

# E-COMMERCE AND INTERNATIONAL POLITICAL ECONOMICS: THE LEGAL AND POLITICAL RAMIFICATIONS OF THE INTERNET ON WORLD ECONOMIES

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## I. INTRODUCTION

In the nearly 300 years since the industrial revolution,<sup>1</sup> the advancement of technology has always aided international business.<sup>2</sup> However, unlike the first industrial revolution that took more than 100 years to cause a massive effect on society,<sup>3</sup> the Internet revolution has occurred almost instantaneously.<sup>4</sup> Today, more than 100 million people worldwide use the Internet to do everything from research to purchasing products online.<sup>5</sup>

One of the many progenies derived from the use of the Internet<sup>6</sup> in everyday life is the development of electronic commerce, or e-commerce. Unlike the evolution of the telephone for doing business, the Internet allows businesses to have more access to more customers in a shorter amount of time.

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1. *The Emerging Digital Economy*, United States Government Electronic Commerce Policy, at <http://www.ecommerce.gov/danc1.htm> (last visited Mar. 26, 2000) (comparing the digital revolution with the industrial revolution which began in 1712).

2. *See id.* (stating that the invention of the steam engine coupled with the invention of electricity meant that companies had the freedom to be located anywhere).

3. *Id.* (noting that it took fifty years after the invention of electricity to create a power station to store electrical power and another fifty years before electricity became commonplace in businesses and households).

4. In terms of technological revolutions fifty-four years seems like a blink of an eye. In 1946, the Electronic Numerical Integrator and Computer (ENIAC) was invented. *See id.* At that time, ENIAC took up a 1,500 square feet of space and could perform only non-graphical calculus computations. *See id.* By 1971, Intel, the company famous for its Pentium Processors, was able to reproduce a chip which was four times more powerful than ENIAC and able to conduct 400 million instructions per second.

5. *Id.*

6. A few of the Internet progenies include digitized telecommunications, online banking, and online securities trading.

Globally, the speed of these transactions allows income generated from e-commerce transactions to be very lucrative for the e-commerce merchant. Currently, no country has taxed the income generated from e-commerce but many countries are considering that prospect.

E-commerce, although a relatively new unit of analysis, lends itself to distinctive issues. This paper advocates three theories regarding international e-commerce. First, an absolute bar on global taxation on the Internet will lead to market efficiency. Second, the burden of regulating consumer privacy during international e-commerce transactions should be placed on the consumer. Finally, each nation should take a nationalistic approach to the issue of whether a digital divide exists.

This comment first defines the concept of e-commerce, discussing its development in the international market. The comment next examines the legal questions raised in the use of the Internet to facilitate business. Legally speaking, in order to promote efficiency in the world market this comment recommends two things: 1) no taxation on international e-commerce income and 2) that the international buyer should be more responsible in their Internet business transactions. Additionally, this comment analyzes the political issue of the "digital divide" and how international nation states have addressed these issues. This comment advocates that increase competition in the global market will lead to increased market access and a narrowing of the digital divide. Finally, this comment describes the business models that have formulated due to the use of the Internet and then it focuses on one company, Yahoo!, to see how it has handled the legal and political ramifications of the Internet in its global business.

## II. E-COMMERCE IN THE INTERNATIONAL MARKET

The term "e-commerce" has only been in existence since about 1994. Economist and capital market analysts use the term loosely to describe anything from the amount of sales generated by an online bookstore to explanations regarding the fluctuations in the global market. What they fail to do is clearly define the term "e-commerce." E-commerce is simply the use of the Internet to conduct business transactions locally, nationally, or internationally.<sup>7</sup> The rise of e-commerce is based on the revolution of the Internet and its technology. The development of the Internet has evolved from a tool of communication to one of economic utilization. The Internet facilitates electronic business transactions both nationally and internationally by permitting businesses to

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7. World Trade Organization, *Study from WTO Secretariat highlights potential trade gains from electronic commerce*, at [http://www.wto.org/english/news\\_e/pres98\\_e/pr96\\_e.htm](http://www.wto.org/english/news_e/pres98_e/pr96_e.htm) (Mar. 13, 1998) (defining electronic commerce as the use of telecommunication networks to produce, advertise, sell, and distribute products).

have easy access to large consumer bases at lower costs. The use of the Internet to conduct business is not without problems. Internationally, there exist some concerns as to who should govern the flow of e-commerce income. Yet, the current debate does not look like it will be resolved any time soon.

### A. *The Development of the Internet*

The modern structure of the Internet<sup>8</sup> developed from a United States Army experiment more than thirty years ago.<sup>9</sup> Today, the Internet exists in no physical or tangible realm.<sup>10</sup> Instead, it is a "giant network which interconnects innumerable smaller groups of linked computer networks."<sup>11</sup> This network is referred to as the World Wide Web (www). The current capabilities of the Internet for business transactions are enormous.<sup>12</sup> The Internet has the ability

8. See, e.g., 47 U.S.C. § 230(e)(1) (Supp. 1998). ("The term 'Internet' means the international network of both Federal and non-Federal interoperable switched data networks."). The term "Internet" derived from the terms "interconnection" and "network." See GLEE HARRAH CADY & PAT MCGREGOR, *MASTERING THE INTERNET* 5 (2d ed. 1996). The term initially meant "the network formed by the cooperative interconnection of computing networks." See *id.* In the development of the Internet other terms were frequently used. William Gibson, in his science fiction novel *Neuromancer*, invented the term "cyberspace." See WILLIAM GIBSON, *NEUROMANCER* 51 (1985). Cyberspace is derived from the term "cybernation," which is equally derived from the term "cybernetics," or the study of automatic control systems of communications, by means of a computer. See WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 319 (9th ed. 1987). See also CADY & MCGREGOR, *supra* note 8 at 835. Gibson wrote that cyberspace was "[a] consensual hallucination experienced daily by billions of legitimate operators, in every nation . . . A graphic representation of data abstracted from the banks of every computer in the human system." See GIBSON, *supra* note 8 at 51. Bill Gates attributes the term "Information Superhighway" to then-senator Al Gore, Jr. See BILL GATES, *THE ROAD AHEAD* 5 (1995). At the time, Senator Gore was advocating the creation of a National Research and Education Network. See *id.*

9. *Nightline: Wired* (ABC television broadcast, Oct. 19, 1999) (asserting that the birth of the present day Internet occurred on October 24, 1969, with the first use of the ARPANET system). See generally *Reno v. ACLU*, 117 S. Ct. 2329, 2334 (1997) (recalling the historical and technological development of the Internet); *Lockheed Martin Corp. v. Network Solutions, Inc.*, 985 F. Supp. 949, 951 (1997) ("The Internet is an international 'super-network' connecting millions of individual computer networks and computers.").

10. See Corinne Bronfman et al., *The SEC's Market 2000 Report*, 19 J. CORP. L. 523, 524 (1994) (flouting the premise that with the advance of technology, markets have lost the necessity of belonging to physical entities).

11. See *ACLU v. Reno*, 929 F. Supp. 824, 830 (E.D. Pa. 1996) [available at] No. CV 96-7438 1996 U.S. Dist. LEXIS 7919, at 22 (1996), *aff'd*, *Reno v. ACLU*, 117 S. Ct. 2329 (1997) (providing a detailed history of the emergence of the Internet from the ARPANET program to the current World Wide Web). See also Ari Staiman, *Shielding Internet Users from Undesirable Content: The Advantages of a PICS Based Rating System*, 20 FORDHAM INT'L L.J. 866, 871-72 (1997).

12. See, e.g., Statement of the Commission Regarding the Use of the Internet Web Sites to Offer Securities, Solicit Securities Transactions or Advertise Investment Services Offshore, Exchange Act Release No. 33-7516, Exchange Act Release No. 34-39779, 63 Fed. Reg. 14, 806, 14,813 (Mar. 23, 1998) (implying that the Internet has fostered investors' ability to obtain market stock quotations and disclosure information from foreign markets in order to execute a purchase or sale of stock anywhere in the world).

to disseminate information to a large number of people quickly and with minimum costs.<sup>13</sup> Because of the inexpensive nature of the Internet, the start-up cost to a company desiring to have a place on the Internet is minimal.<sup>14</sup>

The Internet, unlike other forms of communication, has the ability to allow persons to interactively communicate with one another.<sup>15</sup> Consumers access the World Wide Web by either an Internet Service Provider (ISPs)<sup>16</sup> or Internet Content Providers (ICPs).<sup>17</sup> ISPs and ICPs should not be confused with Internet portals. Internet portals are website interfaces that attract people to utilize the site.<sup>18</sup> Similar to television stations, the portals do not in and of themselves sell anything. Instead, the portals entice consumers to hyperlink to other sites that may provide advice or sell consumers various products.<sup>19</sup>

In addition to direct communication, anonymous communication is also available on the Internet, permitting consumers and purchasers to conduct transactions in private.<sup>20</sup> The flexibility, the low cost of maintaining a website, the ability to quickly disseminate information, and the instantaneous communication to a large population of consumers, makes the Internet an ideal environment for business transactions.

#### B. *E-commerce: The Internet as a Tool for Conducting Business Transactions*

In its early inception, the Internet was used mainly as a tool for people to communicate with one another through e-mail or in chat rooms. Early utilization of the Internet for business focused mainly on direct business to consumer transactions. This model allowed businesses to by-pass retail and

13. See David M. Cielusniak, Note, *You Cannot Fight What you Cannot See: Securities Regulation on the Internet*, 22 *FORDHAM INT'L L. J.* 612, 615-616 (1998) (advancing that currently there exists three methods in which to disseminate information over the Internet: the use of websites, electronic bulletin boards, and e-mail).

14. See Thomas D. Donlan, Editorial, *Regulatory Milestone: SEC Chairman Levitt treads lightly on the markets*, *BARRON'S*, Oct. 18, 1999, at 58 ("American investors can trade practically anything with practically anyone on earth, at practically any time of the day. They can do it more cheaply than ever before, and they can deal with an amazingly diverse array of brokers, advisers and mutual-fund managers.").

15. See *Securities Activity on the Internet: Report of the Internet Task Force to the Technical Committee*, 1128 *PRACTISING LAW INST.* 533, 546 (Sept. 19, 1998) [hereinafter *Report of the Internet Task Force*] (implying that the graphic, audio, and instant written communication capabilities of the Internet acts as a benefit to security investors).

16. For example, Mindspring.com is an Internet service provider that provides its subscribers with e-mail addresses and paid access to the Internet.

17. See, e.g., <http://www.eSinglemoms.com>. Content providers do as their name suggests; provide a vast amount of information on a particular topic or various topics.

18. Interview with Jon Brod, V.P. of Marketing, *iwon.com*, Irvington, NY (Nov. 9, 1999).

19. *Id.* See also <http://www.iwon.com>.

20. See *Report of the Internet Task Force*, *supra* note 15, at 548 (voicing concern that anonymity of securities trading can also trigger fraudulent practices).

wholesale merchants by selling directly to their customers. Profitability depended on key elements. Some problems included brand marketing,<sup>21</sup> both in the website name recognition and marketing the product, creating or carving out a market share, and producing or providing a similar service or product already in the market.<sup>22</sup> Some businesses, realizing the risk of surviving in the Internet environments, have moved away from consumer based transactions to the business to business (B2B) model.<sup>23</sup>

B2B e-commerce is the use of the Internet by one business to market his product to another business.<sup>24</sup> Traditional brick and mortar companies have enhanced their participation in B2B marketing by creating B2B *kerestus*, purchase groups for Internet product suppliers.<sup>25</sup> Businesses participating in B2B transactions make money in numerous ways from taking a percentage of each sale to renting space on their website.<sup>26</sup>

The efficiency of B2B transactions work by automating the intermediaries, such as taking human purchase order processors, out of the supply side of the supply-demand equation.<sup>27</sup> The theoretical result of B2B transactions on the consumer side of the equation is lower prices, better services, and more choices.<sup>28</sup> Yet, some market specialists believe that B2B is just another passing trend in the capital market.<sup>29</sup>

21. Shannon Henry, *For Venture Capital, a Wide-Open Door*, WASH. POST, Apr. 5, 2000, at G13 (acknowledging the difficulty of raising money to support develop a brand around a consumer company). "Trying to have a technical advantage is better than building a brand." See *supra* note 15, at 548 (quoting Karl Khoury, principal with the venture capital firm Columbia Capital).

22. See *id.* at G13 (describing how the market for Internet business targeted toward consumers, i.e. B2C, is in low demand because certain brands such as Amazon, eBay, or Etoys have already established themselves in the American consumer lexicon of web businesses).

23. See Barrett Schaefer, *International Taxation of Electronic Commerce Income: A proposal to utilize software agents for source-based taxation*, 16 SANTA CLARA COMPUTER & HIGH TECH. L.J. 111, 120 (stating that the majority of e-commerce occurs between businesses).

24. Greg Schneider, *Net Firms Get Down to Business*, WASH. POST, Apr. 5, 2000, at G1.

25. See *id.* at G21 (illustrating how the automotive companies have combined forces to create an online marketplace for buying auto parts). In Japan, a *keiretsu* is the business model of various businesses combining their individual efforts to support each business economically. See *id.*

26. See *id.* at G16 (mentioning that companies conducting B2B transactions may command a market worth between \$1 to \$8 trillion by 2004).

27. See *id.* (quoting Shikhar Ghosh, co-founder and chairman of Open Market, Inc., and CEO of iBelong Inc.). Jim Fox, co-founder of EqualFooting.com, Inc., an online market for small construction companies, states that the age of traveling salesmen may soon evaporate. See *id.* at G21.

28. *Id.* at G1. (explaining that in theory that is how it is supposed to work, in reality current speculations of the possibility of B2B transactions seem a bit premature). See generally LARRY DOWNES & CHUNKA MUI, *UNLEASHING THE KILLER APP: DIGITAL STRATEGIES FOR MARKETPLACE DOMINANCE* (1998) (supporting the premise that the evolution of the B2B marketplace will increase the expectations of consumers of lower prices and more purchasing choices).

29. Henry, *supra* note 21, at G13 (quoting Jack Biddle of Novak Biddle Venture Partners as saying that "a year from now they won't be talking about . . . B2B on Wall Street.").

Beyond simple B2B transactions are business to business to consumer (B2B2C) deals.<sup>30</sup> B2B2C is a new market for venture capital investments.<sup>31</sup> B2B2C centers on businesses that provide services or products, either software or hardware, to their business clients, who then sell the products or services to their customers.<sup>32</sup>

### C. *Development of International E-commerce*

E-commerce or electronic commerce is the practice of conducting commercial transactions, based on the processing and transmission of digitalized data over electronic networks.<sup>33</sup> The Organization of Economic Cooperation and Development (OECD) created a working definition<sup>34</sup> of, and guidelines<sup>35</sup> for, e-commerce.

The various uses of the Internet by business entities include the ability to advertise, generate, or otherwise perform regular business functions. According to OECD, e-commerce transactions can be used for both business to business and direct consumer marketing.<sup>36</sup> Through the use of the Internet, either business transaction is considered e-commerce.

OECD has developed specific guidelines for international e-commerce. They expound eight central principles of e-commerce. First, the guidelines call for fair business dealings, advertising, and marketing practices in e-commerce transactions. Second, the guidelines propose that companies conducting e-commerce transactions give consumers sufficient information necessary<sup>37</sup> to make an informed decision in their online purchases. Third, the guidelines ask that companies establish a clear procedure for the confirmation of purchase and sale orders online. Fourth, the guidelines recommend that websites are secured for consumer protection. Fifth, the OECD guidelines suggest that the companies have in place a way to conduct timely and affordable dispute resolutions. Sixth, the guidelines propose that customers are given protection

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30. B2B2C stands for business to business to consumer.

31. See Henry, *supra* note 21, at G13 (recognizing that business to consumer transactions are decreasing and business to business transactions, both interstructure and intrastructure deals, tend to be more profitable).

32. *Id.* (defining the concept of B2B2C).

33. William F. Fox, Jr., *International Electronic Commerce*, SE06 A.L.I.-A.B.A. 159, 161 (1999) (stating that e-commerce is merely the transaction of any kind of business over the Internet).

34. See *id.* (noting the breadth of the definition of e-commerce).

35. See *OECD Adopts Guidelines for International Protection In E-Commerce*, 17 *COMPUTER L.J.* 30 (2000) (stating the purpose of the guidelines) [hereinafter *OECD Guidelines*].

36. Fox, *supra* note 33, at 161 (acknowledging that both organizations and individuals are the target markets of electronic retailers).

37. Sufficient information includes, but is not limited to, general disclosures about conducting business transactions online, the warranties regarding the quality of the goods being sold by the company, and the terms and conditions of the sale.

of their privacy of information provided to the company. Seventh, the guidelines call for companies to conduct both consumer and business education. Finally, the guidelines suggest that governments internationally should cooperate to implement these guidelines.<sup>38</sup>

Since OECD is not a global governing body, the guidelines developed by OECD are not binding regulations on any country.<sup>39</sup> The guidelines act merely as suggestions as to what would be considered fair business practices in international e-commerce transactions. Yet, the guidelines serve two central purposes. The guidelines act as a regulatory scheme, which governments may model in their creation and implementation of consumer protection laws regarding e-commerce and for private companies to emulate in their development of self-regulatory practices. Furthermore, the guidelines assist private companies in their goal of educating consumers about business practices on the Internet.<sup>40</sup> However, since OECD lacks the jurisdictional predicate to enforce these guidelines they are merely ideals of the organization.

Jurisdictional questions arise when discussing international use of e-commerce.<sup>41</sup> Response to such questions, as the amount of sales generated over the Internet, has gotten the attention of the World Trade Organization (WTO) regarding possible regulation of e-commerce.<sup>42</sup> The WTO asserts that electronic commerce transactions fall within the scope of authority of the WTO/GATT.<sup>43</sup> The WTO divides e-commerce transactions into three distinctive stages.<sup>44</sup> The first stage of e-commerce is what the WTO defines as the searching stage, where the market producers and market consumers first interact with each other with the purpose of gathering information from one another. Once a transaction has been agreed upon, the second stage, ordering and payment of the desired product, takes place. Finally, the last stage is the delivery of the goods or contracted services.<sup>45</sup>

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38. See *International Guidelines for Consumer Protection in E-Commerce Issued by OECD*, at <http://www.ftc.gov/opa/1999/9912/oeed2.htm> (last visited Sept. 30, 2000).

39. The OECD is an intergovernmental organization of 29 nation states established to promote global economic growth, trade and development. See *OECD Guidelines*, *supra* note 35.

40. See *id.* (stating that the guidelines should be used as blueprints for both international governments and private companies).

41. John Burgess, *As Internet Commerce Goes Global, Countries Weigh New Barriers*, WASH. POST, Nov. 7, 1999, at H01 (asking the question which country has the power to regulate when a company's headquarters are in country A, with a website hosted in country B, shipping products from country C, to a buyer in country D).

42. See *id.*

43. Fox, *supra* note 33, at 161 (noting that the WTO asserts jurisdiction over electronic commerce transactions).

44. *Id.* (discussing the three WTO categories of e-commerce).

45. *Study from WTO Secretariat highlights potential trade gains from electronic commerce*, World Trade Organization, at [http://www.wto.org/english/news\\_e/pres98\\_e/pr96\\_e.htm](http://www.wto.org/english/news_e/pres98_e/pr96_e.htm) (last visited Nov. 2, 2000) (discussing the WTO's three stages of e-commerce).



Other organizations have tried to provide similar guidelines to the political and legal issues of e-commerce. The International Chamber of Commerce (ICC) issued a set of principles for ensuring and certifying digital messages.<sup>46</sup> In December 1996, the United National Commission on International Trade Law (UNCITRAL) formulated the model law on international e-commerce, which established a global legal principle addressing the issue.<sup>47</sup> Specifically, in the United States, the National Conference of Commissioners on Uniform State Laws (NCCUSL) have worked for several years to propose amendments to the United States' Uniform Commercial Code to incorporate language regarding e-commerce transactions.<sup>48</sup>

### III. LEGAL QUESTIONS AND PROPOSED SOLUTIONS REGARDING INTERNATIONAL E-COMMERCE

#### A. *Legal Issues Concerning International E-commerce*

There exist a plethora of legal issues concerning e-commerce.<sup>49</sup> The two that this paper will focus on are taxation of e-commerce and consumer privacy.

##### 1. International Taxation of E-commerce Income

The emergence of the Internet and e-commerce has generated millions in revenue for the online merchant.<sup>50</sup> National and local governments have debated on how to harness e-commerce's success into the government's coffers of taxable revenue.<sup>51</sup> Yet, taxation of the Internet can be difficult when international corporate taxation is based on geographical location.<sup>52</sup>

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46. See *GUIDEC, General Usage for International Digitally Ensured Commerce*, at <http://www.iccwbo.org/home/guidec/guidec.asp> (last visited Mar. 30, 2000) (detailing the ICC's GUIDEC, or General Usage of International Digital Ensured Commerce).

47. See generally *Electronic Commerce Guide to Enactment of the Uncitral Model Law on Electronic Commerce*, 7 TUL. J. INT'L & COMP. L. 251 (1999) (presenting in its entirety UNCITRAL's model law for international e-commerce).

48. *Uniform Commercial Code Article 2B: Computer Information Transactions*, at <http://www.law.upenn.edu/bll/ulc/ucc2b/2b299.htm> (last visited Sept. 20, 2000) (providing the text of the proposed Article 2B of the UCC regarding the regulation of computer software licenses) [hereinafter *UCC Article 2B*].

49. See Fox, *supra* note 33, at 161 (listing eight issues ranging from contract formation and execution to content regulation).

50. See *id.* (predicting optimistically that by the year 2003 e-commerce transactions may reach 5% of all global sales or \$3.2 trillion U.S. dollars).

51. ROBERT E. LITAN & WILLIAM A. NISKANEN, *GOING DIGITAL!: A GUIDE TO POLICY IN THE DIGITAL AGE* 26 (1998) (stating that governments may view e-commerce transactions as a potential source of revenue which deserves taxation).

52. Schaefer, *supra* note 23, at 134 (evaluating the difficulty of taxing the Internet economy and declaring that predicated tax rules are necessary to examine taxation of global e-commerce income). See also *infra* Section III.A.1. (advocating that global taxation acts as a hindrance to economic progress on the Internet).

Two methods of taxing the international e-commerce income are source-based taxation and residence-based taxation. Source-based taxation, or taxation by source country, dictates that “a country may impose a tax on a non-resident company if that company derived [its] income within the country’s borders.”<sup>53</sup> Source-based taxation can only be applied to companies with a permanent establishment in the source country. The establishment requirements are derived from OECD Model Income Tax Treaty, which states that a company should have economic ties with the source country to cause a legal establishment.

On the other hand, residence taxation states that the resident country of the corporation has the authority to impose taxes.<sup>54</sup> The difficulty of applying these two methods to e-commerce transactions is that companies solely operating on the Internet have no physical residence. Additionally, developing countries, under the residence-based taxation method, would be excluded from taxing some corporations “squatting” in its territory.<sup>55</sup>

## 2. Global Privacy of Consumer Information

Another legal dilemma facing e-commerce is the protection of consumers’ privacy when conducting an online transaction. Consumer International conducted a global e-commerce shopping survey, which concluded that despite the rise in the use of the Internet to buy products, consumers’ confidence in the entire process is low.<sup>56</sup> Some believe that consumer confidence in e-commerce is crucial for the success of global e-commerce.<sup>57</sup> However, the responsibility for consumer protection tends to fall on the e-commerce corporations and not on the individual consumer.<sup>58</sup>

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53. Schaefer, *supra* note 23, at 125.

54. *See id.* at 124 (providing background information regarding taxation under the OECD Model Income Tax Treaty).

55. *See id.* at 135 (arguing that developing countries benefit best under a source-based taxation model).

56. *See* International Chamber of Commerce, *How e-business can secure vital consumer confidence*, at [http://www.iccwbo.org/home/news\\_archives.../how\\_e-business\\_can\\_secure\\_vital\\_consumer.asp](http://www.iccwbo.org/home/news_archives.../how_e-business_can_secure_vital_consumer.asp) (Sept. 20, 1999) (acknowledging that 11% of the time, when an item was purchased online it was never delivered).

57. *See id.* (citing Louise Sylvan, chief executive of the Australian Consumers’ Association).

58. *See id.* (articulating UK’s Advertising Standards Authority personnel, Caroline Crawford’s views that self regulation by the e-commerce companies would establish consumer protection guidelines without national government intervention).

## B. A Legal Foot to Stand on Regarding International E-commerce

### 1. There is No [Cyber] Space for Taxation of International E-commerce Income

The question of taxation of e-commerce transaction is nation state specific. Currently, members of the United States Congress have expressed their desire to place a moratorium on new state and local Internet sales and services tax.<sup>59</sup> The United State's position is that unregulated e-commerce will benefit both rich and poor nations alike.<sup>60</sup> However, within the United States, the NCCUSSL has proposed uniform laws that the individual states may agree to adopt regarding the regulation of Internet software licenses.<sup>61</sup>

The legal and tax consequences of doing business across borders are intensified when the domicile of the business is unknown.<sup>62</sup> Yet, some have advocated that taxation of global e-commerce transactions would provide beneficial revenues for individual national governments. Some members of OECD advocate taxing e-commerce.<sup>63</sup>

In Argentina, a law has been passed to place tariffs on all intellectual property entering the country on discs or by electronic transmission.<sup>64</sup> Argentina has yet to test the law. U.S. companies, along with the European Union, are in the midst of negotiating a self-regulatory scheme where the companies agree to certain e-commerce etiquette.<sup>65</sup> The U.S. government advocates a non-taxing e-commerce policy.<sup>66</sup> Instead, the administration favors a permanent moratorium on international e-commerce tariffs.<sup>67</sup> Some scholars predict that collection of any taxes for the purchase and download of strictly online intellectual property will be difficult.<sup>68</sup> Currently, no country imposes tariffs on e-commerce.

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59. See LITAN & NISKANEN, *supra* note 51, at 26 (explaining that Senator Ron Wyden (D-OR) and Representative Chris Cox (D-CA) sponsored legislature which would place a freeze on state and local laws which are designed to place a tax on e-commerce transactions).

60. Burgess, *supra* note 41; See also Patrick Thibodeau, *Trade group readies international E-commerce guidelines*, NETWORK WORLD FUSION (Oct. 18, 1999).

61. See UCC Article 2B, *supra* note 48.

62. This problem is more acute in the case of purely web-based companies which have no real physical presence, except on the Internet.

63. Thibodeau, *supra* note 60.

64. Burgess, *supra* note 41. This law includes computer software and hardware and MP3 music files. *Id.*

65. See *id.* (stating that the U.S. would like to extend the temporary moratorium on tariffs on cross-border electronic transmissions agreed to by WTO members last year).

66. See *id.* (quoting Deputy U.S. Trade Representative Susan G. Esserman requesting that no barriers to Internet-based trade be established).

67. DOW JONES REPORT, COMM. DAILY, Oct. 29, 1999, available at 1999 WL 7580703.

68. Alan Reynolds, *The Coming of E-Commerce Boom*, AM. OUTLOOK, Spring 1999, at p. 34.

## 2. Globus Caveat Emptor

The theory of "let the buyer beware" arises in terms of global e-commerce marketing and the privacy rights of consumers. The Organization of Economic and Cooperation and Development (OECD) plans to release a set of consumer protection guidelines to aid American companies doing business abroad.<sup>69</sup> The guidelines establish business standards for selling products over the Internet.<sup>70</sup>

In September, Consumers International conducted a diagnostic of more than 700 international e-commerce website, with thirty-five percent in Australia.<sup>71</sup> The results indicated that most international e-commerce websites lacked legal language stating the controlling law on the Internet contract or any privacy policy.

The solution to the problem of consumer protection in global e-commerce transactions begins with the consumer. Forcing e-commerce businesses to act with more self-regulation presumes that companies have been in compliance with generally accepted business standards. However, self-regulating companies are few. Consumers should have a grain of skepticism when conducting certain transactions online. There is a correlation between consumer confidence and the success of global e-commerce. However, this link is not damaged if the consumer exercises his or her best judgment.

### C. *The Legal Laissez Faire Approach to International E-commerce*

#### 1. Absolute Bar on Global E-Tax Promotes Market Efficiency

An absolute bar to international taxation of the e-commerce income promotes market efficiency by preventing legislative waste. Information rich nations tend to regulate e-commerce more than information poor countries.<sup>72</sup> The legislation, thus far, tends to address fair dealings in international e-commerce transactions and consumer privacy on the web. However, some countries have resisted the urge to draft laws regarding the taxation of international e-commerce.<sup>73</sup> Taxation of international e-commerce would slow down the amount of commerce on the Internet. Taxation would increase the start-up costs for international e-commerce businesses. Thus, the amount of revenue generated would actually decrease because a tax would be levied on the income.

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69. Thibodeau, *supra* note 60.

70. *See id.*

71. *International E-Commerce Sites Fail Consumer Test*, ASIA INTELLIGENCE WIRE, Oct. 15, 1999.

72. *See infra* Part IV (discussing the difference between information rich versus information poor).

73. *See infra* Part II.B.1 (discussing the United States government desire to place a moratorium on international taxation of the e-commerce).

Non-taxation of international e-commerce has a downside. The disadvantage to developing countries is that they will be unable to benefit from the increasing revenue that the international e-commerce generates. Yet, such a disadvantage is outweighed by the advantage of promoting international e-commerce.

## 2. Consumer Skepticism is Needed for an Efficient International E-commerce Marketplace

The theory of *globus caveat emptor*, or international buyer beware, works in two ways. First, it creates a duty on the international e-commerce seller to act fairly and truthfully in its dealings. Second, it shifts the responsibility of consumer protection in international purchases from the seller to the consumer since the enforcement of breaches of international consumer privacy is difficult since no specific global governing body exists.

### IV. INTERNATIONAL E-COMMERCE POLITICAL CONCERNS & PROPOSALS

#### A. *Political Issue Concerning International E-commerce*

##### 1. International Impact of the Digital Divide

###### a. *What is the Digital Divide?*

The digital divide is the term used to describe the division between those persons, within a given nation, who have access to and/or knowledge of the intellectual property characteristics of the Internet. Globally, the digital divide is not based on race<sup>74</sup> or ethnic division, which exists in the United States.<sup>75</sup> Nor is the digital divide a solely economic issue to be resolved among nation states. There are, however, two common characteristics that dictate the degree to which a digital divide exists within a country.

The first characteristic that indicates the degree of a digital divide existing in a country is the amount of intellectual property the country controls. The term "info rich" is the degree of intellectual property that currently exists in the nation state or is under the state's control, either by regulation or other means. If the means to create intellectual property exist in a country, the country can be deemed information rich even if it presently do not have a large amount of

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74. See Richard G. Barnes, *Government concerned by growing digital divide*, THE PHILADELPHIA TRIB., Aug. 7, 1998, at 5A (noting FCC Chairman, William Kennard, classifying the digital divide as a racial divide where Black and Hispanic Americans are more likely not to have a computer in their homes).

75. See, e.g., William E. Kennard, *Information POWER: William E. Kennard, FCC Chairman, Shares With Us The Importance Of The 'Information Age*, SACRAMENTO OBSERVER, Sept. 9, 1998, at S30 (noting that Chairman Kennard was giving this speech before the NAACP regarding the lack of African American representation in the technology field).

intellectual property under its direct control. "The means for existence" can be illustrated through legislative or governmental intent to become info rich. In addition, info rich countries try to legislate e-commerce.<sup>76</sup>

In contrast, info poor nations lack the necessary technological infrastructure and necessary resources to become a technology property owner. Furthermore, info poor countries systematically lack the means to establish an intellectual property foothold. Although the current market trend and technological advances create a division between info rich and info poor states, as the Internet and its progeny, e-commerce, become more global in nature the chasm which exists will narrow.

The second common characteristic of the existence of a digital divide within a nation is the number of people in the country who have the requisite technological knowledge (T knowledge) to know how to utilize the intellectual property (T knowledge rich v. T knowledge poor). T knowledge rich countries tend to have more people that are obtaining or have an advanced knowledge of intellectual technology. In comparison, T knowledge poor countries lack the requisite number of people who are technologically inclined to fill the increasing number of intellectual property jobs available in the given nations. These highly skilled workers are missing in T knowledge poor nations because there either exists a limited number of people with that knowledge or the populace as a whole lack people with such sophisticated knowledge. Similar to the factor of intellectual property, there is a direct correlation between the number of persons with intellectual knowledge and the degree of the existence of a digital divide.

#### b. *Four International Models of the Digital Divide*

Four international models of the existence of a digital divide develops from the characteristics of ownership and control of intellectual property and technological knowledge. The first model is countries that are info rich, T knowledge rich. India best illustrates this model type. Economics and inherent classism are the strongest basis for the digital divide in India.

India has a large population of persons who are familiar with intellectual technology and e-commerce.<sup>77</sup> Currently, India has the largest population of intellectual manpower, outside of Silicon Valley.<sup>78</sup> Yet, despite India's high T

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76. *The Millennium Digital Commerce Act*, S. Res. 761, 106th Cong. (1999) (enacted); see also *Singapore, India Join Forces in Information Technology*, AGENCE FRANCE-PRESSE, Mar. 30, 2000 (mentioning that India is interested in proposing legislation on e-commerce due in part to Singapore's e-commerce legislation).

77. *Singapore, India Join Forces in Information Technology*, AGENCE FRANCE-PRESSE, Mar. 30, 2000 (emphasizing India's prowess in intellectual technology).

78. *Id.* (citing India's Minister of Communications, Pramod Mahajan).

knowledge quotient, the country still has difficulty demystifying the Internet and intellectual technology for the general India populace.<sup>79</sup> In a country of more than one billion, the role of the Indian government is not only to harness its T knowledge, but also to convince the Indian population that the Internet and e-commerce is something to embrace.<sup>80</sup> A second issue facing the Indian government is the need to regulate international e-commerce. Although India can be described as info rich, T knowledge rich, the country does not have any current legislation regarding e-commerce.<sup>81</sup> The Indian legislature expects to have a proposed e-commerce bill by the summer of 2000.

Singapore's approach to international e-commerce can be described as info rich, T knowledge poor.<sup>82</sup> Singapore's digital divide does not stem from a lack of technological development but from the lack of knowledgeable persons to implement their plans. Singapore currently has legislation on e-commerce.<sup>83</sup> However, the country lacks the necessary manpower to execute its intellectual technology initiatives.

On March 30, 2000, Singapore and India announced a plan to enter into a joint partnership to harness both countries' intellectual technology know how and man power.<sup>84</sup> According to Yeo Cheow Tong, Singapore's Minister for Communications, Singapore recognizes that India dominates the East-Asian technological community with large populations of intellectual talent.<sup>85</sup> Thus, part of the purpose of the joint task force is to "tap into the vast pool of talents that India has."<sup>86</sup> In addition, Singapore Prime Minister Goh Chok Tong has stated that due to the lack of local talent within its country, Singapore needs foreign talent to implement its intellectual property plans. The Singaporean

79. *See id.* (acknowledging that if India does not convince its more than one billion population that the Internet is something to embrace, then the Internet will not become an asset but a liability widening the digital divide).

80. *See id.* (declaring that there is a view persistent in India that the Internet and its progeny are limited to elite groups of English speakers in the upper class of society).

81. *Id.* (citing India's Minister for Communications and Parliamentary Affairs, Pramod Mahajan, as stating that India is in the process of formulating legislation regarding e-commerce). Information rich nations tend to have some form of e-commerce in process or it is already a part of their laws. *See Robert MacMillian, Senate Democrats Unite on Electronic Signatures*, NEWSBYTESNEWSNETWORK, Mar. 30, 2000 (articulating the United States Senate's bill entitled The Millennium Digital Commerce Act, which is proposed to establish federal guidelines regarding the creation of binding electronic contracts and electronic signing of documents).

82. *Singapore, India Join Forces in Information Technology*, *supra* note 77 (quoting Singapore's Minister for Communications, Yeo Cheow Tong, desire to turn Singapore into the Eastern Silicon Valley).

83. *Id.* (discussing India's desires to implement e-commerce legislature similar to Singapore's legislation).

84. *Id.* (describing India and Singapore's plans to create a joint information technology task force).

85. *See id.*

86. *Id.* (quoting Yeo).

government believes that their national digital divide can be resolved through international infusion of more people with intellectual technical knowledge.

The third model of an international digital divide, info poor, T knowledge poor, is demonstrated by the governmental practices within New Zealand.<sup>87</sup> New Zealand's approach to increasing technological ownership is by cost benefit analysis.<sup>88</sup> New Zealand's Minister of Information Technology, Paul Swain, stated, in his briefing papers to the government, that "New Zealand is not doing enough, fast enough, to reap the full benefits of electronic commerce . . ." This is due in part to New Zealand's technology focus. Unlike information rich countries, like India, who focus on instantaneously acquiring intellectual property and people, New Zealand's mentality relates the country's lack of technological progress with the lack of understanding of the issue.<sup>89</sup> The New Zealand government policy ignores major e-commerce issues, such as consumer privacy and taxation, and instead focuses on increasingly practical and market research on the feasibility of e-commerce.<sup>90</sup> By focusing solely on whether e-commerce is feasible, the New Zealand government gets further and further from becoming either info rich or T knowledge rich.

Finally, the model of info poor, T knowledge rich is difficult to find an example of in the global context. The model in and of itself begs the question, how can a country that does not own intellectual property have a populace which has extensive technological knowledge. Although this model type may not currently exist, it does not preclude the possibility of such an example in the future.

### B. *The International Politics of E-commerce*

E-commerce for one, E-commerce for all: closing the gap on the international digital divide. A nationalistic approach to the international digital divide is the best approach to alleviating the problem. A nationalistic approach looks to the government or world organizations to intervene in international electronic economy. By intervening, the government and/or the agency assert their authority over the e-commerce market to ensure that technologically disenfranchised groups have access to the electronic market. In addition, a

87. See, e.g., Eric R. Biel, *The Impact of Technological Change on Developing Countries*, 25 CAN.-U.S. L.J. 257, 264 (1999) (analyzing the negative impact new technologies will have in developing countries, i.e., widening the digital divide).

88. See Rob O'Neill, *Government Gets Proactive with E-commerce*, INDEP. BUS. WEEKLY, Mar. 29, 2000, at 20 (maintaining that New Zealand's Minister of Information Technology, Paul Swain has recently laid out in a report the legal impediments to e-commerce development in New Zealand).

89. See *id.* "Progress is hampered by the lack of adequate research and statistics on local e-commerce." *Id.*

90. See *id.* (confusing the current legal issues of e-commerce, taxation, and consumer privacy with lesser important issues such as statistics on local e-commerce).



nationalist approach calls for an increased intellectual ownership by national government. Such an approach promotes strategies toward narrowing the international digital divide.

### C. *Political Analysis*

#### 1. How Does Increased Competition Resolve the Problem of Lack of Intellectual Ownership Due to the Digital Divide?

Increased competition in the global e-commerce market resolves the dilemma of the lack of intellectual ownership by certain Internet disenfranchised groups by allowing market forces to dictate a solution. Although the Internet has provided a forum to create new market forces on the economy, economic law still prevails.<sup>91</sup> Microeconomic theory may be used to explain e-commerce.<sup>92</sup> The three basic assumptions of microeconomics are: (1) no barriers exist for a company to enter and exit the market; (2) no business dominates and thus has the ability to manipulate market prices; and (3) companies will operate at a loss in the short run.<sup>93</sup> Any company desiring to conduct business online needs a business plan and little to no money to begin.<sup>94</sup> Companies conducting business on the Internet are so fluid that e-commerce ideas are easily duplicated and thus creating competition.<sup>95</sup> Amazon.com is a prime Internet example of the sacrifice of short-term losses for long-term profits.<sup>96</sup>

Political economy is defined as the parallel existence and mutual interactions between the state and the market.<sup>97</sup> A pure capitalistic market exists when the state is absent from the equation and the market is left on its own to establish the prices of commodities due to market forces.<sup>98</sup> On the other hand, a pure socialistic market exists when the market is non-existent and it is the job of the state to provide the commodities to society.<sup>99</sup>

One assumption is that in order to increase national wealth, there must be free and unrestricted exchange among individuals in both the domestic and

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91. Jacob M. Schlesinger, *If E-Commerce Helps Kill Inflation, Why Did Prices Just Spike?*, WALL ST. J., Oct. 18, 1999 at A1, (quoting University of California at Berkeley economist Hal Varian as saying "technology changes but economic laws do not.")

92. *Opportunity Knocks: On-line retailing shakes up the market again*, BARRONS, Sept. 13, 1999.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. C. ROE GODDARD, JOHN T. PASSÉ-SMITH, AND JOHN G. CONKLIN, *INTERNATIONAL POLITICAL ECONOMY: STATE-MARKET RELATIONS IN THE CHANGING GLOBAL ORDER* 9 (1996).

98. *Id.* (capitalism).

99. *Id.* (socialism).

international economies.<sup>100</sup> Some scholars have argued that pure market theories may be put to the test with the emergence of e-commerce and its effects on the market.<sup>101</sup> However, that argument may be hindered by the fact that the Internet does not provide perfect competition at all times. The Internet also allows industry leaders to obfuscate certain websites so that only industry experts can have access to discounted prices, while simultaneously hosting a high-end priced website that is easier to comprehend.<sup>102</sup>

## 2. A Nationalistic Approach to the International Digital Divide

On the other hand, applying a nationalistic model can lessen the issue of the international digital divide.<sup>103</sup> Unlike free market competition, a nationalistic approach to international e-commerce urges foreign governments to intervene in the electronic economy. The theory being that without government intervention, info poor/T knowledge poor countries, like New Zealand, will be unable to industrialize their technology and thus widen the international digital divide.

A nationalistic approach toward combating the international digital divide can also occur at the international agency level. The WTO's assertion that international e-commerce is inherently within its authority<sup>104</sup> gives rise to theory that the WTO can use its power to narrow the digital divide. Info rich/T knowledge rich countries should urge the World Trade Organization to intervene in the global economy generated by e-commerce in order to encourage the use of the Internet in business but also to level the playing field. Without the WTO's intervention, some countries will be unable to benefit from the advent of e-commerce in the global market and thus fail to become players in the new global market.

## V. THE INVENTION OF INVENTION

The United States is the world leader in e-commerce.<sup>105</sup> Although e-commerce only accounts for 1% of the retail economy in America,<sup>106</sup> it has been

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100. *Id.* at 26.

101. Schlesinger, *supra* note 91 (acknowledging the theories of MIT economists Erik Brynjolfsson and Michael Smith).

102. *See id.* (giving the example of travel agencies and their ability not to create a price war through lower airfares accessible on the Internet).

103. *See infra* Part V.A.1 (describing China's nationalistic e-commerce model).

104. *See infra* Part II.C (expressing that the WTO believes it has authority over international e-commerce under the WTO/GATT).

105. Burgess, *supra* note 41.

106. Schlesinger, *supra* note 91.

a force in lowering prices online as well as off-line.<sup>107</sup> E-commerce creates the same efficiency of service on an international scale as it does on a domestic one.<sup>108</sup> Before the ease of access to the Internet, commerce was dominated by vertical economic links that interconnected manufacturers, wholesalers and retailers causing consumer prices to be linked with “middle-man” syndrome. The emergence of the Internet has converted vertical economics to horizontal economics where all upstream suppliers are on the same level, thus giving consumers easier access to the best price for a product.<sup>109</sup> This translates into lower prices for the average consumer due to decrease in inventory stockpiling by the seller.<sup>110</sup>

#### A. *The Internet Creates New Models of Doing Business*

Many U.S. merchants have specifically targeted foreign buyers.<sup>111</sup> The Internet has been the greatest benefit to the individual consumer as well as merchants.<sup>112</sup> The consumer can buy over the Internet, without the purchase of a plane ticket, using only a mouse and a credit card.<sup>113</sup> Single interactions by consumers become great ripples in the e-commerce supply chain.<sup>114</sup> Thus, companies are advised to be more flexible to the consumer-centric market of the Internet.<sup>115</sup>

##### 1. Nationalistic E-commerce Model - China’s Plan

On April 6-8, 2000, China held its 4th China International E-Commerce Summit. The purpose of the summit was to bring together the top information technology specialist from China and around the world to discuss how to

107. *Id.* (finding that although car buyers may not buy a car over the web, a majority will use the web to determine what is an ideal price for a car in their local area).

108. Burgess, *supra* note 41 (expounding the premise that the use of the Internet can shorten response time between purchasers and merchants, decrease the need to store piles of inventory, and increase the diversity of goods offered).

109. Michael Casey, *Power of the Internet Ensures Supply and Demand Will Never Be the Same*, WALL ST. J., Oct. 18, 1999, at A43M (stating that horizontal economic structures allow purchasers to give a greater access to sellers).

110. *See id.* (stating that the Internet has brought about an age of efficient consumer response and continuous replenishment of inventory).

111. Burgess, *supra* note 41 (contending that U.S. merchants have established web pages specifically for foreign buyers).

112. *See id.* (noting that many international consumers comparison shop over the Internet for quotations on prices of a particular item in the next state or country).

113. *See id.* (describing the use of downloadable MP3 music files as a means of selling records world wide).

114. Casey, *supra* note 109.

115. *See id.*

develop the Internet and e-commerce in China.<sup>116</sup> As of the end of 1999, from a total population of 1.3 billion people, 4.5 million are Internet users.<sup>117</sup> The number is estimated to increase to 9.4 million users by 2002.<sup>118</sup> China's Minister of Information Industry currently has five goals for China's e-commerce development.<sup>119</sup>

First, China would like guidance in the overall planning of e-commerce development.<sup>120</sup> China's governmental intervention could be looked at in two ways. The Chinese government's assistance could stem from the government's desire to aid in the furtherance of e-commerce in China. Yet, on the other hand, such interference from an intolerant government, such as China, could result in the Chinese government censoring the content of certain websites.

Second, the Chinese government would like to emphasize the function of enterprises in e-commerce development. On November 15, 1999, the Chinese agreed to permit foreign investors to own up to 49 percent of telecommunications industries, including Internet services.<sup>121</sup> China's major concerns regarding development of an e-commerce market are its inadequate electronic infrastructure, diminutive credit card base, lack of communications among government departments and difficult to communicate with inland provinces.<sup>122</sup> Yet, the agreement has been a catalyst for China's membership into the WTO.<sup>123</sup> Furthermore, China's move to deregulate the telecommunications industry has opened the way for local Chinese companies to emerge as e-commerce providers.<sup>124</sup>

Third, the Chinese government seeks to have standardized guidelines for any e-commerce development project. The Chinese government's major concern is exposure of inappropriate content to children.<sup>125</sup> But the government, aside from the telecommunication ban from foreign investment, has not indicated the degree of its control of the Internet.<sup>126</sup>

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116. *China to Hold its Largest E-Commerce Conference*, CHINA BUSINESS INFORMATION NETWORK, Oct. 19, 1999, available at 1999 WL 17731516.

117. *Yahoo! Introduces Yahoo! China: New Internet Guide Features Localized Web Programming for China*, BUSINESS WIRE, Sept. 24, 1999.

118. *See id.*

119. *E-Commerce Development Principles Set*, ASIAPORT DAILY NEWS, Oct. 27, 1999, at 1, available at 1999 WL 22635630.

120. *See id.*

121. Michael White, *Chinese Official Urges U.S. Investors to Stop Worrying About Restrictive Policies*, ASSOCIATED PRESS NEWSWIRE, Nov. 20, 1999.

122. *China to Hold its Largest E-Commerce Conference*, *supra* note 116.

123. White, *supra* note 121.

124. *See id.*

125. *See id.*

126. *China to Hold its Largest E-Commerce Conference*, *supra* note 116.

Fourth, E-commerce websites within China must obey Chinese regulations on security and national law. Similar to other countries in the world, in China it is a criminal offense to misuse the Internet for criminal benefit.

Finally, cooperation between the Chinese government and international e-commerce business will be intensified.

## 2. Intrabusiness Model - IKEA

Ikea, the Swedish based home furnishing store, launched an international e-commerce website which will advertise and sell twenty to thirty percent of its current merchandise.<sup>127</sup> Ikea, through its advertising agency, developed a series of microsites, which are targeted to certain life situations.<sup>128</sup> Similar to old-fashioned mail order catalogs, the new website systems would be an electronic mail order service for its stores around the world.<sup>129</sup>

## 3. Interbusiness Model

The advantage of the Internet to the consumer is the ability to gain information on multiple sellers of any given product. In addition, the Internet allows consumers to have access to the same items online if the local seller charges too much.<sup>130</sup> However, the majority of e-commerce sales are from business to business transactions.<sup>131</sup> Businesses that specialize in computers or Internet components use the Internet to make products designed specifically for the customer.<sup>132</sup> Likewise, other industries that are supply and demand driven have been through the global use of the Internet. Purchasers for companies dependent upon chemical products, industrial parts and commodities, or steel and biological raw material are no longer stagnated by the geographical location of their supplier.<sup>133</sup>

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127. *Ikea to Offer a Fresh Start*, NEW MEDIA AGE, Nov. 25, 1999, at 7; see also *The Oil Daily*, Oct. 26, 1999, available at 1999 WL 10014886.

128. *Ikea to Offer a Fresh Start*, *supra* note 127.

129. *Ikea Eyes the World*, NEW MEDIA AGE, Oct. 8, 1999, at 2.

130. Schlesinger, *supra* note 91; citing economist Ethan Harris' statement that "the Internet eliminates local monopoly power." *Id.*

131. Reynolds, *supra* note 68, at 33.

132. Dell Computers began as a company which sold computers over the Internet, specifically to those specifications requested by the customers. The advantage of such an approach ensures that they are "built to order" for the customers specific needs.

133. Casey, *supra* note 109 (featuring two companies, FreeMarket Inc. and VerticalNet Inc., which provide an auction based system to allow industry buyers better access to suppliers worldwide).

B. *The Global Reach - Yahoo! A Case Study*<sup>134</sup>

In September 1999, Yahoo!, a leading Internet portal, launched Yahoo! China (<http://www.yahoo.com.cn>).<sup>135</sup> The twentieth system in Yahoo!'s global network, Yahoo! China provides a localized web guide to financial, news and regional information, as well as e-mail and instant messaging.<sup>136</sup> The Yahoo! service utilizes both simplified Chinese characters and traditional Chinese script.<sup>137</sup> Similar to the original Yahoo! portal, Yahoo! China, as a search engine and ICP, organizes information under various easy to access categories with banner advertisements.<sup>138</sup>

Yahoo! China did not enter the Chinese electronic business community on its own. Instead it created a joint venture with Beijing Founder Electronics Co., Ltd., a subsidiary of Founder (Hong Kong) Limited and a leading information technology company in China.<sup>139</sup> Founder Limited is the world's largest research based for China's electronic publishing systems.<sup>140</sup> The initial purpose of the joint venture was to establish a venture company that will provide online advertising in mainland China and develop Internet technology and applications.<sup>141</sup> The implicit goal of the joint venture was to circumvent the Chinese government's ban on foreign investment in China's Internet industry.<sup>142</sup>

Prior to and after Yahoo! China launched its website, Wu Jichuan, China's Minister of Information Industry (MII), had forbidden partnerships similar to Yahoo! China.<sup>143</sup> The Chinese government's focused on the ban on foreign investment in its telecommunication industry.<sup>144</sup> China's ban is based on the notion that foreign investment would corrupt China's telecommunication industry. Thus in China, the Internet, as a branch of telecommunication, must also have a ban against foreign investment.<sup>145</sup> Yet, Yahoo! China received a tacit consent from the Chinese government for their endeavor.<sup>146</sup> The tacit

134. See also *Commerce Department's Electronic Policy, The Emerging Digital Economy*, at <http://www.e-commerce.gov/emerging.htm> (last visited Apr. 4, 2000) (presenting case studies of seven other companies who conduct B2B transactions using the Internet).

135. White, *supra* note 121.

136. *Yahoo! Introduces Yahoo! China: New Internet Guide Features Localized Web Programming for China*, *supra* note 117.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Yahoo! Evades Ban on Net Deals*, SOUTH CHINA MORNING POST LTD., Sept. 25, 1999, at 1.

141. *Id.*

142. *Id.*

143. *Id.*; see *Chinese Internet Off Limits to Foreigners*, ASIA INTELLIGENCE WIRE, Sept. 28, 1999 (saying Yahoo! China was launched four days later).

144. *Chinese Internet Off Limits to Foreigners*, *supra* note 143.

145. *Id.*

146. *Yahoo! Evades ban on Net Deals*, *supra* note 140.

consent could be due to the fact that in China there exists no one department that governs the Internet.<sup>147</sup> The overall confusion regarding the telecommunication policy of the Chinese government has allowed other companies to defy the ban.<sup>148</sup>

Recently, on March 30, 2000, the FTC announced that it was investigating Yahoo!'s consumer information gathering to determine whether it complied with consumer protection laws.<sup>149</sup> Yahoo acknowledged the FTC's concerns. Yet, Yahoo believes the FTC's inquiry is due in part to a non-profit health care foundation's allegations that some of Yahoo's medical related websites were sharing information about their users.<sup>150</sup> According to California Healthcare Foundation, Yahoo's host sites failed to meet consumer privacy guidelines by not requiring across the board standards for all online business relationships as to the disclosure of consumer information.<sup>151</sup>

This scenario raises the issue as to how far must an e-commerce website provider go to ensure the protection of a customer's privacy. Furthermore, when is the consumer no longer a consumer of the original e-commerce company, at online business relationship level 1 or level 100?

## VI. CONCLUSION

The lack of global taxation on international e-commerce income promotes efficiency in the market. Although some countries may benefit from source-based taxation of e-commerce income, overall taxation acts as an impediment to international e-commerce. Companies conducting international business over the Internet should be aware of their responsibility of fair dealings to their customers. However, the burden of consumer protection regarding international e-commerce should lie with the consumer. The customer is the one who has the ultimate control over whether their personal information is disseminated over the Internet. Therefore, the customer should take measures to protect themselves. Finally, the international digital divide created by the emergence of the Internet and e-commerce is a national specific phenomenon. One broad sweeping solution can not resolve the problem world wide. Each nation state needs to access their degree of intellectual ownership coupled with their amount of intellectual knowledge in order to create solution to e-commerce.

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147. *Id.*

148. *China to Hold its Largest E-Commerce Conference*, *supra* note 116.

149. Steven Bonisteel, *Yahoo Confirms FTC Probe of Privacy Policy*, Newsbytes, at <http://www.newsbytes.com/pubNews/00/146655.html> (Mar. 30, 2000) (detailing the allegations of impropriety made against Yahoo! by the California Healthcare Foundation).

150. *Id.* (discussing that the FTC quickly responded to California Healthcare Foundation's allegations against Yahoo by asking related healthcare sites if CHF's statements were true).

151. *Id.*