
TARGETING TRANSNATIONAL INTERNET CONTENT REGULATION

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I. INTRODUCTION

Countries have recently begun to apply Internet content regulations to web sites that exist outside their territories. The web site content providers who have been dragged into foreign courts have argued that they should not be subjected to laws outside their own country; however, the Internet is a global endeavor, and although a web site may be posted in one country it can be viewed all over the world. When content is offensive to another country's citizens, that country should have the ability to control the information. The content provider also has rights, however, and by insisting that the content be blocked, one country's laws could suddenly have a global effect.

An international standard must be determined in order to give notice to content providers that they may be subject to the laws of multiple jurisdictions, and to give notice to countries as to when they can and cannot assert jurisdiction over such providers. The currently accepted jurisdic-

tional tests are not easily applied to Internet content because content on the Internet does not exist in one particular place; rather it exists in several places at once. This note proposes an international jurisdictional standard for Internet content that utilizes a targeting requirement to determine whether an Internet content provider has subjected himself to the laws of another country. Thus, if an Internet content provider has taken some action to target citizens of a particular country, that country may assert jurisdiction for the content placed on that website.

II. TECHNICAL ENVIRONMENT

The Internet began as a United States military network used for defense research, called Advanced Research Projects Agency Network (ARPANET).¹ Similarly networked computers soon began to develop at universities and research facilities.² In 1990, the Centre Européen de Recherche Nucléaire (CERN) invented the World Wide Web in Geneva, Switzerland.³ CERN made the World Wide Web (Web), which could run on almost any computer, available free to anyone who wanted it.⁴ Individuals may access the Internet and the Web through any computer that links to the Internet.⁵ Some computers may be linked directly to the Internet, but most personal computers must link, through a modem, to companies that provide access through their own computer network that is directly linked to the Internet.⁶ These companies are often called Internet Access Providers (IAPs), Internet Service Providers (ISPs), or Online Service Providers (OSPs).⁷

¹ Brian E. Daughdrill, *Poking Along in the Fast Lane on the Information Super Highway: Territorial-Based Jurisprudence in a Technological World*, 52 MERCER L. REV. 1217, 1218 (2001).

² Asaad Siddiqi, *Welcome to the City of Bytes? An Assessment of the Traditional Methods Employed in the International Application of Jurisdiction over Internet Activities—Including a Critique of Suggested Approaches*, 14 N.Y. INT'L L. REV. 43, 46 (2001).

³ Lyombe Eko, *Many Spiders, One Worldwide Web: Towards a Typology of Internet Regulation*, 6 COMM. L. & POL'Y 445, 448-49 (2001).

⁴ *Id.*

⁵ Siddiqi, *supra* note 2, at 46-47.

⁶ *Id.*

⁷ See *id.* at 47 (using the term "Internet Access Provider"); see also Jeffrey P. Cunard & Jennifer B. Coplan, *Developments in Internet and E-Commerce Law: 2001*, 678 PLI/PAT 935, 941 (2001) (using the term "Online Service Provider"); see also Matthew E. Babcock et al., *Publishing Without Borders: Internet Jurisdictional Issues, Internet Choice of Law Issue, ISP Immunity, and On-line Anonymous Speech*, 651 PLI/PAT 9, 61 (2001) (using the term "Internet Service Provider"). This note will utilize the term "Internet Service Provider" or "ISP" to designate all terms which may be used for companies which provide individuals access to the Internet via their direct network.

Individuals and businesses use the Internet to convey and obtain different types of information and to conduct various types of commerce. Web pages, files written in Hypertext Mark-up Language (HTML)⁸ that are linked via the Web, provide users an easy way to disseminate information or conduct business. A protocol, called Hypertext Transport Protocol (HTTP), gives Internet users the ability to find, browse, and access web pages.⁹ Web sites contain an endless range of information: from personal web sites displaying family vacation photos, to corporate web sites advertising or selling products or services, to web sites that explore more questionable topics, such as Nazism or pornography. Once a creator publishes a web page, anyone with access to the Internet may view the information.¹⁰

An individual's access to the Web allows for the ability, among other opportunities, to send e-mail, to participate in chat rooms, and to view and create web pages.¹¹ To participate in any of these activities or view any pages on the Web, the individual must act affirmatively.¹² An individual utilizing the Web, often called a "Web Surfer," must take some action to request to view a particular web page, to enter into a chat room, or to send e-mail because "[a] web page does not lurk in cyberspace waiting to pounce on an unsuspecting user."¹³

With the ability to pass information through networks over national borders, the Internet and the Web are truly global endeavors.¹⁴ The speed and ease with which information passes around the world makes the Internet appealing to people in many different nations.¹⁵ At the same time, however, many groups are concerned about particular web site content that may be offensive or illegal in certain countries. These groups wish to regulate the availability of such content on the Internet.¹⁶

Regulation of the Internet is a challenging endeavor. Because the Internet configuration does not require information to be transmitted through one particular port, server or storage point, it operates in a rela-

⁸ See Siddiqi, *supra* note 2, at 48.

⁹ Edward P. Davis, Jr. et al., *Potential Liability on the Internet*, 675 PRACTICING LAW INSTITUTE PATENTS, COPYRIGHTS, TRADEMARKS, AND LITERARY PROPERTY COURSE HANDBOOK SERIES 7, 19 (2001).

¹⁰ Siddiqi, *supra* note 2, at 49.

¹¹ Daughdrill, *supra* note 1, at 1220.

¹² *Id.*

¹³ *Id.*

¹⁴ Eko, *supra* note 3, at 447.

¹⁵ *Id.* at 449 (noting that demand for Internet access is growing rapidly around the world).

¹⁶ See *La Ligue Contre Le Racisme et L'Antisemitisme v. Yahoo!, Inc.*, T.G.I. Paris, Nov. 20, 2000, 05308, Nicole Vouriot, available at <http://www.foruminternet.org/telechargement/documents/tgi-par20011030.pdf>.

tively virtual world.¹⁷ One particular entity does not own or control the Internet or the Web.¹⁸ In addition, due to logistical and cultural differences between nations, one regulatory scheme does not exist.¹⁹ Many nations have attempted to regulate content because they are concerned about offensive material on the Internet.²⁰ Individual national regulation, however, has raised questions about which web sites on the Internet such nations have the jurisdiction to regulate.²¹

Private companies have developed some filtering software programs in an attempt to provide a method by which a site can be blocked.²² Such filtering programs are still in their infancy and are not 100% accurate.²³ Private companies have developed other programs to identify the location of a surfer accessing a web page.²⁴ Like their filtering counterparts, however, these programs are not 100% reliable.²⁵

III. LEGAL ENVIRONMENT

A. Jurisdiction

As in most transnational disputes, jurisdiction has been a predominant issue with regard to Internet-related disputes. Various principles of jurisdiction exist within international law, including the Territorial Principle, the Effects Principle, the Protective Principle, and the Targeting Principle. Their application to Internet-related disputes is difficult because Internet content exists in several locations at one time and the location of the conduct or the harm determines whether a particular jurisdictional principle may be applied.

¹⁷ William Crane, *The World-Wide Jurisdiction: An Analysis of Over-Inclusive Internet Jurisdictional Law and an Attempt by Congress to Fix it*, 11 DEPAUL-LCA J. ART & ENT. L. & POL'Y 267, 268 (2001).

¹⁸ *Id.*

¹⁹ Eko, *supra* note 3, at 447.

²⁰ See *Electronic Commerce and International Jurisdiction*, Hague Conference on Private International Law (HCPIL) Prelim. Doc. No. 12, sec. 3 (Aug. 2000), at <http://www.hcch.net>. [hereinafter *The Ottawa Report*]

²¹ See Eko, *supra* note 3, at 450.

²² Yamen Akdeniz, *Case Analysis of League Against Racism and Antisemitism (LICRA), French Union of Jewish Students v. Yahoo! Inc. (USA), Yahoo France, Tribunal de Grande Instance de Paris (The County Court of Paris), Interim Court Order, 20 November, 2000*, 1(3) ELECTRONIC BUS. L. REP. 110 (2001), available at http://www.cyber-rights.org/documents/yahoo_ya.pdf.

²³ See Internet Law and Policy Forum, *The Internet Law and Policy Forum Working Group on Content Blocking* (May 1997), at <http://www.ilpf.org/groups/content/tech.htm>.

²⁴ Michael Geist, *Is There a There There? Toward Greater Certainty for Internet Jurisdiction*, 661 PRACTICING LAW INSTITUTE PATENTS, COPYRIGHTS, TRADEMARKS, AND LITERARY PROPERTY COURSE HANDBOOK SERIES 561, 613-35 (2001).

²⁵ Akdeniz, *supra* note 22.

1. Principles of Jurisdiction

Under the Territorial Principle, the most important and widely utilized principle of international jurisdictional law, a state may not prescribe its laws on conduct that did not occur within the territory of that state.²⁶ Under this theory, any application of domestic law by the forum state on citizens of other states would violate that state's sovereignty.²⁷ Thus, a state may not use this principle to find jurisdiction over a content provider in another state.

In the *S.S. Lotus* case, the Permanent Court of Justice described a subset of the territoriality principle known as the effects principle.²⁸ Jurisdiction is asserted under the effects principle when the conduct of one state has a substantial effect on another state.²⁹ In the *S.S. Lotus* case, the Court found that Turkey had jurisdiction to prosecute a French citizen for injuries sustained by Turkish citizens after a collision between a French steamer and a Turkish boat.³⁰ The Court stated that it could not find any principle of international law that restricted Turkey's application of its laws upon the French citizen.³¹

Although this case has been relied on to justify application of the effects principle, its result is often disputed.³² The decision of the court seems to imply that, even though there is no presumption of legal limits on state jurisdiction, limits may be applied when all states have consented.³³

Disputes over the *S.S. Lotus* case have spilled over into the realm of the effects principle itself, leaving many states reluctant to accept the principle.³⁴ The United Kingdom, for instance, has expressed concern that the doctrine is contrary to international law because it infringes the sovereignty of other states.³⁵ In addition, the United Kingdom sees the effects test as an exception to the territorial jurisdictional rule and thus requires justification for its application.³⁶

²⁶ MARK W. JANIS, *AN INTRODUCTION TO INTERNATIONAL LAW* 322 (3d ed. 1999).

²⁷ Sanjay S. Mody, *National Cyberspace Regulation: Unbundling the Concept of Jurisdiction*, 37 *STAN. J. INT'L L.* 365, 372 (2001).

²⁸ *The Case of the S.S. Lotus (France/Turkey)*, 1927 P.C.I.J. Reports (ser. A) no. 10 (Sept. 27, 1927).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² ROSALYN HIGGINS, *PROBLEMS & PROCESS, INTERNATIONAL LAW AND HOW WE USE IT* 74 (2000).

³³ JANIS, *supra* note 26, at 340.

³⁴ Mody, *supra* note 27, at 376.

³⁵ HIGGINS, *supra* note 32, at 74.

³⁶ *Id.* The United Kingdom considers territoriality to be the primary rule of jurisdiction, and all other forms of jurisdiction are considered an exception to that rule, and thus, their use must be justified.

The United Kingdom, joined by the European Community (E.C.), has protested several applications of the effects test by U.S. courts;³⁷ however, the European Community has used the effects doctrine in its enforcement of the E.C. Treaty.³⁸ The effects doctrine also appears to be applied in many states for anti-trust cases.³⁹ In addition, Canada has applied the effects test in a criminal case.⁴⁰ Thus, the effects doctrine appears to be more widely accepted in recent years.

In *United States v. Aluminum Co. of America (Alcoa)*,⁴¹ the United States, a state that frequently applies the effects test, required intent to effect as well as an actual effect.⁴² The Restatement (Third) of the Foreign Relations Law of the United States also suggests that intent may be required to apply the effects principle.⁴³ The Restatement (Third) further dictates that a state should prescribe its jurisdiction only when it is reasonable to do so.⁴⁴ Suggested reasonableness tests include the following factors for consideration: "the place of activity and of its effect; nationality; its importance to the regulating state; the existence of justified expectations; its importance to the international political, legal and economic systems; consistency with international traditions; interests of other states; and the likelihood of conflict with other states."⁴⁵ United States courts provide the only support for such a balancing test.⁴⁶ Although states have applied this principle to find jurisdiction in Internet content disputes, the principle is applied arbitrarily based on the definition used to determine whether Internet content has an effect on citizens of a particular state.

The protective principle, a jurisdictional principle that is used occasionally, allows a state to exercise extraterritorial prescriptive jurisdiction

³⁷ *Id.*

³⁸ *See id.*; *see also* Mody, *supra* note 27, at 376-77 (citing several E.C. cases that base jurisdiction on the anti-competitive effects on the EC).

³⁹ *See, e.g.*, *United States v. Nippon Paper Industries Co., Ltd.*, 109 F.3d 1 (1st Cir. 1997); *Laker Airways, Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909 (D.C. Cir. 1984); *Hartford Fire Insurance v. California*, 509 U.S. 764 (1993); *see also* Mody, *supra* note 27, at 378 (noting that most states in Western Europe, including Austria, Denmark, Finland, France, Greece, Norway, Portugal, Spain, Sweden and Switzerland, as well as Canada and Japan, have accepted the effects doctrine in the anti-trust context).

⁴⁰ *Id.* (citing *Libman v. Queen*, [1985] D.L.R. 174).

⁴¹ 148 F.2d 416 (2d Cir. 1945).

⁴² *See* Mody, *supra* note 27, at 378.

⁴³ *See* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 402(1)(c)(1987).

⁴⁴ *See* Margaret Khayat Bratt & Norbert F. Kugele, *Who's In Charge*, 80-JUL MICH. B.J. 42, 45 (2001).

⁴⁵ JANIS, *supra* note 26, at 341 (interpreting the RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 403(2) (1987)).

⁴⁶ JANIS, *supra* note 26, at 342.

when the conduct in question is "directed against crucial state interests, especially state security."⁴⁷ Application of the principle is usually restricted to issues related to security interests, and it has also been used in relation to currency, immigration and economic offenses.⁴⁸ Although states have a significant interest in protecting its citizens from morally objectionable information, this interest does not affect the security or economic interests of states.

In an attempt to make the application of jurisdiction in Internet-related cases more predictable, Professor Michael Geist of the University of Ottawa has suggested implementing a test that focuses on whether web sites "target" specific foreign consumers.⁴⁹ Professor Geist endorses the targeting principle because he interprets the relevant case law to require some level of foreseeability in the application of jurisdiction.⁵⁰ Since the Internet is a global endeavor, it is difficult to foresee which countries may attempt to enforce their law extraterritorially.⁵¹ By applying a principle in which the content provider must target a consumer in the country attempting to apply its law extraterritorially, application of jurisdiction becomes more predictable. Jurisdiction will be found only when the content provider specifically tries to reach consumers in another country.⁵²

Professor Geist recommends a three-part test to determine if a content provider has targeted consumers in another country and thus subjected itself to the jurisdiction of that country.⁵³ The test establishes subjective guidelines for a court to follow in determining whether the content provider targeted the citizens of a specific country. They are as follows:

- 1) Did the parties reasonably assent to jurisdiction in advance by way of a contract?
- 2) Did the parties use geographic identification technologies⁵⁴ to either avoid or target a particular jurisdiction?
- 3) Did the parties have, or should they have had, knowledge about the geographic location of the online activity?⁵⁵

⁴⁷ *Id.* at 329.

⁴⁸ IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 307 (5th ed. 1998).

⁴⁹ See generally Geist, *supra* note 24.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See Carole Aciman & Diane Vo-Verde, *Refining the Zippo Test: New Trends on Personal Jurisdiction for Internet Activities*, 19 *COMPUTER & INTERNET LAW* 16, 19 (2002).

⁵³ *Id.* at 18.

⁵⁴ A geographical identification technology is any type of software that can be used to identify the home country of the person accessing the website. The software can be used to target information toward the citizens of a certain country by, for instance, adjusting the language used on the website.

⁵⁵ *Id.*

Although Geist developed the test specifically for commercial Internet transactions, the principle can easily be applied to general content-based disputes.

2. U.S. Approach to Internet Jurisdiction

The United States primarily has used a minimum contacts standard to find jurisdiction in Internet related cases.⁵⁶ In 1997, however, the Western District of Pennsylvania in *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*⁵⁷ developed a “sliding scale” test for Internet related jurisdiction.⁵⁸ This test makes the exercise of jurisdiction dependant upon the “level of interactivity and commercial nature of the exchange of information that occurs on the web site.”⁵⁹ The sliding scale test has been used consistently for Internet cases in the United States.⁶⁰

Recently, the Ninth Circuit refined the *Zippo* test in *Cybersell, Inc. v. Cybersell, Inc.*⁶¹ The court included a “targeting” requirement in addition to the sliding scale,⁶² requiring more than an interactivity analysis to determine jurisdiction.⁶³ The court required that the web site be aimed specifically at the forum state.⁶⁴ The *Cybersell* decision has been followed by several decisions that denied jurisdiction because the web site was not targeted at the citizens of the forum state.⁶⁵

3. International Attempts to Regulate Internet Content

The Hague Conference on Private International Law (Hague Conference) acknowledges the difficulty in applying existing international jurisdictional principles, yet still desires to regulate some Internet content.⁶⁶ As a result, the Hague Conference has incorporated Internet concerns into its Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters (Draft Convention).⁶⁷ The Con-

⁵⁶ See Aciman & Vo-Verde, *supra* note 52.

⁵⁷ 952 F. Supp. 1119 (W.D. Pa. 1997).

⁵⁸ *Id.* at 1124.

⁵⁹ *Id.* at 1124.

⁶⁰ Aciman & Vo-Verde, *supra* note 52, at 18.

⁶¹ 130 F.3d 414 (9th Cir. 1997).

⁶² *Id.* at 418.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See *Am. Info. Corp. v. Am. Infometrics, Inc.*, 139 F. Supp. 2d 696 (D. Md. 2001); see also *S. Morantz, Inc. v. Hang & Shine Ultrasonics, Inc.*, 79 F. Supp. 2d 537 (E.D. Pa. 1999).

⁶⁶ *The Impact of the Internet on the Judgments Project: Thoughts for the Future*, Hague Conference on Private International Law (HCPIIL), Prelim. Doc. No. 17 (Feb. 2002), at ftp://ftp.hcch.net/doc/gen_pd17e.doc. [hereinafter *The Impact Report*].

⁶⁷ See *The Ottawa Report*, *supra* note 20. This particular document is a summary of discussions at an expert meeting held in Ottawa, Canada, February 28, 2000 through March 1, 2000, to discuss the jurisdictional issues raised by electronic

ference is attempting to create unified procedures for the application of jurisdiction.⁶⁸

As the Draft Convention is currently written, jurisdiction may be applied in two ways: by using a "country of origin" approach; or by using a "country of destination" approach.⁶⁹ The country of origin approach allows jurisdiction to be exercised by the country in which the transmission originated.⁷⁰ Alternatively, the country of destination approach places jurisdiction in any country where the information is received.⁷¹

The original draft of the Convention applies a country of destination approach for Internet transmissions;⁷² however, the most recent draft of the convention provides a safe harbor for content providers who have taken "reasonable steps to avoid such jurisdiction."⁷³ This most recent addition has been met with skepticism because many countries see the language as "ambiguous and ineffective."⁷⁴ E-commerce experts have suggested a targeting approach, as an alternative, applying jurisdiction only when an Internet site is targeted toward citizens of the country.⁷⁵

B. *Domestic Regulation of Internet Content*

Even though the application of jurisdiction is tenuous, several countries, including Australia, EC members, and the United States, have implemented legislation to regulate Internet content made available to its citizens.

commerce. *Id.* at intro. The discussions specifically focus on the application of the HCPIIL, *Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters*, *infra* note 72.

⁶⁸ See *The Impact Report*, *supra* note 66. This document, like the Ottawa Report, is a comment on the application of the proposed *Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters*.

⁶⁹ *Id.* ¶¶ 6, 7.

⁷⁰ *Id.* ¶ 7

⁷¹ *Id.*

⁷² *Id.*; see also *Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters*, Hague Conference on Private International Law (HCPIIL), *adopted by the Spec. Comm'n* Oct. 30 1999, Art. 10, at <http://www.hcch.net/e/conventions/draft36e.html>. Article 10 allows a person who is injured or may be injured to bring an action in tort "in the courts of the state in which the injury arose." However, the defendant may use the affirmative defense that the injury was not foreseeable. *Id.*

⁷³ *The Impact Report*, *supra* note 66, ¶ 7.

⁷⁴ *Id.*

⁷⁵ *Id.* ¶ 9, n.27.

1. Australia

Australia is one example of a country that has created extensive Internet regulation.⁷⁶ Its law gives authority to the Australian Broadcasting Authority to investigate and make decisions about Internet content.⁷⁷ Based on these decisions, industry groups then develop standards to apply to Internet content.⁷⁸ The code specifically addressing material hosted outside of Australia, states:

1) The Australian Broadcasting Authority may issue a standard access prevention notice requiring ISPs to ‘take all reasonable steps to prevent end users from accessing content; or 2) where relevant industry code of practice has been registered, the ISPs must comply with that code.’⁷⁹

Based on the code’s language, it appears that Australia fully intends to prosecute extra-territorial ISPs that do not comply with its content-blocking provisions.⁸⁰ Analysts in Australia, however, have read the code to apply only to ISPs that provide service “supplied to end-users in Australia.”⁸¹

2. The European Union

The European Commission has acknowledged that any regulations it decides to place on the Internet must be promulgated carefully to ensure that Internet users’ freedom of expression and freedom of information is not infringed.⁸² Of primary importance to the European Union is blocking what it considers illegal content, such as child pornography and racist materials.⁸³

The European Commission’s concern focuses more on the web surfer than the content provider by proposing that the surfer should have the ability “to report illegal content so that it can be removed from circula-

⁷⁶ Carolyn Penfold, *Nazis, Porn and Politics: Asserting Control Over Internet Content*, 6 J. INT’L L. & TECH. 2 (July 2, 2001), available at <http://elj.warwick.ac.uk/jilt/01-2/penfold.html>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Australian Broadcasting Services Act, (1992) (Cth) Schedule 5 s40(1)(c) (Austl.).

⁸⁰ Penfold, *supra* note 76.

⁸¹ *Id.*

⁸² Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, Proposal for a Decision of the European Parliament and of the Council Amending Decision No. 276/1999/EC Adopting a Multi-Annual Community Action Plan on Promoting Safer Use of the Internet by Combating Illegal and Harmful Content on Global Networks, COM(02)152 final at 5 [hereinafter Community Action Plan on Promoting Safer Use of the Internet].

⁸³ *Id.* § 2.1.3.

tion and offenders brought to justice.”⁸⁴ Like the Hague Conference, the European Commission has promulgated regulations that utilize a country of destination jurisdictional approach.⁸⁵

3. United States

Many countries acknowledge that freedom of expression is a fundamental human right, however, there are certain restrictions placed on that right. The United States protects freedom of expression with fewer restrictions than most countries and, as a result, is often used as an example when countries attempt to regulate content, and thus restrict speech, on the Internet.⁸⁶

Although less restrictive than other countries, the First Amendment’s protections are not without limitations, particularly with regard to obscenity and defamation.⁸⁷ However, the Supreme Court in *Reno v. ACLU*⁸⁸ found portions of the Communications Decency Act of 1996,⁸⁹ which sought to limit sexually explicit communications online, to be unduly restrictive of First Amendment rights.⁹⁰ The Supreme Court found a greater interest in protecting free speech than in protecting the perceived benefit of censorship.⁹¹

In *Yahoo!, Inc. v. La Ligue Contre Le Racisme et L’Antisemitisme*,⁹² the federal district court determined that enforcement of a French judgment would jeopardize Yahoo!’s First Amendment rights because it would allow “entry of foreign judgments granted pursuant to standards deemed appropriate in [another country] but considered antithetical to the protections afforded by the U.S. Constitution.”⁹³ Based on these U.S. decisions, it appears that most Internet content regulations, whether domestic or foreign, would be seen as contrary to the rights provided by the First Amendment.

⁸⁴ *Id.* § 2.2.

⁸⁵ Council Regulation 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, art. 5.3, 2001 O.J. (L 12) 1.

⁸⁶ See Patrick Bartlett, *Germany Struggles with Neo-Nazi Websites*, BBC NEWS ONLINE, December 22, 2000, at http://news.bbc.co.uk/low/english/world/europe/newsid_1083000/1083049.stm.

⁸⁷ Kim L. Rappaport, *In the Wake of Reno v. ACLU: The Continued Struggle in Western Constitutional Democracies with Internet Censorship and Freedom of Speech Online*, 13 AM. U. INT’L L. REV. 765, 772 (1998).

⁸⁸ 521 U.S. 844 (1997).

⁸⁹ Communication Decency Act of 1996, 47 U.S.C.A. § 223 (1994).

⁹⁰ *Reno*, 521 U.S. at 874.

⁹¹ *Reno*, 521 U.S. at 875-6.

⁹² 169 F. Supp. 2d 1181 (N.D. Ca. 2001).

⁹³ *Id.* at 1193.

C. *Related cases*1. *La Ligue Contre Le Racisme et L'Antisemitisme v. Yahoo!, Inc.*⁹⁴

A case currently at the forefront of the Internet content regulation discussions is *La Ligue Contre Le Racisme et L'Antisemitisme (LICRA) v. Yahoo!, Inc.* Two French political groups, LICRA and L'Union des Étudiants Juifs de France (UEJF), filed suit against Yahoo! in France for an alleged violation of a French criminal law which bars:

wearing or exhibiting in public a uniform, insignia, or emblem recalling uniforms, insignia or emblems worn or exhibited . . . by members of an organization declared to be criminal under Article 9 of the statutes of the International Military Tribunal annexed to the London Agreement of 8 August 1945⁹⁵

The French groups alleged that, by hosting an Internet auction web site, Yahoo! had made Nazi-related material available for French citizens to view.⁹⁶ They argued that, because this information was displayed through the Yahoo! Auction website, Yahoo! had broken the French law banning Nazi-related memorabilia.⁹⁷

Yahoo! responded by asserting that the web site in question was a United States-based website targeted at U.S. citizens, and that Yahoo! did not provide the content; rather, Yahoo!'s users or third-parties posted it on Yahoo!'s auction site. In addition, Yahoo! argued that the magnitude of information added to its servers every day made it virtually impossible to monitor the content of all postings.⁹⁸ Finally, Yahoo! argued that the site was not targeted at French users, and French users accessed Yahoo.com through the Yahoo.fr website, which *was* targeted at French users, and thus did not contain any Nazi memorabilia or references to Nazism.⁹⁹

The French court found that Yahoo!'s website was an "offence to the 'collective memory' of the country," and thus a violation of the French Penal Code.¹⁰⁰ As a result, the court ordered Yahoo! to do the following:

- 1) Take all necessary measures to dissuade and make impossible any access via yahoo.com to the auction service for Nazi merchandise as well as to any other site or service that may be construed as an apology for Nazism or contesting the reality of Nazi crimes; and 2) Issue

⁹⁴ T.G.I. Paris, November 20, 2000, 05308, Nicole Voiriot, *available at* <http://www.foruminternet.org/telechargement/documents/tgi-par20011030.pdf>.

⁹⁵ Plaintiff's Motion for Summary Judgment at 6, n. 8, *Yahoo!, Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 145 F. Supp. 2d 1168 (N.D. Ca. 2001) (No. 00-21275 JF) (citing *Le Nouveau Code Penal [The New Penal Code] Art. R.645-2*).

⁹⁶ Akdeniz, *supra* note 22.

⁹⁷ *Id.*

⁹⁸ Plaintiff's Motion for Summary Judgment, *supra* note 95, at 4.

⁹⁹ *Id.*

¹⁰⁰ Akdeniz, *supra* note 22.

to all Internet surfers, even before use is made of the link enabling them to proceed with searches on yahoo.com, a warning informing them of risks involved in continuing to view such sites.¹⁰¹

The court also imposed a fine of 100,000 Francs (approximately \$13,000)¹⁰² for every day that compliance with the order was delayed after a three-month grace period.¹⁰³

Yahoo! responded by filing a declaratory judgment action in the U.S. District Court seeking a declaration that the French order was not enforceable in the United States.¹⁰⁴ The District Court granted summary judgment for Yahoo!, stating that the possibility of enforcement of the French judgment would impinge Yahoo!'s First Amendment rights.¹⁰⁵

The court determined that it had jurisdiction over the case after applying the United States' version of the effects test.¹⁰⁶ Ultimately, the court used a balancing test to compare France's sovereign interest in enforcing the orders and judgments of its courts against the United States' own sovereign interest in protecting the Constitutional and statutory rights of its residents.¹⁰⁷

It is unclear how the French court determined that they had jurisdiction to hear the initial dispute. It is clear that the court determined that although

the 'Yahoo Auctions' site is directed principally at surfers based in the United States having regard notably to the items posted for sale, the methods of payment envisaged, the terms of delivery, the language and the currency used, the same cannot be said to apply to the auctioning of objects representing symbols of Nazi ideology which may be of interest to any person.¹⁰⁸

¹⁰¹ T.G.I. Paris, November 20, 2000, 05308, Nicole Voiriot, *available at* <http://www.foruminternet.org/telechargement/documents/tgi-par20011030.pdf> (citing the order made May 22, 2000).

¹⁰² Lori Enos, *Yahoo! Ordered to Bar French from Nazi Auctions*, November 20, 2000, E-COMMERCE TIMES (Nov. 20, 2000), *at* <http://www.newsfactor.com/perl/printer/5406>.

¹⁰³ T.G.I. Paris, November 20, 2000, 05308, Nicole Voiriot, *available at* <http://www.foruminternet.org/telechargement/documents/tgi-par20011030.pdf> (citing the order made May 22, 2000).

¹⁰⁴ *Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 145 F. Supp. 2d 1168, 1171 (N.D. Ca. 2001).

¹⁰⁵ *Id.* at 1194.

¹⁰⁶ *Id.* at 1173-76.

¹⁰⁷ *Id.* at 1178.

¹⁰⁸ T.G.I. Paris, November 20, 2000, 05308, Nicole Voiriot, *available at* <http://www.foruminternet.org/telechargement/documents/tgi-par20011030.pdf> (citing the order made May 22, 2000).

In addition, the court stated that “the simple act of displaying such objects in France” was illegal.¹⁰⁹ It would seem, based on these statements, that the French court also applied a form of the effects test by designating the fact that French web surfers could view the offending content as the effect necessary to find jurisdiction.¹¹⁰

2. Additional Case Law

The same French court that decided the Yahoo! case recently heard arguments in a similar case, *J'Accuse v. General Communications*.¹¹¹ The French political action group, J'Accuse, filed for an injunction against both French ISP's and American ISP's to block access to a U.S. based web site that hosts content considered to be anti-Semitic as well as other hate speech.¹¹²

In a preliminary ruling, Judge Gomez determined that the web site host could be held liable for the content posted on the web site.¹¹³ Although Judge Gomez stated that the ISPs had no legal obligation to block access to the site¹¹⁴ and could freely choose the content to which they provide access, he implied that it was the ISPs' moral obligation to block access to the site.¹¹⁵ The results of this decision may change, however, since it is only a preliminary decision and the judge has requested further expert testimony and further information about the web site.¹¹⁶

In one of the first Internet content related cases, German prosecutors accused CompuServe of violating Germany's obscenity laws.¹¹⁷ At first, CompuServe complied by barring access to the newsgroups in question.¹¹⁸ But, as Germany passed stricter content-regulating laws, CompuServe reinstated access to the newsgroups and decided to move its administrative offices out of Germany.¹¹⁹ This ploy to avoid the German laws did not work and, in February 1997, German officials filed criminal charges against the General Manager of CompuServe.¹²⁰

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ T.G.I. Paris, Oct. 30, 2001, 57676, Seguin, available at <http://www.foruminternet.org/telechargement/documents/tgi-par20011030.pdf>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *See id.*

¹¹⁶ *Id.*

¹¹⁷ Siddiqi, *supra* note 2, at 89.

¹¹⁸ *Id.*

¹¹⁹ *Material that Would Likely be Considered Offensive Under Most Industry or Governmental Rating Systems Such as Child Pornography, Material Harmful to Children, Excessively Violent Material, Material that Promotes, Incites or Instructs in Matters of Crime or Violence*, INTERNET LAW AND POLICY FORUM, para. 17-21, at <http://www.ilpf.org/groups/content/offensive.html>.

¹²⁰ *Id.* at para. 122.

In December 2000, a German court determined that German laws regarding Nazism and denial of the Holocaust could be applied to an Australian national who had posted Holocaust revisionist material on his web page.¹²¹ The German Court demanded that the Australian national remove the material.¹²²

Although it is illegal to disseminate hate materials in Germany, a German court decided not to prosecute Yahoo Deutschland, a subsidiary of Yahoo!, for selling a copy of *Mein Kampf*¹²³ on its auction site.¹²⁴ The German court ruled that the ISP should not be held liable for content posted on its auction site.¹²⁵ Germany's decision may, however, be based on the fact that Yahoo! takes steps to prevent the posting of such material and removes illegal listings as soon as it becomes aware of them.¹²⁶ As a result of such cases, as well as complaints from the German government, Amazon.com stopped selling Hitler's *Mein Kampf* in Germany before it became embroiled in its own lawsuit.¹²⁷

In August 2000, the government of Saudi Arabia barred access to the website clubs.yahoo.com because the government considered it to contain websites that were pornographic and morally offensive to the Saudi culture.¹²⁸

In early 2001, an Italian prosecutor decided to go forward with a criminal action for libel and defamation even though the identity of the person who had posted the site was unknown.¹²⁹ The web site that was posted was a result of an Italian couple's messy divorce.¹³⁰ After the mother moved with the children to Israel, without the father's approval, the father worked with the Israeli government and was able to have his daughters returned to Italy.¹³¹ Shortly after the children returned to Italy a web site was posted with negative information about both the events and the father himself.¹³²

¹²¹ Jeffrey Barlow, *Jurisdiction and You—Yahoo!*, THE INTERNET L. J., Mar. 8, 2001, para. 14, at <http://www.tilj.com/content/litigationarticle03080102.htm>.

¹²² *Id.*

¹²³ ADOLF HITLER, *MEIN KAMPF* (Ralph Manheim trans. 1926).

¹²⁴ Jay Lyman, *German Court Rules Yahoo! Not Liable for Nazi Auctions*, NEWSFACTOR NETWORK, Mar. 28, 2001, at <http://www.newsfactor.com/perl/printer/8500>.

¹²⁵ *Id.*

¹²⁶ Barlow, *supra* note 127, at para. 13.

¹²⁷ Enos, *supra* note 113.

¹²⁸ *Id.*

¹²⁹ Matt Gallaway, *International Jurisdiction Soup: Borderless Internet Law is Setting the Stage for Global Conflict*, BUSINESS 2.0, February 27, 2001, available at <http://www.business2.com/articles/web/0,1653,9579,00.html>.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

IV. ANALYSIS

A. *Current Problems of Internet Regulation*

1. No Universally Accepted Content Regulations

Many countries have agreed that some form of Internet regulation is necessary because “there is a continuing public concern about illegal and harmful content on the Internet.”¹³³ These countries also acknowledge the impossibility of developing universally accepted Internet content regulations.¹³⁴

An international regulation would need to take into consideration the different cultures, languages, and moral codes of individual countries. This undertaking is virtually impossible because a standard international regulation will be under-inclusive for countries with strict legal regulations.¹³⁵ Likewise, the same standards may be overbroad for countries with looser freedom of expression regulations.¹³⁶ The only way to guarantee that each country’s interests are served is to allow each country to promulgate its own Internet content regulations that are based on that country’s morals and laws.¹³⁷

2. Difficulty of Asserting Jurisdiction Over Content Providers

In order to apply its laws to web sites that are located outside of its territory, a country first must find proper jurisdiction.¹³⁸ Existing international standards for assertion of jurisdiction do not adapt well to the Internet. The Territorial Principle cannot be applied because it would require the application of a country’s domestic laws on the citizens of other states.¹³⁹ The Protective Principle is also not likely to be applied because Internet content regulation cannot be justified as a “crucial state interest.”¹⁴⁰

Therefore, countries wishing to assert jurisdiction extra-territorially will most likely apply the effects principle. In doing so, the court must find that the content has some effect on the citizens of its country.¹⁴¹

¹³³ Community Action Plan on Promoting Safer Use of the Internet, *supra* note 82, § 2.1.3.

¹³⁴ See *The Impact Report*, *supra* note 66, ¶ 13 (noting that “one should not automatically assume that the same balance that is acceptable for the European Community will be appropriate on a world-wide basis”).

¹³⁵ See Catherine P. Heaven, *A Proposal for Removing Road Blocks from the Information Superhighway by Using an Integrated International Approach to Internet Jurisdiction*, 10 MINN. J. GLOBAL TRADE 373, 379 (2001).

¹³⁶ See *id.*

¹³⁷ Community Action Plan on Promoting Safer Use of the Internet, *supra* note 86, § 3.1.1.

¹³⁸ JANIS, *supra* note 26, at 322.

¹³⁹ See Mody, *supra* note 27, at 372.

¹⁴⁰ JANIS, *supra* note 26, at 329.

¹⁴¹ *Id.* at 326.

Some states have found that jurisdiction exists simply because their citizens were able to view the material.¹⁴² The problem with such an application of the effects principle is that it could justify application of jurisdiction by any country over any web site.¹⁴³ As a result, content providers could be held responsible for compliance with the laws of all other countries.¹⁴⁴ Of course, some countries suggest that, by placing content on the Internet, a content provider has voluntarily subjected itself to every country's laws.¹⁴⁵ As a result, a web site content provider, whether a large corporation or an individual, would need to be ever vigilant of the laws of every country regarding Internet content regulation.¹⁴⁶ In addition, this will subject individuals to laws that are much stricter than the laws of their own country, whether they wish to be controlled by those laws or not.

The Hague Conference's "country of destination" approach will cause the same problems as the effects test because the country of destination places jurisdiction in any country where the information is received.¹⁴⁷ The content provider has no choice as to where the content will be accessed, and thus, which laws will subsequently apply.

The problem with subjecting content providers to jurisdiction anywhere in the world is that it is not sufficiently foreseeable when and where the exercise of jurisdiction will occur. Unlike a web surfer who chooses which websites will appear on his screen, a content provider cannot choose the screens on which his website will appear. Existing cases demonstrate the arbitrariness of the current system. It is predictable that a U.S.-based pro-Nazi web page that is written entirely in German could be subject to jurisdiction in Germany. But it seems less predictable for Yahoo! to be dragged into a French court for memorabilia posted on its American-targeted web page, particularly when Yahoo! had taken steps to abide by the laws of an individual country by creating separate country web sites that take local laws and cultures into account.¹⁴⁸

The *Zippo* test, which has been used with success in the United States, would be successful in predicting jurisdiction for more interactive web sites, but it is predictable without considering whether these sites will be the subject of litigation,¹⁴⁹ because the web site content provider has cho-

¹⁴² T.G.I. Paris, November 20, 2000, 05308, Nicole Voiriot, available at <http://www.foruminternet.org/telechargement/documents/tgi-par20011030.pdf>.

¹⁴³ Michael Mahoney, *Yahoo! Gets Backing in Nazi Memorabilia Case*, E-COMMERCE TIMES, Aug. 14, 2001, at <http://www.ecommercetimes.com/perl/printer/12771> (discussing comments made in an Amicus Curiae brief for Yahoo! in the case against LICRA).

¹⁴⁴ Enos, *supra* note 103.

¹⁴⁵ The Ottawa Report, *supra* note 20, § 3.

¹⁴⁶ Enos, *supra* note 103.

¹⁴⁷ The Impact Report, *supra* note 66, ¶ 7.

¹⁴⁸ See Plaintiff's Motion for Summary Judgment, *supra* note 95.

¹⁴⁹ See *Zippo Mfg. Co.*, 952 F. Supp. 1119 (W.D. Pa. 1997).

sen to sell goods to individuals or companies in other jurisdictions. Because web sites are interactive or commercial in nature, the web site owner is more likely to know with whom he is doing business, and thus should be better able to comply with the regulations of the domicile of that person.¹⁵⁰ Of course, it is sometimes difficult to determine the location of a web surfer, even in an interactive site, because the web site owner is dependant upon the surfer supplying truthful identification information.¹⁵¹ There is technology that would enable web site providers to identify the citizenship of the user, but this technology is still in the developmental stages.¹⁵²

The *Zippo* test's interactive, as opposed to a passive, sliding scale quickly may become obsolete as more static web pages are targeted for their content. For example, a court applying the *Zippo* sliding scale test would not be able to find jurisdiction over the Alaskan man whose hate speech web site has attracted the attention of a French political action group because the website is not interactive.¹⁵³ The court would never address whether the website had any effect on that jurisdiction, as jurisdiction could not be found simply because the site is static.

B. *The Best Solution: A Twist on the Targeting Test*

Cases in the United States have begun to shift toward a targeting requirement. The targeting test requires that the web site specifically be aimed at the state that is attempting to find jurisdiction.¹⁵⁴ The test makes exercise of jurisdiction more predictable for the web site provider because he has chosen, in essence, what jurisdictions his site is targeting.¹⁵⁵

Professor Michael Geist has attempted to specify a three-factor test to determine whether targeting occurred.¹⁵⁶ This test begins to establish a predictable framework for jurisdiction. Geist's approach, however, is directed mainly toward e-commerce, and his three factors do not readily fit a static web site.¹⁵⁷ Though Professor Geist's guidelines are a strong foundation, it is imperative to develop a test that also can be applied to non-interactive web sites. Cases such as the French case against

¹⁵⁰ See generally *Zippo Mfg. Co.*, 952 F. Supp. 1119.

¹⁵¹ Akdeniz, *supra* note 22.

¹⁵² *Id.*

¹⁵³ See *J'Accuse v. General Communications*, T.G.I. Paris, Oct. 30, 2001, 57676, Seguin, available at <http://www.foruminternet.org/telechargement/documents/tgi-par20011030.pdf>.

¹⁵⁴ *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419-20.

¹⁵⁵ Geist, *supra* note 24, at 598.

¹⁵⁶ *Id.*

¹⁵⁷ See *Aciman & Vo-Verde*, *supra* note 52, at 18.

Front14.org¹⁵⁸ and the German case against the Holocaust revisionist¹⁵⁹ demonstrate that plaintiffs will not hesitate to bring actions against static content web pages.

In order for the targeting approach to work, an international organization should develop the test and incorporate it into an international instrument similar to the Hague Conference's Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters.¹⁶⁰ By incorporating specific guidelines in such an instrument, web site providers will be put on notice that content they have posted may be subject to foreign jurisdictions dependant upon specific actions they may take to target the citizens of that jurisdiction.¹⁶¹

Professor Geist's three-prong test can be adapted to include elements relevant to non-interactive web pages. Tests to determine whether a non-interactive web site has targeted a specific jurisdiction should also be included. A primary test for a non-interactive web site should be the use of a foreign language that would indicate a desire for citizens of a foreign jurisdiction to read the web page. One example is a neo-Nazi web page that appears in German.¹⁶² Although 90% of Neo-Nazi sites are based in the United States they are written in German, thus it is apparent that they are targeted at native German speakers.¹⁶³

The targeting principle should lead to the conclusion that a content provider has targeted a foreign jurisdiction if information is contained on the web site that directs the viewer to local information. For example, a web site that contains a "for more information" section that directs the user to web sites that are specifically meant for residents of that jurisdiction, or to physical locations in that jurisdiction, would be considered to have targeted that area.

Finally, a web site that uses software technologies to target advertising toward the specific user should also be considered to have submitted to the jurisdiction of the specific user.¹⁶⁴ If the content provider has tools that are sophisticated enough to target advertising, then they should also have the ability to monitor what country's citizens are accessing their web site and, thus, have reason to know the laws to which they could potentially be subjected.

¹⁵⁸ T.G.I. Paris, Oct. 30, 2001, 57676, Seguin, available at <http://www.foruminternet.org/telechargement/documents/tgi-par20011030.pdf>, see discussion *supra* notes 112-17 and accompanying text.

¹⁵⁹ See Barlow, *supra* note 122.

¹⁶⁰ See *Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters*, Hague Conference on Private International Law (HCPIL), Oct. 30, 1999, at <http://www.hcch.net/e/conventions/draft36e.html>.

¹⁶¹ See Geist, *supra* note 24, at 598.

¹⁶² Bartlett, *supra* note 86.

¹⁶³ *Id.*

¹⁶⁴ See Geist, *supra* note 24, at 601.

Interestingly, application of this final targeting principle to the Yahoo! case could have the same result as the French decision.¹⁶⁵ Even though Yahoo! took steps to separate the U.S.-targeted site from one that was targeted at French citizens, Yahoo! used technology that identified web surfers who accessed the U.S.-targeted Yahoo.com via French domain names and responded with French language banner advertisements.¹⁶⁶ Although the result in the Yahoo! case would have been the same whether the effects principle or the targeting principle was applied, the targeting principle would offer notice to the company that the content it provides could be subject to the jurisdiction of the country it was targeting.¹⁶⁷

As with most legal tests, the targeting test is not perfect. In fact, one case has already proven that it will not always work.¹⁶⁸ The iCraveTV case is an example of when the targeting test may fail. The defendant provided re-broadcasting of both Canadian and U.S. television programs to personal computers.¹⁶⁹ iCraveTV had developed safeguards to ensure that only Canadian users would access the web site, since doing so would be illegal in the United States.¹⁷⁰ Nevertheless, industrious web surfers found a way around the verifications.¹⁷¹ Subsequently, a U.S. court found jurisdiction even though the Canadian defendant had not targeted U.S. users.¹⁷² Of course, if the modified targeting test proposed in this note had been applied, the court likely would not be able to find jurisdiction because iCraveTV did not target citizens of the United States.

Any decision asserting jurisdiction by use of the modified targeting test, like any application of jurisdiction over foreign citizens, is subject to acceptance by the foreign citizen's government in order to enforce the judgment in that citizen's country. For instance, had the French Yahoo! court found jurisdiction using the targeting test, the U.S. court might still have determined that enforcement of the decision could not take place in the United States. Thus, establishment of an international targeting standard should also include acceptance by nations that, if jurisdiction is found through proper application of the targeting test, resulting judgments should be enforceable.

The modified targeting test will establish guidelines for a majority of potential cases, and courts will have to deal with the few exceptions on a case-by-case basis. In addition, courts will not be able to assert jurisdic-

¹⁶⁵ See *id.* at 623-24.

¹⁶⁶ Bratt & Kugele, *supra* note 44, at 46.

¹⁶⁷ Geist, *supra* note 24, at 624.

¹⁶⁸ Twentieth Century Fox Film Corp. v. iCraveTV, No. 00-120, 2000 U.S. Dist. LEXIS 1013, at *1 (W.D. Pa. Jan. 28, 2000). See also Geist, *supra* note 24, at 567.

¹⁶⁹ *iCraveTV*, 200 U.S. District LEXIS 1013.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

tion over content that is illegal in their country found on a web site that has not been targeted at their country, even though it may be viewed there. But, because the content provider has not chosen to target that jurisdiction, its laws cannot be applied fairly to the web site. Countries that do not have a legal remedy for offensive content can use filtering software within their own country to ensure its citizens do not view the content.

Therefore, the targeting test is the most favorable alternative for applying jurisdiction. By establishing a specific targeting test, the content provider will be put on notice with regard to which jurisdictions it could be subjected.

V. CONCLUSION

Most countries agree that some Internet content must be regulated, but it is nearly impossible to reach a universal agreement on which content should be included. Because countries' laws and cultures vary widely, one international regulation would be over-inclusive for some countries and underinclusive for others. The solution is to allow individual countries to regulate what content is legal or illegal within its territory. An international jurisdictional standard must then be established to give content providers notice that they may be subjected to foreign jurisdictions. This can be accomplished by creating a targeting test to determine whether the content provider has purposely targeted the citizens of that country. It follows that if the content provider has targeted that country, then it can be subjected to the laws of that country. In instances where the content provider has not targeted a specific country, jurisdiction will not be found, and it will be up to the individual country to block its citizens from viewing the offensive content.

JULIE L. HENN

