

3. METHODOLOGY

To write this thesis data had to be collected, classified, analyzed and then solutions to e-commerce problems determined before the various chapters for the thesis were written. The data on e-commerce events and facts were all collected from the Internet. The history of e-commerce dates back to the period of the last 10 years only. There is as such no real historical data available. Further e-commerce process is changing fast due to fast changes brought about by new developments in the Internet technology. Thus the best data is information on current events

Once the data had been collected the method employed to write this thesis involved the following: -

a) The data has to be classified and compiled. The classification was first done on the different type of businesses and services that have adopted the Internet process. Many businesses have now gone online. They include businesses involved in production of goods and services. Many governments have gone online for their services. Educational institutions have gone online. Amazon .com sells a wide range of products online ranging from books to computer. Airlines sale of tickets and transactions by financial institutions have also gone online. Even religious services, gambling activities and prescription and sale of medicine have all gone online. There is a fast conversion of all types of businesses to the Internet process Thus for example ebay Inc a trading company had adopted the Internet process to set up an educational service online business that had developed to be very popular among its 29 million subscribers. The data on the competitiveness of online education has to be compared and commented on with that of the offline education for the purpose of writing this thesis .The support and the steps taken by businesses and by governments from all over are collected are compared to determine the competitiveness of online business with the offline traditional businesses. The Data collected is then analyzed for positive and negative effects of the e-commerce process. This analysis is done for the various different types of business models developed by businesses that have gone online.

b) The different business models have experienced different legal problems associated with the technological process. These legal problems are then classified into their respective legal categories. The main legal problems for e-commerce relate to the following: -

- 1) Jurisdictional issues
- 2) Conflict and choice of law issues
- 3) Intellectual property rights issues
- 4) Cyber crime issues

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5) Consumer privacy rights issues

6) Contractual law issues and

7) Anti-trust law issues.

These legal issues are related to the technological process used in the Internet

c) Different countries have adopted different methods to overcome the legal problems created by the Internet process for e-commerce. The methods involved ranged from 1) completely banning the Internet service as in Afghanistan, 2) by controlling of all internet activities through licensing, legislation and prohibiting as done in China, 3) through legislation as done in the EU and 4) finally through the combined process of self regulations and through laws passed by the legislature as done in the US. The various methods used are compared in this thesis to determine the most beneficial system for the e-commerce process. A comparative study is also made between the laws of different nations to determine which system of law applied to e-commerce is most appropriate for its development.

d) The development of new technology has had positive and negative effects in the enforcement of Law and order system in cyberspace activities. There is hundreds of new technological software now available. One such software can be used to filter and block pages from the view of young children. Thus for example because of the availability of this new filtering technology the US could pass the **Children's Online Protection Act 2000** (www.aclu.org/news) which requires libraries and schools to install filters in their computers to specifically deter children from viewing pornographic sites from the Internet.

e) Finally data was required to write on legal solutions for e-commerce problems. These data had to be on International laws, treaties and international cooperation among nations and on new technology needed to bring law and order to cyberspace activities that can result in the creation of confidence in the e-commerce process. Data on the ADR system as a better means of solving e-commerce disputes was also needed for this thesis.

The method applied as stated above was then employed to analyze the various data and to write this thesis under the various chapters such as

1) Development of the Internet.

2) The literature needed for this thesis.

3) The transitional e-commerce process problems.

4) The legal issues involved in the said process and.

5) The strategies adopted to overcome these problems.

Space constrain in writing this thesis was why an appendix had been added to this thesis, which contains details of the subject matter discussed in the thesis. This is the method that has been adopted to write this thesis.

4. EFFECT OF INTEGRATION OF E-COMMERCE AND THE LAW

The present day Internet technology provides all the mechanism needed to integrate e-commerce activity into the Internet. The main positive and negative effects of electronic commerce are thus as follows: -

THE POSITIVE EFFECT OF E-COMMERCE ARE AS FOLLOWS:

- 1) The development of new business models in The Internet.
- 2) The use of the Internet process for marketing worldwide.
- 3) The creation of a new and strategic business-to-business relationship.
- 4) Getting work done in competent but low cost locations by using the

Internet process.

1) The New Business Models in The Internet.

Businesses using the Internet had to modify their old business models and adopt new features available in the Internet to develop new dynamic business models. This resulted in better market penetrations. Many businesses that have benefited by the Internet process were new start-off companies. To remain competitive, old businesses had been forced to change their tactics and adopt the Internet process. The adoption of the new process had resulted in new mergers and partnerships between businesses that had gone international
(1)

(1) Refer to article in InfoWorld. Com article dated June 13 2001 "Boeing three airlines launch in-flight net deal"

The Bank of America (Asia), the largest and most profitable subsidiary of the Bank of America outside the US with 15 branches in Hong Kong has launched an internet wireless banking service with the partnership support of Xgate, an advanced multichannel

communications server to introduce Hong Kong's first WAP based wireless banking service. This service would enable customers to conduct their banking activities through the internet like inquiring about their savings, checking multi currency accounts, portfolio inquiries in respect of securities and mutual fund accounts, checking past transactions, transferring fund to own or third party account within the same bank, buying and selling foreign currencies, bill payments and share trading (2)

At the moment only a limited number of financial activities have been introduced but as the Internet security improves, more aspects of the financial activities would go on line. In some countries applications for loan and credit card are processed online. Banks in order to remain competitive have to adopt the Internet process. The new Phileo Bank in Malaysia was the first to adopt the Internet process for its services and consequently had increased its local market share.

Web based education is another sector where there is at present great attention being paid. US Congress Web-based Education Commission had just released a report named "The Power of Internet Learning" This report had created interests in many nations and deals with a number of issues including the replacement of outdated regulations governing education. The new regulations proposed by the commission also spoke of the need to maintain high quality online education contents that meets the highest standards of educational excellence. It is now possible to access knowledge and to learn new ways through the Internet from schools, universities or from corporate training centers. The Internet provides education based on the individual's strengths and needs and makes life long learning a reality.

(2) Refer to Asia Internet .com dated June 7 2001 "Bank of America Launches Wireless Banking Service"

The presence of graphic, sound, video and the interaction between teacher and student provides a path for online learning (3)

In the US many new online education models have appeared. The Ebay University is just one of them. It began as a site for trading but now has 29 million registered users. It is partly an exporter of education while doing other activity (4)

Online education is slowly becoming popular everywhere. In Malaysia, "Universiti Teknologi Malaysia" and Multimedia University provide many of its courses online. Certainly the Internet had opened a new media to export education to all parts of the world. There are also many small start- up companies that have gone on line to provide support to the regular school curriculum as that done by Smart-Ed Dot Com Asia in Malaysia.

The Internet had provided new models for doing online trading, online brokerage, online mortgage services, online publishing, online music, and online karaoke and for online plea of guilt to certain offences by e-mail to court proceedings. The Japanese Prime Minister canvases through his weekly e-mail " The Lion" which he sends regularly to 2 million subscribers. Digital Hospitals provide Internet connections to each bed, letting physicians and nurses check online and update the patient's records and access the same through computers. Thus many business and service sectors have changed their manner of doing work by adopting the Internet to remain competitive.

(3) Refer to article in the Internet version of the Irish Times dated February 26 2001 by Michael Constello & titled " Why e-learning could score an A"

(4) Refer to New York Times dated June 14 2001 "Ebay University Part School and Part time meeting"

2) Internet Marketing Process: -

All businesses concentrate on marketing strategies .A lot of time, money and effort is put into this. There are a lot of competitions in developing a proper Internet market strategy by the various businesses.

The Internet provides a number of new marketing strategies through e-mail marketing and web site advertisement. Many established companies avoid being left behind in their business competitiveness against new dot com businesses have now been forced to adopt this e-mail marketing process.

E-mail marketing is simple, cost effective and cultivates long-term customer-business relationship, which in the year 1999 to 2000 grew by 270%. It is estimated that by the year 2003 e-mail marketing will exceed US\$1 billion to become a major force in the marketing process **(5)**

The main problem is that many marketers send Spam e-mail that have become a nuisance and have clogged the e-mail boxes of consumers. **(6)** The abuse of this strategy had resulted in the failure of many businesses. Many countries are now formulating rules to control e-mail marketing.

Web site advertisements have also now become a very powerful marketing tool for marketers. Web sites display the whole catalog of the business for easy and convenient viewing.

(5) Refer to CRM daily .com dated June 14 2001- "E-mail Marketing Robust"

(6) Refer behind to appendix number 1 "commerce legislative issues update" dated March 2001.

It is also cost effective, convenient and can be upgraded at any time. Web site advertisement is a big problem for law enforcement authorities as many illegal businesses have used web site advertisements to defraud consumers. This issue would be dealt in greater detail later in this thesis.

Many travel and airline businesses have gone online. Orbitz and Honolulu, the Hawaii-based airlines offer a discount of 20% off the listed price offered through dealers for anyone purchasing tickets directly online from them. The Virgin Atlantic on the other hand is the first airline to offer e-mail and web access at every seat on all its aircraft. Now Boeing in alliance with three American based carriers-America, Delta and United Airlines and with Germany's Lufthansa has proposed to provide corporate e-mail, e-commerce and entertainment service to their passengers. Northwest Airlines of the US announced that it will allow customers the ability to change their own flights through its web sites or through airport based Internet kiosks. The Internet had created competitiveness and the consumers had benefited not only by way of price deductions but also by way of better services.

Job web sites all over the world had attracted a lot of visitors. The Internet research company Net Value reported that some 1.3 million UK Internet users visited job sites in January 2001 as many of the lay-off dot-com workers were then looking for jobs. (7)

The web sites of one- stop superstores like the Amazon and Tesco in UK attracted a lot of traffic. Some 250,000 people regularly buy their groceries weekly over the Internet at Tesco. The Amazon; the biggest one-stop shopping center has stores and branches in many parts of the world including London and Tokyo.

(7) Refer to Internet news dated February 16 2001 " Job, travel sites hotter in UK"

Online E-tailing had been one of the most popular and successful e-commerce businesses. Web site advertisement has been most successful in this type of business (8)

The Internet has created greater competition among businesses and has forced many established businesses to adopt its process.

3) The Development of New Business-to-Business Relationship.

Some estimates have reported that 70% of the regular economy is done between business-to-business (B2B). (9) The Internet process provides an efficient system to share information about customer's activity among sellers and buyers at any given B2B marketplace.

B2B activities done through the Internet facilitates substantial savings in terms of cost. The three big automakers General Motors, Ford and Daimler recently announced a single B2B marketplace for buying and selling. The airline giants like British Airways, United Airlines and Honeywell International have also created a single B2B marketplace for industrial sellers and buyers. Boeing, Lockheed Martin, Raytheon and British Aerospace have also formed their own B2B marketplace.

Dell computers have also announced that they intend to set up their own marketplace with Ariba a B2B commerce platform company, with a consulting company Lante and with a software developer Enterprise. This new site will allow marketers to set up workflow rules, route orders and analysis of purchasing data.

(8) Refer E-Europe dated June 30 2001 " A British e-grocer takes on Amazon"

(9) Refer to E-Commerce Times dated June 5 2001-"B2B firms to profit from Internet purchase".

The software will also enable marketers to create virtual showrooms, which will allow vendors to display product features, benefits and prices.

American retailer Sear Roebuck and Co have formed a B2B marketplace with French retailer Carrefour and software giant Oracle Corporation. They hope the venture would significantly reduce their total purchasing expenses, which totaled US\$80 billion in the year 2000.

The Federal Trade Commission report said that B2B marketplaces offer great promise in terms of cutting cost, better-organized business process and improving competition. The only problem is with the anti-trust issue, which raises competitive concerns. However many nations do not have the necessary laws to take necessary actions if businesses in forming their own B2B marketplace break anti-trust laws. In the meanwhile more B2B marketplaces would spring up to reap better profits with the use of the Internet.

4) Internet Lowers Production Cost.

One of the biggest items of expense for businesses has always been overhead cost especially cost of labour. The enterprise software can now be made to do many record functions such as personal, production, sales, office management, accounting, supplies, wholesalers, retailers and end users. "White-collar Robots" a product from the German software giant SAP can install equipment and do the work of what human-controlled forklifts can do.

When the Internet links up hundreds of suppliers into a single internet based market place this business to business e-commerce linkup would create a market place where US trillions of dollars in transactions would be done. **(10)**

(10) Refer to GigaLaw article "Alternative Dispute Resolution for E-Commerce by Daniel in gigalaw.com

In such a setup all transactions would be direct without any third party involvement.

India and China will boost their GDP by trillions of dollars in the next few years by performing white-collar tasks for western companies, says a report from E-Commerce Times. Singapore Airlines had appointed the services of Indian based programmers to do the airlines work in India at a much cheaper rate than that done in Singapore. Other airlines have followed Singapore on this. London-based travel company E-bookers announced recently that it had moved some of its operations to India and had also opened a customer service call center there as part of its plan to cut cost. Its managing director remarked that one of the benefits of the Internet is that its technology allows companies to bring down operation cost by shifting portions of their work to cheaper locations. There is no doubt that e-commerce would bring about a greater benefit for all concerned. It would create a new market place where only the best can survive. The market would be open and transparent.

B) THE NEGATIVE EFFECTS OF E-COMMERCE ARE AS FOLLOWS: -

1) Businesses are affected by criminal activities over the cyber space.

The Internet process is in the experimental stage. The technology has many loopholes and has yet to be perfected. Businesses and consumers using the Internet process are subjected to risks and dangers. It is not surprising that business and consumers are affected by criminal activities over the Internet.

Hackers have been known to enter computers systems all over the world to destroy, alter, amend, and to steal data from computers and data systems. Credit card numbers have

been stolen, web site information has been falsified, and defamatory statements had been posted on the Internet about businesses and about individuals. Even whole computer systems have been paralyzed by computer viruses sent by criminals. These criminal activities affecting business performance is hard to fight. There are jurisdictional, procedural, evidential, technological and other legal problems to overcome at the moment. It would take effort and time before finding solutions for these problems. This issue is dealt with in greater detail in the subsequent chapters. .

2) The Negative Effect of Business-to-Business Internet Transactions.

Anti trust laws are not fully developed even in the advanced legal systems of many nations. The real development of this law is in the US and to some extent in the European Union. However with the development of Internet this branch of the law would soon become important to all nations. Thus any comment on the anti trust laws in relation to businesses would have to be referred to the legal developments in the US. Anti trust laws are aimed at protecting consumers. Online marketplaces have created global business-to-business partnership that could result in collusion among the partners to exclude competitors from their traditional markets. Such collusion undermines competition and decreases the efficiency among businesses that competition creates. In addition the structure of business-to-business relationship could reduce innovation and produce higher prices. This affects consumers, adversely.

Microsoft faced anti trust action in the US under anti trust law. Microsoft had with the collusion of computer manufacturers installed its window operating system in all new computers sold in the US. This had raised protest from other computer companies like Oracle. Justice Jackson the trial judge held that Microsoft had in fact broken the anti trust laws by such monopolistic act and ordered the company to be broken up into 3 independent companies with each handling one different function.

Covisint the Business-to-Business Internet market place company set up to handle the purchases of Ford, General Motors and Daimler was investigated for breach of anti trust provisions by the US Federal Trade Commission but was cleared of any breaches. The European Commission had also investigated My Aircraft.com a supply management marketplace for aerospace companies for breach of anti-trust law but found no evidence of this and so allowed the market place to continue functioning. With the development of e-commerce and with the application of new business models between B2B anti-trust provisions would be further developed to give protection for consumers. (11)

3) Other Negative Effects

a) There are other negative effects of businesses integrating into the Internet. Consumer privacy rights had not been respected by many businesses. In the marketing activities, Spam had been left unregulated by most nations including many of the advanced ones like the US.

b) Then there are many web sites that publish false information and have misleading, fraudulent or illegal contents. In some cases the web sites disappear after achieving their purpose.

c) There are many educational supermarkets online, which give all forms of qualifications even without attendance, or examinations, and just based on one's alleged working experience. Many are not accredited institutions. Again there is no control over this form of online business.

(11) "Refer to appendix numbers 2 on " e-commerce Legislative issues update"

d) There are many on line business, which operate off- shore to avoid the long arm of the authorities. They conduct illegal activities like gambling, web advertisements that promote prostitution, offering for sale-prohibited drugs and doing acts of terrorism.

e) Businesses going on line would require less staff to function. Many businesses set up part of their operations in cheaper locations. This would result in a worldwide increase in the unemployment rate and consequently this would affect the economies of nations with less circulation of money to generate more economic activity.

CONCLUSION

The development of e-commerce would have a definite effect on the whole world. The old economy would not be able to compete with the new economy, which would be more transparent, as every information would be available to everyone at a very fast pace.

The new economy is knowledge based. As such technology, the law and business management would all now play an even more important part in the development of e-commerce. Success for businesses would depend on building new smart partnership and in developing smart networking strategies.

Economies to succeed must still have the same old foundations of having a good environment, a good and stable political and legal system and a sound management. These factors become more important now especially as the Internet now provides a more open and transparent medium.

5. LEGAL ISSUES RELATING TO E-COMMERCE

The cyber law is at its infant stage of its development. While almost all nations have a minimum of a few hundred laws and regulations to regulate their various off line human activities, there are only about 45 nations in the world that have some form of laws to regulate their on line activities. **(12)**

Regulating the Cyber Space: -

In the cyber space the number of human activities that can be done are almost the same as that which can be done on the real earth and range from education to buying property and from selling drugs to giving evidence in court via a video conference. If one wants to pay his bills through the on line process there must be laws to regulate this. Thus the volume of law and regulation needed to regulate the cyber space activity would have to increase with the increase in the activities done over the cyber space and would soon be as many as it exists in the real off-line world.

Many nations that boast of having cyber laws have only a few legislations to go by. Even in Malaysia the number of legislations on cyber law legislations is limited to only about 5 pieces of legislations with the main ones being on e-commerce, copyright and on digital signature. The same is true for most of the other nations. Many nations with limited technological knowledge have to import their cyber legislations from the US, European Union, Canada or from Australia. However even in the US and in EU where the most number of legislations exist there is still a lot of work to be done to increase the range of legislations to keep pace with the increase in the number of new human activities now taking place in the cyber space.

(12) Please see behind to appendix number 3 "Businesses unprepared for e-commerce risk:" and to "Penal Legislations in 32 countries" which is referred to at appendix number 4.

The online activities are the same as the offline activities except that the process involved is different and online activities are based on new models. Thus the offline laws have to be redefined to accommodate for the various online processes and activities and to prevent the cyber space from being an area not governed by any law and order. This was why the hacker from the Philippines who sent out the "I love you" virus although apprehended could not be prosecuted for the crime and damages he did because at the material time of the offence the Philippines had no proper cyber laws to be invoked against the hacker concerned. Thus e-commerce can only be conducted if the cyber environment is secure and sufficiently regulated.

Legal Enforcement Problems: -

The next issue is in respect of enforcement of the law in relation to e-commerce. Information and activities in the cyber space takes place at a very fast speed across borders of nations and this creates technical and procedural problems for enforcement agencies to apprehend foreign criminals or for entry and search of foreign premises or to seize computers and equipments connected with the crime and to extradite the offender. The success in enforcing laws depend on the speed of the action taken by the authorities to locate the criminal and to gather evidence before the same is destroyed, removed or replaced from the computer concerned. This requires a lot of international co-operation from foreign enforcement agencies, from the courts and from the legal authorities concerned. All these can only be done if there are the necessary laws, agreements and co-operation between nations. There must also be extradition treaties and laws to hand over the offender to the country where the offence is committed. **(13)**

(13) See behind to appendix numbers 5 "Taming the Web". Refer also to article on internetlawjournal.com dated December 26 2000 by David D Barr titled "The Need for a Broad Standard in Global E-Commerce"

The Legal Issues of Internet Advertisement: -

Advertisements done in the Internet through e-mails including Spam and through web sites are another source of legal problem for law enforcement officers even from countries where there are laws to regulate online advertisements. Web sites from off shore and from safe jurisdictions transmit advertisements and other offensive materials to the world all over. Many sites practice misleading, deceptive and fraudulent business activities over the net. The authorities have to constantly police the web for such activities. The US, Canada and some of the EU nations have special units for this. The Canadian Competition Bureau recently published a report **(14)** on how it had been visiting millions of web sites to see if the web sites had been complying with the law. Many especially multilevel marketing companies had been prosecuted or action taken against them for false, misleading or fraudulent activities. The latest Canadian action had been on March 2001 against Platinum Vapor Injector Company in respect of false and misleading web advertisement about its promise that its product can save fuel and reduce emission. The FTC and many other enforcement agencies in the US have in fact been leading the fight against fraudulent web sites, closing up many sites, which acted against the law in marketing their products and services. Recently the US prosecuted a business that sold shares online for non-existing companies. But where web sites are situated across national boundaries then enforcement becomes difficult although the US had organized many international actions against such web sites across borders with the

cooperation and joint action with the enforcement agencies of other nations. Many web sites exist only for short periods. They disappear when they see danger ahead or when they get into problems or when they have achieved their purpose. They use false domain names in order to escape detection. Consumers normally do not know the location and jurisdiction of these web sites.

(14) In their home page Competition Bureau. Canada Dated May 26 2001 titled "Doing Business Online US and Canada"

These are problems that retard confidence in e-commerce. There is some degree of international cooperation especially among developed nations The Canadian Competition Bureau for example had signed cooperation agreements with the US, Australia and New Zealand while at the same time it is also a member of several international cross border task forces that had been set up to maintain law and order in the cyber space. However the fact remains that these international cooperation is limited only to a few nations. Some nations like Hong Kong, Singapore and Malaysia have upgraded some of their off line laws to apply to online web site activities especially to regulate financial and banking web sites to prevent illegal financial transactions and deposit collections.

Another marketing problem is in connection with the Spam activities done by businesses. EU had just come out with some directives on this issue. In the US there are no legislations against Spam yet. Most nations also have no legislations on this issue. A recent survey by Gartner revealed that 34% of Internet mails are useless. This is a big growing problem. The problems of web sites and e-mail advertisements are similar in that many e-mail advertisements are also misleading and deceptive with no proper identification or location of the sender. Further Spam sent by so many numerous businesses chokes up the consumers' inbox and contributes to unproductive waste of consumers' time in perusing the many daily mails in the computer. This is another problem for the law in relation to e-commerce.

Breaches of Privacy Rights: -

Privacy breaches of individual's rights are constantly done by government agencies in the name of national security. The individual's activities like e-mails, document transfers, Internet chats and faxes are all monitored. Other computer activities are also monitored by placing bugs, cookies or robots into the surfer's computers and to monitor the surfing activities so as to obtain information about the surfer's habits and profile. Hacking is also done into private computers to obtain stored information or information that had been deleted from the "foot prints" left in the computers. However this privilege provided by the law is limited to enforcement agencies only. There is no such similar privilege given to businesses. **(15)**

Businesses have the same technological abilities as that employed by government agencies. In many instances these technologies were in fact invented by the businesses themselves. It is publicly known that businesses use bugs, robots and cookies to get information about consumers' web site interests. (16) There is a great suspicion among many that businesses also hack into private computers to get past and present information about surfers' interests. Businesses after getting to know about the habits and interests of the surfers then bombard the computers with e-mails containing business information about their products and services which would interest the individual. Another method adopted is to ask visitors to their sites to register (17) and through this process businesses collect a lot of information about the visitors' interests. This information is then used by the businesses or is sold to other businesses or is shared with their own subsidiaries. The surfer then receives Spam (junk mail) from various businesses on information, which he may not be interested in. The surfer had given the original information in confidence for a particular business with the presumption that this information was not to be shared with others. The abuse of the personal data of customers is a breach of the privacy rights of the consumer.

(15) Refer behind to appendix number 6 "On-Line Privacy- The Push and Pull of Self-Regulation and Law".

(16) Refer to article in www.newsbytes.com article by Brian Krebs dated August 14 2001 titled "Groups To Up Ante In Challenge To Microsoft's Passport")

(17) Refer to GigaLaw articles "What the European Data Privacy Means for US Business by James Harvey and to the Title What The Canadian Privacy Act Means to US Companies"

Copyright issues

There are also other issues of law that are in conflict with the e-commerce process. The hardware structures of computers have been standardized to do many activities. Some of its functions had been to download information, to store information and to transmit documents to other locations. This process of standardization had given rise to problems as this same process had been widely used to break copyright laws when music, literary works, movies and graphic are downloaded from one computer to another to be stored, duplicated or transmitted to a third computer.

In a recent decision the US court interpreted **The Digital Millennium Copyright Act 1998** and found **Naspher**, a new start- up company, to be in breach of the copyright law for permitting its 66 million members with the necessary facilities to use it's new software installed in its server that allowed members to enter into one another's computer through Naspher servers and to download into their own computers selected songs and

music files stored in the other computer. After downloading into their own computers it can then be stored, duplicated or transferred as a document to third party computers. This created a serious and a massive breach of copyright laws by Naspher's 66 million.

This problem had not been resolved even after the decision given in Naspher's case (**Naspher v RIAA (www.law.com)**). Naspher's type of web sites has sprung up in many other locations outside the US. Furthermore new soft wares have appeared that allow similar copying but by using a different Internet process. **(18)** Copyright legal problems have become more complicated with the development of the technology **(19)**

(18) Refer behind to appendix number 5 "Taming the Web").

(19) Refer copyright issues relating to reproduction of publications decided in the US Supreme Court in the case of Tasim v New York Times US No 00-201 and published in the Patent, Trademark & Copyright Journal volume 61 number 1515 at website ipcentre.bna.com dated march 16 2001)

Contractual Issues: -

The transaction done over the cyber space creates issues relating to the question of what law is to be applied to a particular transaction. Is it the law of the seller or that of the vendor that is to apply to a transaction? In some nations the cyber law had provided for the law of the consumer to apply as the consumers are the weaker parties in a transaction. One cannot expect purchasers from all over the world to identify the law of the jurisdiction of the web site business or even to travel to the sellers place of jurisdiction to settle a small dispute over a purchase of an item which is of small value .In other nations the contention is that the law of the vendor would apply as the businesses cannot be expected to comply with the numerous laws of the purchasers. There are still others who contend that law as agreed between the parties in the web site document at the time of a transaction shall apply. Consumer groups have contended that the businesses had been the ones that had drafted the web site documents and consumers may not have even noticed the contents of the documents but have just technically agreed to the terms as a matter of process without knowing the implications. Thus some nations in the EU have passed laws that such clauses in web site documents shall not be binding on the consumers and the law of the consumers' jurisdiction shall apply. This conflict is a big problem for e-commerce. **(20)**

The Issue Of Jurisdiction

Thus the main legal problem which e- commerce is faced with is in respect of the question of jurisdiction. This is because the Internet activity spreads over the whole of the cyber space with no single standard set of law or no single judicial system of law to regulate the Internet universally.

**(20) See behind to appendix number 7 "Failure to Read online Contract Disclaimers
Doesn't Prohibit Enforcement of Their Terms"**

thus the legal processes and the associated legal problems remain unsolved. Consequently Cyber crime is on the rise. Fraudulent and illegal activities remain uncontrolled. There is also the problem of getting evidence and prosecuting offenders for crime done across borders. There is no uniform application of decisions made in one jurisdiction to another jurisdiction as is in the case of copyright cases. The Breach of privacy rights of the consumer and technological problems remains unsolved. The issue of jurisdiction is a very big issue as can be seen in the Yahoo case in France **(21)** where the French Court ordered the legally set up US web site based in the US to block a nazi hate web site situated in its server from beaming into France where such publication is against French laws. This decision had extra territorial jurisdictional effect and created ill will among nations and businesses. **(22)**

CONCLUSION

It thus appears that while technology can provide new processes and improve the performance of e-commerce it is the development of a universal law that would determine the success or failure of e-commerce economy. in terms of a global e-market development.

**(21) Refer to International League against Racism and another v Yahoo Inc.
www.juriscom.net**

(22) Refer behind to appendix number 8 "Jurisdiction and You-Yahoo"

6. STRATEGIES ADOPTED TO REGULATE E-COMMERCE.

E-commerce has many international legal dimensions. Different nations have adopted different strategies to regulate various issues relating to e-commerce. These issues range from content regulations, personal privacy, intellectual property rights, security and jurisdiction. The US at a number of World Trade Organization (WTO) meetings had proposed to the member nations to take a liberal attitude to e-commerce. The US wanted e-commerce to be led by the private sector with very minimal government interventions and to allow it to flourish before regulating it. The US advanced this proposal at a meeting attended by Asian Pacific Economic Cooperation (APEC) leaders in Vancouver in the year 1999 but failed to get the necessary consensus from the member countries.

Along with its policy of allowing the private sector to lead in the development of e-commerce the US allowed the private sector body like Internet Corporation for Assigned Names and Numbers (ICANN) to regulate the issue of domain names and also in setting out procedures to settle domain name disputes. The ICANN had now developed into an international authority in respect of issuing and registering domain names and in arbitrating disputes involving domain names. Here the strategy of allowing self-regulation by the private sector to register domain name and to allow the private sector to settle domain name disputes is working out well.

In the US businesses were allowed to regulate their consumer relationship. Because of intense business competition among businesses, conflict of interest issues has cropped up between businesses and consumers. In trying to retain market control businesses broke all rules of ethics when advertising in the Internet. The businesses interfered with the Internet surfing activities done by surfers to observe the surfers habits of sites popularly visited by them to learn about the surfer's interests. The businesses would then select targeted consumers from the study made and send e-mails in respect of goods and services, which may interest the selected consumer. Consequently consumers receive hundreds of e-mails from many companies in respect of their products. This is a breach of the consumers' privacy rights. This Spam activity by businesses had reached an epidemic level. Allowing e-commerce to self regulate their consumer relationship activity had not succeeded.

In the US and in many nations unregulated web sites had been allowed to exist. It had been hoped that businesses would be responsible in not abusing the privileges given to them to set up unregulated web sites. Many businesses had been responsible in regulating their web site activities. The aim of giving businesses this freedom was to allow business to innovate new business models and to develop the next generation of the Internet technology with advanced features. This was why the US and a few other nations have strongly propagated the strategy of not regulating the web. **(23)**

But all did not turn out well as expected. Many businesses conducted illegal web site activities. Some used their web sites for criminal activities like setting up links for money laundering and for selling prohibited drugs, while others used their web site

advertisements to cheat and deceived consumers. On the other hand some used their web sites to created new businesses models like what Napster did when it set up a new system which allowed direct transfer of music between peer groups through using it's system, while others used their web sites to help in the development of new technology like the creation of new soft wares to filter websites advertisements and new soft wares that now allowed website contents to be directed to specific selected locations of the world and not to all parts of the world. (24)

(23) However the EU is not happy with allowing unregulated freedom given to businesses to send junk mails and for this refer to article in Newsbytes.com by Ned Stafford dated 27 June 2001 titled "EU Ministers Spar over Spam, Agree on Spam"

(24) See article by Charles C Mann dated September 1 2001 titled "Taming the Web" at technologyreview.com that is referred at appendix number 5"

While there are positive aspects in allowing the net to self-regulate consumer interests had been compromised.

Except for the regulatory process in the control of business activities all other Internet activities and processes involved are regulated. The Digital Signature Act, The Data Protection Act and the Copyright Acts are just some of the many laws passed by nations. The right to self regulate consumer relationship being left in the hands of businesses also shows the influence businesses have with the legislatures. Many businesses want national status in international forums. They have budgets bigger then many nations. They control the development of many sensitive technologies and are now even dictating the direction of development of the cyber space. This is the view of many consumer groups in the US. One commentator said that the concept that businesses self-regulate their relationship with consumers was "like putting the wolf into a chicken coupe". At the moment there is intense pressure on the US legislature to legislate some form of anti-Spam legislature to protect consumers. There are also many nations in the world that do not have any specific legislation to regulate web site advertisements.

However US Federal agencies have been active in protecting consumer rights. The FTC had been policing the web and had set up a complaints web site for consumers to bring their problems to the attention of the authorities. Web sites that cheat consumers by false advertisements and web sites that conducted illegal activities like Internet gambling and financial web sites that conducted illegal deposit collections had been charged in the courts. The US courts have always applied the necessary remedy to protect consumer rights under the general provisions of their off line laws or under powers vested in the courts.

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The EU had taken a different approach than the US in so far as business to consumer relations were concerned. Businesses were not allowed to regulate their activity with the consumer as done in the US. The relationship between business and the consumer are strictly regulated by way of EU directives in respect of protecting consumer. The EU directive (**95/46/EC which is now known as EU Data Directive**) provides that the law and the place of jurisdiction of a business to consumer dispute shall be that of the consumer's jurisdiction unlike in the US where the law is uncertain and business to consumer disputes is left to the courts to decide on the question of jurisdiction. **(25)** On the issue of Spam the EU directive (**95/46/EU**) is very specific in that consumers information's cannot be obtained except with the consent of the consumer concerned. This means that advertisement cannot be sent to consumers until the consumer had given his consent. All foreign businesses have to comply with this directive if they are interested in doing business with the EU. In this way EU had actually exported this branch of the law to other nations wanting to do business with EU. The EU and US had reached an agreement which allows US companies to do business in EU provided they comply with this EU directive by registering themselves under the Safe Harbor agreement signed between the US and the EU **(26)**

The EU had been fair in its dealing with consumer to business activity. Like the US, the EU had enacted legislations to protect business interests. Thus for example copyright materials are protected in the EU as done in the US. In fact there is no difference in the approach taken by the US and EU on this issue of protecting business rights.

(25) Refer to Gigalaw.com article by James A Harvey and Kimberly A Verska "What the European Data Privacy Obligations Mean to US Business"

(26) Refer to GagaLaw.com articles a)"The Problem with Online Privacy Laws" by Doug Isenberg, b)"An Introduction of EU Directives on Protection of Personal Data" by Peter K Yu and c)"Round Table Discussion on Internet Privacy and the Law" by special reporter)

The most integral part of e-commerce is in creating a vibrant marketplace where people will feel secure about trading information, goods and services and where all will benefit from on-line commerce as an efficient means of exchange. But the strategies adopted by the private sector led e-commerce have not been well regulated and had created a wild market place. The better strategy would be for governments to regulate certain sensitive e-commerce areas like protection of consumer privacy rights before handing over the management of e-business to the private sector. Consumer confidence and consumer protection are necessary for the success of any economy.

Different nations have adopted different strategies to overcome the problems faced by e-commerce. There are various strategies that other nations have adopted in their approach

to the problems faced by e-commerce. China's strategy has been to control all form of on line activity as it does to its off-line activities. Foreign and local businesses wanting to do business in China would have to register with the authorities and all web sites must be registered, licensed and be in the Chinese language. The Chinese authorities only allow domain names that have been registered with them. Net users are also registered with the Authority. Every Internet activity is regulated. (27) India on the other hand has adopted a balanced approach between business and consumer rights as practiced in the EU. Other nations like Singapore, Malaysia Korea and Hong Kong do not have many specific cyber laws as in the US or in the EU. As such the e-commerce activities are developing in an unregulated atmosphere. However whenever the necessity occurs these nations do regulate the Internet by either requiring some activities to be licensed or by blocking the offensive site or by regulating and passing laws against certain activities like on- line gambling. Generally however most nations have limited restrictions and have left the Internet to be free. Consumer right issues have not cropped up in developing nations, as the consumers here are not matured yet to fully realize the importance of such issues of consumer privacy and human rights.

(27) Refer to NewsFactor. Network dated February 28 2001 by Dan Gewbler "Chinese Web Filters May Block Western Sites"

In trying to fight cyber crime to enhance the security of e-commerce the EU and the US have adopted surveillance system on all activities in the cyber space. The UK does this under the newly passed **Regulation Of Investigatory Powers (RIP) Act of 2000**. All communications e-mails, Internet chat fax, phone calls and documents transfers were all vetted by robotic intelligent software agents at a central collecting point before they were released. The US also had a similar system named Carnivorous and controlled by the FBI. In Australia and in New Zealand to fight cyber crime the authorities among others have legislations that allowed the authorities to hack into any computer system to search for evidence relating to criminal activities.

The development of on-line laws by all nations for e-commerce is an ongoing process. The contents of cyber laws enacted by many developed and developing nations are imported mainly from the laws enacted by the US and by the EU. In the meanwhile e-commerce would be subjected to the problems created by conflict of laws, choice of law and to issues relating to jurisdiction. Consequently the ADR (28) system of settling e-commerce disputes is getting popular all over the world especially in the US. This type of system can overcome legal as well technological disputes at this transitional stage of e-commerce development.

In conclusion the best strategy appears to be as follows: -

a) The Internet ought to be regulated to certain degree especially where consumer interests are concerned. Businesses ought not to be given the free hand to regulate consumer relations with them. The privacy rights of consumers must be respected and there must be regulations towards this.

(28) See behind to appendix number 9 for gigaLaw article on "Alternative Dispute Resolution for E-Commerce" by Daniel Unifelder)

b) Since there is no one single international law to regulate cross boarder e-commerce disputes, then such disputes arising between parties is best to be settled through ADR system. This removes jurisdictional and choice of law problems.

c) Businesses must be allowed to regulate certain of their own activities without interference from the governments such as in the setting up web site businesses or registering domain names. This is to allow for the further development of technology that could refine future Internet activities.

d) Confidence creation is most important for the development of e-commerce. Thus security activities of surveillance done by some nations under regulatory powers must be restricted. The enforcement authorities should not be allowed to use the new surveillance powers without the supervision of the courts. Arbitrary surveillance activity does not create confidence for both businesses and the consumers alike. Even the EU ought to reconsider its present moves to approve a similar system of surveillance as the one that had been enacted under the RIP Act in the UK.