



**Launch of *Jurisdiction and the Internet*
by Professor Brian Fitzgerald, Gaye Middleton and Dr Anne Fitzgerald**

**5.30pm Thursday 12 February 2004
Banco Court**

Chief Justice Paul de Jersey AC

I am very pleased to welcome you to the Banco Court, and the launch of this progressive work – the progressive work of progressive authors!

Benjamin Cardozo once observed that '[j]urisdiction exists that rights may be maintained'.¹ Our authors sound an alarm, rung by that phenomenon both beneficial and pesky – the Internet. They contend the ubiquitous nature of the internet has blurred the traditional concepts of jurisdiction,² and suggest the manner in which rights are protected in the future is in some doubt. The creation of this global communications system, the 'World Wide Web', has thrown up a conundrum: how to apply traditional principles of jurisdiction to an entity without geographical foundation?³

We gather tonight to launch this latest work from Professor Brian Fitzgerald, Gaye Middleton and Dr Anne Fitzgerald. *Jurisdiction and the Internet*, the latest addition to Lawbook's series *E-commerce: The Implications for the Law*, is a comprehensive analysis of the manner in which Australia, the United States of America and the European Union are treating the many jurisdictional issues arising from the pervasive contemporary use of the internet.

All three authors are highly respected specialists in the area of information technology law. Professor Fitzgerald is the well-known head of the School of Law at Queensland University of Technology, Gaye Middleton is a

¹ Benjamin N. Cardozo, *Berkowitz v Arbib* 230 N.Y. 261, 274, 130 N.E. 288 (1921).

² Brian Fitzgerald, Gaye Middleton, Anne Fitzgerald, *Jurisdiction and the Internet* (2004, Lawbook Co) 159.

³ John Sullivan and Daniel Tsai, 'The developing law of Internet jurisdiction' (2003) 61(4) *The Advocate* 521.



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biotechnology lawyer in McCullough Robertson Lawyers Technology Group and Dr Anne Fitzgerald is currently practising at Crown Law as Principal Legal Officer of the Technology and Communications Team.

Approaches to internet jurisdiction seem to lurch from one extreme to the other. A so-called 'spectre of global liability'⁴ ominously looms as some argue that a worldwide Internet necessarily entails a worldwide jurisdiction.⁵ What is next? An international common law? Some way off, I think, with even those sophisticated Europeans unable to agree on a common Constitution. But issues certainly develop rapidly and uniquely where the Internet is concerned. Others perhaps more circumspectly argue that jurisdiction in Internet disputes should be confined to the courts of states where either the defendant or its web server is to be found.⁶ After detailing the principles of choice of law and forum and enforcement jurisdiction the authors go on to study the application of existing law to some actual cases involving the internet. Their study evinces the conclusion that the present inclination of the courts is towards the middle ground with the formulation of positive tests.⁷ A pertinent Australian example is *Dow Jones v Gutnick* where, as you will recall, the High Court held the test for jurisdiction is predicated upon whether the plaintiff suffered harm in the forum state.⁸

Escalation in internet litigation is inevitable and the development of an international regulatory system is probably required. The authors have covered future models for internet jurisdiction in the final section of the book, and have also thrown down a challenge for the judiciary! They raise the question: '[w]hen national courts engage with the transnational ... are they

⁴ B Fitzgerald, Middleton, A Fitzgerald, above n 2, 3.

⁵ Sullivan and Tsai, above n 3, 521.

⁶ Ibid.

⁷ Ibid.

⁸ *Dow Jones v Gutnick* (2002) HCA 56 at [44].



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acting as agents of the national or transnational[?]. The current answer is that 'they are acting as agents or part of a national legal system'.⁹ Our authors exhort national judges to 'engage in a transjudicial dialogue in order to build transnational legal principle[s]'.¹⁰ Fortunately the internet itself will mean judicial travelling allowances will not need to be increased for fulfilment of that goal.

As the spread of e-commerce continues to impact on our personal and professional lives, it is imperative that lawyers continue to evolve and adapt to the varied issues which will certainly affect their practice. As another writer has warned '[t]he commercial litigator who does not comprehend the changes that are going to overtake him will go the way of the farm horse, eliminated by tractors'.¹¹ By the use of the masculine in this statement made in 1998, is the writer suggesting that troglodites are all male?

The authors of *Jurisdiction and the Internet* hold a constructive view. In light of the constantly developing nature of the law over past centuries, their perspective is more viable. As they conclude, '[t]he law, though rooted in notions of territorial sovereignty can, has and will continue to respond to the dynamic and transnational nature of the internet'. I respectfully endorse that view, and worthwhile productions like this will undoubtedly facilitate the necessary adaptation.

I therefore have great pleasure in launching Professor Fitzgerald, Ms Middleton and Dr Fitzgerald's impressive contribution to the continually developing area of e-commerce. In acknowledgement of Professor Fitzgerald's other apparently well-known passion, '[s]ince we have no choice

⁹ B Fitzgerald, Middleton, A Fitzgerald, above n 2, 156.

¹⁰ Ibid 157.

¹¹ Alistair Kelman, 'Editorial' (1998) 3 *Journal of Information, Law and Technology*.



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but to be swept along by [this] vast technological surge, we might as well learn to surf.¹² I recently noted by the way, that Queensland's first Chief Justice, Sir James Cockle, discerned lyrical aspects in algebraic equations. Our authors have, with their own style, rendered a subject some may think rather dry, quite fascinating, and for that I warmly congratulate them.

¹² Michael Soule, in David Western and Mary C. Pearl, *Conservation for the 21st Century*, 1989 (Simon & Schuster).