicable maxim is plainly *communicator emptor*. At a minimum, companies establishing web sites need to consider the legal implications of their site, if not in every state and country in the world, at least in those in which it conducts significant business. In order to fully protect themselves, companies which are not in fact engaged in national or global business should consider placing on their site a disclaimer of any intent to solicit business, or even site visitors, from outside specified jurisdictions. This is particularly important in light of the developing trend in the United States that a state’s jurisdiction over a particular web site is conferred through actual transactions in the state.<sup>75</sup>

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<sup>69</sup> Laurent Szuskin and Myria Saarinen, *Enactment of the Decree Relating to E-Signatures*, WORLD INTERNET L. REP. (BNA) (June 2001), at 7.

<sup>70</sup> Stephanie Tsacoumis and Victoria P. Rostow, *E-SIGN Your Life Away: Digital Signatures in the New Economy*, 4 WALLSTREETLAWYER.COM, at 20.

<sup>71</sup> UETA was approved by the National Conference of Commissioners on Uniform State Laws at its annual meeting in July 1999.

<sup>72</sup> For current statistics on the adoption of the UETA, see <http://www.nccusl.org/nccusl/pubndrafts.asp>.

<sup>73</sup> *Most UETA Bills Introduced in 2001 Pass*, WORLD INTERNET L. REP. (BNA) (Sept. 2001), at 17.

<sup>74</sup> Stewart Baker, quoted in *U.N. Commission to Consider Draft Model Law on E-Signatures at June Meeting*, WORLD INTERNET L. REP. (BNA) (May 2001), at 31.

<sup>75</sup> See, e.g., *Ford Motor Co. v. Texas Dep’t of Transp.*, No. 00-50750 (5<sup>th</sup> Cir. 2001) (Internet sale by Ford of used motor vehicles violated state statute prohibiting automobile manufacturers from retailing motor vehicles to consumers); *National Football League v. Miller*, No. 99 Civ. 11846(JSM), 2000 WL 335566 (S.D.N.Y. 2000) (income derived by defendant from New Yorkers placing bets through advertisers on defendant’s *web site* created jurisdiction in New York); *Euromarket Designs Inc. v. Crate & Barrel Ltd.* (E.D. Ill. 2000) (completed Internet transaction between Irish vendor and Illinois resident constituted

State securities regulators have endorsed this approach from the securities law standpoint, exempting offerings that disclaim offering to residents of specific states, provided the offering is not directed at state residents by other means and sales are not made in the state.<sup>76</sup> Similarly, in a series of three no-action letters, the SEC permitted web sites to screen investors by way of an accreditation questionnaire and issuing passwords to those found to be qualified. Only after reviewing the password would the investor actually access the web site and view corporate offerings. This process was found not to be a “general solicitation” in violation of Rule 507.<sup>77</sup>

Franchise regulations have taken a similar approach. The North American Securities Administrators Association (“NASAA”) adopted a “Statement of Policy Regarding Offers of Franchises on the Internet” on May 3, 1998, which deems franchise offers on the Internet as exempt from franchise registration and disclosure statutes in states where the offer indicates that it is not being made to residents of the state, it is not otherwise directed at residents of the state, and no franchise sales are made in the state before compliance with the state’s franchise registration and disclosure law. This approach has since been adopted in seven states, including Indiana,<sup>78</sup> Maryland<sup>79</sup> and New York.<sup>80</sup> Such a disclaimer approach is doubtless anathema to web site designers and marketing staff, but (if the disclaimer is not contradicted by the facts) at least provides an argument that the company is not “purposely availing itself” of the privilege of conducting activities in unexpected places and so should not be held subject to jurisdiction there.

The NASAA is also preparing to issue a statement of policy regarding franchise advertising on the Internet. The NASAA’s proposed Internet Advertising Statement provides that any communication about a franchise offering made through the Internet

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sufficient contacts for jurisdiction); *American Eyewear Inc. v. Peeper’s Sunglasses and Accessories Inc.* (N.D. Tex. 2000) (personal jurisdiction created in Texas by regular Internet transactions of Minnesota corporation with Texas residents); *People Solutions, Inc. v. People Solutions, Inc.*, No. 3:99-CV-2339-L, 2000 U.S. Dist. LEXIS 10444 (N.D. Tex. 2000) (web site allowing Texas residents to order goods online insufficient to establish personal jurisdiction because no goods actually sold to Texas residents), *but cf.* *America Online Inc. v. Huang*, No. 00-290-A (E.D. Va. 2000) reported in 60 PAT. TRADEMARK & COPYRIGHT J. (BNA) 258 (July 28, 2000) (registration of Internet domain name with Virginia-based company was insufficient contact to create jurisdiction); *contra*, *Bancroft & Masters Inc. v. Augusta Nat’l Inc.*, No. 99-15099 (9<sup>th</sup> Cir. Aug. 18, 2000), reported in 60 PAT. TRADEMARK COPYRIGHT J. (BNA) 366 (Aug. 25, 2000) (protest letter sent to domain name registrar in state sufficient to provide jurisdiction).

<sup>76</sup> Alaska Administrator of Securities, In Re: Offers Effected Through Internet That Do Not Result in Sales of Securities in Alaska, Admin. Order 96-065 (Dec. 20, 1995); Indiana Sec. Div., In the Matter of: Securities Offered on the Internet but Not Sold in Indiana, Order No. 95-0115 AO (Nov. 15, 1995); Texas Sec. Bd., § 139.17, Offer Disseminated Through the Internet; all *cited in* E. Schneiderman & R. Kornreich, *Personal Jurisdiction and Internet Commerce*, N.Y.L.J. June 4, 1997, at 1.

<sup>77</sup> See J. Coffee, “Brave New World?: The Impact(s) of the Internet on Modern Securities Regulation,” 52 *The Bus. Lawyer* 1195, 1219-21 (1997), *citing* IPOnet, SEC No-Action Letter, 1997 SEC No. Act. LEXIS 642 (July 26, 1996); Angel Capital Electronic Network, SEC No-Action Letter, 1997 SEC No. Act. LEXIS 812 (Oct. 25, 1996); Lamp Technologies, Inc. SEC No-Action Letter, 1997 SEC No-Act. LEXIS 638 (May 29, 1997).

<sup>78</sup> Order No. 97-0378AO, *BUS. FRAN. GUIDE (CCH)* ¶ 5140.011 (Dec. 24, 1997).

<sup>79</sup> Code of Md. Regs., Div. of Securities § 02.02.08.18.

<sup>80</sup> Dep’t of Law, Bureau of Investor Protection and Securities – Codes, Rules and Regulations of the State of N.Y., Tit. 13, Ch. VII § 200.13 (1999), *BUS. FRAN. GUIDE (CCH)* ¶ 5320.13.

should be exempted from franchise filing requirements<sup>81</sup> if the franchisor provides the URL of the advertising to the state franchise administrator.<sup>82</sup>

The United Kingdom has enacted the Consumer Protection (Distance Selling) Regulations 2000, which offers similar protection. Specifically, prospective purchasers must be provided with the name and address of the supplier; a description of the goods and services; the price for the goods, including tax; arrangements for payment, delivery and performance; and the ability of the purchaser to cancel the contract.<sup>83</sup>

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<sup>81</sup> Nine of the franchise registration states require franchisors that offer franchises in those states to file copies of their franchise sales advertisements prior to publication. Steven Goldman & Mark P. Forseth, *Internet Franchise Advertising: Will Franchise Regulation Join the Information Age?*, 7 L.J.N.'S FRANCHISING BUS. NEWS & L. ALERT 11 (Aug. 2001), at 6.

<sup>82</sup> Likewise, the Federal Trade Commission has issued a notice of proposed rulemaking with respect to the dissemination of financial performance representations outside of the offering circular, including Internet advertising. *Id.*, at 5.

<sup>83</sup> Statutory Instrument 2000 No. 2334, available at [www.legislation.hmso.gov.uk/si/si2000/20002334.htm](http://www.legislation.hmso.gov.uk/si/si2000/20002334.htm); "New Rules Governing Sales to Consumers over the Internet" located at [www.elexica.com/items/data/d9c607dc9.htm](http://www.elexica.com/items/data/d9c607dc9.htm).