

## International Law

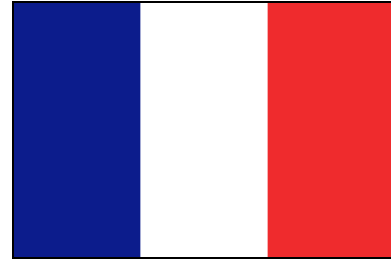
Chapter Assignment for Chapter Five

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The Internet offers a complete set of challenges to both state sovereignty and to international law. Most of the difficulties center on the question of the crime's location—where it actually occurred. Were I (living in Baltimore) to write in my web log (server located in Toronto) about the greatness of Hitler, would I be liable for a Frenchman (vacationing in Amsterdam, but who lives in Paris) viewing the illegal material in a hotel room at the Hotel Okura (owned by a Netherlands citizen, but part of a French conglomerate) using their Internet service provider (ISP) owned by Vodaphone (headquartered in London)?



Where did the crime occur? Under whose jurisdiction would it fall? Who actually committed the crime? Did a crime actually occur? Were France to attempt prosecution, under which jurisdictional principle would they rely?

The Internet allowed this to happen.

Carefully read the Paris court's decision in the case *Union des Etudiants Juifs de France, Ligue contre le Racisme et l'Antisémitisme v. Yahoo! Inc. and Yahoo France* (2000).<sup>1</sup> It is lengthy, but filled with interesting insight and questions. While reading it, think about the following questions.

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1. Paragraph [8] of the French case states that “looking at such objects [Nazi memorabilia on the web] obviously causes a wrong in France.” Was the wrong caused “in” France?
  2. Paragraph [10] resolves that “A tying link of the present case with France... gives this Court full jurisdiction to hear the claims...” Does this so-called link really exist?

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<sup>1</sup> The two claimants' names approximately translate as ‘The Union of Jewish Students of France’ and ‘The League against Racism and Anti-Semitism’. The Slomanson version of the case can be accessed from <http://slomanson.tjssl.edu/YahooJmt.html>.

3. Paragraph [14] refers to the Court's previous May 22nd announcement which "Order[ed] Company Yahoo! France to give to any internaut, before he opens the link... a notice informing him that, if the result of his search... leads him to point to sites, pages or forums, the title and/or contents of which constitute a violation of the French law,... then he must stop the consultation of the site concerned. ...” Would compliance with this order present Yahoo! with an insurmountable technical problem? Does paragraph [30] provide any insight?
4. Paragraph [53.6] states that “it would be appropriate to ask the internauts, when their IP address is ambiguous, that they subscribe a declaration of nationality. Would French subscribers—knowing that accessing the Nazi memorabilia web page is illegal in France—be likely to declare their French nationality? Is this even a viable alternative?
5. Paragraph [71] concludes that “most certainly it would cost Yahoo! Inc. very little to extend the above [see ¶70] prohibitions to symbols of Nazism. ...” Yahoo! could have settled the French case, thus avoiding the costs including those of the expert consultants —not to mention the costs associated with the related US litigation. Was Yahoo! thus taking a principled approach to its dilemma, because it was an advocate of First Amendment freedom of speech? Was Yahoo! actually fighting for some other purpose? Was the French judge wrong in his assessment that developing more software programs to fix the nationality of the user would cost Yahoo! “very little?”
6. Paragraph [i] of the US federal court's subsequent opinion notes that while the procedural question regarding jurisdiction might present a “higher threshold” for foreign defendants, constitutional concerns sometimes trump such limitations.<sup>2</sup> What was the gist of Yahoo's! constitutional argument?

During class, we will discuss the six questions above as well as the opening scenario. But, for your Chapter Five assignment, use your answers to these six questions to discuss any question of international law you deem fit to discuss relating to the Internet and International Law.

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<sup>2</sup> Yahoo! Inc. v. La Ligue Contre le Racisme et l'Antisémitisme 169 F.Supp.2d 1181 (2001), heard by the United States Court for the Northern District of California.