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Challenges of Conflict of Laws in the Digital Environment: An Analytical Study of Online Contracts

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Abstract :

In recent years, the Internet has created not only a binding concept of time and place, but also a new significant social structure. Utilization of the Internet is not a privilege of certain countries; rather, it is a necessity for modern survival. Nowadays Internet influence is strongly growing in economic and political areas worldwide leading to the globalization of these fields. The influence of the Internet is viewed differently by countries, thereby creating various dangers. For instance, the constant worldwide communication could significantly deteriorate countries' relationships and therefore, national security. The Internet is not as significant for the economy as states see it, which are unaware of its potential. Instead, major information systems, electronics companies and the main stock exchanges are controlled by a few countries, while other countries are only consumers, losing the greatest economic profit. The Internet creates both desired and undesirable objects for the countries; however, the latter are not successfully neutralized. Some valid and relatively modern conflicts of laws conventions are reviewed including certain conventions and directives on electronic commerce. Some provisions of these acts are seen as a possibility for further developing a more cognition-oriented disposition of the Internet global nature as opposed to its territorial understanding. The mentioned rules could be supplemented by creating interoperability, traceability, functionality and other technical characteristics on the web.

The rapid development of information technology challenges judicial and legal systems around the globe. New opportunities and possibilities of high-tech electronic transfers of data, messages and documents lead to disputes in cyberspace that need to be settled in court. For example, a person subscribes to an online newspaper evening edition in a certain location and is charged through an unauthorized credit card instruction in another location. The contract was concluded in both states and in a third one, nowhere and everywhere. The question arises: can and where to sue the newspaper? Or through a scorched access to the e-mail address: legality of derogatory statements about a local mayor and arising attempts from another location, where no mail is deliverable? Or through an exceedingly unsafe chat room riddled with offensive gender comments of a security guard? In these four hypothetic cases, clearly a search engine is crucial; nevertheless, it is registered in a region where access is easy. States try now to regulate this and other acts or facts occurring outside their territory. Their attempts seem culminative, as, for example, the criminal exodus of certain individuals from one country stopped after a worker's upset retire to another country. The state will probably expect that issuing of requests will end, without realizing that anomalous behavior is incidental from a new way of thinking that charters and titles are of little or no value in a number of occasions boundaries. Additionally, other states may wish to efflux sophisticated suspicions on their territory, since presumably certain entities are deep within their own country as well as in others; nevertheless, its painstaking behavior may cause amazement again.

Keywords: Challenges, Conflict of Laws, Digital Environment, Analytical Study, Online Contracts

1. Introduction

The phenomenal growth of the Internet has led to the creation of a new marketplace known as cyberspace. With technological advancements, the Internet is expected to transform lives, lifestyles, and economies throughout the world. The Internet may change the dimensions of business, speed up transactions, reduce transaction costs, and eliminate the need for middlemen between supplier and consumer. The Internet is expected to bring rapid changes in the ways people conduct electronic commerce. Internet penetration has created a revolutionary change in people's communication, business, trade, commerce, education, entertainment, and many other domains of life. Any information, document, or commodity can easily be accessed worldwide within a fraction of seconds, as a result of which the

geographical borders of trade and commerce in cyberspace have virtually disappeared (A., 2014). The newest countries are rapidly opening their doors for trade and commerce over the Internet.

With just a few clicks of the mouse, on-line purchasing through Internet trading communities is easy and convenient. There is no need to visit shops, malls, or markets. All kinds of commodities, merchandise, services, securities, and knowledge-based information are available on the Internet. Buyer and seller get in on-line contracts and settle transactions on fortuitous benefits out of the system with varied payment modes. On-line contracts are wider than traditional contracts. The opposite parties in on-line contracts may be located in different geographical territories and are governed by different legal systems (Wang, 2008). This brought the urgent need for the identification of the governing law applicable to on-line contracts. But the validity and enforceability of the cross-border contract of cyberspace depend on the governing law rules.

Conflicts in law have emerged due to the borderless reality of the current era of globalization. Violation of a law of a sovereign nation is no longer restricted to that particular territory. Contracts could be made, breached, or executed by and from several jurisdictions giving rise to the concept of conflicts of law. The wide spread use of the Internet brought along with it the concern of jurisdiction and enforcement of law over cyberspace. People can now communicate, trade, and engage in a large variety of other activities crossing territorial boundaries with one click of the mouse. Given such a borderless realm, the issues of law applicable to cyberspace transactions come along. It is expected that with the intensifying interdependence and enterprises in the current globalized economy, conflicts of law questions will increasingly arise.

Research problem

The Internet has changed the world. Modern communication technology enables a person sitting in one part of the globe to disseminate a message throughout the world. Information can not only be disseminated across borders without physical movement, but it may also be stored anywhere in the world. The hundreds of millions of Internet users form a 'second world' in which it is questionable how territorial the law is.

As a general rule, the law is territorial in nature. The boundary of the law is the boundary of sovereign power. The Internet as a new forum creates a revolutionary challenge for new situations based on interests of several states. This text focuses on the existing conflict of law rules in respect to the commencement of non-contractual obligations caused by the Internet. It aims to reveal their weaknesses and give an explanation as to how they should be amended in order to adapt them to the new circumstances of the Internet.

The Internet creates a ground in which the interests of several states behave in a new way. Contrary to the traditional private international law, the Internet does not require the physical transfer and/or reception of a piece of information. Within the scope of cyberspace communication, a possible potential is created in respect to problems related to the conflict of laws. For instance, cyber obstacles may lead to losses that may only possibly be claimed in

more than one jurisdiction, thus giving rise to a conflict of laws situation. There are several types of non-contractual obligations caused by the Internet communication, among which torts and delicts may be the most common.

As a general rule, the phenomenon is likely to lead to hard-core questions of jurisdiction, applicable law, and in turn recognition and enforcement of overseas judgments in common aspects. Such fundamental matters have always been dealt with as an issue of public international law, though nowadays, they are usually studied within the narrower scope of private international law. It is essentially a 19th-century problem that is closely related to the development of the nation-state. The nation-state is the cornerstone of modern public international law. However, its ascription of power, thus jurisdiction, to govern is geographically oriented, a concept of territoriality. In turn, from its perspective, law becomes a territorial conception. However, jurisdiction remains the basis for law.

Time and space concepts are thus essential in analyzing a legal sense of jurisdiction. Basically, there are locatable persons or things whose location defines a state jurisdiction over them. It is questionable how jurisdiction may appropriately be exercised in the absence of any physical presence. It may be asserted that a non-local person or thing may well acquire territorial attachments and its own nature, which is the reverse and still appropriate within a virtual world. But nowadays, uncontroverted evidence shows that a legal person, a computer, a fiber-optic cable, or anything of that nature has not yet acquired territoriality of its own, and cyberspace is still beyond states.

Research Objectives

To examine the challenges of jurisdiction in contracting in cyberspace. To assess and analyze the conflict of laws regimes relating to contracting in cyberspace and the recent works of the European Communities in this area. To give some perspective on where these efforts fit in the overall picture of information technology law and offer some thoughts on what area this intriguing and complex area of law will develop in the coming years. Globalization, digitalization and the concomitant spread of the Internet have had a profound influence on the world and on the law. The legal world has not been immune to the innovative developments brought about or enhanced by information technology (A., 2014). It is not strange, therefore, that the Internet and cyberspace have been a ubiquitous topic of scholarly discussion that has produced a proliferation of perspectives and ideas over the last two decades. At the same time, a sense of urgency regarding international regulation of disputes arising in cyberspace has emerged amongst adjudicating bodies, governments and intergovernmental organizations. Therefore, cyberspace and the conflicts of laws issues it engenders is a profoundly interesting area of law and one that is fast developing. However, it is argued that the overall state of this area of law is simply not satisfactory (Wang, 2008). There is no uniformity of laws governing conflict of laws in cyberspace. Jurisdictional issues and governing laws are often contested issues and pertinent criticisms of some current laws are explored. Furthermore, it is shown that the issues are complex with philosophical, technical and practical implications. Clarity of these laws would benefit adjudicating bodies, international organizations, transnational bodies, legal professionals and businesses in general. Additionally, in light of the broad and

fluid nature of cyberspace, it is stressed that all efforts to regulate conflict of laws in cyberspace should be sensitive to the potential advantage and disadvantage associated with restrictive rules and should be flexible enough to accommodate future changes.

Methodology

Any inquiry into the validity of contracts is necessarily a historical process in which the evolution of the legal rules and principles serves the key function of revealing the orientation and limits of the presiding order. The inquiry thus leads to the identification of the taxonomic rules, principles and criteria which claim validity in the realm of contracts.

The typology proposed here to identify the major normative taxons consists of five criteria for conceptualizing the validity of contracts: freedom, transaction, performing capacity, agreement and form. The first four criteria refer to the contract itself, leaving the fifth as an auxiliary norm indicating the admissible techniques of presentation of the contract. The typological rules are discussed in five tantalizing snapshots, based on product-copy business-relevant contracts, following a progressively broader geographical scope: Finnish law only, EU directives and regulations, harmonized contract law, and the increasing relevance of consistently governing transnational law. Subsequently, the jurisprudence of each taxonomic rule is briefly scrutinized by tapping a few obvious practically relevant questions related to potentially perceivable rules.

The condition of induced certainty is highlighted with respect to the transactional norm of the legal process applicable to the contract, by which, given its credibility, the question is posed: Who is entitled to allege and/or deny the exercise of that authority? An interactive explanatory point of view may thus be taken, acknowledging a cognitive influence emanating from the interrogative format of the principle feedback system and the strictly com-formative nature of law. Justice is then explicated as an expert's subjective equality re-evaluated by the Justice Assemblers, which have the cognitive capacity of conceptually generating at least objects with infinitely many components.

2. The Nature of Online Contracts

In the field of online commerce, the presence of "terms and conditions" to outline the deal between buyers and sellers has become a ubiquitous phenomenon. In the modern landscape of Internet commerce, standard form contracts are prevalent whenever a consumer browses a website. Such contracts usually include a lengthy array of fine print detailing the terms of the sale and containing a number of clauses that severely limit the litigious options of consumers (P. Marks, 2019). In the early days of the Internet, these contracts were hardly noticed because they surfaced rarely. The typical pattern, then as now, was to search for the product and then click on the appropriate link. After learning the particulars of the deal, a consumer merely clicked the button labeled "Submit Order" or an equivalent. This pattern usually left the consumer oblivious to the existence of a parade of terms that may affect adversarial encounters down the road. Now, however, the attempt to slip a sales contract past the consumer’s notice is not a one-way street. Increasingly, a consumer can encounter Internet retailers that front load the screening effort.

The Internet has opened up new avenues for commerce and allowed new sellers to come to the market. While access to the marketplace has expanded considerably, the means for screening the offerings have not kept pace (Mann & Siebeneicher, 2008). Conventional screening methods include rule-of-thumb heuristics and direct inquiry, and both would probably yield the desired result before the Internet. In the modern environment, however, it is often hard to know the name of a firm. Given that click paths can obscure a firm's identity altogether, inquiries about its integrity can be impossible. A tool that might help consumers assess a seller's trustworthiness is the use of escrow and other advance payment services, so they can be sure to receive a product before the money changes hands. Such a technique was appropriate when selling on a very limited scale, but was considered impractical when buying a yacht. That view may no longer be justified.

2.1. Definition and Characteristics

Online contracts are contracts entered into by parties using the Internet. This definition is broad enough to cover a variety of electronic transactions. However, it must be noted that not all contracts that influence or use the Internet in some way should be called online contracts. There is a difference between "online contracts" and "transactions made online." Online contracts are not limited to any particular agreement templates or types. Generally, customers receive product information, order products, and pay for them using the Internet. This is just a procedure to complete an online contract, which means a contract made online. Everything from service contracts to long-term loan agreements is possible online. However, in most discussions, online contracts refer to the electronically formed contracts as the "clickwrap" or "browse wrap" contracts widely used on websites and the Internet (A., 2014). Consequently, if a website does not post its terms of use when a user accesses its services, the question of whether a contract governs the relationship between the user and the website would depend on the governing law of the relationship and would trigger a choice of law inquiry.

There are three main categories of online contracts. The first category is facsimile transactions, which are contracts made by sending signed papers in the "snail mail" manner, where one party sends the signed papers to another through postal mail or a facsimile machine. Using the Internet, contracts could simply be transmitted via email, requiring only minutes instead of days or weeks. The second category is agreements made using a standard contract form in a situation where a party (the offeror) has a wide choice of persons to whom to send an offer and direct communication is not feasible. Contracts of this type include the standard form agreements of series companies, product warranties, "shrink-wrap" software license agreements, detailed purchase agreements on the Internet, and other mass-market licenses for retail use. The last category is electronic contracts, which are contracts generated using selected transaction templates automatically or semi-automatically through dialogue information that includes gender, nationality, or other demographic information that pre-recorded comments refer to. Some online contracts could also join products and/or new agreements to submit a renewed agreement or a detailed contract.

2.2. Types of Online Contracts

The dramatic rise of the Internet as a mode of communication in recent years has resulted in an equally dramatic rise in its use as a means for entering into legally binding contracts. Various systems and procedures have been implemented by the operators of Internet-enabled computers.

Online contracting is a complex and high-technology area of the law that will potentially involve numerous legal doctrines in addition to traditional contract law. It will also be affected by the rapid development of technology that involves its applications. The technology used for the Internet is in large part simple, but it is constantly evolving. Computers using different systems and applications negotiate online contracts, arrange and display drafts or form contracts, execute contracts, and perform, convert, and query them. The Internet is also a device for the storage of computer files and for access to or delivery of these files.

The Internet as a mode of communication is well known but will be described briefly here so that subsequently proposed rules for it can be viewed in context. Briefly stated, the Internet is a worldwide computer communication network consisting of numerous computer-based sub-networks operated by a multitude of entities adhering to a common set of technical standards. These standards define protocols that, among other things, determine the address scheme by which Internet-enabled computers can be identified and located and the format in which data is attached to requests for access to the computers (P. Marks, 2019). A request can be made via a protocol for the retrieval of a file or other data from the computer by a user of a requesting computer. This protocol will cause a representative of the receiving computer to locate the requested file and transmit a response containing lesser amounts of data sufficient for the receiving computer to reconstruct the file.

This process also describes the establishment of an online contract or the delivery of a computer file representing any collateral such as a written instrument. What goes on in translation, approval, execution, and compliance with online contracts is not so well understood. These processes will be analyzed in detail, and rules governing the design and implementation of systems and protocols for the negotiation, formation, and performance of online contracts will be proposed (Mann & Siebeneicher, 2008).

3. Jurisdictional Issues in Online Contracts

Electronic contracts are contracts that are entered into using the electronic medium and implemented through electronic communications. Online contracts are electronic contracts put in place on the World Wide Web. The use of online contracts is being recognized in a large number of jurisdictions and is increasing rapidly around the world. Businesses using online contracting observe that cyberspace has no geographical boundaries, no place of performance, and no center of control. On the one hand, this is viewed as an advantage of using the Internet and other forms of electronic communication, as businesses can find customers and suppliers anywhere in the world, and potential international trade opportunities are greatly expanded. This is especially important as many businesses, especially small and medium-sized enterprises, have limited capacity or resources to reach foreign markets and are looking for

cost-effective ways to break into foreign markets. On the other hand, businesses are concerned about the fact that geographical boundaries have no meaning in cyberspace and this will heighten the risk of cross-border disputes. Cross-border disputes have far greater potential consequences than domestic disputes and are more complicated. At present, there are few specific rules in the statutes, regulations, model laws and international conventions in the area of the law relating to online contracts. (Kalyvaki, 2023)

The objective of this paper is to analyze the jurisdictional issues in online contracts, with a focus on some of the obstacles that businesses are facing and solutions to redress these obstacles at present. The first part of the paper will discuss the background of global online commerce and the obstacles and concerns businesses face regarding Internet jurisdiction. The paper will then analyze the existing regulatory framework and proposed solutions to Internet jurisdiction. The focus of the analysis will be on the Model Laws, which deal with internet jurisdiction concern and a draft proposal to establish a court to facilitate online dispute resolution for domain name disputes. There would be no coherent court system for resolving all kinds of Internet disputes unless industry standard and a clear governing law was established. A corresponding adjudication framework is also needed to accompany these international rules in order for them to be effective. Finally, conclusions and suggestions will be made regarding Internet jurisdiction. (Chaisse & Kirkwood, 2022)

The Internet is causing a revolution in communication and commercial activities. Global online commerce is exploding, through the growth of cyberspace. The number of Internet users and electronic commerce is growing exponentially worldwide. Businesses can now carry on their transactions with customers, partners, suppliers, and other businesses, whether large or small, anywhere in the world. Businesses are using new technologies such as the internet to save costs, increase productivity, and enhance products and customer services. As this trend continues, the potential for conducting transactions online will expand rapidly and the speed and global reach of electronic commerce will increase even further. As more businesses develop websites and solicit for business via the Internet, the use of online contracts is likely to continue to increase rapidly in the next few years. Online contracts have also the potential to resolve many commercial disputes. (Jain et al.2021)

3.1. Determining Jurisdiction

The contemporary challenge of conflict of laws posed by the digital environment, at its preliminary level, is complexity finding out which nation state’s legislation applies to a particular online contract. As online contracts are multinational in character, there is an uncertainty: no conflict of laws rule, let alone any governing law, has been specifically designed for online contracts. Each individual state’s general conflict of laws rules do not seem to work smoothly within a digital environment. Jurisdictional difficulties exist for online contracts conducted through electronic means. In an attempt to tackle the intricacies of conflict of laws in the age of the Internet, lawyers and academics have focused on the matter of where an online contract is made. The consideration of where a contract is consummated has derived from traditional thinking still prevalent within the legal domain today. Conventionally, a contract is pleasingly yet vaguely defined as a “set of exchanges that takes

place between parties." Primary in nature enquiry should be to ascertain what has taken place by way of exchange of communication between parties. Investigation would naturally look at what was said, where it was said, when it was said and how it was said. From one's understanding of what has taken place, one is then able to ascertain where that exchange occurred. It is also a relatively oxymoronic exercise. Certainty at the beginning can later give rise to uncertainty and ambiguity: jurisprudential observations have constantly stated the simple fact that parties intending to be bound by a contract will by nature try to avoid ambiguity. However, it is precisely hatred of certainty and foreknowledge of its "danger" that lends innovation to semantic creativity (Wang, 2008). A recent case, C2C Marketplace Limited v. Vanz, application number 30835 of 3013 decided on 1st February, 2013, comes close to breaking down the conventional definition of a contract while in view of the emergence of technology-backed bargains. It is regarding a sale of smart phones via an online auction forum between a Hong Kong seller and a prospective buyer from the mainland China in which both parties were satisfied with the deal until the seller defaulted. In the preliminary stages of investigation conducted by the Police, the buyer alleged that he was being cheated, and the contract was void. The seller, however, maintained that there was no "contract" in law as none of the essential elements – offer, acceptance and consideration – required for a valid contract were present (Selvadurai, 2013).

3.2. Forum Selection Clauses

Most contracts contain a provision designating the forum for adjudicating disputes. Forum selection clauses are contractual provisions whereby the parties agree upon a forum or several fora for adjudicating litigation that may arise. These clauses might take the form of either mandatory or permissive clauses. Forum selection clauses may also appear in various forms: (a) an explicit agreement among the parties stating a specific court, city, or designation of courts or (b) a reference to certain standardized documents under which the forum selection clause is outlined. (Coyle, 2022)

Forum selection clauses send a signal to the court to determine whether the case falls within the jury's jurisdiction. The court will seek to satisfy itself first that this choice-of-court agreement has prima facie validity and then determine whether this validity has been preserved. (Coyle & Richardson, 2021)

In the same line of attack, the party seeking to undo the choice-of-court agreement can contest either the document's authenticity or the forum clause's effectiveness concerning the matter before it. If the clause is found to be valid, the next step is to accord certain votes, almost automatic dismissal, in the forum selected by the parties, as the interests of the parties must be respected. However, an exception is brought forth by the courts when they are asked to dismiss an action against the forum expressly chosen by the parties based on a policy enacted expressly to block enforcement of foreign judgments issued in the forum designated by the parties in order to hamper the due process of law against foreigners, since it is necessary to assess first whether the procedure against those foreigners satisfied minimally the due process of law. (Born, 2021)

4. Applicable Law in Online Contracts

Both international trade and transaction preferences have changed along with ICT development. People in the global village are constantly facing situations where different legal systems exist. This situation can easily complicate the conditions of an online contract. The first question raising in one's mind might be, "Which country's law governs this dispute?" It means what should be taken into account to explain the content of the contract. The correctness of the choice of applicable law plays an important role in international trade and commerce since dispute resolution comes as a last resort and expending legal costs to defend the rights is one the opportunities that might be lost forever. It is agreed by both the jurisprudence and scholars that no system of law can apply in every case in this world riddled with differences (Wang, 2008). No law-perfect solution can satisfy everyone and, thus, conflicts rules are inevitable in this shifting environment. This essay will analyze the current conflict of law rules concerning online contracts and the existing approaches for creating a comprehensive uniform law to govern all agreements.

As an initial step into the maze, it is necessary to choose which jurisdiction the law is to be applied theoretically. Only then could the statutory law be examined to sort out the specific provisions governing the issues existing in the electronic contract. In order to narrow down the mentioned high-level introduction of the maze, only the counterparts of the contract will be looked at from the trade or transaction side. This means the online shops, sale owners have the initiative to create the electronic contract. Those contract words composed by both contents and styles are usually hard to analyze on their own and the respecting jurisdiction has to be specified to reread them. Online contracts fall into many forms concerning their contents and both the granting conditions and text types can vary along with the difference in domains (A., 2014). So, in order to manage the maze, it is good to remind few types of online contracts presented below. Choice of law in computer software license agreements, Logistics Contract of E-business Logistics, Protocol Swap Contract, Contracts, etc.

4.1. Choice of Law Principles

A. Origin and Evolution of the Principles

Origin and evolution of the choice of law principles regulating contract law were described and analyzed. A contract may take on different forms: an official document or an oral agreement. For any contract, all parties must have a clear and common understanding of: the purpose, the exchange, and the obligation arising from it. Based on the obligation arising from the contract, the party having the right to ask for the performance of the contract is called the creditor, and the party having the obligation to perform the contract is called the debtor (A. Effross, 1997).

Origin and evolution of the principles regulating the parties' right to choose applicable law have been studied and analyzed. In principle, a party engaging in business is free to decide the type of business; the nature of the business, conditions and obligations, and the choice of law governing their enterprise. The prime consideration is the freedom to contract, whether the contract is legal, moral, or ethical is secondary.

B. Scope of Income Tax Treaties

Many jurisdictions provide broad taxing rights over tax residents in the country of residence, which leads to the risk of the same amount of income being taxed in more than one jurisdiction (Wang, 2008). A comprehensive bilateral tax treaty network seeks to eliminate tax discrimination and the risk of double taxation between Contracting States. A model approach to income tax treaties, usually based on OECD and UN models, resists comprehensive regulation of cross-border tax disputes. Income tax treaties usually remain silent on the availability of any tax credit under the exclusive taxation of dividends by either Contracting State. In other words, it has become well-established that a purely domestic tax rule should apply to a tax issue arising from an international cross-border deal without explicit provisions in the relevant tax treaties.

4.2. Uniformity vs. Diversity of Laws

The question of conflicts of laws in the digital environment is a fascinating one as it relates to the proliferation of electronic commerce. Much of the existing literature on this question has been devoted to the relatively efficient treatment of general questions of jurisdiction and enforcement of judgments vis-à-vis state or quasi-state actors in a digitized environment. Global on-line retailers such as Amazon and eBay are well advised as to how to design their software to get the desired outcome in relation to consumer protection and privacy rules and to design their web sites to maximize compliance with the formally applicable laws. They understand the complexities of multiple conflicting legal rules and, where necessary, employ smart strategies to ensure compliance worldwide. One key consideration of this literature is the extent to which the state's reach can extend to regulate private actors generally (Coetzee, 2017).

While it is important to understand this first layer of conflict of laws questions, the more pressing question is the actual compatibility of diverging legal regimes in a digital environment where the same product is marketed at the same time in different jurisdictions by a single retailer. It can be reasonably expected that on-line contracts themselves differ considerably from their traditional hard copy predecessors to which the classical rules of private international law were formulated. By contrast, the literature addressing questions of conflict of laws that arise from the lack of compatibility of laws in a digitized economy has received little attention. The current on-line contracts largely take the form of terms-of-service contracts that frequently traverse the line of enforceability under the unpacking doctrine. Simultaneously, the state largely enforced its own regulatory standards top down by using economic coercion in undertaking to purchase on-line contracts. To illustrate the challenges in the implementation of laws at the intersection of diverging legal orders in a digitized economy, hypothetical scenarios will also be given. (Singh2023)

5. Cross-Border Enforcement of Online Contracts

Among the multiplicity of obstacles to the successful development of the Internet as a medium for commerce is the problem of the cross-border enforcement of online contracts. Most particularly problematic is the enforcement of judgements rendered on the basis of online contracts created by persons who, whether intentionally or otherwise, are 'non-parties'

to the jurisdiction in which judicial enforcement is being sought. The problem of enforcement is an especially vexatious problem in the area of online contracts because they are created using an entirely different process from that by which conventional contracts are made and the parties to whom online contracts are made will quite often be geographically isolated from the jurisdiction within which enforcement is sought (Kloza, 2010).

In light of the exponential increases in the create contracts and litigation based on online contracts, there is an urgent need in the public discourse for a comprehensive exploration of possible common law solutions to the problems of cross-border enforcement of judgements rendered on the basis of online contracts. This necessarily includes the problem of jurisdiction but it is incorrectly assumed that if jurisdictional issues are solved by ways of universal rules of international law, the problems of enforcing the contracts will automatically obtain solutions (Wang, 2008). Since the world is still a long way from a global rules on Internet jurisdiction, and still many remains to be discussed on the adequacy of the current rules proposed by private international law.

Association of Southeast Asian Nation (ASEAN) is a geo-political and economic organisation of ten countries located in Southeast Asia with a vision of creating the ASEAN community. One of its objectives is to promote regional economic growth. Since being established, it has signed several economic agreements aimed not only at intra-ASEAN economic cooperation but also at enhancing ASEAN's regional economic relations with dialogue partners. To further enhance economic cooperation in the region, the ASEAN economic blueprint was put in place titled ASEAN Economic Vision 2020. The blueprint formulates action plans as part of ASEAN's long-term outlook for close economic cooperation through the establishment of the ASEAN Economic Community. (Snedden, 2022)

5.1. Recognition and Enforcement of Judgments

The problems of recognition and enforcement of judgements are vital in the area of conflict of laws, or in broader terms, private international law. They stand front and centre in any civil guarantees of freedom, security, and justice. Nevertheless, the legal instruments existing in this area are usually very short and succinct. This state of affairs seems particularly regrettable in the light of the recently recognised need for stronger and more effective tools for the enforcement of mediatory settlements in cross-border B2B relations. The generation of internal conflicts of laws powers of the EU Member States´ statutes has generally been left with their national law rules. Only in the field of divorce and separation, indirectly at that, Brussels II-bis touched upon such a subjective conflict of laws catalogue, giving rise to the Appellate Court at The Hague. The problems of cross-border choice of court agreements and their effects stand at the borderline between both the areas (Kloza, 2010). The fears that a successful business in e-commerce would generate blockade of language and consequently be not sufficiently attractive on some markets have not materialised. In fact, all widely used programming and working languages are being intensive taught and their interpretation in accordance with transnational principles of its application usually does not come across great problems. Nevertheless, in the commercial practice, variably on the world´s mass scale, in bulk markets of information goods, traditional, national legal system instruments are still

being valid and functioning. It is hard to imagine unconditional using unlimited language competence of professional translators or engaged software engineers in e-business of MP3 recordings, e-Books, tele-phones etc. sold as a continuously streaming into the client's computer file flow; similarly in on-line gambling games or interbank foreign currency transactions. These 'digitised results of mental work', 'soft goods' or 'intangible assets' find living under different substantive law rules, currency and taxation, and/or confrontation with diverse civil guarantees of fairness. As evidenced by the rapid establishment and influence of a few mono-color portals, it is just this latter aspect that is crucial for the worldwide range of an on-line business. Therefore, widely applied and yet not uniformly operative conflict of laws rules, judgments, ruptures and their enforcement ensure the very basis of a sound e-business ground. (Briggs, 2024)

5.2. Challenges in Enforcement

The internet has completely changed the environment of commerce. Sellers and buyers can now do business online across state and national borders at almost no cost. Businesses can establish only an easy, low-cost presence on the internet in order to tap into large markets. The whole meaning of the word market changes dramatically when there are no more geographic borders. An unregulated global market may sound utopian, but it poses significant problems as well as tremendous potential.

One of the most important legal issues in online commercial activity is jurisdiction. With the advent of e-commerce, businesses have expanded their markets from a given geographic area to the globe. Companies can now sell their goods and services twenty-four hours a day, seven days a week. But even the most aggressive entrepreneur is constrained within the limits of time and space. As a result, the availability of and accessibility to the global marketplace bring up important questions of jurisdiction and choice of law. Generally speaking, jurisdiction refers to the limit of the sovereign's authority over persons, activities and property ((Kloza, 2010)). With the advent of the internet, companies are no longer defined by their buildings and states, but rather by their messages and the activities that they conduct through their messages ((Wang, 2008)). The simultaneous universality of these messages is an inherent effect of the internet. It has profound consequences for extra-territorial application of state law. Questions arise as to how to regulate this dynamic space, and who should have the authority to regulate what. Similarly, if a complaint is to be raised, how should the jurisdiction of the state be determined?

Jurisdiction has therefore become a fertile discourse in which the legal debate on globalization plays out. It has recently become a buzzword of international law. Questions relating to jurisdiction and harmonization are not specific to the internet, but are pertinent to the very concept of private international law. As online businesses cross the limits of nation states, it has been tenet that discussions for enhanced international co-operation on private international law should not be confined to the internet but encompass approaches at a higher conceptual level. Nonetheless, the internet brings to the fore acute human concerns that could be masked by the more ramified and complex discussions of jurisdiction and harmonisation in

the globalisation space. Specifically, it raises immediate and practical concerns of business and livelihoods. (Dimitropoulos, 2022)

The fundamentally new realities set forth by the internet needs to be understood competently, and critically attested in order to better inform regulatory and other actions that could be taken in this regard. While international law, though diluted in its applicability, may still come to play an overarching role in the architecture of the internet as a new public sphere, private international law, together with self-regulation, are poised to come to dominate the governance of interstate on-line activities. Yet the time frames of regulatory development may not match those of the rapid innovation's consequent to the internet. Consequently, a jurisdictional-space mismatch can be foreseen in some tactical senses, especially in relation to how to create enforcement powers that will be warranted sustainably. (Svantesson, 2021)

6. Consumer Protection in the Digital Environment

Consumer protection is a legal concept that ensures that the rights of consumers are protected. In the context of the digital environment, it refers to the protection of consumers in relation to online contracts and transactions. The protection of consumers in the digital environment is a great challenge. The reasons for these challenges are multifaceted. First, consumers are often not aware of the fact that may expose them to risks when entering into an online contract. They may not be aware of default rules applicable to contracts, including rules of information and formation of contracts; or they may be aware of the fact that the use of standard contracts entails additional obligations. Second, consumers often lack the ability to evaluate relevant contract terms, and even if they are aware of them, they may not be able to effectively oppose traders via negotiation. Third, consumers may have a low propensity to enforce their rights, given the low monetary value of many online contracts and the difficulty of doing so (Montplaisir, 2018).

Consumer protection in the digital environment entails the protection of consumers in relation to online contracts and contracts entered into via electronic means. Such a protection is necessary particularly because the digitization of commercial transactions has brought about fundamental changes in how contracts are formed. It is a pertinent goal to explore legal disciplines dealing with this topic. There is no singular definition of what can be referred to as a consumer. It may be defined broadly as a person who purchases a good or service for non-business purposes or more strictly as a natural person who enters into a transaction that is outside the scope of his or her business activities. It is also important to consider the concept of consumer transaction. A transaction comprises a chain of facts leading from the initiation of negotiations to the performance of the contract (Beishuizen, 2005). A consumption transaction entails the sale, leasing distribution, or any other transaction by any means, that concerns all types of goods with a view to their purchase or leasing by consumers.

6.1. Consumer Rights

The Convention on the Law Applicable to Contractual Obligations (1980) and the Rome Convention (1980) came into force and were applied in the most precious of legal fields, determining which rules of law should govern the contractual obligations of contractual issuers and recipients. Consumer contracts were excluded from the scope of the Rome

Convention. As e-commerce matured and consumers began contracting more online, a desire arose to set forth laws governing contractual obligations between consumers and businesses in different countries. The U.S. also sought to promote trade by adopting rules that would regulate consumer contracts, resulting in the Draft Convention on the Law Applicable to Consumer Contracts. (Schmitz2022)

The second mechanism for the protection of the consumer lies in the limitation of the general principle of freedom of choice. Article 6 allows the choice of law in consumer contracts, according to the requirements of the conflict-of-law rule of Article 3 of the Rome I Regulation. However, the choice of law in a consumer contract has an important limitation: the chosen law cannot deprive the consumer of the protection that is given by the law of his or her habitual residence. Therefore, the provisions of the law of the consumer's habitual residence will be applicable and cannot be derogated from by agreement if those provisions grant to consumers a higher protection than the provisions of the chosen law. Article 6, Section 2, establishes a minimum standard of protection in favor of the consumer that is given by the mandatory rules of the country of his or her habitual residence: between this law and the chosen law, the contract will be governed by the mandatory provisions which are more favorable to the consumer. (Brenncke, 2024)

Thus, it is not possible to negate the strength of the professional over the consumer in e-commerce because the former can, through pre-formulated standard contracts, impose a choice-of-law clause in favor of a legal system that promotes its own interests. In these pre-formulated standard contracts, there is a mere consent to the contractual standard terms, without a real negotiation and without the possibility of the consumer influencing the terms of the contract. For these reasons, today, this form of contract has an enormous social significance, providing consumers all sorts of contracts on a basis of operability and unification, so that the applied rules can be expected to be the same as those known from other latitudes of the world. Nevertheless, pre-formulated standard contracts in consumer contracts in e-commerce are, in many cases, a source of concern regarding consumer protection (Beishuizen, 2005).

6.2. Regulatory Frameworks

The advance of cyberspace technologies has affected states' pursuance and enforcement of laws, including laws governing contracts. Contract law is generally regarded as a field where the setting of rules and regulation is an area of legislative discretion. Accordingly, it is expected that lawmakers in different jurisdictions have different policies towards governing international electronic transactions and in regulating online contracts. Consequently, there would emerge conflicting laws governing online contracts. The current conflict of laws approaches towards contracts and the practical problems of formulating a solution to such issues have resulted in uncertainty in the knowing and in some cases the ability of entering into contracts through cyberspace (A., 2014). It is anticipated that there would be conflicting laws, but not restrictions on where and whom to contract with through cyberspace.

More in detail, the application of the rules of conflict of laws for contracts is intricate. Variable and variable situations lead to a different conflict of law question. First, the

applicable governing law is required for determining the rights and duties of the parties (which is the substantive law question of the contracts). Such situation is described as the 'internal' conflict of laws question. Second, a situation may arise when a party having obtained a Judgement on the substance of the contracts needs to enforce that Judgement against the other party in a different state. Such situation is described as the 'external' conflict of laws question. To make matters worse, the current rules of conflict of laws for contracts are not comprehensive. Where no applicable law may be identified under the current rules of conflict of laws for contracts, it would remain for the adjudicating court to decide the dispute on the basis of the circumstances of fact which it regards as relevant (Wang, 2008).

7. Intellectual Property Issues in Online Contracts

Compatible with tools: Yes

Cybersquatting on top-level domains that are identical to or similar to the proper names of famous individuals, especially intended for commercial purposes, is a growing Internet industry. The commercial purchase and resale, or auctioning, of desired domain names has made cybersquatting a lucrative business. This kind of practice has been dubbed the Internet "land grab." Even cybersquatting firms are in business for profit, cybersquatting at Non-Profit Organizations (NPOs) or Gossip Names is also common. In addition, competition or combat of domain names has also successfully revealed trademark infringement, unfair competition, or dilution claims. Conflicts over Internet domain names, prominent in the dot-com business boom of the late 1990s, have largely been perceived as a classic battle between aggressive-development and cheap-squatting. (Bhusari & Rampure, 2021)

As a first step to study domain names, scholars have begun to raise related issues such as jurisdiction. Given the unique characteristics of the Internet, awarding exclusive rights to domain names requires careful examination. The registration systems of country-code Top-Level Domains (ccTLD) also deserve more consideration. The rules or procedures adopted in domain name registrations must take into account their impact on medium-term competition. The influences of different geographic settings need to be clearly understood and evaluated (Wang, 2008).

Domain Names as Trademarks. The US Anti-cybersquatting Consumer Protection Act provides a benchmark for interpreting legal texts common to other countries. International treaties, such as the Paris Convention for the Protection of Industrial Property and the TRIPS Agreement, contained requirements that should have been incorporated into the national laws. However, it might be too hasty to conclude that domain names must be classifiable as trademarks. It is much more likely, however, that domain names need some protection due to their influence and increasing importance in e-commerce. Under common law, titles to subject chattels or real estate can be acquired by a prior owner against all the rest.

No one has successfully crowded out the owner. Trademarks, by contrast, have a distinct feature. Owning a trademark gives the owner the right to prevent others from using the identical or a confusingly similar mark only in conjunction with the same or confusingly similar goods (K. Mehrotra & Halpern, 2000).

7.1. Copyright and Licensing

With the increasing number of companies with sites on the World Wide Web, interest in the various legal aspects of those sites has increased. One key issue is whether contracts entered into via the Internet would be enforceable under state law. While there is no doubt that a revised set of contract law rules could readily be applied to this new medium of communication, countries are still trying to determine what rules are best (A. Effross, 1997).

The growth of the content of the Internet largely has been fueled by the plummeting costs of computing, telecommunications, and storage technologies. The potential uses of the Net range across multiple sectors and types of industry. Inclusion of almost any type of content is now feasible. Growth in usage has been largely driven by the availability of personal computers, improvements in telecommunications technology, and an expansive approach to regulation that has encouraged competition. There are already over 60 million computers on the Internet. The revolution currently being experienced is often likened to the advent of the printing press, and there is no doubt that the impact will be far-reaching (Guadamuz-González, 2009).

The scope of materials available on the Internet is staggering. There is real-time access to news, filmed reports of events in New York City, and home pages of members of newly formed parties in Russia. Widespread interest in such sites only been piqued by the North American launch of the World Wide Web, a visually-accessed segment of the Internet often referred to as cyberspace. There are thousands of sites containing almost any content that can be imagined and more added daily. Other Internet-accessible sites aggregate access requests to hundreds of thousands of smaller sites started by individuals and small companies who want to advertise their product or service, distribute an idea, or simply contribute to the general fare of cyberspace.

7.2. Trademark Considerations

The application of trademark law to the Internet is the most controversial topic in the IP context. Because of its international character, the Internet has generated many trademark disputes that arise over geographically bounded trademarks. The international forum for adjudication of the disputes is complicated by the fact that the boundaries of rights created under national trademark laws do not match the boundaries of the Internet (K. Mehrotra & Halpern, 2000). On the one hand, pre-Internet trademark law treats trademark rights as territorial, with the result that trademark owners effectively have no rights beyond the territory of registration. On the other hand, the worldwide nature of the Internet means that an infringing action in one country, such as a registration of a domain name equivalent to a registered trademark, can have worldwide consequences. As this circumstance pertains to more than one country, it raises very technical and complicated questions of proof regarding which law governs and what court has jurisdiction. These questions go beyond the legal brief. It is difficult to obtain evidence, to monitor and police the infringing conduct, to influence the ruling of the foreign court, and to enforce the ruling of the court foreign to the infringer.

Examples of such disputes show that it is disputed by big corporations like the trademark dispute between Philip Morris and the owner of aa.com. In this case, the domain name aa.com has the same character string as the registered trademark. Similar disputes are also introduced

regarding the film industry with companies like Warner Brothers, Quaker Oats, and Siemens fighting to preserve their IPLs in cyberspace against aggressive domain registrants. The prohibition of conduct in the case is another example of how overly broad interpretation of trademark law in the Internet environment can impede legitimate conduct. (Zhao2023)

8. Data Privacy and Security Concerns

The state of affairs for privacy law at present merits historical comparison, because this is an area where, not simply between the state and citizens, but between private individuals (or corporations) and one another, the balance of power is shifting dramatically. A future history of privacy could comfortably skip over the early years of the Internet, where privacy was an afterthought, only to come back again in the years 2000-2005, when arrangements for some sort of control kicked in (Corley, 2016). It would no doubt have considered the possibility that the current matrix where power lies with increasing aggregation of private data sets will not last, and that privacy laws that regulate the use of data but not prevent its accumulation would similarly become outmoded. This also shows that non-legal mechanisms can affect online privacy; about half of the parameters studied are viewed as social mechanisms, while the other half are technological. The scope of influence of social mechanisms is more indirect, operating mainly through the shaping of the state of mind of the individuals involved and relying greatly on their complexity. In both realms, mechanisms are viewed as more influential when instituted by private orderings or groups of individuals, such as website architecture dichotomies and social privacy expectations.

Policy implications can be drawn based on the theoretical framework formulated and empirical evidence gathered. At the policy level, the merits of non-legal privacy mechanisms deserve examination. It was empirically shown that some non-legal mechanisms affect online privacy. Policymakers might consider how best to promote the implementation of non-legal privacy mechanisms such as the creation of privacy-enhancing technologies like standardized ad-blocking software. A particular role can be played by Internet Service Providers, whose activity often encompasses tens of thousands of domains, as a robust point of intervention (Birnhack & Elkin-Koren, 2011). Governments might provide incentives to design-and-deploy good practices for privacy-enhancing technologies. Current browsing habits enable companies representing mere fractions of the entire online ecology to analyze the entire online behavior of the consumer.

8.1. Data Protection Regulations

Under both, The Rome II Regulation and the Brussels I Regulation, ordinary courts are competent in disputes involving online contracts only, if the subject matter of a dispute is within the territory of the forum (A., 2014). However, with regard to contracts wholly concluded online, identifying the territory of performance can be problematic. More specifically, a legally binding acceptance can occur on the Internet in many jurisdictions at a given moment, thus giving rise to difficulties regarding the localization of the contract within the meaning of The Rome I Regulation. Since there can be more than one situs of a contract, jurisdictional rules must be clear as to which is valid. Additional factors come into play if a contract is being performed online, namely the information processing and transfer to online

computers and the subsequent routing of the on-line information by transmission lines. The situs of the contract is likely to be many in such a case, making the determination of jurisdiction very complicated.

Disputes pertaining to data processing agreements are particularly problematic. A wide range of enforcement issues arise with respect to the use of biometric data. On the one hand, individuals may want to control their biometric data, and on the other, businesses and enterprises, including research institutions, may want to collect, use, and process biometric data. Some laws protect the right of individuals in such a data-proliferated world, while on the other hand, some laws may constitute a threat to the data protection rights of the individuals. This scenario may create huge enforcement and conflict of laws issues, especially where conflicting laws exist in or between jurisdictions. A number of international law, soft and hard law, legislation, guidelines, and principles exist to regulate the cross-border flow of personal data. The most important legal documents include the OECD Guidelines, the 1980 Council of Europe Data Protection Convention, the European Union's data protection directives, and the so-called Safe Harbor. Questions arise with respect to their adequacies and effectiveness in contemporary times. For instance, the absence of an international harmonious data protection law poses threats to jurisdictional specific data protection regimes, especially in cyberspace (Corley, 2016).

8.2. Impact on Online Contracts

The rise of the internet has made the world smaller, allowing easy communication, interaction, and commerce. In this digital environment, cross-border contracts have increased tremendously. No more do buyers and sellers need to wait on opposite sides of the world for confirmation of a contract via traditional mail. Now, a buyer need only click on an icon on its computer screen and the contract is formed immediately. This is beneficial for companies, but it creates a number of issues for conflict of laws or private international law. One concern is how countries can speak with one voice when the words being spoken are set out in a uniform text in cyberspace (Wang, 2008).

Another concern is how to ascertain which law applies when people from different countries get together to enter into a contract in this new environment. Internet users can communicate with each other instantaneously without recourse to national boundaries. An issue therefore arises as to which law will govern the contract when individuals in different jurisdictions enter into an online contract. Such questions are particularly relevant to commercial contracts entered via the internet. This aspect of the problem is enlarged into a method of applying the factors or-theorums involved to the specific analysis of such contracts. (Gelpern et al.2023)

A third issue, which is the focus of these remarks, is how to allocate a dispute over an online contract to a forum. How does a court in one jurisdiction say whether it has jurisdiction over the facts of a dispute arising from an online contract? Such questions are becoming even more pressing as the number of online contracts increases on an almost daily basis. Continued discussion of these topics is essential if courts are to effectively meet these challenges.

9. Technological Advancements and Legal Adaptation

The rapid advancement of technology has created a revolutionary change in the way people communicate. The continued growth of the Internet, more recently the development of technologies which allow anonymizing and localization of a user or a seller, open up new possibilities to change a user's real location, i.e. change a targeted territory. Nevertheless, although the cyberspace is understood as a borderless phenomenon, the law is still basically national for global communications. Modern technologies have created new forms of communicating and new opportunities for unethical behavior, which however are still not entirely satisfactory under existing governmental regulations (A., 2014). The Internet today possesses all of the same vulnerabilities as telephone or telegraph networks.

In the United States, although Title II of the Communications Act of 1934 attempts to protect the fundamental right of free speech against network discrimination, it required complex proceedings ruled by investigations and regulations, not numerous and quick. In addition, it will not and does not afford much protection against behind-the-scenes manipulation of the market. This slow proceeding of the Amendment reflects a chronic inefficiency of governance and thus the nature of national territoriality; the law requires certain evidence of an accused behavior-something apparent before a legislature can step in (A. Effross, 1997). Such legal proceedings may rationally be a trade-off with more rapid innovative entrepreneurship and deviation detection under a less regulatory supervision; nevertheless, there also is a price to pay-it takes time before the worse damage occurs.

9.1. Blockchain and Smart Contracts

The term "blockchain" is sometimes used more narrowly to refer to a blockchain that is permissionless, decentralized, and public. These features create the conditions for trustless environments, for better or worse. If these features are present, the blockchain is, in principle, open to anyone, and anyone can participate in the shared ledger. In addition, this type of blockchain is not managed or controlled by any one person or organization. Finally, in a permissionless blockchain, the incentives are such that attempts to cheat are detected and thwarted by the majority of honest actors. This could be thought of as a sort of "self-policing." In practice, of course, things are often more complicated (and more nuanced) (Werbach & Cornell, 2017).

"Smart contracts" refer to programmable instructions that exist on the blockchain and that are enforced by the blockchain. These programmed instructions are agnostic to the legal nature of a contract and they can be used to make quite different things from a single kind of contract regime. In the next pages, the difference between ordinary mediation, 'smart mediation' and 'mediation + smart contracts' is analyzed. Those differences are illustrated with the greatest possible clarity. In short, the invention of the formal contracts, computers, and digital data changed contracts again. Contracts are performed over a new domain and people can now structure the contracts accordingly (negotiation, archiving, editing, sending, storing, etc.). Nevertheless, the need of governance and safeguards concerning contracts has not changed - people still need third parties to enforce and arbitrate their contracts. (Khan et al.2021)

9.2. Artificial Intelligence in Contracting

The advent of artificial intelligence raises several questions at the confluence of contracts and technology. An artificial intelligence can assess a party's performance and determine whether that performance breaches the parties' contract in a scenario in which the breach of the contract precludes liability. In turn, such questions raise significant legal questions about the ability to enforce artificial intelligence contracts. Are contracts that use artificial intelligence as an independent contracting party legally enforceable as written? Or should they simply be recognized as negotiable instruments? In the commercial context, artificial intelligence has the potential to negotiate contracts semiindependently. It raises questions of what kind of legal instruments negotiable autonomous contracts should become and how courts will adjudicate their meaning or applicability. Jurisdictions already interpret contracts differently globally. Therefore, these contracts raise a plethora of regulatory issues. The huge gap between legal understanding and contracting understanding will lead to losses globally as new technologies speed up globally. Regulators need to adopt definitions of negotiation and performance bots in their jurisdictions. The question of artificial intelligence contracts must first be defined and categorized. A contract is a binding agreement between two parties. The scope of contracts works broadly; for example, inequality in the application of data machine-generated contracts globally might be observed. Similar contracts are perceived internationally, generating benefits and dangers globally. Many great examples have been once witnessed in which contracts have caused great losses outside the jurisdiction, and few institutions could regulate the actions globally (Henry Scholz, 2017). Therefore, the question must be further narrowed. There are two types of bots: negotiating bots, which can negotiate the content of a contract, and performance bots, which screen either party's performance of their contractual obligation. The default rule must first address negotiating bots, which can autonomously negotiate both parties' bargaining positions until a binding agreement is formed. This scenario raises questions about how courts would interpret the accuracy of a fair meeting of minds and at what point a cause of action might arise in a dispute. Courts would use either contract theories or semiotic theories.

10. Case Studies and Legal Precedents

The U.S. Case of Bensusan Restaurant Corp. v. King is one of the frequent-reference landmark cases. Subject to the New York long-arm statute, the case presented the matter of whether the defendant's internet activity caused the transactional jurisdiction of the district court. In the heart of Times Square, New York City, the famous Blue Restaurant had operated and advertised on its website that opened in 1996. Contemporaneously, the plaintiff corporation opened a jazz club and adopted the name Blue Note, which shares a capitalized planet motif on its website. The complaint asserted that the defendant's websites caused confusion amongst the two clubs. The failure to establish the plaintiff's prima facie case led to the court's reaffirmation of nonpersonal jurisdiction, upheld by the Second Circuit and without rehearing en banc (Wang, 2008).

The EU Case of R. v. Brown is another frequently cited leading case regarding rights of personality in the context of internet tort and defamation. When D. set up an experiment site containing dungeons, roofs, prison, and designed the content in such a way that violations of

the rights of personality were highlighted. Even if the actual act is disproportionate, rights of personality protected someone in a deadly way. Even if publishers expressed false facts, the fictitious depiction sufficiently infringed Aristotle's rights of personality. The same judgment is given if D. publishes news. The time and manner of publication was of no concern. However, it was difficult to accept liability for internet publications, since the recipient had to take a respective responsibility to avoid screening over the contents. The General Attorney was against such opinion and made a proposal for further consideration (A., 2014).

Most of the German acts referenced the codes and regime of non-tort in the discussion regarding application of applicable law in regards of torts. Grounded on the European Distribution Law developed in the first paragraph, the regulations defined the international regime of tort, both prospectively and retrospectively. The rules-updated were complex variations of the identical provisions in the drafted original texts. After the opening of the current codes, several courts held jurisdiction over internet delicts. However, it is still questioned whether the subject matter of jurisdiction could be defined by the nature or quality of the act (defaut and/or fault), since jurisdiction was founded on tortious acts alone. (Buonaiuti2022)

10.1. Notable Cases in Conflict of Laws

In the early 1990s, the Internet began to emerge as a potential medium for commerce. Soon after, businesses began to use the Internet as another sales channel by setting up public-facing web sites to attract customers, and thereafter seeing how this could arrange for transactions through the web. When someone decides to click on a web banner with a view to purchasing a product on the web, the two parties (consumer and supplier) are often located in different places (i.e. countries). What law is to govern their online cross-border contract, which law might be said to be relevant or connected with the dispute, does China's law apply? In what forum could the consumer bring suit? Would his claim still be good as they are a stranger to these countries, or better still which is the forum convenient for him? Will he get discovery, pre-trial enforcement of any judgment awarded in his favour from the forum state? In these respects, whether an online contract is binding under Chinese law can be probed through existing legal tests or through more facto-based investigations depending on cases. The testing of the above five questions commonly asked in hard were left to be relied on through existing laws and venues and judges' discretion. The growth of e-good in Internet has created new challenges for both consumers and businesses alike. For consumers, these challenges include the lack of privacy protection, non-delivery of goods, failure to meet expected delivery time and faulty items, as well as hazards presented by spam, phishing and hacking (Wang, 2008). The evolution of the Internet and improvements in Electronic Communication and Digital Signature Technologies lead to the rapid growth and successful use of online contracts. In today's global economy, consumers can purchase items through remote shopping without worrying about geographic boundaries. International firms can easily reach out to new markets and consumers, developing e-commerce and better servicing consumers. Consumer can charter a plane, and build a house online, as long as they have Internet connection, a credit card and an email account. Likewise, firms can easily stumble into cross-border transactions. For example, when a Chicago firm visits Hong Kong's own tourism web site,

without knowing it, it is ordered to full load of chairs from a Hong Kong Firm online. Legal issues such as jurisdiction forum, applicable law and recognition and enforceability of judgment, need to consider. The above labelled concern, and fear, need to ask: what clouds this idyllic electronic commerce in the real world? Online contracting is done through the interplay between a client application (or client) under the control of a user (e.g. a browser), and a server application (server) which is accessed remotely through a computer network (or the Internet).

10.2. Lessons Learned from Case Studies

The empirical examination of the significance of digital feature elements in facilitating that is as far as possible the stable binding of online agreements between users on one side of the world and service providers on the other offers some guidance as to the minimum features that most Internet contracts currently exhibit. It is necessary to review some of the many Pareto-optimal options available within each of the four feature categories to produce and maintain comparable online contracts for international use. It will also be demonstrated that many of the current features, and others discussed as options, are not in perfect harmony with one another. Some trade-offs between particular feature choices and others concerning design, elaboration, balance and strength of effect must always be considered in determining which options are most advocated and which, although not foremost recommended, still offer valuable lessons.

Many of the summary observations as to currently shared design features are based on the more complete collection of examples for each particular element and formware-wise design feature category . There is relatively little debate as to the need for these factors, but the far less universally observed recommendations as to same-language communication do warrant some further explanation.

While most of the dominant social and linguistic groups in cyberspace use English as a common language, there does exist one whole confederation of states, members of the Ex-French Commonwealth, where another common language, French, is used. The rise of new information technologies offers many cultures, linguistic groups and nations the opportunity to bestow a voice and body on languages and cultural nuances often subordinated to those of their larger rivals in an analogous way to that previously achieved by some programming code based social networks. Thus, while it is important to maintain English versions of general web pages to reach this largest concentration of users, it is also vital to create full French language versions for parallel pages, elaborating the need for bilingualist on information pages (Kloza, 2010).

11. Future Directions in Conflict of Laws

Lack of regulation will drive fatalism when faced with unprecedented problems of enforcement and conflict of laws. However, this is equally dangerous. Another fear is to lose the case to the international court over the question of jurisdiction simply because of laws that are far too out of touch with needs of the moment. Courts may refuse to take the cases or orders may not be liable to enforcement due to farcical attempts at conflict of law that rely weather-beaten theories of territoriality (Wang, 2008).

Culpable failure. Law had the chance to rise like the Phoenix but has proved itself unjust not only in implementation but also in counsels. Courts and lawyers who fail to keep pace with changing needs in such dynamic sectors particularly may face ridicule. Internet companies, especially those who have handled a mass of contracts on behalf of other firms, regularly receive orders from overseas trying to foist liability for failure to carry out a task which they were, for whatever reason, unable to fulfill within the timeframe agreed upon (A., 2014).

It´s only too easy to show why the company is not liable. Compliance at relevant legislation on issues such privacy, e.g., ensures legal protection from regulatory liability. But the process is never straightforward and left to damning self-revelations about how shocking it was as the existence of laws on data interception. There remain uncertainty over enforcement as far as conflicting increase in adaptation of regional variation in smart legislation. Or leave it totally to an uncontactable technecocracy.

11.1. Emerging Trends

The international character of the Internet means that in certain cases, conflicts of law arise, as the effects of an act may extend beyond the borders of the state whose law is applicable. Balancing the interests of the parties is important because one of the most important features of the Internet is an expansion of a user's real location. An Internet user may change his/her real location consciously or subconsciously. Affected parties bear an additional and inevitable burden – they must know the dominant law of a state to protect their rights. Affected parties are often unable to define the dominant law. Their protection depends on the law of the location of a wrongful act. This is an uncertainty of affected parties' rights, where there are many possible types of applicable law. The law is not designed for new developments of technology, and therefore reflections on the specific case of the Internet and cyberspace must be considered (A., 2014). Essential criteria include accessibility of law for the parties, cognitive interest and protectionability of rights, creation of fair conditions for the parties, and respect for public interests. The Internet per se is technology for data distribution. This technology is neither good nor bad/inflationary nor deflationary/simply a reflection of the human mind/creativity. It offers an unlimited possibility for knowledge acquisition and dissemination. It positively creates a global village where everyone can benefit from knowledge and creativity. Technologies have limitations. They do not determine the behavior of the users or content provider beyond common technical limitations. The equipment assembled locally can be used to communicate with people thousands of miles away. Storehouse equipment in the United States can house all the electronic mail from people in all parts of the globe.

11.2. Recommendations for Policymakers

Policymakers addressing conflicts of laws should contemplate legislation or other effective guidelines to assist in enforcement of forum selection clauses in online transactions. Those potential contacts with each state's citizens give that state the capacity to require compliance with its laws, subject to the same limitations on non-retroactive, general laws discussed above. Knowledge, which makes a transaction improper, is usually within the actor's control, and ignorance of a foreseen net effect can, after the fact, be difficult to establish. Regulations

could also address many of the possible shortcomings discussed above regarding more general consumer protection laws. Governments could pass laws requiring that cloud computing contracts and other contracts that govern the relationship between an individual or a small business on the one hand, and a service provider on the other, be made in plain language and written so that an ordinary person could understand them and have a fair chance to accept or reject them. Laws creating incentives for better forms of enforcement could be created, such as by granting suability but also immunity to the authors of anti-consumer provisions in an electronic contract. Finally, electronic contracts should be regulated in that they create opportunities for abusive contracts, similar to how other devices used for unfair purposes have been regulated.

Remembering that the original impetus was the unique difficulties consumers face in protecting their rights in contracts the written form has made possible, restrictions or requirements could follow along these lines: 1. Requirements regarding horizontal fees, explained in terms that an ordinary person will understand; 2. Making uneconomic for a service provider the effort litigation would require, in consideration of lobby or other brands; 3. Opening contracts and allowing the middle class to contract directly with the people they lend to; and 4. Creating a clause to permit enforceability of contracts through surfacing obligations against payment. The ability of governments to validly criminalize a contract should be kept in mind. There are places to now look for anti-consumer contracts, such as mass-produced contracts. Attempts to negotiate an alternative contract could be looked at as affirmative justification for sanctions. A ban on selection clauses could be imposed in consumer contracts, as could a ban on automatic renewal.

Error, abuse, and overreach in agreements written in the general form should be watched for. Possible evidence of such could be forwarding to the service provider the terms of a digital purchase and waiting three months for a reply before making the chargeback argument to the bank. An SOP to verify receipt of opposing views might be adopted, including standards like verification by recorded or certified entity and timing based on when prior notice was received. Well-documented receipt of opposing views should be made to legislators, agencies, and courts. The argument would include relevance as well as economic impact and appropriate comparison group.

12. Conclusion

Internet penetration has created a revolutionary change in people’s communication. Daily life transactions can now be conducted in real time and effective way just with a simple click of a button anywhere and at any time. With this advancement, more and more people now have access to information and services they could not acquire before, offering great opportunity and convenience to individuals and businesses alike. This ultimate era of convenience, however, also creates certain negative consequences, which are largely unprecedented and have yet to be addressed adequately. One such consequence is the exponential emergence of cross-border electronic contracting transactions. Where there were once limited contracts between businesses and customers within the same state, there now exist endless possibilities of cross-border transactions over the Internet involving parties from different states. This

characteristic of the Internet, while benefiting individuals and businesses by offering them lower prices and better products and services, raises, however, substantial conflicts of laws issues. In particular, a contracting party may take advantage of the recourse to a jurisdiction which is more favorable to its law or it may want to avoid the application of the jurisdiction of a state where he/she is exposed to a law which is contrary to his/her interests (Wang, 2008).

Given the abovementioned challenges, this paper seeks to examine the conflict of laws and proper law issues undertaken by the effecting of electronic contracts. It first analyzes the types of electronic contracts that are made possible by the Internet. Next, the discussion will focus on the major conflict of laws issues raised in these transactions, which include the proper law and governing jurisdiction issues, the applicable law choice of multiple governing jurisdictions, and the consequences of law that may be chosen such as the incorporation of mandatory laws and principles of law. In examining these issues, different electronic contracting models and applicable laws from various states are examined and discussed in an effort to accentuate the gravity of the legal gaps in seeking redress for a breach of electronic contracts. Finally some proposals are made to enhance legal protections in electronic contracts. Issues arising out of non-consensual contracts on the other hand, such as unsolicited emails or viruses, are however, not covered in this paper as they fall under non-contractual obligations (A., 2014).

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