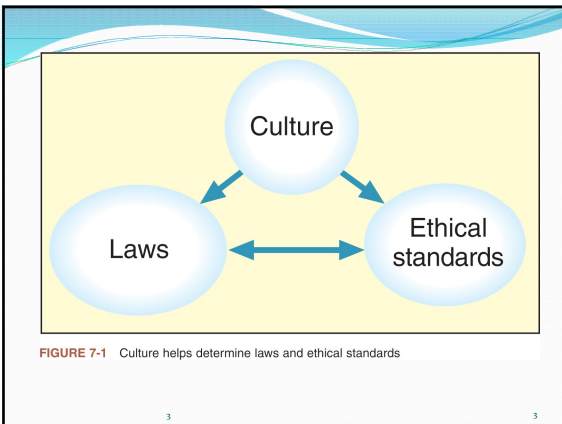


The Legal Environment of Electronic Commerce

- Online businesses:
 - Must comply with the same laws and regulations that govern the operations of all businesses
 - But
 - The Web extends a company's reach beyond traditional boundaries

Borders and Jurisdiction

- Territorial borders in the physical world mark the range of culture and reach of applicable laws very clearly



Borders and Jurisdiction

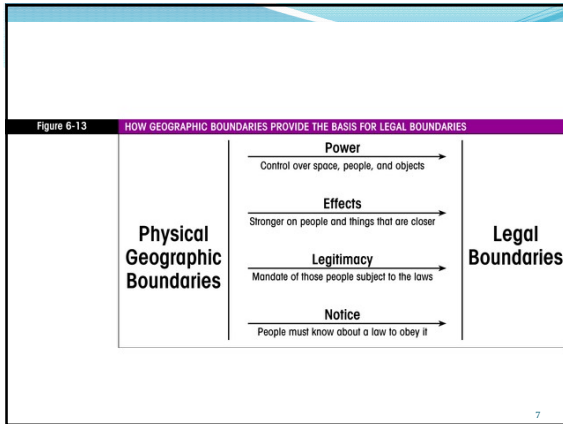
- We can define the relationship between geographic boundaries and legal boundaries in terms of four elements:
 - power, effects, legitimacy, and notice.

Borders and Jurisdiction (continued)

- Power
 - A form of control over physical space and the people and objects that reside in that space
 - A defining characteristic of statehood
- Effects
 - Impact of a person's behavior

Borders and Jurisdiction (continued)

- Legitimacy
 - Idea that those subject to laws should have some role in formulating them
- Notice
 - The expression of a change in rules
 - Constructive notice
 - Individuals become subject to new laws and cultural norms when they cross an international border



Jurisdiction on the Internet

- Power, effects, legitimacy, and notice do not translate well to the virtual world of electronic commerce
- Governments that want to enforce laws must establish jurisdiction over business conduct
- Jurisdiction
 - Ability of a government to exert control over a person or corporation

Jurisdiction on the Internet (continued)

- Tort
 - Intentional or negligent action taken by a legal entity that causes harm to another legal entity
- A court has sufficient jurisdiction in a matter if it has both subject matter jurisdiction and personal jurisdiction

Subject-Matter Jurisdiction

- Subject-matter jurisdiction is a court's authority to decide a type of dispute
- Personal jurisdiction
 - Determined by the residence of the parties
 - Long-arm statutes
 - Create personal jurisdiction over nonresidents who transact business in the state

Contracting and Contract Enforcement in Electronic Commerce

- Contract
 - Includes three essential elements
 - An offer, an acceptance, and consideration
 - Formed when one party accepts the offer of another party
- Offer
 - Commitment with certain terms made to another party
- Acceptance
 - Expression of willingness to take an offer

Contracting and Contract Enforcement in Electronic Commerce (continued)

- Consideration
 - Agreed upon exchange of something valuable
- Implied contract
 - Formed by two or more parties that act as if a contract exists

Contracting and Contract Enforcement in Electronic Commerce (continued)

- Statute of Frauds
 - The following must be created by a signed writing
 - Contracts for the sale of goods worth over \$500
 - Contracts requiring actions that cannot be completed within one year

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Contracting and Contract Enforcement in Electronic Commerce (continued)

- A writing
 - Exists when the terms of a contract have been reduced to some tangible form
- Signature
 - Any symbol executed or adopted for the purpose of authenticating a writing
- Warranties on the Web
 - Any contract for the sale of goods includes implied warranties

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Contracting and Contract Enforcement in Electronic Commerce (continued)

- Warranty disclaimer
 - Statement declaring that the seller will not honor some or all implied warranties
- Authority to bind
 - Determining whether an individual has the authority to commit a company to an online contract
- Terms of service (ToS)
 - Intended to limit a Web site owner's liability

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Use and Protection of Intellectual Property in Online Business

- Intellectual property
 - Includes all products of the human mind
 - Products can be tangible or intangible
- Intellectual property rights
 - Include protections by governments through:
 - Granting of copyrights and patents
 - Registration of trademarks and service marks

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Web Site Content Issues

- Copyright
 - Right granted by a government to an author or creator of a literary or artistic work
- Creations that can be copyrighted include all forms of artistic or intellectual expression
- Works copyrighted by corporations or not-for-profit organizations are protected for 95 years

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Web Site Content Issues (continued)

- Fair use of a copyrighted work
 - Includes copying it for use in criticism, comment, news reporting, teaching, or research
- copyright infringement
 - Entity becomes liable if:
 - It is capable of supervising infringing activity
 - It obtains financial benefit from infringing activity

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Patent Infringement

- Patent
 - Exclusive right granted by a government to an individual to make, use, and sell an invention
- To be patentable the invention must be genuine, novel, useful, and not obvious, given the current state of technology
- Business process patent
 - Protects a specific set of procedures for conducting a particular business activity

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Trademark Infringement

- Trademark
 - Distinctive mark, device, motto, or implement that a company affixes to goods it produces
- Service mark
 - Used to identify services provided
- Trade name
 - Name that a business uses to identify itself
- Common law
 - Part of British and U.S. law established by the history of court decisions

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Domain Names, Cybersquatting, and Name Stealing

- Cybersquatting
 - Registering a domain name that is the trademark of a person or company and hoping to sell it to that person or company for money
- Name changing
 - Registering misspelled variations of well-known domain names
- Name stealing
 - Ownership of a site's assigned domain name is changed to another site and owner

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Domain Names, Cybersquatting, and Name Stealing (continued)

- U.S. Anticybersquatting Consumer Protection Act
 - Protects trademarked names from being registered as domain names by other parties
 - Parties found guilty of cybersquatting can be held liable for damages of up to \$100,000 per trademark

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Protecting Intellectual Property Online

- Proposed solutions to problems in digital copyright protection include:
 - Host name blocking
 - Packet filtering
 - Proxy servers

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Defamation

- Defamatory statement
 - Statement that is false and injures the reputation of another person or company
- Product disparagement
 - If a defamatory statement injures the reputation of a product or service instead of a person
- Per se defamation
 - Court deems some types of statements to be so negative that injury is assumed

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Advertising Regulation

- Federal Trade Commission
 - Regulates advertising in the United States
 - Publishes regulations and investigates claims of false advertising
- Provides policy statements
- Policies cover specific areas such as:
 - Bait advertising
 - Consumer lending and leasing
 - Endorsements and testimonials

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Online Crime, Terrorism, and Warfare

- Online crime
 - Obstacles faced by law enforcement:
 - Jurisdiction
 - Difficulty applying laws written before the Internet became prone to criminal actions
- Online warfare and terrorism
 - Sustained effort by a well-financed terrorist group could slow down operation of major transaction-processing centers

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Communications with Children

- Children's Online Privacy Protection Act of 1998 (COPPA)
 - Provides restrictions on data collection that must be followed by electronic commerce sites aimed at children
- Children's Internet Protection Act (CIPA)
 - Requires schools that receive federal funds to install filtering software on computers

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Taxation and Electronic Commerce

- Income taxes
 - Levied by national, state, and local governments on net income generated by business activities
- Transaction taxes
 - Levied on products or services that a company sells
- Property taxes
 - Levied by states and local governments on personal property and real estate used in business

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Summary

- Legal concept of jurisdiction on the Internet is still unclear and ill defined
- Relationship between geographic boundaries and legal boundaries are based on power, effects, legitimacy, and notice
- Innocent inclusion of photographs and other elements on a Web page can lead to infringement of trademarks, copyrights, or patents

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Summary (continued)

- The Internet can be used to perpetrate crimes, advocate terrorism, and wage war
- Web business practices have led to questions of ethics regarding online privacy
- Companies that conduct electronic commerce are subject to the same laws and taxes as other companies
- The international nature of business complicates tax obligations

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