

## **The Exercise of Jurisdiction over Internet Activities and Transactions**

by [Peter F. M. Jones](#)

The American Bar Association Report on Jurisdiction and the Internet is now in its second public draft version. There are two principal additions to the prior version. First, the report proposes a number of "solutions" for global consideration. These solutions take the form of "criteria that . . . governments, interested organizations, businesses, legislatures and courts will consider as they deal with jurisdictional principles in electronic network environments." Secondly, the Report makes a suggestion for the development of further consensus on international law to govern Internet transactions.

### **Draft Jurisdictional Rules**

The solutions in the Report take the form of proposals, called Rules. The Rules dealing with the exercise of state power over Internet activities are referred to as Jurisdictional Default Rules, of which there are five.

1. The first Rule confirms that more than one state may assert jurisdiction over an "internet party" in electronic commerce transactions, a Rule that is no different from principles governing jurisdiction over "physical transactions".
2. The second Rule advocates against jurisdiction based solely on accessibility of a Web site that does not "target" a jurisdiction. As the report recognizes, there is a need for a global consensus on an appropriate definition of "targetting".
3. The third Rule, broken into three sub-rules, covers a state's right to exercise personal and prescriptive jurisdiction over a Website content provider (a sponsor).
4. The fourth Rule addresses in two sub rules the means whereby a sponsor can resist claims by states to exercise jurisdiction over the site. The Fourth Rule deals with tax jurisdiction, and suggests that the principles on which states tax internet transactions will have to be more closely allied to Rules of prescriptive jurisdiction than before.
5. The last Rule covers the exercise of prescriptive, personal and tax jurisdiction, and has four sub-rules that potentially could limit a state's right under international law to assert jurisdiction.

The second Group of Rules deals with Contractual Choice of Forum, a subject previously dealt with under an article in the PM LAW Library entitled "The American Bar Report on Jurisdiction". (Click on Library or on the title in the right hand Navbar).

### **A Global Commission?**

Secondly, the Report emphasizes the limited ability that any one state or nation may have in bringing greater certainty to the area of internet commerce. To overcome that limited ability, the Report suggests the establishment of a global commission to test the feasibility of global consensus in this area. The nature of this global commission will be the subject of a further commentary in PMLaw.

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