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Doctoral Thesis in Corporate Law  
University of Canberra

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**An Analytical Framework  
on Regulatory Competence  
over Online Activity**

March 2003

## **Abstract**

This thesis examines the application of traditional jurisdictional doctrines to online activity. It analyses not only to what extent, and why, the Internet challenges existing principles allocating regulatory competence, but the factors which shape, and must shape, the regulatory responses to these challenges, in an attempt to create an analytical framework within which the search for viable solutions can begin.

The overarching argument made in this thesis is that the keys to viable future Internet regulation are deeply embedded in past and present regulation and that we cannot simply look for the most efficient legal solutions, regardless of how they fit within existing laws. This would be inconsistent with the law's basic function to answer the need for certainty and predictability. Building upon this fundamental premise, it is further argued, and shown, that an understanding of the public law - private law dichotomy within the existing jurisdictional framework, as well as its deeply entrenched status, is essential for appreciating the severity of the jurisdictional problems caused by the Internet and actual and likely regulatory responses to them. It is argued that this explains why both sets of rules have consistently accommodated transnational online activity differently, giving rise to different problems - problems which ultimately touch upon fundamental legal notions, such as formal justice, the rule of law or obedience to law which cannot but set further outer parameters of the search for solutions to the jurisdictional problems triggered by the Internet.

The thesis considers the law up to 30 November 2002.

## Acknowledgments

Writing this thesis proved far trickier than anticipated - trickier specially in terms of the sheer stamina required for completing this mammoth task when faced with other far more instantaneously gratifying distractions, such as a job, children, publishing articles and eating chocolate.

So my gratitude goes to all those whose unwavering faith in my ability to finish this thesis I did not dare to disappoint. A prime candidate of this group is my supervisor, Eugene Clark, who beyond giving advice on my chapters was invaluable though his patience as well as his radiance of energy and optimism which I have always found quite contagious and inspiring.

On a day-to-day level I am highly indebted to my husband, Ryszard Piotrowicz, who has helped me more than I deserve. He has read and re-read all my chapters with the most meticulous attention to detail as well as to the wider arguments. He has been quietly encouraging and also had to put up with me being not infrequently a party-pooper on PhD grounds. I would also like to thank my children Alma (9), Max (6) and Karl (3) who for the last years have lived more or less patiently in the faint hope that one day I would be a doctor (and cure) and finally surrender, as I had promised, the family computer to more worthwhile pastimes.

I also would like to thank my colleagues Diane Rowland and Kate Williams at the University of Wales, Aberystwyth, who both plowed their way through some of my chapters and helped me greatly with their feedback.

There is also my neighbour Gina Preston who patiently listened when I told her, in not insignificant detail, about my latest PhD arguments during our 'coffee' afternoons on Thursdays. I would like to thank her for that.

Last but not least, my parents, who have taught me that it is important to finish what you start, deserve the greatest credit in helping me to finish this thesis.

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## Published Articles

The following articles, which to varying degrees build upon the discussion in the thesis, were published during the candidature:

'The Horror-Scope for the Taxation Office: The Internet and its Impact on 'Residence'" (1998) 21 *University of NSW Law Journal* 436-451.

'Legal Reasoning and Legal Change in the Age of the Internet - Why the Ground Rules are still Valid' (1999) 7(2) *International Journal of Law and Information Technology* 123-151.

'Defamation on the Internet - A Duty-Free Zone After All? *Macquarie Bank Ltd & Anor v Berg*' (2000) 22 *Sydney Law Review* 119-140.

'Injunctions v Damages (The Age of the Internet) Old Battle of Remedies Revisited' (2001) 11 *Journal of Law and Information Science* 160-182.

'Yahoo! - But no Hooray! for the international online community' (2001) 75 *Australian Law Journal* 411-416.

'Eggs, Jurisdiction and the Internet' (2002) 51 *International and Comparative Law Quarterly* 555-582.

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