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Symposium Articles

Why Should the Internet Be Any Different?*

Jonathan D. Bick**

Introduction

Economic activity in the United States and other countries in the developed world relies on the production and dissemination of information. Some of that information has intrinsic value and is likely to be protected by certain property rights. Other types of information form the contractual basis for America's, and much of the world's commercial system. The communication of both types of information is subject to existing law. Existing American laws, which govern the communication of these types of information, are based on the concept

* This paper is adopted from a lecture given at the 1998 Pace Law Review Symposium, *Untangling the Web: The Legal Implications of the Internet* at Pace University School of Law on March 20, 1998. Please note that several of the footnotes have subsequently been updated. This paper does not attempt to present a complete analysis of why the Internet should be treated in a special manner. Rather, it is only concerned with justifying the position that current law must be applied in a special manner to accommodate a new communication medium. To do so, it attempts to highlight pragmatic issues and identify existing applications of law that impinge upon the Internet.

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of geographical sovereignty. Due in part to the digitization of information,¹ the availability of personal computers, and the existence of the Internet, the flow of information defies geographical boundaries. Therefore, the application of existing American law may have to be applied to Internet transactions differently than in any prior transactions.

What began several decades ago as a technological undertaking² by the United States Defense Department and a small number of research oriented American universities,³ has developed into the leading edge of an information tidal wave⁴ known as the Internet.⁵ What was once an arcane communication method is now commonly thought of as a public utility.⁶ Some Internet service providers⁷ have even sought protection from liability under the privilege afforded communication common

1. Digitization of information means the encoding of information into a series of 1's and 0's.

2. To be specific, the task was simply the creation of a "set of connections among university and research lab computers." HENRY H. PERRITT, *LAW AND THE INFORMATION SUPERHIGHWAY* 13 (1996).

3. See KLUWER LAW INTERNATIONAL, *THE ELECTRONIC SUPERHIGHWAY* 8-10 (Ejan Mackaay et al. eds., 1995) (stating that in the mid-sixties, a United States Defense Department organization asked university researchers to develop a computer telecommunications network. The network that they developed ultimately became the Internet). For more details related to the historical development of the Internet, see Douglas Dangerfield, *Web Surfing, or The Internet for the Uniformed*, 15 AM. BANKR. INST. J., Mar. 1996, at 12 and KEN D. STUCKEY, *INTERNET AND ON-LINE LAW*, xv-xvi (1997).

4. See *ACLU v. Reno*, 929 F. Supp. 824, 881 (E.D. Pa. 1996), *aff'd*, 117 S. Ct. 2329 (1997) (Dalzell, J., concurring) (stating that "[i]t is no exaggeration to conclude that the Internet has achieved, and continues to achieve, the most participatory marketplace of mass speech that this country — and indeed the world — has yet seen."); see also ORG. FOR ECON. CO-OPERATION AND DEV., *DISMANTLING THE BARRIERS TO GLOBAL ELECTRONIC COMMERCE* 3-4 (1997); Amy Harmon, *U.S. in Shift, Drops Its Effort to Manage Internet Addresses*, N.Y. TIMES, June 7, 1998, at A1.

5. The Internet (interconnected networks) is a global grid of conversing computers. The terms "Internet," "information superhighway," and "World Wide Web" (WWW or the Web) are generally used interchangeably according to Howard E. Abrams and Richard L. Doernberg, *How Electronic Commerce Works*, TAX NOTES INT'L, May 12, 1997, at 1574.

6. See Lizette Alvarez, *Internet is New Pet Issue in Congress*, N.Y. TIMES, June 28, 1998, § 1, at 4; Jeffrey Rose, *So What do the Internet and the World Wide Web Mean to Me and How Can I Use Them in My Practice?*, 39 ORANGE COUNTY LAWYER 10 (Apr. 1998).

7. An Internet Service Provider (ISP) is usually a firm offering telephone access to the Internet.

carriers. This plea for protection is substantiated by the commonly expressed view that the Internet is now "an appliance of every day life."⁸

Contrary to the "Wild West" comparisons⁹ and other hype published by the popular press,¹⁰ the Internet has yet to wreak havoc on existing law in the United States. The American judicial system seems to have taken Internet transactions in stride and adjudicated Internet matters on a significant number of occasions.¹¹ Still, Internet transactions should be treated differently from other transactions because the Internet allows interactions that have previously been impossible. Those unprecedented interactions have inevitably unveiled numerous, previously unforeseen difficulties.¹²

Suggestions that the Internet has created an artificial economic environment and a synthetic society without law have proved to be merely myth. In fact, the Securities and Exchange

8. The Clinton Administration published a White House Paper shortly after the *ACLU* decision was rendered by the Supreme Court. That report described the Internet as a communication arrangement, which "empowers citizens and democratizes societies." The Administration's assessment of the Internet extolled the emergence of the Internet, stating:

Once a tool reserved for scientific and academic exchange, the Internet has emerged as an appliance of every day life, accessible from almost every point on the planet. Students across the world are discovering vast treasure troves of data via the World Wide Web. Doctors are utilizing tele-medicine to administer off-site diagnoses to patients in need. Citizens of many nations are finding additional outlets for personal and political expression. The Internet is being used to reinvent government and reshape our lives and our communities in the process.

9. See, e.g., *Crimes of the 'Net'*, NEWSWEEK, Nov. 14, 1994, at 46; John W. Verity, *The Internet*, BUS. WK., Nov. 14, 1994, at 80; *Net Watch*, TIME, Sept. 5, 1994, at 20.

10. See Amy Harmon, *The Law Where There is No Land*, N.Y. TIMES, Mar. 16, 1998, at D1 (referring to the Internet as the "Wild West of the information age"); Jerry W. Thomas, *Brave New World*, 70 N.Y. ST. B. J., Jan. 1998, at 8-9 (stating that the "impact of the Internet . . . [is] . . . clouded by the confusion . . . attendant to the birth of a new technology").

11. A recent LEXIS search on the term "Internet" revealed 345 federal cases involving that term. The search included two Supreme Court cases (*Reno v. ACLU*, 117 S. Ct. 2329 (1997); *Denver Area Education Telecommunications Consortium v. Federal Communications Commission*, 518 U.S. 727 (1996)), fifty-two United States Court of Appeals cases, and nearly three hundred district court cases.

12. See David G. Post, *Anarchy, State and the Internet: An Essay on Law-Making in Cyberspace* (visited Apr. 30, 1998) <<http://www.wm.edu/law/publications/jol/post.html>>.

Commission,¹³ the Food and Drug Administration,¹⁴ and other agencies have successfully claimed jurisdiction over parts of the Internet as a part of their mandate. Also, a petition has been filed with the Federal Communications Commission (FCC), "requesting the initiation of rulemaking proceedings 'defining permissible communications over the Internet.'"¹⁵ Nevertheless, an argument can be made that the American legal system in general, and government agencies in particular, should treat transactions involving the Internet in a unique manner.

The Internet penetrates many aspects of business and personal life. For example, in preparation for a recent trip to Europe, I used the Internet to review transportation schedules, acquire airline tickets, request car rentals, and make train, ferry, restaurant, and hotel reservations. During the trip, I also used the Internet to set up, confirm, and reschedule meetings with friends and business acquaintances in five countries. The Internet also provided a source of entertainment and news. Upon returning home, I bought a Volvo directly from the factory, sent thank you notes, and paid trip-related bills using the Internet.

The Internet has also changed the way businesses do business. For instance, the International Business Machines Credit Corporation (ICC) abandoned its paper law books in favor of an Internet legal database.¹⁶ Additionally, since some songs are now free from physical form, there may be no need to visit a record store or handle a compact disc in order to listen to new music. Well-known artists, such as David Bowie and Duran

13. The Security and Exchange Commission (SEC) granted Real Goods Trading Corporation its approval to trade stock on the Internet by issuing them a no-action letter dated June 24, 1996, and Spring Street Brewery made an initial public offering of its stock over the Internet in 1996 with the SEC's concurrence. See Christina K. McGlosson, *Who Needs Wall Street? The Dilemma of Regulating Securities Trading in Cyberspace*, 5 COMMLAW CONCEPTUS 43 (1997) (providing more information regarding the SEC's claim of jurisdiction over part of the Internet).

14. See Wayne L. Pines, *New Challenges for Medical Product Promotion and Its Regulation*, 52 FOOD & DRUG L.J. 61 (1997).

15. Henry E. Crawford, *Internet Calling: FCC Jurisdiction Over Internet Telephony*, 5 COMMLAW CONCEPTUS 43 (1997) (quoting America's Carriers Telecommunication Association Petition, In re Provision of Interstate and International Interexchange Telecommunication Service (visited Mar. 4, 1996) <http://www.FCC.gov/Bureaus/Common_Carrier/other/acta.pet.html>).

16. The author was personally involved in this transaction.

Duran, have released songs through the Internet. Thus, the dissemination of strings of 1's and 0's has joined records, tapes, and discs as a channel of music distribution.

From an advanced legal perspective, the Internet has raised novel questions with respect to the application of criminal law, contracts, torts, intellectual property, and other areas of the law. The Internet was built to be a communication system¹⁷ and is now used by an immense number of people to create seemingly binding obligations. The validity of those contracts is yet to be analyzed, particularly from the standpoint of which laws, and especially, whose laws, are applicable.¹⁸

The accessible nature of the Internet allows individuals to communicate with a vast number of people, whether such communication is intentional or not. Thus, a defamatory statement or a file containing a computer virus can be distributed worldwide in a matter of minutes. The law of torts, which is generally understood to make people responsible for their actions and inactions, must invent new duties of care, and possibly new remedies with respect to the Internet.¹⁹

The Internet is populated by protected intellectual property. The most important are those intangible assets that enjoy trademark and copyright protection. Until now, no definitive relationship has been established between trademarks and the unique Internet addresses known as "domain names." In addition, since copying information and data from one intermediary computer to another is the essence of the Internet's communication technology, existing copyright laws that make such copying a potential form of infringement must be reexamined.

Similarly, while crimes of trespass, wire fraud, unauthorized access, obscenity, transportation of stolen goods, and threatening communications are all covered by existing crimi-

17. See KLUWER LAW INTERNATIONAL, *supra* note 3, at 8-10.

18. Some obvious choices are the plaintiff's domicile, the defendant's domicile, the Internet server's location, the place the contract was performed, or a place agreed upon by contract. Another option might be anywhere the transmission is received.

19. Potential issues include: extent of liability for spreading an Internet computer virus accidentally; determining if attaching vital systems to the Internet or the failure to back up computer systems connected to the Internet is tantamount to contributory negligence; and what, if any, disclaimers absolve Internet users from tort liability.

nal statutes, the Internet still raises challenges regarding how these crimes fit into the criminal justice system. For example, how can a crime be sufficiently localized for prosecution when the Internet is part of a criminal transaction? The lack of locality makes criminal judgments involving the Internet more difficult to enforce.

The ability to use the Internet to "project" an activity into a jurisdiction presents another opportunity to circumvent criminal statutes. For instance, the French government banned a book describing the decline in health of French President Mitterand, but French citizens were able to access the book on the Internet. The Japanese government prohibits certain types of gambling, but British bookmakers have used the Internet to allow Japanese citizens to participate in prohibited wagering. The German government restricts neo-Nazi propaganda that can nevertheless be found on the Internet.

Additionally, the Internet allows individuals to commit crimes not previously considered possible. In *United States v. Morris*,²⁰ a computer program was sent across the Internet to thousands of computers worldwide. The program caused those computers which accepted it to shut down.²¹ In *United States v. Baker*,²² a student was jailed for violating Federal law²³ after posting a story accessible by millions, which graphically described the torture, rape, and murder of a woman who was thought to be a classmate.²⁴ It should be noted that the District Court subsequently dismissed the charges.²⁵

There is public opinion that the Internet is beyond existing laws; such opinion springs from the underlying concept that the Internet is new and somehow different. However, the Internet has been fully commercialized for more than five years.²⁶ Dur-

20. 928 F.2d 504 (2d Cir. 1991).

21. *See id.* at 506.

22. 890 F. Supp. 1375 (E.D. Mich. 1995).

23. 18 U.S.C. § 875(c) (1998).

24. *See Baker*, 890 F. Supp. at 1379.

25. *See id.*

26. *See KLUWER LAW INTERNATIONAL*, *supra* note 3, at 10. On a more humorous and perhaps telling note, the July 5, 1993 edition of New Yorker magazine contained a cartoon portraying a dog and a computer with the caption, "On the Internet, nobody knows you're a dog." *Id.* at 57. This cartoon was cited as an indication that "[t]he Internet had risen far enough into the popular consciousness to be laughed at," and thus marked a high degree of public awareness. *Id.* Similar

ing that time, attorneys throughout the United States and the world have been able to give clients a good idea of what to do and how to proceed as clients' concerns arose. They were able to do so by identifying underlying legal principles and by resorting to the development of appropriate analogies. Much of the difficulty associated with Internet law arises when an attorney attempts to reconcile the disparate advice given to various clients relating to Internet matters. Universal Internet legal principles are still elusive.

Clearly, the Internet has given birth to a spate of cases that have raised a range of legal doctrinal issues. The United States' anti-trust lawsuit against Microsoft,²⁷ as well as threats of additional anti-trust litigation against Microsoft²⁸ by twelve state attorney generals, begs the question: Can a company monopolize Internet access? White House aide Sidney Blumenthal's libel suit against Internet gossip columnist Matt Drudge,²⁹ required that we ask what libel standards should be used regarding the Internet where anyone can possibly be a publisher.³⁰ Several recording companies have filed civil copyright infringement suits against Internet sites that allow users to download music without permission from the copyright holders. These actions were undoubtedly brought to test the existing copyright law's ability to deal with the Internet.

Likewise, America Online's trespass and violation of privacy suits against several junk e-mail distributors raises the

conclusions concerning the New Yorker magazine cartoon have been made by The Harvard Business Review, Business Week, and the American Bar Association. See Debora Spar and Jeffrey J. Bussgang, *The Net*, 74 HARV. BUS. REV. 125 (1996); Paul Eng and Julie Tilsner, *Up All Night With the Internet*, BUS. WK., Feb. 7, 1994, at 14; G. Burgess Allison, *Technology Update*, 19 A.B.A. LAW PRACTICE MGMT. 8 (1993).

27. See Cliff Saran, *US Software Group Forces Windows 98 Reshuffle on Gates*, COMPUTER WKLY., Apr. 23, 1998, at 4; David Lawsky, *US: Judges Sharply Question Government Lawyer on Microsoft*, AAP NEWSFEED, Apr. 22, 1998, at 4-5; Ann Davis, *Microsoft Judge Taps a Pioneer of Internet Law*, WALL ST. J., Dec. 15, 1997, at B1.

28. See Saran, *supra* note 27, at 4.

29. See Edward Felsenthal, *A Web of Intrigue: The Internet's Bad Boy Has His Day in Court*, WALL ST. J., Mar. 11, 1998, at 1.

30. See David Stout, *Suit Against Internet Service by Clinton Aide is Dismissed*, N.Y. TIMES, Apr. 23, 1998, at A21. According to Stout, a Federal court dismissed a libel suit against the Internet provider (America Online), but let stand a libel suit against Matt Drudge, the Internet content writer. See *id.*

question: Do attempts to block electronic mail violate the First Amendment? The case of *McVeigh v. Cohen*³¹ involved a sailor who was discharged from the Navy after he posted a note on the Internet in which he identified his marital status as "gay." The *McVeigh* court suggested that the Navy and America Online violated a 1986 Federal law barring computer service companies from releasing confidential information about customers without the person's permission or a court order.³² Consequently, it is difficult to argue that American courts have not been able to cope with these new, previously undecided issues.

Attorneys who evaluate Internet transactions on a regular basis have typically found that once speculative and hypothetical controversies are now replaced by real ones, and they tend to find that the results seem reasonable and predictable. In short, Internet matters usually do not require new modes of thought, rather Internet transactions need only be treated differently. To be specific, the Internet is the quintessential product of the digitization phenomenon. It is a phenomenon that has collapsed the boundaries among communication technologies. The toppling of the ambits between communication technologies is significant because the American legal system relies almost exclusively on transmission technology to determine the nature of the legal rights and obligations associated with a communication related activity. Consequently, a single Internet transaction may be subject to a number of arguably conflicting legal rights and obligations.

I. A Longer Answer

From a legal perspective, tomes can be written describing why Internet transactions might be treated differently from non-Internet transactions. This writing will be limited to three areas: (1) identifying certain transactions that are unique to the Internet; (2) recognizing several special problems that have arisen which have been perceived to be caused by the Internet's use of digital communications; and (3) pinpointing a limited number of uniquely Internet related legal issues.

31. 983 F. Supp. 215 (D.D.C. 1998).

32. See *id.* at 220 (citing Electronic Communication Privacy Act of 1986, 18 U.S.C. § 2701 *et seq.* (1998)).

In order to best identify which transactions are unique to the Internet, this writing will attempt to define the Internet. This definition, though, will not speak in terms of technological concepts and terminology. There are many excellent Internet "how to" books and magazines on that topic.³³ Rather, the definition of the Internet will be phrased in terms of what the Internet can do.

Legal practitioners have found that while one can practice Internet law dependably without the benefit of advanced training in computer science, an attorney's ability to give competent legal advice regarding Internet transactions is dramatically enhanced by an understanding of the Internet. This is particularly true when such comprehension is combined with a working knowledge of the Internet's limitations and potential.

The 1998 participants in the Internet Law Symposium at Pace University School of Law ("the Symposium") have unearthed example after example of Internet transactions which, on first blush, purportedly exposed blatant inadequacies in the existing American legal system. Generally, these perceived inadequacies consisted of two types: i) either an Internet transaction was apparently not subject to any existing law, or ii) any attempt to apply existing laws to a particular type of Internet transaction resulted in an obvious violation of certain basic legal concepts. Both inadequacies were illustrated by the application of the First Amendment to the Internet.³⁴

Consider the following: certain information is deemed obscene in New York, but not in Ohio or New Jersey. An Ohio Internet user using a home computer posts such material on a server located in New Jersey. Sometime later, a seven-year-old Internet user, located in New York, uses a home computer to access the Internet via a New York ISP. He seeks out and reads the material in question. At first glance, the purveyor of the allegedly obscene material appears to be beyond the reach of New York authorities. Alternatively, if the parents of the New York minor complained to the appropriate New York authorities, who in turn prosecuted the New York ISP for trafficking of

33. See, e.g., PERRITT, *supra* note 2, at 13; STUCKEY, *supra* note 5, at xv-xvi.

34. See Fred Cate, *Indecency, Ignorance, and Intolerance: The First Amendment and the Regulation of Electronic Expression (article 5)-Part II* (visited Apr. 30, 1998) <<http://www.wm.edu/law/publications/jol/cate2.html>>.

obscene material, initially it would seem that the New York ISP was being held responsible for actions beyond its control. This presumes that the New York ISP had no knowledge of the obscene nature of the content it was passing.

After some ringing of hands, in almost every case the members of the Symposium saw that the legal gaps and the mismatches disappeared when exposed to the light of an appropriate analogy. Symposium speakers and students alike have found that even the most novel Internet questions can be handled by analogy if one understands the similarities among the new and existing technologies.

In the above example, the actions in Ohio and New Jersey were legal (i.e., the posting of certain material on an Internet server). However, they resulted in a potentially unlawful act in New York (i.e., exposing a minor to material considered obscene), resulting in the New York court's ability to prosecute the Ohio Internet user. While the Internet allows actors from different jurisdictions to raise challenges as to the appropriateness of the jurisdiction of foreign criminal justice systems, their actions have reasonably foreseeable consequences, for which the application of long arm statutes may result in criminal culpability.

In considering the above hypothetical, the Symposium concentrated on analogies equating ISPs to common carriers and concluded that the ISP common carrier privilege would provide an appropriate liability shield. This analogy is firmly based on the technical understanding that an ISP is one layer of a multi-layered Internet communication infrastructure and has the two most obvious components, as its name implies.³⁵ Specifically, it is available to a broad range of the public for hire,³⁶ and it is in the business of communicating messages over which it has limited or no content control.³⁷

35. These "common carrier" characteristics are not based on any single court finding. Rather, they are the combination of findings of several prominent cases that dealt with the definition of "common carrier."

36. Thus, satisfying the traditional "holding-out" test defined in BLACK'S LAW DICTIONARY 249 (5th ed. 1979).

37. See *National Association of Regulatory Utility Commissioners v. Federal Communications Commission*, 525 F.2d 630 (D.C. Cir. 1976) (considering services operated by a common carrier and made available to the public).

The Symposium's search for appropriate analogies concerning the question of intermediary liability for a potentially obnoxious or offensive communication, with respect to ISPs, was aided by researching cases concerning pre-1900 telegraph industry activity³⁸ and the mechanics of telephone,³⁹ radio, television,⁴⁰ cable television,⁴¹ and telefacsimile (better known as telefaxes, or simply, faxes) machinery.⁴² The discussion set forth in *Cubby, Inc. v. CompuServe, Inc.*,⁴³ concerning the relative responsibility of conduits for harmful information in light of a claim of defamation, was also useful in solidifying the analogy.

38. See, e.g., *Howley v. Whipple*, 48 N.H. 487 (1869) (finding that offers and acceptances by telegraph were as effective as offers and acceptances made by pen for the purpose of satisfying the Statute of Frauds).

39. See, e.g., *Sable Communications of California, Inc. v. Federal Communications Commission*, 492 U.S. 115, 131 (1989) (holding that a legislative ban on certain speech was not constitutional because "the statute's denial of adult access to telephone messages which are indecent but not obscene far exceeds that which is necessary to limit the access of minors to such messages"). Note that the disputed statute, section 223(b) of the Communications Act of 1934, Ch. 652, 48 Stat. 1064 (1934) (codified as amended at 47 U.S.C. § 151 et seq. (amended 1988)) prohibited both indecent and obscene commercial telephone messages. See *Sable*, 492 U.S. at 123.

40. Much like the Internet today, the emergence of radio and television broadcasting earlier this century brought a new technology into the world of mass media, and with it, new challenges of regulating within the boundaries of the First Amendment. In the seminal case of *Federal Communications Commission v. Pacifica Foundation*, 438 U.S. 726 (1978), the Court considered whether the Federal Communications Commission had the power to regulate radio broadcast that was indecent but was not obscene. The Court deliberated over whether a radio broadcast of a George Carlin record, which included a number of objectionable words, violated a federal statute that prohibited the broadcasting of certain material. See *id.* at 729-30. The Court established the extent to which the Federal government may go to limit free speech broadcast on television and radio. See *id.* at 778-80.

41. In cases dealing with cable television, the Supreme Court reiterated its intent to apply First Amendment protection standards based on the characteristics of the communication medium. See, e.g., *City of Los Angeles v. Preferred Communications, Inc.*, 476 U.S. 488, 494-95 (1986) (endorsing different standards for different media); *Quincy Cable TV, Inc. v. Federal Communications Commission*, 768 F.2d 1434 (D.C. Cir. 1985) (indicating that the communication medium should be assessed for First Amendment purposes by appropriate standards).

42. See, e.g., *Jan Fritchard, Keeping the Fax Private*, 52 J. Mo. B. 279 (1996).

43. 776 F. Supp. 135 (S.D.N.Y. 1991) (concerning the free flow of information and highlighting the need to have knowledge of the defamation in order to implicate an intermediary and find liability).

Generally, historical analogies have been useful guides.⁴⁴ However, contemporary perceptions of the role of emerging technologies, including the telegraph, telephone, radio, and television, have often been vehemently amiss.⁴⁵ Since it is unlikely that the ultimate development of the Internet can be predicted, it would be a mistake to formulate rules based on its present state. Symposium members found that rather than developing a fixed set of black letter laws, which could be used to understand the regulation of Internet related transactions, the adaptation of existing laws and precedent would be sufficient.⁴⁶

The pace of legal developments regarding the Internet was found to be frantic.⁴⁷ For example, it is anticipated that before a federal appeals court can consider the fate of Microsoft's Windows 95 Internet access software, Windows 95 will be replaced by Microsoft's Windows 98. Thus, it behooves Internet practitioners to stay abreast of contemporaneous court findings, as well as technological changes in the Internet as they develop advice based on analogies.

Digital phenomena, that is, the use of digital technology rather than analog technology, has made certain Internet related transactions legally unique. This writing will attempt to identify the perceived problems which have arisen due to the Internet's use of digital communications. The digitalization

44. For example, what William M. Martin wrote in 1940 concerning telegraph operators is applicable to Internet service providers: "The difficulty and inconvenience of requiring operators to analyze either the message or the senders from either a factual or legal standpoint is manifest. The indispensability of the telegraph, on the other hand, is as unchallenged as the realization that speed is the essence of its worth." William M. Martin, *Telegraphs and Telephones*, 2 WASH. & LEE L. REV. 141, 147 (1940).

45. See I. Trotter Hardy, *Copyright Owners' Rights and Users' Privileges on the Internet*, 22 U. DAYTON L. REV. 423 (1997) (pointing out examples of how predictions of the future of a particular communication technology were inaccurate, including the prediction that the telephone was too delicate an instrument for general use, or that closed circuit television would be a more commonly used commodity).

46. This approach mimicked the finding in the plurality opinion set forth in *Denver Area Education Telecommunications Consortium v. Federal Communications Commission*, 518 U.S. 727, 741-742 (1996) (stating that no single analogy was so appropriate as to allow the court to find a rigid standard that would be applicable to all future media).

47. A similar finding was expressed in Kathy Rebello, *Inside Microsoft*, BUS. WK., July 15, 1996, at 56 (stating, "Internet time: a pace so frenetic it's like living dog years — each jammed with the events of seven normal ones").

phenomenon has collapsed old boundaries of communication. Unlike the past, specific transmission channel technologies are no longer a reliable guide to the legal nature of the activity.

While some communication laws may need to be changed, the core ideas of the legal subjects, which are affected by the Internet, remain sound and viable. The Internet is not so revolutionary that all existing legal precepts must be abandoned and replaced with new legal principles in a completely separate Internet jurisdiction.⁴⁸ It is evident that the American legal values that have evolved over the past two centuries and that have been incorporated into American jurisprudence will apply to Internet transactions.

Because the Internet allows certain unique types of communication, some Internet transactions pose potentially novel challenges for legal practitioners. For example, the application of liability to an Internet communication intermediary is a unique Internet matter, whereas the originator of an Internet electronic mail message is not. The originator will generally be in the same legal position as he or she would be if the content were on paper. Other uniquely Internet related issues include the appropriate determination of jurisdiction for Internet related civil and criminal matters, as well as a proper nexus for tax matters. This is primarily because the American legal system's tradition is based on geographically defined sovereign boundaries.

II. What Are the Characteristics That Made the Internet Special?

In order to understand why Internet transactions should be treated differently, one must first consider what the Internet is. I am the father of three young children, all of whom are more Internet literate than me. Therefore, I need only draw on my personal experience at home to give a working definition of the Internet, not based on what it is, but what it does.

48. See Stephan Wilske et al., *International Jurisdiction in Cyberspace*, 50 FED. COMM. L.J. 117 (1997); Jonathan I. Edelstein, *Anonymity and International Law Enforcement in Cyberspace*, 7 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 231 (1996).

Recently, my nine-year-old son was explaining the Internet to my six-year-old daughter. This is the same nine-year-old who, when angered by his mother, sought his revenge by using the Internet to circumvent the DuPont Corporation security system. He changed the password on her Du Pont issued computer, thereby locking her out of her PC for several hours. Since Alexander is nine, needless to say, he did not tell six-year-old Emily that the Internet is an international plexus of computer networks connected to each other through common routers, using Transport Control and Internet Protocols (TCP/IP) and sharing common name and address space conventions. Although true, this information is not very useful to most attorneys or six-year-old sisters. Rather, Alexander told Emily that the Internet is like a book because you can look things up in it; but, it is more. It is like a fax because you can send and get pictures, like Aunt Julie does of her new baby; but, it does more. It is like a newspaper because once you put something in it, you don't know who will read it or how many times it will be copied; and yet it is still more. It is like television and radio because it does not cost anything extra to send a message to five or five million people, and it is like the mail or the telephone because you can send or receive a private message. Alexander summed it up by telling Emily the Internet is like a Swiss Army knife, a single tool that can do the same job as many other tools.

After hearing Alexander's explanation, it has been instructional to treat the Internet as a book, a fax, a letter system, a newspaper, a phone system, a radio, and a television system. This treatment has allowed the use of a cornucopia of potentially useful analogies. By defining the Internet in terms of what it can do, instead of what it is, a practitioner can immediately identify potential legal issues and the sources of potential analogies.

A working definition of the Internet based on what it does, rather than what it is, highlights two major reasons why the American legal system should treat the Internet differently. First, the Internet involves potentially the same transactions as many existing communication technologies (i.e., books, faxes, letters, newspapers, phones, radio, and television). Thus, the Internet potentially allows people to act like and share the same rights and obligations as a publisher, a common carrier,

and a broadcaster. This definition also highlights the fact that the Internet does the same thing as many communication technologies, but due to a technological change, does not do it the same way.

Second, the Internet appears to be able to do what a combination of many existing technologies already do today. This is important to note because each one of these existing technologies has a nearly complete set of legal principles, based on different underlying assumptions, precedents, and rules and regulations. Because our legal system reveres precedent and relies on analogy, the legal doctrines that define the rights and obligations of a given communication technology, such as print or broadcast, can each be visualized as a separate monolith or ionic column. Each monument or column is planted on a different base and is pointed upward to a different point in space.

Consequently, the principles and legal doctrines that have evolved for different technologies may conflict. As evidence of this, one need only look as far as the Communications Act of 1934,⁴⁹ which governs radio and television transmissions, and cable communications. There was no attempt to intellectually integrate the governing doctrines. Additionally, the regulations came from completely different places. The doctrines governing terrestrial telecommunication common carriers were adopted wholesale from the Interstate Commerce Act of 1887.⁵⁰

The regulation of the telephone common carrier was based on market entry price controls imposing a duty to furnish communication services upon reasonable request. The doctrines governing radio and television came from the Radio Act of 1927.⁵¹ The original theme of broadcast regulation was to ration the public spectrum's use and impose a public service obligation: that the public interest and necessity would be served.

Until the Internet sprang into existence, separate legal doctrines concerning communication transactions could co-exist. However, the digital phenomena has led to the destruction of existing communication technology boundaries. The very na-

49. Ch. 652, 48 Stat. 1064 (1934) (codified as amended at 45 U.S.C. § 151 *et seq.* (1998)).

50. Ch. 104, 24 Stat. 379 (codified as amended in scattered sections of 49 U.S.C.).

51. Ch. 169, 44 Stat. 1162 (1927).

ture of the Internet is forcing the American legal community to re-evaluate substantial amounts of substantive law.

As indicated previously, the Internet penetrates many aspects of American life, and consequently, many aspects of American law. While it may be beneficial to address a large number of Internet related transactions, addressing Internet transactions in a general way tends to lead to conclusions with little relevancy. Therefore, the implications of only two Internet transactions are considered below: Internet transactions related to the First Amendment and copyright protection.

First Amendment concerns and Internet matters are intertwined. Internet transactions have special value because they are part of a technology that allows the free flow of information, which is a central concern of the First Amendment.⁵² The First Amendment exerts itself by limiting liability on tort actions like defamation, which limits efforts of federal, state, and local governments to restrict access to public information and limits governmental efforts to control content. This exertion is readily and directly applicable to the Internet.

The Internet represents the convergence of different technologies and economic markets. Specifically, the Internet combines common carrier, broadcasting, and print transactions. Each technology and associated market has a very different First Amendment legal tradition. For example, telephone companies and media broadcasting firms have been heavily regulated, while newspapers and magazines have enjoyed broad First Amendment immunity from regulation.

Moreover, while newspaper publishers have strong First Amendment protections, telephone firms waived their First Amendment privileges to assume common carrier status. Consequently, in the case of the Internet, we find a juxtaposition of interests where a publisher's content control, arguably the most critical characteristic of a publisher's First Amendment privilege, is inconsistent with regulations necessary for a telephone common carrier.⁵³ Thus, Internet transactions will most likely be treated differently from other First Amendment transactions.

52. See U.S. CONST. amend. I.

53. Telephone and telegraph services were declared to be common carriers by the Mann-Elkins Act, ch. 309, sec. 7, §1, 36 stat. 539, 544-45 (1910).

The area of copyright protection presents another set of perplexing issues when existing law is applied to Internet transactions. Among the most interesting concerns is the use of "caching"⁵⁴ of information by Internet applications.⁵⁵ In a nutshell, it can be argued that since caching requires that data is copied, and since the Internet extensively relies on caching,⁵⁶ Internet users are engaged in the most pernicious infringement of copyrighted material in history. While this conclusion is often cited, the conclusions that may be drawn from this set of facts vary.⁵⁷

Under existing law, a copy, even if temporary, is a copy for the purpose of applying copyright law. In the area of computers, the courts have found that copying computer data or software into a computer constitutes the production of a copy for copyright purposes.⁵⁸ Most users (infringers) are unaware of the cached copies, which are created by merely using an Internet browser such as Netscape's Navigator or Microsoft's Internet Explorer.

The existing law could respond in a number of ways. Caching, which is preventable, may be deemed infringement. However, the Fair Use Doctrine⁵⁹ of the U.S. Copyright law will likely be applied in an expansive way to cover unintentional copying on a case by case basis. Alternatively, the courts could find an implied license created by Internet content suppliers which permit caching. In short, it is likely that Internet trans-

54. Caching is the temporary storage of network data and information that is made in order to improve the overall performance of the network. It is used by many Internet applications to reduce the access time for subsequent use of Internet files.

55. It should be noted that the Internet relies upon copying information and data in other ways as well. The Internet is composed of a network of computers. In order for data to travel to its ultimate destination, it is generally broken up into data "packets" and routed through many computers. Each computer en route makes a copy as part of the transmission process.

56. An argument can be made that caching is not essential for the productive use of the Internet and that caching is merely a temporary response to the existing Internet network. See Hardy, *supra* note 45, at 429. However, existing Internet technology relies on caching.

57. See *id.* at 452-53.

58. See *MAI Systems Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 518 (9th Cir. 1993), *cert. dismissed*, 510 U.S. 1033 (1994); see also *Triad Systems Corp. v. Southeastern Express Co.*, 64 F.3d 1330, 1334 (9th Cir. 1995).

59. See 17 U.S.C. § 107 (1995).

actions will be treated differently than other copyright transactions.

The digital phenomena made the Internet special because it collapsed old boundaries of communication technologies. The digital phenomena⁶⁰ is at the heart of the technological change that made the Internet unique among communication technologies. The Internet, like other forms of publication, provides value by providing content. Content is the basic message or data with nothing provided to help a user find, get, file or look at information.

Most information providers add value to the content by dividing it into pages and by identifying the order and nature of the content. More sophisticated information products have cross-references, like indexes or tables of contents, that internally point to another part of the product. The Internet has pointers called "hyperlinks," which add a new dimension to cross-referencing. They not only point to new material, but also enable the user to procure an original copy of an information source. The user may then distribute it all with the click of a mouse.

Hyperlinking and the other results of the convergence of different communication technologies are principally due to the effects of the digital phenomena. That is, the movement of most forms of electronic communication from analog representation to digital representation. Understanding the distinction between analog and digital communications is pivotal in understanding why the Internet must be treated differently. Analog communication involves waves. Analog technology works by copying the sound wave or the light wave with an electronic wave and sending it. The prime example is the airwave created when a person speaks. Technological analog communication is exemplified by the original method used by Alexander Graham Bell in the telephone, a method that has remained dominant in the telecommunications field until recently. Analog techniques are also used for the vast majority of radio and television broadcasts.

60. The digital phenomena, sometimes referred to as "convergence," is the confluence of all significant media streams. It exists due to the maintenance of a communication transport mechanism that reduces every major sort of media (including text, image, audio, and video) to a common communication channel.

Digital communication technology works by taking millions of static samples of sound or light waves each minute and reducing them to computer bits. These bits are sent to machines that combine them to make pictures and sounds. Digital data technology makes it possible to use information in the digital content to permit routing and addressing. Only a single channel is required by digital technology to be sent on parallel paths. Analog technology requires a separate and parallel channel to be established for routing and addressing purposes, a channel that must remain intact during the entire duration of the analog transmission.

Digital technology reduces text, image, and audio to a common transmission media. This allows the easy combination of various types of information representations. Digital information or data, as embodied in the Internet, also has the characteristic of being quick and easy to replicate. These characteristics are not present in other static⁶¹ or dynamic⁶² communication technologies.

Another central feature of digital information or data is that each copy is as good as the original. These characteristics are not found in either analog or print technologies. If each copy is in all respects identical to the original, and if we accept the traditional privilege – that anyone can read a copyrighted work when one possesses it – then a copyright holder's reproduction right has no value. This follows from the fact that the traditional distinction between reading (never within the copyright monopoly) and reproducing it (always within the copyright monopoly) vanishes.

It can be argued that Internet transactions need to be treated in the same "revolutionary" manner that, for example, torts have been. That is to say, Internet transactions like tort transactions should be separately grouped and taught as a unit. In support of this contention, one need only look at the cases that have dealt with the application of existing law to the Internet. It appears that the courts have had a difficult time squaring their Internet related decisions with existing decisions. Proponents of the "Internet requiring revolutionary

61. Such as newspapers or other print technologies.

62. Such as standard telephone, radio, television, or analog technologies.

treatment" position might point to the newly established tort law, which was developed because the courts had a difficult time squaring tort related decisions with then existing decisions. During the hundreds of years prior to the development of modern tort law, people were still liable for their actions, but the liability arose under a wide variety of legal theories.⁶³

Proponents of the position that the Internet must be treated in a revolutionary manner might also point out that prior to Justice Louis Brandeis' establishment of the "revolutionary" right to privacy,⁶⁴ courts experienced some difficulty articulating the basis for certain decisions. It can be argued that Internet rights, like the right of privacy, must be discovered. It may ultimately be determined that the use of the Internet gives rise to one or more new forms of rights or obligations. Yet another possibility is the "revolutionary" redefining of existing legal concepts. For example, changing the word "copying" from "tangible reproduction" to something more abstract would be more applicable to the transient appearance of data or information in a computer. This might lead to the development of new copyright laws.⁶⁵

There is a division between those who would like to see incremental change and those who prefer radical change.⁶⁶ The more radical group indicates that due to the Internet, America is entering a shift from an industrial based economy to a knowledge and information based economy. They argue that this change will be as radical as the change of the American society from agrarian to industrial. They point out that the American legal system is strongly based on geographically defined entities and that Internet information flows freely across geographical boundaries. This presents problems for determining both civil and criminal jurisdiction. They further argue that this informa-

63. See PROSSER ET AL., CASES AND MATERIALS ON TORTS 1-16 (9th ed. 1994). Prosser also points out that separate rules of liability developed around specific types of action (such as different forms of trespass) because various torts which are recognized today grew out of different historical common law forms of action. See *id.*

64. See Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 195 (1890).

65. See Hardy, *supra* note 45, at 462.

66. See Amy Harmon, *We, the People of the Internet*, N.Y. TIMES, June 29, 1998, at B1.

tion flow causes irreconcilable jurisdictional difficulties. In addition, they contend that Internet technology has produced new types of disputes while diminishing the feasibility of traditional methods for discovering unlawful conduct and enforcing traditional legal remedies. Some adherents to this line of thought maintain that a separate Internet jurisdiction must be established and that all new legal principles be created. Others have argued that since the Internet is limited by existing protocol and technology, it necessarily creates its own rules.⁶⁷ Still, others have suggested that a body of private international law that incorporates centuries of trade law practice should apply.⁶⁸

Nevertheless, most practitioners and commentators do not deny that technological change has always been a source of problems that the American legal system has successfully addressed. One need only look at the legal changes wrought in employment relations by the Industrial Revolution, or how the automobile altered the nature of personal injury claims. A quick read of the American legal system's handling of past technological advances demonstrates that the challenges presented by the Internet may be evolutionary, although not revolutionary.⁶⁹ Previously, the American legal system has neatly accommodated the telegraph, telephone, television, and fax.

In fact, many of the ideas presented in the legal integration of those technologies into the then existing American legal system are still valid today. The Symposium students have often consulted law review articles of the past to help them formulate legal models for the Internet law challenges of today. For example, a 1920 Columbia Law Review article considered the difficulties faced by a telegraph operator who had to determine whether a message was defamatory, and thus decide whether to send it or not.⁷⁰ The concerns expressed in this article are as relevant today to Internet intermediary computer providers, Internet bulletin board service providers, and Internet service

67. See Post, *supra* note 12.

68. See RESTATEMENT (SECOND) OF JUDGMENTS §§ 10, 81, 82 (1982).

69. The Internet is often referred to as being a "revolutionary" change in communication or as a part of a communications revolution. See Ilene Gotts, *Communications Law*, NAT'L L.J., June 14, 1994, at B6.

70. See Y.B. Smith, *Liability for a Telegraph Company for Transmitting a Defamatory Message*, 20 COLUM. L. REV. 369 (1920); see also PERRITT, *supra* note 2, at 18-21.

providers in general, as they were to telegraph firms and telegraph operators shortly after the turn of the century.

The same quandary is presumably faced today by Internet service providers who are at peril for transmitting or posting potentially defamatory material. Because legal changes lag behind technological changes, it comes as no surprise that the American legal system has not already resolved all the difficulties presented by the Internet. The American market system has thrived in part because our system tries not to predetermine the course of technological change. It merely makes itself available for dispute resolution when private accommodation and market mechanisms fail. While our existing legal system will most likely be able to accommodate Internet law, it should concentrate on the application of law to new classes of litigants such as Internet intermediaries of Internet publishers. Since neither of these classes previously existed, it is only natural that no legal precedent is available to guide them.

III. Uniquely Internet Issues

The Internet has bred a new, unique class of litigants and judicial matters. One new issue involves novel jurisdiction. For example, in *U.S. v. Thomas*,⁷¹ a California couple violated a federal obscenity criminal statute and was convicted in Tennessee, even though their obscene posting was on a server in California. A second type of uniquely Internet related matter involves copyright protection and caching. This is particularly important because existing infringement laws do not require intent or knowledge in order to find infringement.

71. 113 F.3d 1247 (10th Cir. 1997). Mr. Thomas owned and operated a bulletin board service which relied upon a computer located in California, from which users could download pornographic images. *See id.* In 1994, Mr. Thomas was arrested and convicted by a jury in Tennessee on several counts of distributing obscene material via his bulletin board in violation of 18 U.S.C. § 1465. *See id.* He was subsequently indicted in Utah for several counts relating to the distribution of child pornography via his bulletin board in violation of 18 U.S.C. §§ 2252(a)(1) and (2). *See id.* Mr. Thomas moved to dismiss the Utah indictment on the grounds of double jeopardy arising out of his Tennessee prosecution and sentencing. *See id.* After the denial of his motions to dismiss, Mr. Thomas entered a guilty plea on one of the counts and was sentenced to a prison term, which ran concurrently with his Tennessee sentence. *See Thomas*, 113 F.3d at 1247.

A less obvious class of uniquely Internet litigants is a particular type of Internet service providers that can be divided into three basic groups. The first two groups, conduits and content providers, fit comfortably within established legal categories. The third group, store-and-forward Internet services providers, do not.

Conduits are Internet service providers that provide services involving little or no content alteration. They look and act like telephone and telegraph companies, which historically have had common carrier obligations and benefitted from judicially acknowledged privileges. These privileges have resulted in favorable treatment under the law of torts, either because of their common carrier duties or because of the fiction that they merely provide communication links and do not actually republish information.

In short, courts have regularly limited the liability of common carriers for the transmission of defamatory communications and have often found that telephone companies merely provide facilities, not reproductions. They are usually asked to implement electronic eavesdropping, and typically have an obligation to do so. They also normally have common law nondisclosure obligations and must take reasonable steps to prevent third parties from intercepting communications. In defamation law, conduits can escape liability under the "sealed container" doctrine, unless there is no upstream producer available to pay a judgment. In such cases, even a faultless conduit may be liable in order to avoid placing the loss on an innocent consumer.

Content providers are the Internet service providers who own the content. They are almost like publishers, and enjoy a publisher's First Amendment rights, which limit their tort and criminal liabilities with respect to the content they publish. This makes them much more vulnerable than the conduits. Store-and-forward Internet service providers do both, and can arguably be governed by both sets of doctrines.

Internet law should concentrate on the liability of intermediaries because originators of electronic information content are in the same legal position they would be if their content were on paper. The Internet structure is composed of many layers. Even the simplest Internet transaction usually involves a user's computer, an Internet service provider's access computer,

a regional router, a governmental backbone computer, another regional router, another Internet service provider's computer, and a content provider's computer. So, even in the simplest transactions, there are many more intermediaries than users or content providers.

In most of the potential intermediary liability areas the finding of fault is a necessary element in the assessment of liability. In copyright law, fault is not a prerequisite to liability. Consequently, an intermediary, who is only acting as a conduit and has neither control over the content nor vouches for its quality, is exposed to a great deal of liability. This lack of fault required for liability could have significant impact for Internet intermediaries.

There are some cases that address the liability of Internet intermediaries. However, their message is not clear. Consider *Cubby, Inc. v. CompuServe Inc.*,⁷² where a federal district court, clearly interested in maintaining information flow, found that an Internet intermediary was not liable for defamation in the absence of evidence that it knew or should have known about the harmful information flowing through its service. In *Cubby*, a newsletter that allegedly defamed the plaintiffs was uploaded by its publisher onto a database maintained on CompuServe's computers.⁷³ The court characterized CompuServe's service as a for-profit library.⁷⁴ It indicated that CompuServe had no general duty to inspect the content it was carrying.⁷⁵ This position is completely in accord with generally accepted tort law.⁷⁶

The Internet has given birth to a new type of intermediary between the content creator and the user, who will ultimately consume the information. The earliest examples of this new type of intermediary are the Internet electronic bulletin boards. While it appears to the end user that he or she is getting his or her information directly from the content creator, it is actually being delivered by one or more intermediaries.

An Internet page usually presents a user with a highlighted text string, called a hyperlink. A user gets the informa-

72. 776 F. Supp. 135 (S.D.N.Y. 1991).

73. See *id.* at 138.

74. See *id.* at 140.

75. See *id.*

76. See RESTATEMENT (SECOND) OF TORTS § 12 (1995).

tion by clicking on the hyperlink. The user's action causes the server displaying the pointer to download special computer information, known as a universal resource locator, to the user's computer and then disconnects. The user's computer, running Internet software, connects to another computer and receives more information, and so on and so forth. Thus, information allegedly infringing upon another's copyright may move through several intermediaries in this distribution system. The potential liability of various intermediaries for copyright infringement is a matter of obvious interest both to the intermediaries and to the copyright owner alleging infringement.

The copyright holder is more likely to find intermediaries, such as IBM, America On-line, or CompuServe, more eligible candidates to sue than end users, because they have deeper pockets and are more amenable to personal jurisdiction. For example, in *Playboy Enterprises v. Frena*,⁷⁷ the District Court found that an Internet intermediary, which ran a dial-up electronic bulletin board service, was liable for copyright and trademark infringement for material available through its service, without the plaintiff having to prove that the intermediaries knew of the infringing nature of the content.⁷⁸ Moreover, copyright infringement claims arose from the on-line use of copyrighted photographs owned by the plaintiff.⁷⁹ The photos in question were claimed to have been downloaded by one or more of the defendant's customers.⁸⁰ However, because the plaintiff's trademarks were replaced by the defendant's advertising, this claim was questionable. Based on the standard of strict liability for direct infringement, the court disregarded Frena's defense of lack of actual knowledge.⁸¹

IV. Conclusion

The Internet causes tension among many elements worldwide. Such tension exists between intellectual property owners who need a stable set of rules to make appropriate business decisions and the worldwide need for broad freedoms of speech to

77. 839 F. Supp. 1552 (M.D. Fla. 1993).

78. *See id.* at 1556.

79. *See id.* at 1554.

80. *See id.*

81. *See id.* at 1560.

ensure fundamental human rights. The Internet cases that arose in 1998 and in prior years can be read to imply there is a stable set of expectations which will lead to predictable results in the near future with respect to the Internet. Consequently, Internet attorneys must recognize that the Internet is a new medium for sharing information and must treat Internet transactions differently than any other prior transactions.

While the Internet does represent an evolutionary convergence of technologies as a result of expanded use of digitization, it is not a revolutionary change. It is premature to suggest that America scrap the legal doctrines created to deal with other information technologies. Rather, legal issues of derivative works, rights of privacy, theory of trademark dilution, and others are adequately addressed by existing legal theories if applied correctly.

Most legal precepts can be adopted without much difficulty to deal with the novel challenges posed by the Internet. Media reports highlighting the vulnerability of privacy and intellectual property on the Internet tend to be sensationalistic rather than scholarly. For example, adequate laws already exist to punish intellectual property infringers and those who initiate damage while using the Internet.

While legislatures should focus on real problems, such as whether a server located in a jurisdiction constitutes a valid nexus for jurisdictional purposes, or whether access to the Internet is a taxable activity, they need not criminalize what is already criminal activity or make a special tort for what is already tortious conduct. Legislatures may want to act to restrain frivolous suits as Congress has protected Internet intermediaries such as Internet service providers with the Telecommunication Act of 1996.⁸² Technological fixes have evolved to address issues as well, such as the problem of one Internet site using the pages of another site without permission.⁸³

Suggestions that the American legal system will be crushed by the worldwide infrastructure of the Internet are alarmist.

82. Pub. L. No. 104-104, 110 Stat. 56 (1996).

83. One example is the use of programming techniques which force Internet site users to enter a site at a designated domain name. See Bradley J. Hillis, *Thinking about Linking*, (visited May 19, 1998) <<http://www.llrx.com/features/weblink2.htm>>.

As in the past, America can enforce legal obligations and a standard of conduct against natural persons within the United States and against corporations with physical assets located within its boundaries. This has always been the cornerstone of legal jurisdiction.