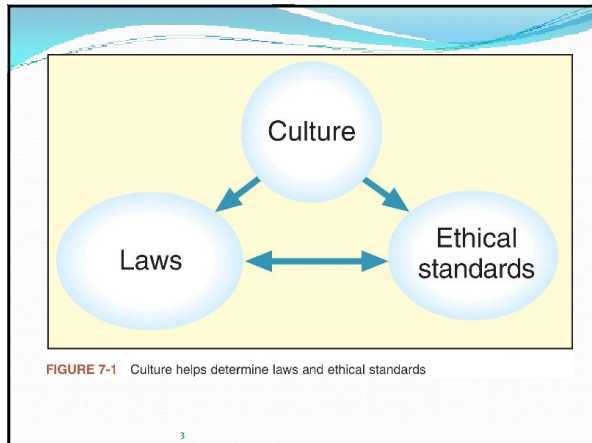


The Legal Environment of Electronic Commerce

- 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

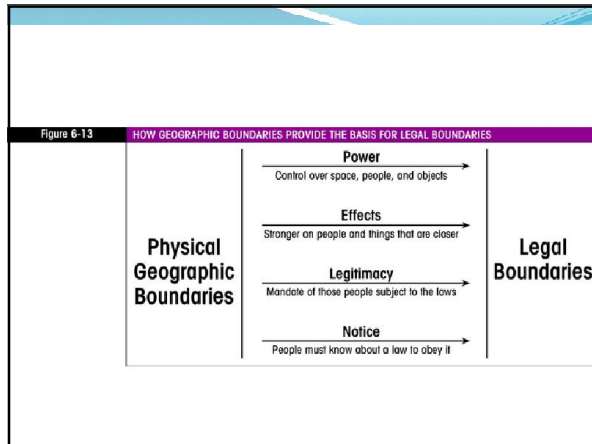
- We can define the relationship between geographic boundaries and legal boundaries in terms of four elements:
 - power, effects, legitimacy, and notice.

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

8

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

9

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

10

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

11

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

12

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

13

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

14

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

15

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

16

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

17

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

18

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

19

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

20

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

21

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

22

Protecting Intellectual Property Online

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

23

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

24

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

25

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

26

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

27

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

28

Nexus

- Nexus is the connection between a taxpaying entity and a government
- Activities that create nexus in the United States are determined by state law and thus vary from state to state

29

U.S. Income Taxes

- Internal Revenue Service (IRS)
 - U.S. government agency charged with administering the country's tax laws
- Basic principle of the U.S. tax system
 - Any verifiable increase in a company's wealth is subject to federal taxation
- Any company whose U.S.-based Web site generates income is subject to U.S. federal income tax

30

Internal Revenue Service IRS.gov
DEPARTMENT OF THE TREASURY

Accessibility | Tax Rates | About IRS | Contact | Forms | The Inspector | Site Map | Español | Help

Search for...
with: IRS Site [GO]

Advanced Search
Use the suggested keywords
Personal Database

Information for:
Individuals
Businesses
Charities & Non-Profits
Government Entities
Tax Professionals
Employment Plans & Investments
Tax Exempt Bond Communities

Help for Hurricane Victims
The IRS has granted tax relief to victims of Hurricane Katrina and Hurricane Rita and will continue to monitor the situation to provide appropriate relief and assistance. Also, review our conditions to a phased audit. Take a minute to review some IRSU TIPS.

New Leave Donation Program Available
Employees can help workers in need donate unused leave to Katrina victims through an innovative program. Everyone benefits.

Where's My Refund?
Check on your refund now, or, in special situations, start a trace on your refund.

Free File - Still Going Strong
Need to file? Free File is still an option. Join the 5 million others who've used it.

EFPS*
Electronic payment options.

Extended Refund period
Investigating crime victims.

CEIP
Crime victims - fast, free

Business Deposits | Contact Us | Important Links | 800-829-1040 | Taxpayer Advocate

FIGURE 7-9 Internal Revenue Service home page

U.S. State Sales Taxes

- Use tax
 - Levied by a state on property used in that state that was not purchased in that state
- In most states use tax rates are identical to sales tax rates
- Purchasers exempt from sales tax include certain charitable organizations and businesses buying items for resale

European Union (EU) Value Added Taxes

- Value Added Tax
 - Most common transfer tax used in the EU
 - Assessed on the amount of value added at each stage of production
- EU enacted legislation
 - Companies based in EU countries must collect VAT on digital goods

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

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