

## HYPOTHETICALS FOR U.S. PANEL ON CHOICE OF LAW AND JURISDICTION

*We plan to discuss the following hypotheticals at the FTC workshop on June 9. In thinking about possible answers to the questions below, please consider not just the current legal framework, but also alternative frameworks that take into account issues of fairness, practicality, cost, regulatory predictability, and effects on the market.*

**Mom&PopBooks.com (“Mom&Pop”) is a company with its principal place of business in Foreignland. Mom&Pop sells books through its website, which is viewable in all countries, including the United States, but it is stated on the website that Mom&Pop sells its books only to Foreignese customers. The representations on the website are clearly deceptive, and would violate U.S. federal and state law.**

- (1) Mom&Pop has not yet engaged in a transaction with U.S. consumers.
  - (a) Which law enforcement agencies should have jurisdiction to sue Mom&Pop?
  - (b) Where should it be possible for action to be brought?
  - (c) Which laws should apply?
  
- (2) A Florida consumer buys a book from Mom&Pop, relying on the deceptive representations made on its website, and finds that the book is not what Mom&Pop represented it to be.
  - (a) Public Action
    - (1) Which law enforcement agencies should have jurisdiction to sue Mom&Pop?
    - (2) Where should it be possible for a public action to be brought?
    - (3) Which laws should apply?
  - (b) Private Action
    - (1) Where should it be possible for a consumer to bring a private action?
    - (2) Which laws should apply?
  
- (3) Should the result change if Mom&Pop sold a product that could be downloaded on to the consumer’s computer (e.g., music, information) instead of being sent by mail from Mom&Pop to the consumer’s residence?
  
- (4) Should the result in question (3) change if the website asked customers to click on the following before downloading – “I certify that I am a resident of Foreignland.”?
  
- (5) Which factors should be considered in determining whether a court should exercise jurisdiction over a foreign online company?
  - the extent to which the company specifically tailors its website to appeal to

consumers in a particular country (e.g., currency in U.S. dollars, English only, posting of telephone number on website that is toll free in the U.S.)

- the extent to which the company actively markets to consumers in a particular country (e.g., sending unsolicited e-mail, placing ads in local newspapers)

- (6) Should the result of questions (1) and (2) change if the website has international appeal but does not specifically target a particular country (e.g., available in multiple languages, multiple currencies)?
- (7) Should the results of questions (1) and (2) change if it is stated on the website that:
- (a) all disputes arising from transactions with Mom&Pop must be litigated in a Foreignland court?
  - (b) the law of Foreignland applies?
  - (c) all disputes arising from the website are subject to mandatory arbitration, for which the law of Foreignland applies?
- (8) Should the result change if Mom&PopBooks were a U.S. company selling only to U.S. consumers, and its website contained a comparative advertisement that was forbidden in certain countries?
- (9) Should the result change if (1) a consumer places an order for a book on Mom&Pop's website, changes her mind the next day, and seeks to cancel the transaction under a local "cooling off" ordinance in effect in the consumer's county of residence, which gives consumers three days to cancel any Internet transaction and (2) Mom&Pop refuses and processes the transaction, in clear violation of the local ordinance.