

Introduction

Certain Internet applications, such as the World Wide Web (WWW), are widely recognised as being borderless. This 'borderlessness' causes complications in relation to the application of law to Internet behaviour.

It is submitted that there are, at least, two ways in which the jurisdictional difficulties associated with the Internet's unique set of characteristics can be addressed. Either borders need to be placed *on* the Internet, or borders need to be placed *around* the Internet.

The first alternative can be achieved in either of two ways; private international law can be adjusted to properly address Internet conflicts and place sensible protective borders on the Internet, or technical borders may be placed on the Internet through so-called geo-location technologies. Currently, the approach taken seems to be a combination of these two approaches.

The second alternative – placing borders around the Internet – was popular amongst early commentators, but has essentially been abandoned as unrealistic. However, this paper argues that, in light of the extraordinarily serious consequences of placing borders on the Internet, it is necessary to re-examine the possibility of placing borders around it.

Placing border on the Internet

The placing of borders *on* the Internet seems to be a more realistic goal than placing borders *around* the Internet. This is due to several factors, but in particular it is due to the fact that

states would be unwilling to give up their jurisdictional claims over the Internet, and Internet activity.

Finding the Answers in Private International Law

Perhaps the most obvious manner in which borders are being placed on the Internet is through the application of private international law rules. Arguably, the most prominent article discussing the role played by private international law in Internet regulation is Goldsmith's *Against cyberanarchy*¹. Taking his point of departure in the writings of the people he refer to as "regulation skeptics", Goldsmith draws, essentially, two conclusions: "From the perspective of jurisdiction and choice of law, regulation of cyberspace transactions is no less feasible than regulation of other transnational transactions"², and extraterritorial claims of jurisdiction, and application of law, are legally legitimate when local harm has been caused.

Goldsmith is, of course, right in dismissing the notion that Internet activities are, or should be immune from territorial regulations. He states that "Cyberspace participants are no more self-contained than telephone users, members of the Catholic Church, corporations, and other private groups with activities that transcend jurisdictional borders."³ Yet the conclusion that, from the perspective of jurisdiction and choice of law, regulation of cyberspace transactions is feasible should not stem from any comparison between Internet communications and offline communications. Instead, it is respectfully submitted, that the real