

Fordham CLIP on Internet Jurisdiction in England and the U.S.

Joel Reidenberg, Jamela Debelak, Jordan Kovnot, Megan Bright, N. Cameron Russell, Daniela Alvarado, Emily Seiderman and Andrew Rosen (Fordham CLIP) have posted Internet Jurisdiction: A Survey of Legal Scholarship Published in English and United States Case Law on SSRN.

This study provides a survey of the case law and legal literature analyzing jurisdiction for claims arising out of Internet activity in the United States. A companion study, released simultaneously, explores similar issues as they are treated in the German legal system. The goal of the report is to identify trends in legal literature and case law and to serve as a comprehensive, objective resource to assist scholars and policy-makers looking to learn about the issues of jurisdiction on the Internet.

The U.S. study shows that most academic scholarship discusses all three aspects of jurisdiction law — personal jurisdiction, choice of law and jurisdiction to enforce — within the individual articles. In addition, the literature treats a noticeably wide variety of legal areas — including, for example, analyses of specific cases, particular issues related to e-commerce, and the regulation of online speech — but overall, does not appear to have a consensus on an approach or solution that cuts across the varied areas of law addressed by the scholarship. Thus, in effect, a review of academic scholarship shows that Internet jurisdiction is as varied as the legal issues and fields of law it permeates.

With respect to U.S. case law, Fordham CLIP's research indicates that issues surrounding Internet jurisdiction gravitate toward the Ninth Circuit and the Second Circuit more so than other federal circuits. Moreover, contrary to the body of academic literature, the research demonstrates that U.S. courts predominantly adjudicate matters of personal jurisdiction in Internet cases rather than other subsets of jurisdiction, and that Internet jurisdiction issues trend toward intellectual property and defamation cases. Lastly, the case law

shows that, although the Zippo and Calder decisions remain the clear, predominant legal standards and tests for Internet jurisdiction matters, when and how these rules are applied by U.S. courts lacks uniformity.