here and there:
unpacking the complexity of internet jurisdiction

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spyware and jurisdiction

- local vs. offshore
- privacy vs. criminal
- spyware subset -- model for multiple issues
  - spam
  - fraud
  - id theft
  - phishing
is there a there there?

- 2001 btlj article on internet jurisdiction
- zippo test unsatisfactory
- move toward targeting based analysis
- targeting indicia
  - contract
  - technology
  - actual or implied knowledge
is there a there there?

- fundamental principles remain valid
- zippo receives just lip service today
- greater use of targeting analysis
- technology more important -- used for commercial purposes
- awareness of potential compliance and liability issues
complexity

1. commercial activities
2. defamation
3. regulatory/enforcement
defamation split

• no unified theory because no unified approach
• u.s. vs. commonwealth (australia, uk, canada)
• law of the poster vs. law of the target
homeless harms

• no home and no jurisdictional target
• practical enforcement challenges
• \textit{r v. libman} (scc 1985)

“everyone knows the transaction in the present case is both here and there”
## unpacking net jurisdiction

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### unpacking net jurisdiction

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<td>vs. practically powerful</td>
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commercial

• zippo referenced but rarely followed
• proven to least challenging
  – choice of forum vs. choice of law
  – contractual mitigation of risk
  – cost/necessity of doing business
  – other risks greater - fraud, chargebacks
defamation

- law of the poster (u.s. - lidov, young)
  vs.
- Law of the target (commonwealth - gutnick (au), lewis (uk), bangoura (can))
- defamation divide has had an impact
  - aba/icc study finds media chill
  - companies intervening in bangoura
regulatory - key considerations

- **effects in the jurisdiction?** - if create local harm, inclined to act (*granite gate*)
- **is there an alternate regulator?** - “unregulated exchanges are homeless” (*wse*)
- **alternate enforcement mechanism?** - seize domains (*ftc v. pereira*)
- **likelihood of action elsewhere?** (*accc v. chen*)
regulatory - limitations

- **Statutory limitation** - may be precluded from acting *(abika)*
- **Efficacy limitations** - is law undermined if ineffective? *(accc v. chen)*
- **Resource limitations**
- **Co-operative limitations** - absence of mou or other data sharing agreement
regulatory - forum

- national
- bi-lateral mechanisms
- multi-lateral mechanisms
regulatory - forum

- national (can-spam)
- bi-lateral mechanisms (agt. with spain, au)
- multi-lateral mechanisms (london action plan)
legislative

- **practically powerless**
  - recognition that limits of regulatory power; particularly if smaller country
  - australia -- gambling and content regulation carves out foreign sites

- **practically powerful**
  - ability to extend national laws outside jurisdiction
  - eu - data protection directive
  - us - coppa, acpa
application to spyware

- clear effects in the jurisdiction
- alternatives? -- technical solutions, mkt pressure
- efficacy and resource concerns
- co-operative tools
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