

## 7. CONCLUSION

The beginning of the new millennium had seen the introduction of e-commerce and this coupled with the slowdown in the economies of the US and Japan had compounded the economic problems of the developed and developing nations all over. Even the economies of EU member nations had not been left out in this world wide economic slowdown. A recent press report in **The Star a local Malaysian newspaper in a report dated August 15 2001** quoted an announcement by the Central Bank of Germany that Germany would experience zero growth for the second half of 2001 although there were no signs still that Germany would slide into recession. Practically the whole world had been economically affected by the economic conditions caused by events in the US. The US Federal Reserves had applied the standard methods of regulating the economy through a series of six interest rate reductions and US\$1.35 trillion tax cuts as of the year 2001 .The Group of Seven (G7) industrial nations at their latest meeting in July, 2001 expects the US to lead a rebound in the world economic growth after the measures taken by the US Federal Reserves but opinion on this varies. **The Straits Times in a report dated July 11, 2001 from Singapore** states that the recovery would only be after the second half of the year 2002 and after order had been established in the computer industry. There are implications that suggest that this universal economic slowdown is caused principally by the transitional e-commerce problems.

a) The economic slowdown in the US began with the fast development of e-commerce businesses. Almost all the businesses that had been most affected were dot com businesses. Thus business such Hewlett- Packard, Intel, Microsoft, Yahoo have been the main leading businesses which had to retrench and cut down staff. The share value of many of these businesses had drastically fallen down. The economic slowdown in the high-tech and the Internet based economies had precipitated the economic crisis in the US and this had now spread to other sectors in the US. The slowdown had a chain link effect affecting other parts of the world.

b) The big question to ask is why is it that the main victims of the worlds present economic problem started with the dot com businesses .Is it possible that the present problems are connected to the high risks associated with the fast rate of conversion of business activities from traditional means to electronic means and this fast conversion had destabilized the world economy .The industrial revolution took about 150 years to mature while the internet revolution is forced to mature by most nations by 2010 i.e. within a period of 10 years of its introduction. Nations in wanting to remain competitive have thus taken great risks of forging ahead with e-commerce businesses without proper technology, laws, security precautions, treaties and international agreements. (29)

c) Here is a situation where the whole international environment is not ready for e-commerce activities yet. The time would only be ripe when the main problems of e-commerce such as proper law and order, proper management and proper control have been resolved. It is interesting to note that the Uruguay conference that resulted in the setting up of the WTO that took over 20 years to be a reality. The WTO is still involved

in the complicated process of defining the rules to govern world trade. On the other hand unlike the WTO the Internet is the creation of a completely new process, which is even more complex and harder to deal with than with the problems of the WTO. There are issues of Jurisdiction, issues of sovereignty, issues of choice of law, issues of having a satisfactory dispute resolving systems, issues relating to economic interests of states, issues of political and cultural conflicts, and issues of market control. These are all not easy problems to solve and certainly would take a long time to resolve.

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**(29) Refer to [WWW.idaudit.org](http://WWW.idaudit.org) on "Risk Assessment When Auditing E- commerce Activities" by Denys Martin dated February 1, 2001). (Also see behind to appendix 10 and to 11 in respect of articles "When will the Tech.Slump Finally End" and "Should Government Revive The New Economy"**

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In an article in **E-Europe** dated **12 June 2001** and titled "**When it comes to the Net the US still leads but the old World is catching up fast**" Justin Fox says that the information revolution has so far been a made in America phenomenon. US based Internet companies dominated the world and European web site audience. US based net companies had certain advantages in that they have a massive home market that provides them with resources to attack the international market against competitors. They also have control of the hard and soft wear which makes the Internet marketplaces run. Software giants like Oracle, IBM, Sun Commerce One, and Cisco are all Americans companies. Europe's sole software giant SAP is having a hard time in trying to get into the game. America has the Internet lead. The freewheeling US is a society suited for innovation but too disorganized and short term oriented to get around to perfect things. Europe on the other hand is slow at radical changes and innovations but very good at perfecting innovations made at somewhere else

In an article written in **the Standard (internet version)** dated **May 25 2001** titled "**The Rise and fall of IBM**" the lesson learnt in the rise of IBM after its dramatic fall in the 1990 had shown that business success did not depend solely on technological advantages. A lot depended on business environment such as a secure system for doing business that is free from crime, a good system of law and order and a good management strategy to run the business. The failure of any of these would bring the downfall of the business. The end of the year 2000 followed by the year 2001 saw a lot of dot com businesses closing down in the US. There are many e-commerce businesses that have cut down their staff due to cash problems and had transferred their operations to cheaper locations such as India and China **says a NewsFactor Network in an article dated June 7 2001 and titled "US Tech. Burst a Boom for Asia"**. Cyber crimes are skyrocketing in the US where e-commerce is more active than anywhere else. **The Internet Fraud Complaint Center** which was established by the US Federal Bureau of Investigation and the National White Collar Crime Center established in May 2000 reported increasing amounts of internet fraud .It had received more than 20,000 complaints since its inception

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until November 2000. Of the 538 businesses surveyed by the Computer Security Institute 64% say they experienced financial losses from computer breaches. The complaint had been that the government has a bad track record in not providing sufficient online security for e-commerce to move.

The New York based **Markle Foundation** found in a survey that Americans were concerned about their rights and several other key issues. A. Majority wants some rules to protect their privacy when they are online. About 70% said they questioned the truthfulness of most things they read in the Internet. This reflected badly on the marketing strategies businesses adopted in the Internet. There was no accountability for advertisements appearing in the Internet. The study showed most Americans view the Internet primarily as a giant library rather than a place to shop or to use it for financial services. Consumers had a series of complaints on a number of issues that most important of all being on their data protection and privacy rights. There must be clear and specific rules of accountability for online activities especially on the promotion of e-commerce.

Cyber law had long been shaped with the idea that the Internet was global in nature and was borderless. The courts, the enforcement authorities and the legislatures all over the world have taken into consideration that in respect of the Internet there were no international boundaries. Accordingly it was the belief that any control of the Internet activity can only be effective if it was done universally by way of corporations among nations and through international laws and treaties. Any application of the local law of a nation would have extra territorial effect and could offend nations. In many recent decisions the courts had applied the local laws to a business located overseas. This was what happened to the Yahoo case in France when the French courts imposed their decision on web site that was situated in the US. Technology is never static. Now several technological firms like NetGeo and Digital Envoy have developed new technology software that can be used by web sites to target their online presence to a particular geographical area. This would reduce the legal risks involved. The contents of the website can comply with the legal needs and rules of the targeted geographical area. Thus this technology will be able to enable web site contents to comply with the offline rules of the environment targeted. This new geographical identification technology serves the need of governments, regulators, businesses and web site advertisers. Web site advertisers can now no more say that there is no technology available for them to enable their web sites contents to comply with the law and needs of a particular nation. It is now possible for offline laws to be effectively applied to the Internet to exert jurisdiction over certain online activities. The Internet is slowly becoming bordered with the fast changing technology. Whether this technology is secure for use is left to be seen. **(30)**

The Internet economy had been speculated to bring prosperity to the whole world. It had moved at a very fast rate. The present world population is about 6 billion. New business models are cropping up daily as the Internet provides a medium for people to develop and innovate new ideas and models for doing business and other activity. The importance of the Internet cannot thus be dismissed at all.

However new issues have also surfaced as a result of the growth of the Internet and many of these issues such as the breach of the privacy rights of consumers, the infringement of intellectual property rights, fraud and misrepresentation through e-mails and web advertisements, employees attacks on the their employers businesses by posting defamatory contents in the Internet or by defacing the employers web site or by sending virus to their computers or by damaging the data stored in computers or by giving confidential information to the competitors and destroying clients confidence in their employers through e-mails are all activities that have serious and negative effects on the society. Here the main problem has again been with the law and order enforcement over the net especially over those activities, which originate from across international boundaries. Can new technology assist is not certain yet.

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**(30) Refer behind to appendix number 12 in respect of the economist.com article's "Internet's new borders" and "putting it in its place")**

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There had been legal incompetence in tackling the issues of the Internet due a lack of sufficient trained personals in technology and the law. There was also a lack of proper understanding that the Internet provided a medium for the development of new innovations and ideas by the Internet population. The laws have to continuously change with the changes in the technology while at the same time remaining neutral. The legal system is thus faced with a very difficult task.

At the same time legal issues involving jurisdiction, choice of law and conflicts of law issues would continue to give headaches to e-commerce development. The United Nations Conventions on International Trade Laws (UNICTRAL) on e-commerce have yet to reach agreement among member nations although proposals on issues of international contract pertaining to the net had been prepared for consideration by the member nations. The Hague convention on Jurisdiction And Recognition Of Foreign Judgment had not produced any agreement even after many attempts. The European Union is presently deliberating on a standard cyber criminal law for Europe. Here too there have been criticisms by businesses and consumer bodies as to some of the proposals especially those relating to security surveillance that is similar to the provisions as embedded in the UK RIP act of 2000. There is also no agreement yet in the WTO as to e-commerce classification, Is e-commerce to be under General Agreement on Trade in Services (GATS) or under General Agreement on Trade and Tariff (GATT) rules. If the issues' pertaining to classification of e-commerce itself were taking so long then the rules pertaining to it use would take even longer to be settled by the WTO.

In a situation like this the existing legal system may not be appropriate to settle e-commerce disputes. This was why the UN set up World Intellectual Property Organization (WIPO), which arbitrates international intellectual property disputes. The Internet Corporation For Assigned Names And Numbers (ICANN) set up in 1998 in the

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US by the business community with the assistance from the US government and governed by an International Board of Directors registers to give International domain names. The ICANN also now arbitrates over domain name disputes referred to it from all over the world.

The ADR system has been found to be a more appropriate system to settle e-commerce disputes on issues of jurisdiction, choice of law, conflict of law and also on the choice of choosing a forum that is competent to handle complex technological cum legal issues.

WIPO and ICANN have applied arbitration successfully to solve international e-commerce disputes. The UN Commission on International Trade Law (UNCITRAL) have also proposed an international arbitration process and rules for the settlement of e-commerce disputes. The Vienna conventions on contract for international sales of goods have also proposed arbitration rules for resolving cross boarder disputes. In the US the arbitration and mediation processes are continuously on the rise. The American Bar Association in its report on the issue of Internet Jurisdiction had suggested ADR to be introduced to resolve the numerous e-commerce legal problems. The latest development in the US had been by the American Arbitration Association (AAA), which had set up a dispute risk management system specifically to resolve online e-commerce business to business disputes. The AAA case management tools and services provide for dispute settlements through on-call mediation or through on line document arbitration.

E-commerce being universal in structure is faced with numerous problems. It should be regulated to a certain extend so that there would be law and order to create confidence in the worlds economic system. At the same time some degree of flexibility ought to be given in the use of the Internet because a lot of creativity is taking place when new forms of business models and other new forms of activities are constantly being created in the net. The present legal system had been found to be inadequate and this had resulted in the emergence of the ADR system, which may soon be the main international medium for settling e-commerce disputes in this confused electronic world.

## **APPENDIX**

### **1) EcomForum: March 2001 "ecommerce legislative issues" ([file:///A:/ecommerce legal issues by ABA\(Mega Law\).htm](file:///A:/ecommerce%20legal%20issues%20by%20ABA(Mega%20Law).htm))**

One of the issues discussed here is on the Junk mails and the proposed "Unsolicited Electronic Mail Act 2000"-(USA) that is still pending in a private bill form before the US Congress. It proposes that ISP's (Internet Service Producers) set up their own rules to regulate junk mails with a penalty of \$500/-for each junk mail and this is to be regulated by the FTC. Businesses criticize this, as 1) going against the concept of "Self Regulation" principle and 2) on the fact that businesses cannot be expected to know all the rules the various ISP would impose.

### **2) EcomForum: March 2001 "ecommerce legislative issues" ([file:///A:/ecommerce legal issues by ABA \(Mega Law\). htm](file:///A:/ecommerce%20legal%20issues%20by%20ABA%20(Mega%20Law).htm))**

Antitrust/B2B e-marketplace issues were discussed at the forum and it was concluded that the basic characteristics of a market place remained but issues were centered on whether by reducing competitions, promoting collusion and by decreasing efficiency the number of participants in the market place had been increased or reduced? The other issue involved was whether the development of new innovations had been reduced and whether price of products had been affected. Has the free flow of information been affected to create speculation and consequently had this affected the market remained questionable. .

### **3) "Business unprepared for e-commerce risk: report" 23August 2001 ([wysiwyg://214/http://it.mycareer.com.au/breaking/20000323/A25903-2000Mar23.html](http://it.mycareer.com.au/breaking/20000323/A25903-2000Mar23.html))**

Report by Ernest &Young survey found that 40% of Australian businesses have no e-commerce strategy and 90% had no management strategy to reduce fraud and risk. Laws to regulate e-commerce would educate businesses to adopt a serious front to security & risk facing e-commerce.

### **4) " The Legal Framework-unauthorized access to computer System Penal legislation in 37 countries" dated 22 February 2001 ([file:///A:/Crime- un-authorized access-37 Countries law.htm](file:///A:/Crime%20un-authorized%20access-37%20Countries%20law.htm))**

Chief Justice of Norway did a survey of 37 nations and did a brief survey of the cyber penal laws of these nations. His finding was that most nations from the surveyed nations had no penal cyber laws at all but in the rest of the nations surveyed the structure and definitions of the various penal laws were same or almost same.

**5) "Taming the Web" dated 01 September 2001 by Charles C Mann**  
([http://www.technologreview.com/magazine/sep01/print\\_version/mann.html](http://www.technologreview.com/magazine/sep01/print_version/mann.html))

The Internet cannot be controlled. It is too international, too interconnected, too filled with hackers with new technology to be controlled. In Naspher's case the courts decision was based the Digital Millennium Copyright Act 1998. This act had very wide provisions. Even if one did not copy the rights of another but merely assisted another to copy such rights, even for fair use, one can be guilty of a breach of copyright as what happened to Naspher. But because the net is too interconnected and because many nations do not have any cyber laws or laws similar to the Digital Millennium Copyright Act cross boarder breaches of copy rights cannot be controlled. Further New technology is always being developed. The latest new technology developed by a 28 year old programmer named "BearShare" is a decentralized file sharing software that allows thousands of Internet users to search each other's computers for files and exchange them without supervision/ monitoring or with the assistance of any third party as what had happened in Naspher's case. There is no central point for the enforcement authorities to act against. In these circumstances breaches of copyright would be very difficult to control

**1. "On-line Privacy: the Push and Pull of Self -Regulation and Law" by Ann K Moceyunas** (<http://www.mindspring.com/-moceyuna/privacy.html>)

Privacy is a matter of culture. In the US it is the balancing of the rights of an individual with that of the data collector. FTC had set out 5 data collection principles -notice, choice, access, and security and enforcement principles. The EU directive 95/46/EU and the "Safe Harbor" agreement between EU and US may have shifted the said balance between the conflicting rights in the US. Regulations may be needed if self-regulation does not protect consumer rights.

**2. "Failure to read Online Contract Disclaimers Doesn't Prohibit Enforcement of Their Terms" dated May 23**  
(<http://pubs.bna.com/ip/BN Aeip.nst^/id/a0a4f2v4h7> )

New York Supreme Court decision in the case of Scott v Bell Atlantic N.Y Appeal Division No.3466.5/10/01. The circumstance of each case would determine the outcome of each case. The Plaintiff had failed to act within the 30 days grace period in respect of the false and misdescription complained. Plaintiff's appeal was thus dismissed.

**3. "Jurisdiction and You-Yahoo" March 8 2001 by Jeffery Barlow (Internet Law Journal .com)**

The French Court's applied Extra Territorial Jurisdiction principle in Yahoo's Case ordering Yahoo Inc. in the US to block one of its webs sites from

beaming into France as the contents of that site were offensive to French Laws. The implications of this decision are discussed in this case. A comparison is done to the American case of Playboy Enterprise v Chuckleberry Publishing 939 F.Supp 1032 (S.D.N.Y. 1996) where the US courts made a similar order against an Italian website for infringing the plaintiffs trademark. German courts also now seem ready to follow the French example. This all seems to suggest that web sites can be subject to all the jurisdictions where they can be viewed from where they are viewed.

**9) "Alternative Dispute Resolution for E-Commerce" by Daniel W Uhfelder. ([www.gigalaw.com/articles](http://www.gigalaw.com/articles))**

E-commerce business is expected to be a few trillion dollars by 2004. The American Arbitration Association had made a number of agreements with Industry leaders and with legal firms to use ADR to settle e-commerce disputes. Benefits include clear dispute management policies, the disputes are resolved fast and effectively, the jurisdictional problems are solved and there is little adverse publicity and the relationship between the parties do not get strained that much as in the traditional court system.

**10) "When Will the Tech Slumps Finally End?" by Daniel F DeLong dated August 13 2001([www.newsfactor.com/perl/printer/12718/](http://www.newsfactor.com/perl/printer/12718/))**

The near recession condition gripping the High-Tech industry will continue well into the next year. The cause is excess inventory and lack of demand by customers. The US Federal Reserve was expected to cut the interest rate for the seventh time this year. The near recession had resulted in deep labour cuts and in the weakening of overseas economies. This is the main theme of the article.

(Note: -The digital divide situation all over the world is improving fast. Thus by logic there must be increased demand for computer and computer parts. Thus the reasons given by the high-tech industry that there is an over supply of inventory because of fallen demand cannot be convincing. The fact remains that massive failure in the dot com businesses caused the economic slump and this affected the High-Tech businesses which then set off a chain reaction all over. The dot com businesses failed because of the high risk taken by the industry in the face of insufficient laws to protect the business activities. The basic principle for the success of any business is to have a good set of laws and this had not been so in e-commerce because of its international character.

**11) "Should government revive the New Economy" by Patrick Ross dated March 6 2001([news.cnet.com/news](http://news.cnet.com/news))**

The US President made an announcement before the budget session that the US would stop playing venture capitalist and reduce high tech funding programs as the government was not there to create wealth but was there to create the necessary environment for businesses to achieve success.

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At the 2001 Global Internet Summit it was the opinion of the business sector that the economic factors affecting the high tech industry would take sometime to improve and the government should increase its involvement as policies and economic cannot be separated.

**12) "The Internet's new borders" and "Putting it in its place" written by a staff writer from Economist.com ([www.economist.com.on/PrinterFriendly.cfm?Story\\_ID=729808](http://www.economist.com.on/PrinterFriendly.cfm?Story_ID=729808))**

Both the articles give details of how the latest new software had revolutionized the basic concept of the Internet. By installing this new software into ISP network the national borders are reintroduced. Web sites can now focus their advertisements to the needs of each state and be bound by the laws of the particular state. Many Jurisdictional and other legal problems involving the Internet would then be reduced. However on a word of caution, this solution may not last long as technology is always on the move. Like all new technology it won't be a surprise that the effectiveness of this new technology may soon be broken by future scientific developments.

**(Note:-**On a point of interest I refer to the latest NEWSBYTES article dated 17 August 2001 "Law could always "infect" Americans via Free-Trade Pact-EFF. ([www.newsbytes.com/cgi-bin/udt/i...le?client.id=newsbytes&story.id=169165](http://www.newsbytes.com/cgi-bin/udt/i...le?client.id=newsbytes&story.id=169165)) The Electronic Frontier Foundation (EFF) issued an alert saying that the current draft treaty involving that part on intellectual property for the Free Trade Area of America (FTAA) for all the 34 nations should be strongly objected to. The stand on intellectual property rights issues that is being discussed for the FTAA region is more serious than the Digital Millennium Copyright Act 1998 (DMCA) of the US. It not only prohibits acts of circumventing "technical measures" but also the manufacture and distribution of devices used to circumvent such measures. It is proposed to exercise an even greater control on publishers than that found in the DMCA. It also bans making or providing tools that could help another to use a copyright work. Unlike the DMCA there is no single exemption like permitting lawful activities like reverse engineering, protecting privacy, fair-use rights, encryption research and other.

All these are negative to the freedom of expression. Recently a Russian software developer Dmitry Sklyarov who came to the US to attend a conference was charged for revealing the security features in the Adobe Systems' Acrobat eBook Reader.

The proposed treaty is even more restrictive than the DMCA. What measures could not be taken locally through legislations is attempted to be done (through the backdoor) by means of international treaties and to cover everyone in the region irrespective of the territorial borders).

**Glossary of Terms**

<b>AAA</b>	<b>AMERICAN ARBITRATION ASSOCIATION</b>
<b>ABA</b>	<b>AMERICAN BAR ASSOCIATION</b>
<b>ADR</b>	<b>ALTERNATIVE DISPUTE RESOLUTION</b>
<b>APEC</b>	<b>ASIAN PACIFIC ECONOMIC CO-OPERATION</b>
<b>B2B</b>	<b>BUSINESS TO BUSINESS RELATIONSHIP</b>
<b>B2C</b>	<b>BUSINESS TO CONSUMER RELATIONSHIP</b>
<b>B2P</b>	<b>BUSINESS TO PEER GROUP RELATIONSHIP</b>
<b>DOT COM</b>	<b>INTERNET RELATED BUSINESS</b>
<b>EU</b>	<b>EUROPEAN UNION</b>
<b>E-TAILING</b>	<b>RETAIL INTERNET BUSINESS</b>
<b>FTC</b>	<b>THE FEDERAL TRADE COMMISSION OF THE UNITED STATES</b>
<b>FBI</b>	<b>THE FEDERAL BUREAU OF INVESTIGATION OF THE UNITED STATES</b>
<b>GDP</b>	<b>GROSS DOMESTIC PRODUCT</b>
<b>GATS</b>	<b>GENERAL AGREEMENT ON TRADE AND SERVICES</b>
<b>GATT</b>	<b>GENERAL AGREEMENT ON TARIFF AND TRADE</b>
<b>ICANN</b>	<b>INTERNET CO-OPERATION FOR ASSIGNED NAMES AND NUMBERS (USA)</b>
<b>K-ECONOMY</b>	<b>KNOWLEDGE BASED ECONOMY</b>
<b>P2P</b>	<b>PEER TO PEER GROUP</b>
<b>RIP ACT</b>	<b>REGULATION OF INVESTIGATORY POWERS ACT YEAR 2000 (UK)</b>
<b>UK</b>	<b>UNITED KINGDOM</b>
<b>UN</b>	<b>UNITED NATIONS</b>
<b>US</b>	<b>UNITED STATES OF AMERICA</b>
<b>UNCITRAL</b>	<b>THE UNITED NATION COMMISSION ON INTERNATIONAL TRADE LAW</b>
<b>WTO</b>	<b>WORLD TRADE ORGANIZATION</b>
<b>WIPO</b>	<b>WORLD INTELLECTUAL PROPERTY ORGANIZATION</b>
<b>WAP</b>	<b>WIRELESS APPLICATION PROTOCOL</b>

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